

Board of Zoning Appeals Members

District 1: Beverly Williams
District 2: Kemesha Lowery
District 3: Keye Jones
District 4: Gary Alden
District 5: Sheresha Ingram
District 6:
District 7: Frances Liu, Chair

**County Attorney**

Ginny L. Merck-Dupont

Clerk to Board of Zoning Appeals

Jennifer Bryan

Development Services Director

Allison Hardin

January 9, 2024

6:00 PM

**101 North Main Street
Lancaster, SC 29720**

**LANCASTER COUNTY BOARD OF ZONING
APPEALS
Council Chambers, Lancaster County Administration
Building, 101 N. Main Street**

AGENDA

1. **Call to Order Regular Meeting - Chair**
2. **Roll Call**
3. **Approval of the Agenda - Board of Zoning Appeals**
4. **Approval of Minutes**
 - a. August 29, 2023 BZA Minutes (revised)
Revised Draft of August 29, 2023 Minutes.
 - b. November 30, 2023 BZA Minutes
5. **Public Hearing Items**
 - a. VAR-2023-2067 Floyd
Application by Dustin Floyd for a Variance for a parcel of .79 acres at 504 Oakhaven Drive (TM 0088K-0A-008.00) to reduce required setbacks under UDO Sec. 2.4 District Regulations: Setbacks.
6. **New Business**
7. **Adjourn**

Please note that the Board of Zoning Appeals makes the final decision on all items.

Anyone requiring special services to attend this meeting should contact 285-1565 at least 24 hours in advance of this meeting. Lancaster County Board of Zoning Appeals agendas are posted at the Lancaster County Administration Building and are available on the Website: www.mylancaster.org

Meetings are live streamed and can be found by using the following link:
<https://www.youtube.com/@LancasterCoSCGov/streams>

Agenda Item Summary

Ordinance # / Resolution #:

Contact Person / Sponsor:

Department: Board of Zoning Appeals

Date Requested to be on Agenda: 1/9/2024

Issue for Consideration:

Points to Consider:

Recommendation:

ATTACHMENTS:

Description

August 29, 2023 BZA Minutes (revised)

Upload Date

1/2/2024

Type

Exhibit



MEMBERS OF LANCASTER COUNTY BOARD OF ZONING APPEALS

BEVERLY WILLIAMS, DISTRICT 1
KEMESHA LOWERY, DISTRICT 2
KEYE JONES, DISTRICT 3
GARY WAYNE ALDEN, DISTRICT 4
SHERESA INGRAM, DISTRICT 5
, DISTRICT 6
FRANCES LIU, DISTRICT 7

**MINUTES OF THE LANCASTER COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING**

August 29, 2023 at 6:00 PM

1. Roll Call

Board Members present: Quorum is present (5 Board Members)
Frances Liu Keye Jones Kemesha Lowery
Sheresa Ingram Gary Alden

Absent: Beverly Williams

Staff: Allison Hardin, Interim Planning Director
Jennifer Bryan, Administrative Assistant acted as Clerk and Recording Secretary

Members of the press were not present. All adjacent property owners were notified by mail. A notice was published in the local newspaper to include meeting place, date, time and the agenda and a copy is on file.

2. Call to Order

Chair Liu called the public meeting to order at 6:05 p.m.

a. Discussion of Officer Elections:

Motion to postpone Officer Elections until after fall training session [October 2023], by
Keye Jones; 2nd by Gary Alden.

Discussion: no further questions.

Called Vote: 5:0. **Motion to postpone elections is approved.**

3. Approval of Agenda

Kemesha Lowery moved to Approve the Agenda; 2nd by Sheresa Ingram. The motion was approved by unanimous consent.

4. Approval of Minutes from June 6, 2023

Chair Frances Liu asked if there were any comments, changes or corrections to the Minutes of the June 6, 2023 meeting. Beverly Williams was absent from the meeting of June 6, 2023. Gary Alden moved to approve minutes as written, seconded by Sheresa Ingram. The Board members voted unanimously to approve and adopt the June 6, 2023 meeting Minutes.

5. Public Hearing Items

Staff was sworn in under oath.

a. BZA 2023-1201: NR Lodges Property Owner LLC

STATEMENT OF MATTER TO BE HEARD:

Application by NR Lodges Property Owner LLC to Appeal the Decision of a Planning/Zoning Official, regarding the assessment and scheduling of payment for School Impact Fees on 44 apartment units. Subject property is The Lodges at Fort Mill Highway near Rosemont Drive (TM 0006-00-086.00).

PRESENTATION BY APPLICANT: Eight (8) Minute limit.

NR Lodges Property Owner LLC represented by **Michael Wilson**. Also present are attorney Dan Ballou (Morton & Gettys), Vice President Kyle Whitaker, and Vice President Ron Stewart. Original site plan was approved before impact fees were implemented; master plan was revised and submitted for approval with 44 additional residential units after impact fees were instituted. Although number of units changed, the number of buildings and the number of bedrooms did not change. Floor plans were reconfigured to include a higher number of one-bedroom units.

Summary of request: Delay the payment of the school impact fee until either a) more than 217 units overall have been built, or b) until more than 4 garden apartments have been built, since the additional units are all garden apartments [green area on schematic].

PRESENTATION BY PLANNING/ZONING STAFF: Eight (8) Minute limit.

Planning/Zoning Staff represented by **Allison Hardin**, Development Services Director. Original plan approved for 217 rental units. Additional units were approved after the implementation of impact fees. On the schematic shown, number of units in the blue area and the yellow area did not change. Only the number of units in the garden apartments (green area) changed.

Impact fees are assessed as proportional to infrastructure demand of a project. Fees apply to all new development. The County chose not to apply the fees on the previously approved 217 units.

Fees are assessed at the time building permits are issued and/or the commencement of construction activity. All other impact fees assessed by the County have been paid by the applicant.

Staff concurred that fees did not need to be assessed for permitting of construction in the blue and yellow sections, but that fees must be assessed for permitting of garden apartment buildings, because the additional units are not confined to one building but are dispersed throughout the garden apartment buildings. The footprints of the buildings have not changed. There is no way to delay permitting or assessment of fees because of the nature of phased construction requires work on multiple areas simultaneously.

If the applicant wishes to challenge the metric of assessment of school impact fees, there is a separate process for that, requiring that they engage a consultant to establish an alternative fee calculation basis.

STIPULATION:

Mr. Wilson:

To clarify the nature of the applicant's request as presented in the application, they are willing to stipulate that in this hearing, they are only requesting a delay in the imposition of school impact fees, not a change in the calculation or waiver of the school impact fees.

Ms. Hardin: If they choose to engage a consultant and pursue the other options, that can be brought back to the Board if needed.

PUBLIC HEARING: Four (4) Minute limit per person

None signed in to speak.

REBUTTAL BY APPLICANT/APPELLANT: Three (3) Minute Limit

Mr. Wilson: We feel that we have a good working relationship with the Director and the Planning Department. At this time we are not asking for a waiver of the fees or a recalculation; we only request a change in the schedule of payment, deferred until either unit 218 overall or unit 75 of the garden apartments.

QUESTIONS/DISCUSSION FROM BOARD:

Frances Liu and **Keye Jones** ask for clarification of the request, per numbered items in the agenda and staff report. **Ms. Hardin** and **Mr. Wilson** resolve what is being requested in this hearing. [See STIPULATION above.]

The applicant asked if the impact fees could be paid after the construction on the original plan was completed and construction begins on the additional garden apartments. When this was denied, he suggested a compromise wherein the fees would be paid upon completion of the original 74 garden apartments and before the first of the additional 44 garden apartments would be started.

When questioned as to whether construction of the cottage court units, the townhome units and the garden apartments would be concurrent, he said "That is how it works". When asked if that meant that all of the construction on the original plan could be completed before construction began on the additional garden apartments was started, he said yes.

Chairman Liu indicated that this was no different than the plan that was denied and it did not provide a compromise.

Gary Alden asked if there is a statutory requirement for the fee to be paid at permitting? **Hardin** confirmed that our UDO states that all fees are to be paid at permitting.

Gary Alden asked if the bond was for all impact fees?

Mr. Wilson and **Ms. Hardin** clarified that the other impact fees have been paid, the bond only covers the school impact fees, and that the bond remains in place until project is finished or other conditions for release are met.

Sheresa Ingram asked for the name of the development company.

Mr. Wilson confirmed that the developer is Northwood Raven.

Vote: A 4/5 vote is required in affirmation or denial of the appeal.

Motion to Approve the Appeal request, by Kemesha Lowery; second by Gary Alden.

Vote:	KL: Against	KJ: Against	GA: For
	SI: Against	FL: Against	BW: Against

Vote: 4:1. **The motion is denied.**

No other motions are presented.

6. Other Business:

- There will be no September meeting;
- A training session will be take place on the scheduled date of the October meeting.

7. Adjournment:

With there being no further business, Kemesha Lowery moved to adjourn; motion seconded by Sheresa Ingram. The motion was approved by unanimous consent.



Board of Zoning Appeals Public Hearing Sign In Sheet

Item 5a: BZA-2023-1201 NR Lodges Property Owner LLC

Application by NR Lodges Property Owner LLC to Appeal the Decision of a Planning/Zoning Official, regarding the assessment and scheduling of payment for School Impact Fees on 44 apartment units. Subject property is The Lodges at Fort Mill Highway near Rosemont Drive (TM 0006-00-086.00).

ONLY STATEMENTS OF FACT WILL BE CONSIDERED AS EVIDENCE. HEARSAY AND OPINION ARE INADMISSABLE.

Council Chambers
101 N. Main Street, Lancaster South Carolina
Tuesday, August 29, 2023

Citizens are allowed 3 minutes per person to speak. Everyone speaking before the Board will be required to do so in a civil manner. The Board will not tolerate personal attacks on individual Board Members, County Staff or any person or group. Racial slurs will not be permitted. The Board's number one priority is to conduct business for the citizens of this county.

PLEASE PRINT

1.	MIKE WILSON - NR LODGES PROPERTY OWNER, LLC
2.	DAN BALLOU - NR LODGES MORTON & GOTTYS
3.	

9.2.14 APPEAL OF ADMINISTRATIVE DECISIONS

A. APPLICABILITY

This process is hereby established to provide an appeal process for parties aggrieved by any administrative order, requirement, decision or determination, made by an administrative officer charged with enforcing the provisions of this ordinance.

B. FILING PROCEDURES

1. **Process Type:** Quasi-Judicial.
2. **Filing Procedure:** An appeal of an administrative decision may be taken by any person aggrieved (or by their authorized agent) or may be taken by any officer, department, board or bureau of the County. Such an appeal shall be made to the County within 30 days of the receipt of the written notice of decision from the County.
3. **Stay of Proceedings:** The filing of an appeal shall stay all proceedings in furtherance of the contested action unless the Administrator certifies that, in his/her opinion, by reason of facts stated in the certification, such a stay would cause imminent peril to life and property. In such a case, proceedings shall not be stayed except by restraining order granted by the Court of Common Pleas on notice to the administrative official from whom the appeal is taken with due cause shown.
4. **Required Application Information:** All information relevant to describing the applicant's appeal to the Board of Zoning Appeals is required. The Administrator shall similarly prepare a report detailing the regulations and interpretation behind the matter being appealed and their reason for their decision.
5. **Public Notification:** Level 1 and 3.

C. FORMAL REVIEW

1. Upon receiving the application, the Board shall conduct a public hearing on the matter. Any party may appear in person or be represented by an agent at the hearing.
2. After conducting the public hearing, the Board shall adopt an order reversing or affirming, wholly or in part, or modifying the order requirements, decision or determination in question. It shall take a 4/5ths vote of the Board to reverse or modify the contested action.
3. The Board, in making its ruling, shall have all the powers of the Administrator from whom the appeal is taken, and may issue or direct the issuance of a permit.
4. The decision of the Board must be in writing and permanently filed in the minutes of that reviewing body as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the Board, which must be delivered to parties of interest by certified mail.

D. APPEALS

Any appeal from a decision of the Board of Zoning Appeals may be made by an aggrieved party and shall be made to the Circuit Court of Lancaster County in the nature of certiorari. Any such petition shall be filed no later than 30 days after the applicant receives a written copy of the decision of the Board of Zoning Appeals.

GUIDELINES FOR CONSIDERATION: (All BZA actions)

Section 6.h of Rules & Procedures:

- h. Board members will cast their votes based on evidence presented, considering the following guidelines:
 - 1. The evidence presented does or does not meet the requirements and standards of the UDO;
 - 2. The evidence presented is or is not compatible with the current planned land uses or zoning;
 - 3. The evidence will or will not diminish the value of adjacent property, or property in the general area;
 - 4. The evidence presented will or will not have a positive impact on the general health, safety and welfare of the citizens of the area and Lancaster County;
 - 5. The Board may approve any guidelines or conditions by a simple majority.

**LANCASTER COUNTY BOARD OF ZONING APPEALS SCRIPT
AND ORDER OF MEETING**

1. THE BOARD OF APPEALS AND ZONING DEPARTMENT WELCOME ALL OF YOU TO THE MEETING TONIGHT.

✓ BY ATTENDING THIS MEETING, WE SINCERELY HOPE THE RESULTS ARE INFORMATIVE TO YOU ON HOW THE SYSTEM HANDLES EACH APPLICATION BECAUSE ALL REQUESTS ARE DIFFERENT.

- ✓ 2. OUR BOARD MEMBERS ARE: CHAIR **FRANCES LIU**, VICE-CHAIR **BEVERLY WILLIAMS**, **KEMESHA LOWERY**, **KEYE JONES**, **GARY ALDEN** and **SHERESA INGRAM**

- ✓ 3. THE CLERK WILL PLEASE CALL THE ATTENDANCE.

- ✓ 4. AT THIS TIME, I WILL ASK ALL MEMBERS OF STAFF TO PLEASE STAND, STATE YOUR NAME AND YOUR DUTIES WITHIN THE COUNTY. PLEASE REMAIN STANDING AND THE CLERK WILL PLACE EACH OF YOU UNDER OATH.

ALLISON HARDIN

- ✓ 5. IS THERE ANY BOARD MEMBER THAT HAS NOT RECEIVED A PACKET FROM THE ZONING DEPARTMENT CONTAINING THE NECESSARY INFORMATION FOR OUR MEETING?

- ✓ 6. OUR NEXT ORDER OF BUSINESS IS TO DISCUSS OFFICER ELECTIONS. ELECTIONS ARE TO BE HELD AT THE FIRST MEETING AFTER THE COMMENCEMENT OF THE NEW FISCAL YEAR ON JULY 1ST.

[Discussion on whether to postpone elections until after training this fall.

✓ Outcome of discussion may require motion and vote to postpone. Otherwise proceed to election of Chair and Vice Chair, moderated by Director of Development Services.]

- ✓ 7. OUR NEXT ORDER OF BUSINESS IS TO **APPROVE THE AGENDA**. ARE THERE ANY CHANGES TO THE AGENDA?

[ASK FOR A MOTION TO APPROVE, SECOND, DISCUSS AND APPROVE].

- ✓ 8. OUR NEXT ORDER OF BUSINESS IS TO **APPROVE THE MINUTES** of JUNE 6, 2023. ARE THERE ANY CHANGES?

[ASK FOR MOTION TO APPROVE, SECOND, DISCUSS AND APPROVE.]

9. **LEGAL NOTICE:**

- ✓
- HAS ZONING MADE IT POSSIBLE FOR ALL APPLICANTS OR APPELLANTS TO RECEIVE INFORMATION OF THIS MEETING?
 - HAVE ALL ADJACENT PROPERTY OWNERS WITHIN THE REQUIRED LIMITS BEEN NOTIFIED?
 - WAS THERE A NOTICE OF THIS MEETING PUBLISHED IN THE LOCAL NEWSPAPER TO INCLUDE THE MEETING PLACE, DATE, TIME AND THE AGENDA?
 - IS THERE A COPY POSTED IN THE LOBBY OF THE ADMINISTRATION BUILDING?

10. THE ZONING BOARD OF APPEALS' DUTIES ARE WITHIN THREE SPECIFIC AREAS:

- ✓
- A. AN **ADMINISTRATIVE REVIEW** IS AN APPEAL OF AN ORDER, OR DECISION OF THE ADMINISTRATOR THAT HAS ALLEDGED ERROR(S).
- B. THE POWER TO GRANT A **VARIANCE** IS GIVEN TO THE BOARD OF ZONING APPEALS BY THE STATE OF SOUTH CAROLINA. VARIANCES MAY BE GRANTED WHEN STRICT APPLICATION OF THE ZONING ORDINANCE WOULD CAUSE UNNECESSARY HARDSHIP AND THE GRANTING OF THE VARIANCE WOULD NOT CAUSE SUBSTANTIAL DETRIMENT TO ADJACENT PROPERTIES OR THE PUBLIC GOOD.
- C. **SPECIAL EXCEPTIONS** ARE PERMITTED USES WITHIN A ZONING DISTRICT BUT REQUIRE A PUBLIC HEARING PRIOR TO GRANTING FINAL APPROVAL.

✓ 11. A PUBLIC HEARING IS CONDUCTED TO REVIEW EVIDENTIARY COMMENTS AND INFORMATION, BOTH FOR AND AGAINST THE PROPOSED APPLICATION. DURING THE PUBLIC HEARING PORTION OF THE MEETING:

- ALL INTERESTED PARTIES WILL BE GIVEN THE OPPORTUNITY TO SPEAK AND GIVE **FACTUAL INFORMATION** OR PRESENT **FACTUAL DOCUMENTATION**. OPINION AND HEARSAY ARE INADMISSIBLE.
- ALL PERSONS WISHING TO SPEAK WILL SIGN THE REGISTER PRIOR TO SPEAKING.
- ALL PERSONS SPEAKING WILL BE PLACED UNDER OATH.

✓ 12. ANYONE SPEAKING WILL COME FORWARD TO THE PODIUM, SPEAK INTO THE MICROPHONE, STATE HIS OR HER NAME AND ADDRESS, AND BE SWORN IN.

- ALL INFORMATION IS RECORDED FOR THE RECORD.
- THE APPLICANT/APELLANT WILL SPEAK FIRST AND WILL HAVE AN OPPORTUNITY FOR A REBUTTAL AT THE END.
- PLEASE LIMIT YOUR COMMENTS TO NO MORE THAN THE ALLOTTED TIME, PER SECTION 6.b OF THE RULES AND PROCEDURES. (FOUR (4) MINUTES

✓ 13. THE CLERK WILL NOW READ THE STATEMENT OF MATTER AS READ. IF AN AMENDMENT IS NEEDED, PLEASE CORRECT THE DOCUMENT, INITIAL AREAS OF AMENDMENT.

14. I NOW DECLARE THE PUBLIC PORTION OF OUR MEETING OPEN. WE WILL CALL EACH SPEAKER TO THE PODIUM.

- ✓ a. APPLICANT NR LODGES PROPERTY OWNER LLC (8 minutes)
- ✓ b. STAFF REPRESENTATIVE (8 Minutes)
- c. PUBLIC HEARING: (4 minutes per person) *none signed in.*
- d. APPLICANT REBUTTAL (3 minutes)

15. **[AFTER HEARING]**: ALL SPEAKERS HAVE BEEN HEARD; THE PUBLIC PORTION OF THE MEETING IS NOW CLOSED.

16. **[CALL FOR BOARD MEMBERS' QUESTIONS TO APPLICANT]**

17. **[CALL FOR BOARD MEMBERS' QUESTIONS TO STAFF]**

18. **[CALL FOR DISCUSSION]** PLEASE REFER TO THE HANDOUT OF UDO Sec. 9.2.14 REGARDING APPEALS, and Rules & Procedure Sec. 6.h.

19. THE CHAIR WILL ENTERTAIN A MOTION TO:

- A. APPROVE THE APPEAL
- B. DENY THE APPEAL
- C. APPROVE WITH STIPULATIONS/CONDITIONS, OR
- D. POSTPONE THE VOTE UNTIL THE NEXT MEETING, IF THE INFORMATION PROVIDED IS NOT SUFFICIENT FOR THE BOARD TO MAKE A DECISION

VOTE: 1:4 *(G. Alden in support, remainder against).*

~~20. CALL FOR NEXT APPLICATION AND REPEAT ITEMS 12-20~~

THERE ARE NO FURTHER ITEMS FOR PUBLIC HEARING

Motion is denied

21. NEW BUSINESS:

[Discussion of administrative items]:

- Next month's agenda
- Date for group CE Training Session

22. **[IF NO FURTHER BUSINESS, CALL FOR ADJOURNMENT, PAUSE, AND ADJOURN].**

Agenda Item Summary

Ordinance # / Resolution #:

Contact Person / Sponsor:

Department: Board of Zoning Appeals

Date Requested to be on Agenda: 1/9/2024

Issue for Consideration:

Points to Consider:

Recommendation:

ATTACHMENTS:

Description

November 30, 2023 BZA Minutes

Upload Date

12/28/2023

Type

Exhibit



MEMBERS OF LANCASTER COUNTY BOARD OF ZONING APPEALS

BEVERLY WILLIAMS, DISTRICT 1
KEMESHA LOWERY, DISTRICT 2
KEYE JONES, DISTRICT 3
GARY WAYNE ALDEN, DISTRICT 4
SHERESA INGRAM, DISTRICT 5
, DISTRICT 6
FRANCES LIU, DISTRICT 7

**MINUTES OF THE LANCASTER COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING**

November 30, 2023 at 6:00 PM

1. Roll Call

Board Members present: Quorum is present (6 Board Members)

Frances Liu	Keye Jones	Kemesha Lowery
Gary Alden	Beverly Williams	Sheresa Ingram

Staff: Matthew Blaszyk, Planner
Jennifer Bryan, Clerk and Recording Secretary
Shannon Catoe, Zoning Director
Juie Faile, Zoning
Mika Garris, Zoning

Members of the press were notified in advance, but were not present. All adjacent property owners were notified by mail. A notice of public hearing was published in the Lancaster News at least 15 days prior to the meeting. The Agenda was posted on the County website, and posted in the lobby of the administration Building one week prior to the meeting. A copy of the agenda is on file.

THE FOLLOWING IS A SUMMARY ONLY; IT IS NOT A VERBATIM TRANSCRIPT.

2. Call to Order

Chair Liu called the public meeting to order at 6:05 p.m.

3. Approval of Agenda

Kemesha Lowery moved to Approve the Agenda; 2nd by Sheresa Ingram. The motion was approved by unanimous consent.

4. Approval of Minutes

a. Minutes of August 29, 2023

Chair Frances Liu asked that amendments be made to the Minutes of the August 29, 2023 meeting. Sheresa Ingram made a Motion to postpone adoption of the minutes until amendments could be made and presented at the meeting of January 9, 2024. Seconded by Kemesha Lowery.

Vote: 6:0. Motion to postpone is approved.

b. **Minutes of October 3, 2023.**

Motion to Approve by Sheresa Ingram; seconded by Keye Jones.

Vote: 6:0. Motion is approved.

5. **Public Hearing Items**

- County Attorney Ginny Merck-DuPont announced for the record that Attorney **Tommy Morgan** (Smith Robinson Law) is present as Legal Counsel for the Board of Zoning Appeals.
- Clerk Jennifer Bryan read the statement of matter presented for hearing.

a. **VAR-2023-1769 Faith Presbyterian Church**

Application by Janis Tacy on behalf of Faith Presbyterian Church for a Variance from Unified Development Ordinance Sec. 2.4 District Development Standards: Setbacks, for a 6.5 acre parcel at location 7520 Charlotte Highway, Indian Land (Tm# 0016-00-031.00). Zoned Institutional District (INS).

APPLICANT STATEMENT: **Janis Tacy** for First Presbyterian Church.

The site plan was designed and approved prior to the 2016 UDO. Subsequently the Church received a Variance for parking. The Church did not have sufficient funds to complete the structure as designed, and built a portion, which was completed and received a Certificate of Occupancy. In 2023 a site plan for an addition to complete the original plan was submitted, and was denied because it did not meet code regulations instituted in 2016. It is the Church's position that first, they were not notified that their permit needed to be renewed, and second, that federal RLUIPA statute applies in this case and that the requirement to change the design would constitute a "substantial burden."

STAFF REPRESENTATIVE: **Matthew Blaszyk** for Planning and Zoning Department. [See Staff Report attached to Agenda]. Completion of the modified plan for the fellowship hall and issuance of the CO closed the project. Applicants are responsible for filing any necessary renewals for their projects, there is no system for notifying applicants of expiration of vested rights (site plan) or permits. Compliance with current UDO requirements does not invoke RLUIPA.

PUBLIC HEARING: [See attached sign-in sheet]

Rev. David Bender, First Presbyterian Church: [See attached article regarding interpretation of RLUIPA statute] RLUIPA statute requires that in dealing with religious institutions, government agencies must meet objectives in the least intrusive way possible.

Dick Bonner, First Presbyterian Church: The site plan was designed to enhance the existing historic church structure. The northeast corner of the site plan does not encroach into the 20-foot setback. The addition as designed will not impact adjacent properties. Because of the location of the historic church and the adjacent cemetery, the site has significant restrictions that prevent relocating or redesigning the plan.

APPLICANT REBUTTAL: **Rev. David Bender** and **Janet Tacy** for First Presbyterian Church: [See attached copies of email communications from Deputy Planning Director Ashley Davis regarding UDO considerations and interpretation.] Under the RLUIPA standard, changing the site plan would create a “substantial burden,” and would prevent the Church from fully practicing their beliefs.

EXECUTIVE SESSION: RECESS: 7:02 PM

c. Executive Session

For the receipt of legal advice subject to the attorney-client privilege related to pending public hearing, VAR-2023-1769 Faith Presbyterian Church for a Variance from Unified Development Ordinance Sec. 2.4 District Development Standards: Setbacks, for a 6.5 acre parcel at location 7520 Charlotte Highway, Indian Land (Tm# 0016-00-031.00). Zoned Institutional District (INS).

RECALL TO ORDER: 7:47 PM

QUESTIONS/DISCUSSION BY BOARD:

Keye Jones: Do you have anything to add to the statement regarding the burden on the congregation posed by compliance with setback regulations?

Rev. Bender: The capacity of our church is reduced, the capacity for the kitchen is reduced. Our ministry includes many public events that are compromised by reduced capacity.

Keye Jones: Does this burden prevent you from practicing your religion?

Rev. Bender: No.

Beverly Williams: Is this the first year the site as been a polling place?

Rev. Bender: This is the second year.

Rev. Bender: Not being able to build the building as designed, that we need, is a substantial burden on the practice of our religion.

Janis Tacy: We would not be able to use that part of our land. Because of the historic church, the cemetery, and encroachment on heelsplitter habitat, it is the only place we can expand.

Keye Jones: We are bound by the legal definition of “substantial burden,” and this does not rise to that level.

CALLED VOTES: VARIANCE CRITERIA

- i. THAT THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THIS ORDINANCE: Agree (A) or Disagree (D)

Motion to approve by Gary Alden; Second Sheresa Ingram

F. Liu: A	K. Lowery: A	G. Alden: A
B. Williams: A	S. Ingram: A	K. Jones: D

Carried 5:1

- ii. THAT IF THE APPLICANT COMPLIES WITH THE PROVISIONS OF THE ORDINANCE, THE PROPERTY OWNER SEEKING THE VARIANCE CAN SECURE NO REASONABLE RETURN FROM, OR MAKE NO REASONABLE USE OF HIS PROPERTY; Agree (A) or Disagree (D)

Motion to approve by Beverly Williams; second by Sheresa Ingram.

F.Liu: A	K. Lowery: D	G. Alden: A
B. Williams: A	S. Ingram: A	K.Jones: D

Carried 4:2

- iii. THAT SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST WHICH ARE PECULIAR TO THE LAND, STRUCTURE OR BUILDING INVOLVED AND WHICH ARE NOT APPLICABLE TO OTHER LANDS, STRUCTURES OR BUILDINGS LOCATED IN THE SAME LAND DEVELOPMENT DISTRICT; Agree (A) or Disagree (D)

Motion to approve by Beverly Williams; second by Sheresa Ingram

F.Liu: A	K. Lowery: A	G. Alden: A
B. Williams: A	S. Ingram: A	K.Jones: D

Carried 5:1

- iv. THAT THE VARIANCE WILL NOT MATERIALLY DIMINISH OR IMPAIR ESTABLISHED PROPERTY VALUES WITHIN THE SURROUNDING AREA; Agree (A) or Disagree (D)

Motion to approve by Sheresa Ingram ; second by Kemesha Lowery

F.Liu: A	K. Lowery: A	G. Alden: A
B. Williams: A	S. Ingram: A	K.Jones: D

Carried 5:1

- v. THAT THE SPECIAL CONDITIONS AND CIRCUMSTANCES REFERENCED IN III, ABOVE, RESULT FROM THE APPLICATION OF THIS ORDINANCE AND NOT FROM THE ACTIONS OF THE APPLICANT; Agree (A) or Disagree (D)

Motion to approve by Sheresa Ingram ; second by Gary Alden.

F.Liu: A	K. Lowery: A	G. Alden: A
B. Williams: A	S. Ingram: A	K.Jones: A

Carried 6:0

- vi. THAT THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THIS ORDINANCE AND PRESERVES ITS SPIRIT; Agree (A) or Disagree (D)

Motion to approve by Gary Alden ; second by Kemesha Lowery.

F.Liu: A	K. Lowery: A	G. Alden: A
B. Williams: A	S. Ingram: A	K.Jones: A

Carried 6:0

- vii. THAT THE VARIANCE IS THE MINIMUM NECESSARY TO AFFORD RELIEF; Agree (A) or Disagree (D) AND

Motion to approve by Sheresa Ingram; second by Gary Alden.

F.Liu: D	K. Lowery: A	G. Alden: A
B. Williams: A	S. Ingram: A	K.Jones: D

Carried 4:2

- viii. THAT THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE HAVE BEEN ASSURED AND SUBSTANTIAL JUSTICE HAS BEEN DONE: Agree (A) or Disagree (D)

Motion to approve by Sheresa Ingram; second by Gary Alden.

F.Liu: A	K. Lowery: A	G. Alden: A
B. Williams: A	S. Ingram: A	K.Jones: A

Carried 6:0

All eight criteria are found to be satisfied; the Variance is granted.

6. Other Business:

- a. Review of Next Month's agenda: Variance for Dustin Floyd (Sec. 24 Development Standards: Setbacks).

7. Adjournment:

With there being no further business, Gary Alden moved to adjourn; motion seconded by Beverly Williams. The motion was approved by unanimous consent. **Adjourned at 8:52 PM.**

See published agenda for Application and Staff Report.

ATTACHMENT 1:

SIGN-IN SHEET (PUBLIC COMMENTS)



Board of Zoning Appeals Public Hearing Sign In Sheet

Item 5a: VAR-2023-1769 Faith Presbyterian Church

Application by Janis Tacy on behalf of Faith Presbyterian Church for a Variance from Unified Development Ordinance Sec. 2.4 District Development Standards: Setbacks, for 6.5 acre parcel at location 7520 Charlotte Highway, Indian Land (TM# 0016-00-031.00). Zoned Institutional (INS) District.

ONLY STATEMENTS OF FACT WILL BE CONSIDERED AS EVIDENCE. HEARSAY AND OPINION ARE INADMISSABLE.

Council Chambers
101 N. Main Street, Lancaster South Carolina
Thursday, November 30, 2023

Citizens are allowed 3 minutes per person to speak. Everyone speaking before the Board will be required to do so in a civil manner. The Board will not tolerate personal attacks on individual Board Members, County Staff or any person or group. Racial slurs will not be permitted. The Board's number one priority is to conduct business for the citizens of this county.

PLEASE PRINT

1.	David Bender
2.	Dick Bonner
3.	

ATTACHMENT 2:

Applicant's Petition in Support (183 Signatures)

To: The Lancaster County Board of Zoning Appeal

RE: Case Number: BZA 2023-1769, Faith Presbyterian Church

Nov 30th

Page 1

We, the undersigned, support the variance request by Faith Presbyterian Church to allow a setback of 20 ft on the North side for the construction of the proposed addition to the existing building.

This setback of 20 ft will be in lieu of the 35 ft setback required for the Institutional Zoning District.

Name/Address	Member of Faith	Non-Member of Faith
Davis R Bonner 14318 Stonewater Ct Indian Land SC	✓	
Glenda Bonner 14318 Stonewater Ct. Indian Land	✓	
Roger [unclear] 15146 Legend Oaks Ct	✓	
Gina Jett 20119 Duvick Lane	✓	
Lois Seunig 15146 Legend Oaks Ct	✓	
Vivian Mandracchia 49012 Gladolus St IL SC	✓	
Rodney Mandracchia 49012 Gladolus St IL SC	✓	
Nancy Roche 2023 Moultrie Ct IL SC	✓	
Stephen W. Roche 2023 Moultrie Ct IL SC	✓	
Bonnie Harris 1603 River Bend Blvd IL SC	✓	
Sandy Herr 2050 Moultrie Court, T.L. SC	✓	
Sandy Spang 4299 Perth Rd. Indian Land SC	✓	
Michael Spang " " " " " "	✓	
Kathy McCowan 3039 Azalea Dr. Indian Land SC	✓	
Janet Bershars 2082 Hartwell Ln, Indian Land SC	✓	
John Morley 44421 Oriole Dr, Unit 7 500, Indian Land	✓	
Paul Anthuril 3009 Autumn Hill Lane, Indian Land	✓	
Brenda Herros 27044 Sordling Ct Indian Land	✓	
Mark Hume 27044 Sordling Ct Indian Land	✓	
MaBass 2051 Moultrie Ct., IL SC 29707	✓	
OP Jett 52520 W. Chester St IL SC 29707	✓	
Toni Reij 7044 Sunset Coastal Place 29707		
M.K. Bjorklund 48410 Snapdragon Ln, Indian Land SC	✓	
Gary Fox 20253 Duvick Ln, Indian Land SC	✓	
John [unclear] 15225 Legend Oaks Ct, Indian Land	✓	

To: The Lancaster County Board of Zoning Appeal

RE: Case Number: BZA 2023-1769, Faith Presbyterian Church

Page 2

We, the undersigned, support the variance request by Faith Presbyterian Church to allow a setback of 20 ft on the North side for the construction of the proposed addition to the existing building.

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Name/Address	Member of Faith	Non-Member of Faith
Demi J. Lufkin 17586 Hawks View Dr, Indian Land	✓	
Suzanne W Senglaub 17586 Hawks View Indian Land	✓	
Tom Ray 7044 Sunset Crater Place Indian Land	✓	
Richard Ray 7044 SUNSET CRATER PL LANCASTER SC	✓	
Ann Mary Northrup 15265 Legend Oaks Ct., Indian Land, SC	✓	
Rev. Dr. David H. Bender 1443 Deer Forest Dr., Indian Land, SC	✓	
Raymond Weiss 1022 Besicayne Ct. Indian Land SC	✓	
Elvin Weiss 1022 Besicayne Ct. Indian Land SC	✓	
Carol Almoadi 2066 E Foxwood Ct Indian Land SC	✓	
Judy Knudsen 3103 Azalea Dr. Indian Land, SC	✓	
Joseph W. Boyes 10441 Scotland Ave, Indian Land	✓	
Robert W. Boyes 10441 Scotland Ave, Indian Land	✓	
Christine E. Offerson 23164 Kingfisher Dr, Indian Land	✓	
Linda L. Stewart 15232 Legend Oaks Ct, Indian Land, SC	✓	
Janet Reinhardt 2021 Sunflower Ct Indian Land SC	✓	
Dinda Gibson 4442 Oriole Dr. unit 103 Indian Land SC	✓	
James Fields 4254 Perth Road Indian Land SC	✓	
Betty Acker 4021 Christopher Way Ct Indian Land SC		✓
Charles Acker "		✓
Kathy Hata 2319 Kingfisher Dr, Indian Land SC	✓	
Robert Smith 3033 Voyagers way, Fort Hill, SC	✓	
Ronald Acker 1016 Mava Ct. Indian Land SC	✓	
Shirley Sweeney 6192 Jack Thomas Dr Indian Land	✓	
Paul Cullen 5012 Blossom Point Dr. Indian Land	✓	
Velta Rouchon 4483 Acorn Hill Dr. Lancaster S.C	✓	

To: The Lancaster County Board of Zoning Appeal

RE: Case Number: BZA 2023-1769, Faith Presbyterian Church

Page 3

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Name/Address	Member of Faith	Non-Member of Faith
Sharon J. Archer, 1016 Mava Ct., Indian Land, SC 29707	✓	
Beverley Brazzel 1064 Wellstone Indian Land SC 29707	✓	
Jill Bickowski 8101 Murrey St, " " "	✓	
Don Brazzel 1064 Wellstone Indian Land SC 29707		✓
SIMONE TROTT 2001 SUNKER	✓	
GRACE MORRIS 4441 ORION DR. UNIT 100, Indian Land	✓	
Mary Jane Carr 20164 Dove Lake Ind. Land	✓	
Michael Carr 20164 Dove Lake " "	✓	
POW MORRIS 4441 ORION DR. UNIT 100 I.L.	✓	
Pam Stephens 9017 Smokey Hill Ln, Ind. Land	✓	
Keith Stephens 9017 Smokey Hill Ln, Ind. Land	✓	
Gloria Clement 8100 Perimeter Springs Dr Waxhaw	✓	
Robert Kirk 55402 Derringer Ave Indian Land	✓	
Janice Herkey 4092 Highgate Lane Lancaster SC	✓	
Sam Barber 2030 Aberdeen Ln Indian Land SC	✓	
Marsha Fairbanks 8103 Crater Lake Dr. " "	✓	
Richard Buss 71067 Murrey St, Indian Land SC	✓	
David J. Fairbanks 8103 Crater Lake Dr Indian Land SC	✓	
MARVIN GALLAWAY 4254 PERTH RD INDIAN LAND	✓	
Susan Moore 5130 Mill Race Lane Lancaster	✓	
Holly Brown 10264 Raven Crest Dr Indian Land SC		✓
Susan Layne 2250 Harfueelpn. Indian Land	✓	
Bill Cousins 4029 Ambleside, I.L., SC	✓	
Aly Chapman 8718 Waxhaw Creek Rd Waxhaw		✓
Peyton Chapman 8718 Waxhaw Creek Rd Waxhaw		✓

To: The Lancaster County Board of Zoning Appeal

RE: Case Number: BZA 2023-1769, Faith Presbyterian Church

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Name/Address	Member of Faith	Non-Member of Faith
Mary E Wolf 617 Moses Drive, I.L 29707		✓
Doris Wolf 617 Moses Drive I.L 29707		✓
Nancy Gater & Richard Gater 20230 Dovekie Lane 29707		✓
Josephine Moffett Helliwell 1100 29704		✓
Elmer Offner 23164 Kingfisher Ct. 29707	✓	
Bruce & Mary 4899 Old Hickory Rd Lancaster, SC 29206		✓
Betsy Crumrell 911 Lily Magnolia Ct. Ok		✓
Rebecca Mangham 4071 Twiddy St 29707	✓	
Sandy Mangham 4071 Twiddy St 29707	✓	
Nancy Jexatro 5025 Thistle, I.L. 29707	✓	
Jean Lyman 2143 Hartwell Ln. 29707	✓	
Tom Lyman " " " "	✓	
Larry & Linda 2018 Aberdeen Ln Indian Land, SC 29707	✓	
Patricia & Larry " " " " " "	✓	
Lucy Brown 2294 Haworth Ln. Indian Land SC 29707	✓	
Robert J. & Mary Berthel 17553 Hawks View Dr. IL	✓	
Ellie Bailey Twiddy St.		✓
Glenn Nitzmann, 5017 Broad Ln 29707	✓	
Jon Pellmar 825 Deer Crossing Dr.	✓	
Joan Lando 4483 ACORN HILL DRIVE 29720	✓	
Dennis Bershers 2082 HARTWELL LN, INDIAN LAND 29707		✓
Jasema Jones 3213 Queensland Ct. Indian Land 29707	✓	
Stephanie Lambert 2250 Hartwell Lane I.L. SC 29707		✓
Ginny Ostien 15259 Legend Oaks Ct., IL 29720		✓
John Ostien 15259 Legend Oaks Ct., IL 29720		✓

To: The Lancaster County Board of Zoning Appeal

RE: Case Number: BZA 2023-1769, Faith Presbyterian Church

Page 5

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Name/Address	Member of Faith	Non-Member of Faith
Danue Teague 23059 Kingfisher Dr, Indian Land SC	✓	
Loe Loe 23059 Kingfisher Dr, Indian Land SC	✓	
Ann Cook 9119 Whistling Straits Dr, Indian Land SC	✓	
Baha Loe 101 Solada Pointe Dr, Unit 535 Lexington SC	✓	
Lois Briggs 4067 Murray St Indian Land SC	✓	
THOMAS BROWN 2294 HARTWELL, INDIAN LAND SC 29707	✓	
Melissa Wellman 7004 Sunset Crater Pl Lancaster SC 29720	✓	
Maya Kalyan 7004 Sunset Crater Pl Lancaster SC 29720	✓	
Sharon Klemming 3043 Santee Ct, Indian Land 29707	✓	
Steve Smith 3033 Dejeuws Way 29707	✓	
Robert Smith 3033 Dejeuws Way 29707	✓	
Barbara Stevens 2251 Hartwell Ln 29707	✓	
Tom Stevens 2251 Hartwell Ln 29707	✓	
Doug Sobe 4078 Amalasie Dr IL, 29707	✓	
Linda Sobe 4078 Amalasie Dr IL 29707	✓	
Bob Tacy 86620 Arrington Rd, Lancaster 29720	✓	
JAN TACY 86620 Arrington Rd, Lancaster 29720	✓	
Richard Lambert 2250 Hartwell LN IL 29707	✓	
Carol Gunlicks Lancaster SC	✓	
Joanne Arecco	✓	
Ruben Arecco	✓	
Jack Haubach 47250 Everlasting St Indian Land-SC	✓	
Ted Tozer 2807 Bevis Ln., Waxhaw, NC	✓	
Jill Belkowski 4010 Murray St, Indian Land, SC	✓	

To: The Lancaster County Board of Zoning Appeal

RE: Case Number: BZA 2023-1769, Faith Presbyterian Church

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We, the undersigned, support the variance request by Faith Presbyterian Church to allow a setback of 20 ft on the North side for the construction of the proposed addition to the existing building.

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Name/Address	Member of Faith	Non-Member of Faith
Marci Gardner 1796 Tranquility Blvd	✓	
Hank Howland 1796 Tranquility Blvd	✓	
Brenda Veal 2246 Hartwell Lane		✓
Jane Stein 1078 Truman Dr	✓	
Judith Haskin 2243 Hartwell		✓
Samuel 2243 Hartwell Ln.		✓
Rita Gough	✓	
Wes Gough	✓	
Valerie Weeks	✓	
Albert 3213 Queensland Court	✓	
Melissa Whitaker 8209 Palmetto Place	✓	
Doris Gail	✓	
Berry Choate 9022 Waxhaw Creek Rd Waxhaw, NC	✓	
Barbara Choate 9022 Waxhaw Creek Rd Waxhaw, NC	✓	
Dana Hammel 52520 Winchester	✓	
Bruce Bjorklund 48410 SNAPDRAGON INDIAN LAND	✓	
Diane Winchester 6062 Chimney Bluff	✓	
Colin Warden 6062 Chimney Bluff	✓	
Thomas C Gills 8084 Pawley Ct	✓	
Carol A Gills 8084 Pawley Ct		✓
Michael W Boyes 2119 Ashley Glen Island 29707		✓
Julie T. Boyes 2119 Ashley Glen Island 29707		✓
Edw W. Bender 1443 Deer Forest IL SC 29707	✓	
OSWALD SIMM	✓	
ANN MARIE SIMM	✓	

To: The Lancaster County Board of Zoning Appeal

RE: Case Number: BZA 2023-1769, Faith Presbyterian Church

Nov. ~~28~~ 30

Page ~~87~~

We, the undersigned, support the variance request by Faith Presbyterian Church to allow a setback of 20 ft on the North side for the construction of the proposed addition to the existing building.

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Name/Address	Member of Faith	Non-Member of Faith
Beth Young 2221 Sunny Valley Ct Indian Land SC 29707	✓	
Ann Beatty 19125 Mallard DR Indian Land SC 29707		✓
Ken Edmonds 2066 E Foxwood Ct Indian Land SC 29707	✓	
Garn Breckin 20936 Dovekie Ln. Fort Mill SC 29707	✓	
Carolyn Hurdasty 15343 Legend Oaks Ct, Indian Land		✓
Mary Cardullo 20237 Dovekie Ln Indian Land SC 29707		✓
Barbara Davis 5017 Helmerworth Wayhew, NC 28173		✓
Carlton Krause 2052 Hartwell Ln Fort Mill 29707		✓
Judi Duncan 23310 Kingfisher Dr Indian Land		✓
Susan Binley 52044 Longspur Lane Indian Land		✓
Julie Krueger 48498 Anapodragon Ln. Indian Land		✓
Betty Warfield 9311 Whistling Straits Dr.		✓
Ellen Wilmoth 2059 Hartwell Lane Indian Land 29707		✓
Jaila Nash 20257 Dovekie Lane Indian Land SC 29707		✓
Maureen LaCorte 44409 Oriole dr. unit 102 Fort Mill SC 29707		✓
Sue Hamilton 48495 Snap Dragon Ln Indian Land 29707		✓
ROBERT BREDIN 2039 DOVEKIE LN.	✓	✓
Betty P. McParth 20289 Dovekie Ln - Indian Land SC	✓	
Shirley 20289 Dovekie Ln - Indian Land SC	✓	
Sandy Tozer 2804 Davis Ln Wayhew NC	✓	
Gary Curt 2030 YELLOWSTONE DR INDIAN LAND SC		✓
Glenn R. Pack 2203 Olson drive Indian Land SC	✓	

RE: Case Number: BZA 2023-1769, Faith Presbyterian Church

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This setback of 20 ft will be in lieu of the 35 ft setback required for the Institutional Zoning District.

[illegible]

ATTACHMENT 3:

Article, “Avoiding and Defending Against RLUIPA Claims,” by J. Peloso and E. Seeman. Copyright 2019 Thomson Reuters.

AVOIDING AND DEFENDING AGAINST RLUIPA CLAIMS



JOHN F.X. PELOSO, JR.
PARTNER
ROBINSON & COLE LLP

John represents companies, municipalities, and individuals in business and real property disputes. He has significant experience representing clients in disputes involving title, zoning, wetlands, land use, RLUIPA, eminent domain, foreclosure, and other real property rights cases.



EVAN J. SEEMAN
COUNSEL
ROBINSON & COLE LLP

Evan focuses his practice on land use and zoning, real property litigation, and municipal law. He represents developers, landowners, municipalities, corporations, and advocacy groups. Evan has substantial experience in defending municipalities nationwide in cases involving RLUIPA.



Under the Religious Land Use and Institutionalized Persons Act (RLUIPA), municipalities are prohibited from implementing zoning and other land use regulations that impose a substantial burden on religious exercise. Applying the statute can be confusing and the financial consequences of a RLUIPA violation are often severe. Municipalities and their counsel must therefore understand RLUIPA's requirements and take steps to avoid and defend against RLUIPA claims.

The Religious Land Use and Institutionalized Persons Act (RLUIPA), enacted in 2000, is a federal law that prohibits municipalities from implementing zoning and other land use regulations that impose a substantial burden on a person's or group's religious exercise. The consequences of violating RLUIPA can be severe. In addition to injunctive relief, a prevailing plaintiff can recover its legal fees, which, in addition to the municipality's legal fees, can reach millions of dollars.

Municipalities should view RLUIPA as a federal zoning ordinance that is part of any local zoning code. As a federal statute, RLUIPA takes precedence over conflicting state and local laws. This often creates confusion for zoning agencies and municipal officials, because many factors that apply in analyzing a claim under RLUIPA are not relevant to zoning applications submitted by secular groups.

This article explains how municipalities can effectively avoid and defend against RLUIPA claims. In particular, it:

- Provides an overview of regulation of religious land use.
- Examines claims made against municipalities under RLUIPA.
- Describes RLUIPA's safe harbor provision.
- Offers guidance on counseling municipal officials on RLUIPA's requirements.



Search [Local Government Regulation of Religious Land Uses Under RLUIPA](#) for more on RLUIPA.

RELIGIOUS LAND USE: OVERVIEW

To avoid and defend against RLUIPA claims, municipalities must first understand:

- The definition of "religious exercise."
- Permissible regulation of religious land use.

RELIGIOUS EXERCISE

RLUIPA defines religious exercise as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief" (42 U.S.C. § 2000cc-5(7)(A)). Under RLUIPA, "[t]he use, building, or conversion of real property for the purpose of religious exercise" is considered to be religious exercise (42 U.S.C. § 2000cc-5(7)(B)).

RLUIPA's reach is broad and applies to almost any type of use alleged by a religious group as a form of religious exercise, even if nontraditional, as long as the beliefs are sincerely held. Courts do not determine what is and what is not religious exercise (see *U.S. v. Ballard*, 322 U.S. 78, 86-87 (1944)).

While municipalities are free to challenge the sincerity of religious beliefs, they should not opine on what they view as religious exercise. Challenging whether a religious group's proposed use is religious exercise could give rise to a discrimination claim.

Mixed use of a property can still be considered religious exercise (see *Chabad Lubavitch of Litchfield Cty., Inc. v. Borough of Litchfield*, 2016 WL 370696, at *6-7 (D. Conn. Jan. 27, 2016)).

(applying a segmented approach to each room in a multi-use building under which RLUIPA's substantial burden analysis was applied to rooms that were used for both secular and religious purposes, but not applied to rooms used only for secular purposes)).

REGULATION OF RELIGIOUS LAND USE

Religious uses are not exempt from zoning. A religious group "has no constitutional right to be free from reasonable zoning regulations nor does [it] have a constitutional right to build its house of worship wherever it pleases" (*Alger Bible Baptist Church v. Twp. of Moffatt*, 2014 WL 462354, at *6 (E.D. Mich. Feb. 5, 2014)). Courts have consistently recognized that "land-use regulation is one of the historic powers of the [s]tates" (*City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 744 (1995)).

Prohibiting religious uses from certain zones is generally permissible as long as a municipality does not:

- Impose a substantial burden on the religious exercise of a person unless the action is the least restrictive means of advancing a compelling governmental interest (42 U.S.C. § 2000cc(a)(1)).
- Treat religious uses on less than equal terms with analogous secular assembly uses (42 U.S.C. § 2000cc(b)(1)).
- Discriminate based on religion (42 U.S.C. § 2000cc(b)(2)).
- Totally exclude religious uses from locating anywhere in the municipality (42 U.S.C. § 2000cc(b)(3)(A)).
- Unreasonably limit the opportunity for religious groups to locate within its jurisdiction (42 U.S.C. § 2000cc(b)(3)(B)).

However, this does not mean that religious uses must be permitted in any zoning district or that a religious group's proposed use of property is allowed as of right. Municipalities can allow religious uses as special permit uses (also known as conditional uses or special exception uses).

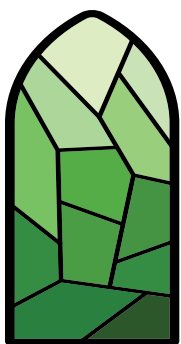
Municipalities regulate land with zoning and other controls based on their comprehensive plans. Comprehensive plans outline the municipality's long-term goals and policies that guide local land use decisions and operate as blueprints for development. As with most other uses, municipalities typically allow religious and other assembly uses in certain zones and exclude those uses from other zones. These restrictions further the municipality's comprehensive plan.

Courts have expressed deference to local planning principles to reject unreasonable limits claims and substantial burden claims under RLUIPA (see, for example, *Eagle Cove Camp & Conference Ctr., Inc. v. Town of Woodboro*, 734 F.3d 673 (7th Cir. 2013)).

RLUIPA CLAIMS

The primary claims made against municipalities under RLUIPA are:

- Substantial burden claims.
- Equal terms claims.
- Discrimination claims.
- Unreasonable limits claims.



If few parcels are available for religious use, municipalities should consider whether amendments to zoning regulations or to the official zoning map would make more land available for religious use.

SUBSTANTIAL BURDEN CLAIMS

The most common RLUIPA claim involves an assertion by a religious group that government action has substantially burdened its religious exercise. To claim a substantial burden, the religious group must first establish one of the following elements:

- The substantial burden is imposed on a program or activity that receives federal financial assistance.
- The substantial burden affects interstate commerce.
- The government has made an individualized assessment of the proposed religious use by imposing or implementing a land use regulation.

(42 U.S.C. § 2000cc(a)(2).)

If the religious group can establish that government action substantially burdens its religious exercise, the government can only avoid liability if it can show that its action advanced a compelling governmental interest using the least restrictive means possible (42 U.S.C. § 2000cc(a)(1)).

RLUIPA lawsuits turn on whether an adverse zoning decision truly infringes religious exercise or is only a matter of preference or convenience for the religious group. Courts frequently reject claims of “financial cost and inconvenience, as well as the frustration of not getting what one wants” as constituting a burden on religion (*Castle Hills First Baptist Church v. City of Castle Hills*, 2004 WL 546792, at *11 (W.D. Tex. Mar. 17, 2004); see also *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004) (“While we certainly sympathize with those congregants who endure Floridian heat and humidity to walk to services, the burden of walking a few extra blocks, made greater by Mother Nature’s occasional incorrigibility, is not ‘substantial’ within the meaning of RLUIPA”).

To help avoid and defend against substantial burden claims, municipalities should:

- Designate a surplus of land for religious use.
- Plan for a compelling interest.
- Regulate religious use based on size and impact.
- Encourage reapplication after a denial.

Designate a Surplus of Land for Religious Use

Conducting an annual inventory of all land available for religious use may help to plan for these uses and to avoid or defend against RLUIPA claims. The more land that is available for religious uses, the more difficult it is for a religious group to show that an adverse decision has caused it to modify or forego its religious exercise.

Some courts consider whether there are feasible alternative properties available for religious use. For example, the US Court of Appeals for the Second Circuit found a substantial burden where a village in New York denied an Orthodox Jewish group’s special permit to expand its coeducational day school because of a lack of feasible alternatives. The Second Circuit credited the testimony of the school’s experts, who testified that the planned location of the school expansion “was the only site that would accommodate the new building.” (*Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 352-53 (2d Cir. 2007).)

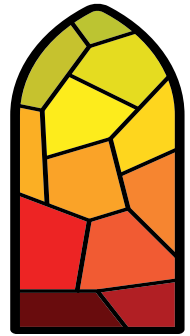
A surplus can also help municipalities defeat claims brought under RLUIPA’s total exclusion provision, which provides that “[n]o government shall impose or implement a land use regulation that ... totally excludes religious assemblies from a jurisdiction” (42 U.S.C. § 2000cc(b)(3)(A)). Claims under this provision can be defeated by a municipality by making some land available for religious use.

A municipality’s annual inventory should determine how many parcels are:

- Vacant.
- Available for sale.
- Zoned to allow religious use.

If few parcels are available for religious use, municipalities should consider whether amendments to zoning regulations or to the official zoning map would make more land available for religious use. Real estate experts and planners can help municipalities better understand the market and determine whether they should amend their zoning maps to make more land available for religious use. Additionally, if a municipality chooses to defend a RLUIPA lawsuit, real estate experts and planners may be able to persuade a court that other sites are available for the religious group to use.

A compelling interest must be more than pro forma reliance on traditional zoning interests. It must be supported by a complete and comprehensive record of the municipality's interests, and government action must be tailored to meet those interests.



Plan for a Compelling Interest

If a religious group shows that a government action has substantially burdened its religious exercise, a municipality can avoid liability only if its actions were taken to advance a compelling interest using the least restrictive means possible. Municipalities therefore must consider the compelling interests they seek to promote when taking a government action, such as enacting a regulation or denying a religious use application.

According to the US Supreme Court, compelling interests are interests of the “highest order” (see *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993)). Examples of compelling interests include:

- Promoting public health and safety (*Wis. v. Yoder*, 406 U.S. 205 (1972)).
- Preserving the rural and rustic, single-family residential character of a residential zone (*Eagle Cove Camp*, 734 F.3d at 673).
- Enforcing zoning regulations to ensure the safety of residential neighborhoods (*Murphy v. Zoning Comm’n of New Milford*, 289 F. Supp. 2d 87, 108 (D. Conn. 2003), vacated, 402 F.3d 342 (2d Cir. 2005)).
- Preventing crime (*Harbor Missionary Church Corp. v. City of San Buenaventura*, 642 F. App’x 726 (9th Cir. 2016)).

A compelling interest must be more than pro forma reliance on traditional zoning interests. It must be supported by a complete and comprehensive record of the municipality’s interests, and government action must be tailored to meet those interests. Creating a complete and comprehensive record is especially important to defeat substantial burden claims, which are the most fact-intensive type of RLUIPA claim.

Municipal counsel should speak with the responsible planner and other municipal officials to identify these interests in advance. Relying on compelling interests during the review process can be proof that the municipal actions sounded in legitimate concerns from the start, and could be strong evidence to support the municipality’s decision.

Regulate Religious Use Based on Size and Impact

Municipalities can treat religious uses differently from other uses based on the expected size and impact of the religious uses and still comply with RLUIPA. Municipalities have been successful in defending against RLUIPA claims by focusing on the size and impact of proposed religious uses, including the compelling interests the municipality seeks to advance.

For example, in *Adhi Parasakthi Charitable, Medical, Educational, and Cultural Society of North America v. Township of West Pikeland*, a Hindu group claimed that a local zoning code treated religious uses differently from secular uses. The court denied summary judgment because the zoning code did not discriminate against religious uses in favor of secular uses, but against large-scale uses in favor of small-scale uses. (721 F. Supp. 2d 361, 378 (E.D. Pa. 2010).) Similarly, a court denied summary judgment to a church, finding that the city’s hostility toward the church’s expansion arose not from religious discrimination, but from concerns over its size and proposed growth, which “threatened to outstrip the character and size of the city” (*Castle Hills*, 2004 WL 546792, at *14).

Encourage Reapplication After a Denial

Encouraging modifications to a proposed religious use application and suggesting that the religious group resubmit its proposal can increase a municipality’s chances of defeating a substantial burden claim. A municipality can express on the record that it is willing to entertain a modified religious use application for a similar proposal.

However, disingenuously leaving open the possibility of modification and resubmission will not insulate municipalities from substantial burden claims. For example, in *Fortress Bible Church v. Feiner*, the court found a town’s stated willingness to consider a church’s future religious use application was not genuine. There was sufficient evidence that the town wanted to derail the church’s project after the church refused to make a payment in lieu of taxes, and the town had manipulated the statutory environmental review process to that end. (694 F.3d 208, 219 (2d Cir. 2012).)

An honest effort to develop alternatives may be the best approach for municipalities to avoid a RLUIPA violation and the potential for protracted and costly litigation. However, when engaging in dialogue over possible uses, it is important to emphasize that approval is not guaranteed, even though the municipality may be more receptive to a modified proposal that incorporates the specific recommendations of the municipality.

In some cases, it may be helpful for the religious group and the municipality to jointly engage a mediator. If a municipality does not want to encourage reapplication, identifying compelling interests using the least restrictive means possible is crucial to defeating a substantial burden claim.

EQUAL TERMS CLAIMS

Municipalities must be careful to avoid the perception of unequal treatment when excluding religious uses from certain zones. RLUIPA requires that religious uses be treated as well as any comparable secular assembly use (42 U.S.C. § 2000cc(b)(1)). Courts have established different tests to determine unequal treatment (see *Elijah Grp., Inc. v. City of Leon Valley*, 643 F.3d 419, 422-23 (5th Cir. 2011)). However, violations of the equal terms provision are commonly found in cases where:

- A municipality imposes a different, more onerous application process on a religious group than on a secular group.
- Zoning codes prohibit religious uses, but permit secular assembly uses.

To help avoid and defend against equal terms claims, municipalities should:

- Use the same process and procedures for religious and secular uses.
- Articulate justifications for using different standards.
- Consider the impacts of all uses in commercial zones.

Use the Same Process and Procedures

If religious uses are prohibited in a particular zone, municipalities should ensure that analogous secular assembly uses are also prohibited. For example, courts have found violations where zoning codes prohibit religious uses, but allow secular assembly uses, such as:

- Clubs.
- Meeting halls.
- Community centers.
- Auditoriums.
- Theatres.
- Recreational facilities.

(*Midrash Sephardi*, 366 F.3d at 1231-32.)

Violations have also been found where religious uses are allowed, but subject to different, more stringent standards (see *Corp. of the Catholic Archbishop of Seattle v. City of Seattle*, 28 F. Supp. 3d 1163 (W.D. Wash. 2014) (requiring a private Catholic high school to obtain a variance from the city zoning code to install light poles on its athletic fields, while granting public schools a special exception from that requirement, violated the equal terms provision of RLUIPA)). Municipalities should develop comparable regulations for broad classes of similar uses, including by:

- Classifying assembly uses together.
- Permitting and prohibiting all assembly uses in the same zones, if possible.

Regulating for broad classes of uses may also help municipalities:

- Establish the neutrality and general applicability of their zoning codes.
- Demonstrate that they do not impermissibly target religious use.

However, some states have carved out regulatory power over certain types of uses, such as public schools. Courts have found that public uses regulated by the state are not proper comparators to equal terms claims involving similar but private uses regulated by municipalities (see *Marianist Province of the U.S. v. City of Kirkwood*, 2018 WL 4286409 (E.D. Mo. Sept. 7, 2018)).

Municipal counsel should scrutinize the zoning code to determine which uses could potentially be considered assembly uses. Assembly uses may not be obvious. For example, zoning codes that identify municipal uses may not appear to qualify as secular assembly uses, but they can include public schools, libraries, and museums.

If it is unclear whether a particular use could be considered an assembly use, municipal counsel should err on the side of caution, and regulate that use in the same manner as other grouped assembly uses.

Articulate Justifications for Using Different Standards

There may be valid reasons why a municipality does not want to regulate broadly, and these reasons may be acceptable if they are carefully articulated. Courts have held that municipalities must articulate any justifications for unequal treatment in the applicable sections of the zoning code itself to avoid claims of subjectivity (see *Catholic Archbishop of Seattle*, 28 F. Supp. 3d at 1168-69).

Justifications that have defeated, or that courts have held could potentially defeat, equal terms claims include:

- Creating parking spaces.
- Controlling traffic.
- Generating municipal revenue.
- Limiting a commercial zone to commercial use.

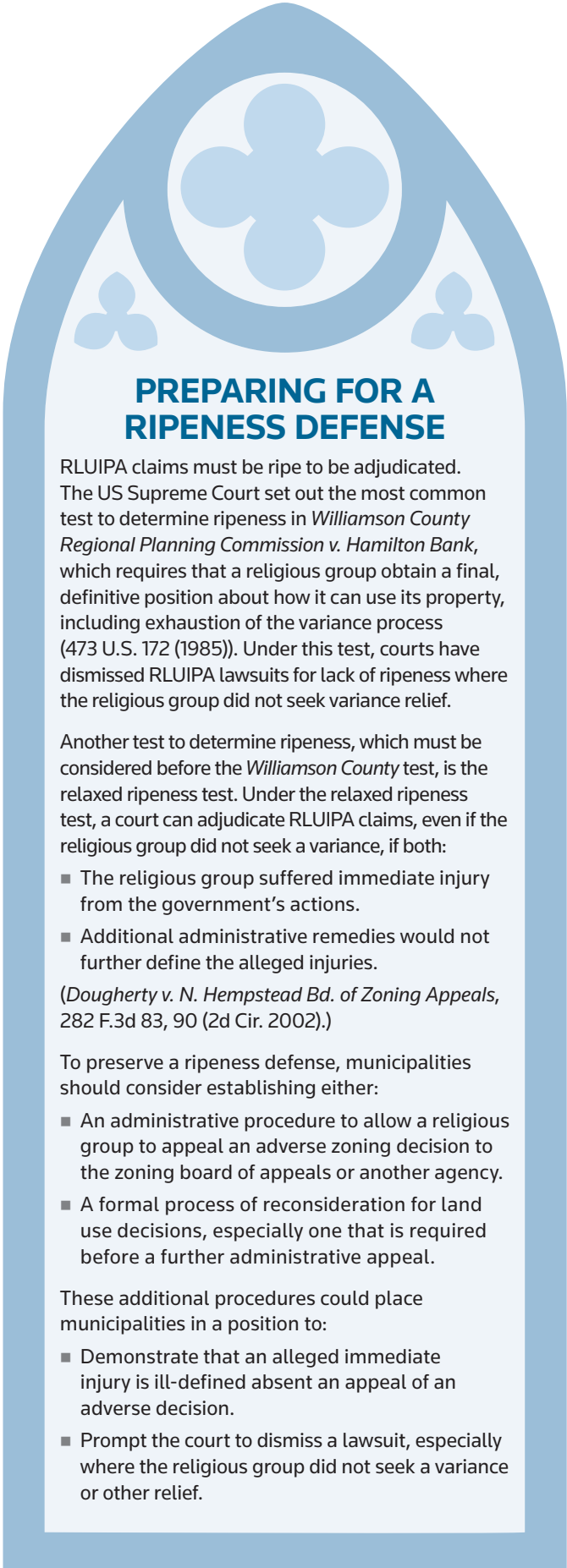
(See *River of Life Kingdom Ministries v. Vill. of Hazel Crest*, 611 F.3d 367, 373 (7th Cir. 2010).)

Consider the Impacts of All Uses in Commercial Zones

When creating a pure commercial district in name, municipalities should proceed with caution if they then allow non-commercial secular uses, but reject religious uses. In this case, municipalities should:

- Identify potential justifications for different treatment.
- Consider what other uses are allowed.
- Assess whether any other uses could cause the same impacts the municipality seeks to alleviate by using different standards for religious uses.

If other allowed uses are determined to cause the same or similar impacts as the religious uses that are excluded from the commercial zone, the municipality may be subject to an equal terms claim.



PREPARING FOR A RIPENESS DEFENSE

RLUIPA claims must be ripe to be adjudicated. The US Supreme Court set out the most common test to determine ripeness in *Williamson County Regional Planning Commission v. Hamilton Bank*, which requires that a religious group obtain a final, definitive position about how it can use its property, including exhaustion of the variance process (473 U.S. 172 (1985)). Under this test, courts have dismissed RLUIPA lawsuits for lack of ripeness where the religious group did not seek variance relief.

Another test to determine ripeness, which must be considered before the *Williamson County* test, is the relaxed ripeness test. Under the relaxed ripeness test, a court can adjudicate RLUIPA claims, even if the religious group did not seek a variance, if both:

- The religious group suffered immediate injury from the government's actions.
- Additional administrative remedies would not further define the alleged injuries.

(*Dougherty v. N. Hempstead Bd. of Zoning Appeals*, 282 F.3d 83, 90 (2d Cir. 2002).)

To preserve a ripeness defense, municipalities should consider establishing either:

- An administrative procedure to allow a religious group to appeal an adverse zoning decision to the zoning board of appeals or another agency.
- A formal process of reconsideration for land use decisions, especially one that is required before a further administrative appeal.

These additional procedures could place municipalities in a position to:

- Demonstrate that an alleged immediate injury is ill-defined absent an appeal of an adverse decision.
- Prompt the court to dismiss a lawsuit, especially where the religious group did not seek a variance or other relief.

For example, in *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, a city sought to create an entertainment district. The city required churches, but not other secular groups, to obtain a conditional use permit because a state statute prohibited the issuance of new liquor licenses to businesses operating within 300 feet of a church. The US Court of Appeals for the Ninth Circuit rejected the city's stated justification for the unequal treatment, namely to promote the development of the entertainment district, because "many of the uses permitted as of right would have the same practical effect as a church of blighting a potential block of bars and nightclubs" (*City of Yuma*, 651 F.3d 1163, 1174 (9th Cir. 2011)).

DISCRIMINATION CLAIMS

RLUIPA's nondiscrimination provision prohibits a municipality from imposing a land use regulation that discriminates against an assembly or institution based on its religion or religious denomination (42 U.S.C. § 2000cc(b)(2)). Although few courts have interpreted or applied this provision, the Second Circuit found that the provision implicated many of the same factors under the Equal Protection Clause, including statements made by community members (*Chabad Lubavitch*, 768 F.3d at 199; see below *Denounce Discriminatory Statements Made by Members of the Public*). Plaintiffs can also support discrimination claims by identifying other religious groups that have been treated more favorably. However, religious animus (express or implied) is required to prove a discrimination claim.

Additionally, discriminatory comments made by government officials or consultants reviewing a religious group's land use proposal, especially when made on the public record, can be damaging to municipalities defending against other RLUIPA claims, such as substantial burden claims. Plaintiffs' attorneys might construe any relevant comment as an example of overt discrimination. One court found a town's "open hostility" to religious use, in support of finding a violation of RLUIPA's substantial burden provision, was evinced in part by:

- Town board members' comments that they opposed the religious use application because it was "another church."
- The town's instruction to the town planner to "stop" and "kill" the project.

(*Fortress Bible*, 694 F.3d at 214, 219-20.)

Some courts consider whether a municipality's decision was arbitrary and capricious when evaluating RLUIPA claims (see *Westchester Day Sch.*, 504 F.3d at 351). Discriminatory comments made by public officials could also support a finding that a municipality's decision was arbitrary and capricious. Even comments from municipal counsel that are not carefully considered are subject to being misconstrued.

To help avoid and defend against discrimination claims and other claims under RLUIPA, municipalities should:

- Cure damage from discriminatory statements made by municipal officials.
- Denounce discriminatory statements made by members of the public.

Cure Damage from Statements Made by Municipal Officials

Municipal officials should immediately and publicly renounce on the record any statements that could be construed as discriminatory and should clarify that the religious group's beliefs do not impact the municipality's review of the religious use application.

The municipality should also consider:

- Requesting that the offending individual recuse himself from further review of the religious use application, as well as:
 - note on the record that the reason for the recusal is due to the discriminatory statement; and
 - affirm again that the religious group's beliefs do not affect the municipality's decision.
- Asking the religious group for suggestions regarding how the municipality can remedy the situation. If the municipality acts on the religious group's suggestion (for example, by officially condemning the statement), the religious group may have waived the opportunity to challenge the statement.

Even if a statement is unclear, but could be construed as discriminatory, the record should be clarified. While it is difficult to predict whether these actions would be sufficient to cleanse the record, they demonstrate good faith efforts on the part of the municipality.

Denounce Discriminatory Statements Made by Members of the Public

Municipalities should address discriminatory statements made by members of the public. If these comments are not appropriately addressed, the municipality could be found to be complicit in, or, more consequentially, persuaded by these statements. Additionally, the Second Circuit recently ruled that public comments are one factor to consider under a RLUIPA discrimination claim (*Chabad Lubavitch*, 768 F.3d at 199).

In *City of Cleburne v. Cleburne Living Center*, the city denied a special permit for a group home for people with developmental disabilities due to residents' prejudices against those individuals (473 U.S. 432 (1985)). The city's deference to the negative attitudes and unfounded fears of the residents supported a finding of discrimination under the Equal Protection Clause. Although not a religious land use case, the same principle applies. As the US Supreme Court noted, "[p]rivate biases may be outside the reach of the law, but the

law cannot, directly or indirectly, give them effect." (*Cleburne Living Ctr.*, 473 U.S. at 448.)

The steps municipalities should take to address discriminatory statements made by members of the public differ depending on whether the discriminatory statements are made:

- At a public hearing.
- Outside of a public hearing.

To help prevent members of the public from making discriminatory statements at a public hearing, municipalities should consider:

- Preparing a statement to be read at the opening of the public hearing to inform the public that the religious group may submit evidence about its religion, particularly regarding what its beliefs require and the space needed to accommodate its exercise of religion.
- Requesting that members of the public:
 - refrain from challenging the religious group's beliefs, even if they disagree about whether the proposed use is religious use; and
 - limit any comments to zoning issues only.

If discriminatory statements are made, a municipal official should immediately:

- Instruct the speaker to limit his comments to zoning issues.
- Denounce the discriminatory statement.
- Reiterate on the record that religion plays no part in the municipality's decisions.

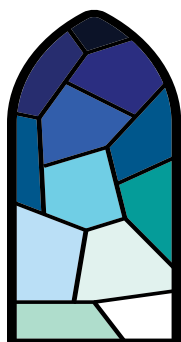
Discriminatory statements made by members of the public outside of a public hearing, such as those made on blogs or through local media outlets, are not part of the record. However, these types of statements can taint the public debate and color a municipality's decision to deny use. Municipal officials who are aware of those comments should denounce them in a public forum.

UNREASONABLE LIMITS CLAIMS

RLUIPA's exclusions and limits provision prohibits a municipality from imposing a land use regulation that either:

- Completely excludes religious assemblies from a jurisdiction.
- Unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

(42 U.S.C. § 2000cc(b)(3).)



Discriminatory statements made by members of the public outside of a public hearing, such as those made on blogs or through local media outlets, are not part of the record. However, these types of statements can taint the public debate and color a municipality's decision to deny use.

As with discrimination claims, claims under the exclusions and limits provision are not frequently adjudicated.

This provision imposes two separate requirements on municipalities:

- **Municipalities may not entirely prohibit religious uses from locating within a jurisdiction.** Religious uses must be allowed to locate somewhere, whether it is in a single zoning district or multiple zones. A total exclusion claim is defeated where religious uses are allowed, even if exclusively as special permit uses. (*Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 990 (7th Cir. 2006).)
- **Local governments must provide reasonable opportunities for religious uses to locate.** For example, a violation of the unreasonable limits provision was found where religious uses were subject to heightened frontage requirements. This meant that religious uses had to aggregate five properties to satisfy the frontage requirement at an additional cost of between \$880,000 and \$2.5 million. The court stated that “[w]hile it is true that religious assemblies cannot complain when they are subject to the same marketplace for property as are all land users, religious assemblies are not participating in the same marketplace when they are required to aggregate anywhere from 2-7 times the number of properties as the average land user and required to obtain more frontage than any other non-residential uses in the same district.” (*Chabad of Nova, Inc. v. City of Cooper City*, 575 F. Supp. 2d 1280, 1290 (S.D. Fla. 2008).)



Search [Local Government Regulation of Religious Land Uses Under RLUIPA](#) for more on unreasonable limits claims.

RLUIPA'S SAFE HARBOR PROVISION

The availability of land for religious uses may not be enough to defeat an unreasonable limits or substantial burden claim. Courts have found violations of RLUIPA's unreasonable limits provision “where regulations effectively left few sites for construction of houses of worship, such as through excessive frontage and spacing requirements, or have imposed steep and questionable expenses on applicants” (US Department of Justice (DOJ), Statement of the Department of Justice on the Land-Use Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), Question 15 (Dec. 15, 2010)). Additionally, there may be no opportunity to make more land available for religious use.

To address these situations, RLUIPA contains a safe harbor provision that authorizes municipalities to exempt religious land uses from certain policies or practices that might otherwise violate the statute (42 U.S.C. § 2000cc-3(e)). Although the safe harbor provision does not expressly provide what municipalities must do to avoid liability, it gives them broad authority to act. Municipalities should add the safe harbor provision verbatim to their local zoning codes, to allow for religious uses when a religious group is having difficulty finding land.

The safe harbor provision could be used by municipalities to, for example:

- Reconsider a denial, for example where a religious group claims that a zoning denial, coupled with the realities of the real estate market, have imposed a substantial burden on religious exercise (see *Riverside Church v. City of St. Michael*, 2017 WL 3521719 (D. Minn. Aug. 16, 2017)).
- Reverse a denial and approve the religious use application subject to reasonable conditions. Municipalities should work with religious groups to determine which conditions would be acceptable for all parties. If this is not feasible, the municipality should ensure that all conditions of approval are reasonable in scope and further compelling interests (such as public health and safety) in the least restrictive means possible.
- Reopen a hearing, inform the religious group of an acceptable development design, or reevaluate the religious use application if the former hearing was full of religious animus, in cases where a RLUIPA lawsuit is filed after a denial or when a religious use application is approved with conditions.
- Amend zoning codes to ensure that religious uses are treated the same as secular uses to comply with RLUIPA's equal terms provision.

COUNSELING MUNICIPAL OFFICIALS

RLUIPA is not easy to understand, and even courts interpret it differently. Municipal counsel should:

- Provide training to municipal officials on RLUIPA's requirements.
- Conduct mock religious use application exercises.
- Provide real-time advice at meetings and public hearings.

RLUIPA TRAINING

Proper training of municipal officials by municipal counsel prior to the review of a religious use application is essential to avoid and defend against RLUIPA claims.

For example, in *Grace Church of North County v. City of San Diego*, the court found a violation of RLUIPA's substantial burden provision in part because of the arbitrariness of the municipality's decision-making process. The court noted that the planning board members “lacked legal training and possessed little to no knowledge of RLUIPA” and there was “no attempt by the City to educate the [planning board] regarding RLUIPA.” (555 F. Supp. 2d 1126, 1137 (S.D. Cal. 2008).)

Even if comprehensive training is not feasible, municipal counsel should offer training tailored to the issues relevant to specific proposals. Additionally, municipal counsel should consider:

- Providing annual courses to update municipal officials on new developments in the law.
- Updating zoning handbooks.
- Circulating copies of the DOJ's RLUIPA reports, which are freely available to decision-makers (see, for example, DOJ, Update on the Justice Department's Enforcement of the Religious Land Use and Institutionalized Persons Act: 2010–2016).
- Administering mandatory trainings and testing for municipal officials based on their review of the zoning handbook or other materials.

However, if municipal counsel is involved in reviewing the religious group's application, training should be conducted by

an outside provider. This can help maintain the confidentiality of the attorney-client relationship. Non-privileged actions and statements from municipal counsel, likely the municipality's agent, will be part of the record if a RLUIPA claim is litigated.



Search [Attorney-Client Privilege and Work Product Doctrine Toolkit](#) for resources to assist counsel in navigating the attorney-client privilege and the work product doctrine in litigation.

MOCK RELIGIOUS USE APPLICATION EXERCISES

Municipalities can create mock exercises to help identify any vulnerabilities in their regulations by enlisting municipal officials to take on roles as potential religious group applicants and make hypothetical applications. The hypothetical applications should build in as many teaching points as possible. Roles can be assigned to some participants, but not others, to create a more realistic scenario.

For example, the mock exercise could involve a religious group's application for a house of worship with a private, religious school in a residential neighborhood. Additional complexities could be introduced to make the mock exercise more challenging, such as:

- The religious group seeks to use hallucinogenic tea as part of its faith.
- Part of the school will be used for only religious classes, while the other part of the school will be used for only secular classes.
- Within the past few years, the municipality has approved both secular and religious high schools of varying sizes in the same zone.

- Municipal officials:
 - have a conflict of interest; or
 - have made questionable comments.
- Neighbors are angry about the religious group's proposal.

After the mock exercise is complete, municipal counsel should identify any issues and critique the municipality's decision and its handling of the mock public hearing.

REAL-TIME ADVICE

Municipal or special counsel should attend all meetings or hearings where religious land use proposals are considered. Some of the factors under RLUIPA may conflict with certain aspects of the standard discretionary review process. For example:

- Financial hardship generally cannot form the basis for variance relief, but a religious group's financial situation is relevant to substantial burden claims (see *Westchester Day Sch.*, 504 F.3d at 352-53).
- Consideration of the religious group's ability to find ready alternatives may not be relevant to most other types of applications, but is relevant to religious and other land uses that have First Amendment protection, such as adult entertainment.

Additionally, if a municipal official makes a comment that is clearly inconsistent with RLUIPA, it may be necessary for municipal counsel to step in and provide real-time advice to avoid a decision that may later be found to violate RLUIPA.

ATTACHMENT 4:

Emails from Ashley Davis, Deputy Planning Director, Lancaster County.

From: [Ashley Davis](#)
To: [Jennifer Bryan](#)
Subject: FW: Faith Presbyterian Church
Date: Wednesday, December 6, 2023 2:45:51 PM
Attachments: LCLogo c716c29e-f766-46c0-a18c-7d20f2fc6ebd.png



Ashley Davis, Deputy Planning Director
Planning

Lancaster County Government
P.O. Box 1809
Lancaster, SC 29720

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ADavis@lancastersc.net

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From: Ashley Davis
Sent: Monday, September 18, 2023 5:12 PM
To: dick.bonner64@gmail.com; dmbender33@aol.com; rjtacy@gmail.com
Cc: Matthew Blaszyk <mblaszyk@lancastersc.net>; Allison Hardin <ahardin@lancastersc.net>
Subject: RE: Faith Presbyterian Church

Mr. Bonner,

There are a few points I would like to address in your email below.

1. Per the South Carolina Vested Rights Act Section 6-29-1530, Site Specific Development plans have a vested right to develop for a period of 2 years after which applicants must request extensions of the approved plan via the process laid out by the local jurisdiction (in this case: Lancaster County UDO section 9.2.17). The church did not file any form of extension request therefore the former plan set has expired and holds no bearing on new approvals.
2. Lancaster County UDO section 1.1.6.D states: *All development approvals granted in accordance with the UDO and other County ordinances and policies in effect prior to the effective date for this ordinance established in Section 1.1.11, shall have until 2 years to complete the approved development under the terms of the previous ordinances and policies. After such time, all development must be completed in accordance with the provisions of this UDO.*

3. UDO Section 1.1.7.C.2.A and 1.1.7.C.2.B states: *a. Any type of land development application which has been officially filed with the appropriate County official prior to the effective date of this ordinance or any amendment thereto, may continue to be processed under the land use rules and regulations in effect prior to said date. b. The application approval process for such applications must be completed within 2 years of the filing date.*
4. UDO Section 9.3.3.A.4 states: **Maximum Build-Out Period:** *If construction is not begun under such an outstanding permit within a period of one year subsequent to the passage of this ordinance, or where it has not been completed within 2 years subsequent to passage of this ordinance, any further construction or use shall be in conformity with the provisions of this ordinance. We as County employees do not have the authority to provide exemptions to this portion of the UDO.*
5. UDO Section 9.3.4.B.4 states: **Expansion of Structures:** *Any improvement or expansion of any structure on a nonconforming occupied lot must comply with all other minimum requirements of this ordinance or a variance must be obtained from these requirements through an action of the Board of Zoning Appeals.*
6. As local regulatory documents are legally binding documents, County Staff cannot simply make the determination to exempt you from any of the regulations provided above and/or from setback and Highway Corridor Overlay standards unless explicitly allowed by the controlling document itself.
7. In no way are these standards (setbacks and highway corridor overlay) denying the church the opportunity to fulfill its Religious & Community Mission. An expansion may occur on this site, religious practice may continue, and new buildings may be constructed so long as they comply with current local, state, and federal laws and regulations.
8. Lastly, there is no path for “grandfathering” a new building to prior standards. You may however request a variance or variances from the Board of Zoning Appeals. If you would like to discuss this process further, please let us know.

Best,
Ashley

From: Dick Bonner <dick.bonner64@gmail.com>
Sent: Monday, September 18, 2023 1:48 PM
To: Matthew Blaszyk <mblaszyk@lancastersc.net>
Cc: David Bender <dmbender33@aol.com>; Robert Tacy <rjtacy@gmail.com>
Subject: Faith Presbyterian Church

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Good Afternoon Matthew,

We have diligently reviewed your reply of Sep 11 and are still of the opinion that we should be Grandfathered and allowed to comply with the 20' side setback that was in place when we designed & constructed the first portion of our existing building as the total building footprint was clearly shown on those plans. We even went as far as grading & strengthening the pad to accommodate. We desired to complete building in one phase but were unable to obtain financing for the total amount required to complete.

We were not advised at that time of any foreseen changes to the zoning setbacks or we would have designed the building differently. The recent changes are extremely punitive to our plans. During construction we constructed roughins for the openings into the area we now plan to construct. By losing 15' additionally to the side of the building we will not be able to utilize those openings. Further, we cannot easily modify the building because of the location of the existing "1800's" church building which we are carefully trying to protect as it is a significant part of Indian Land & Lancaster County history. Also the cemetery on the E. Elevation will likely prohibit additional encroachment.

All things considered, it is entirely likely we might have to cancel our plans for the completion of the Facility that the Congregation & Community was promised in 2015 and provided funding for. In my humble opinion, I guess it could be said that because of the recent Lancaster County Zoning change "Faith Presbyterian Church is being denied opportunity to fulfill its Religious & Community Mission Practices".

We therefore, request that Grandfathering Faith Presbyterian Church to 2015 Side Setback requirement that was in effect when the first half of the building was constructed be extended. Once again, ***"The Granting of this request would not be of substantial Detriment to the surrounding properties or to the Public Good."***

If Grandfathering cannot be provided by you. Please provide us with the contact information of the persons or agency where we should next turn.

Once again we sincerely thank you for your support in this matter.

Regards,
Dick Bonner
704-953-8644

From: [Ashley Davis](#)
To: [Jennifer Bryan](#)
Subject: FW: Faith Presbyterian Church
Date: Wednesday, December 6, 2023 2:44:46 PM
Attachments: [LCLogo c716c29e-f766-46c0-a18c-7d20f2fc6ebd.png](#)
[LCLogo c716c29e-f766-46c0-a18c-7d20f2fc6ebd.png](#)
[LCLogo c716c29e-f766-46c0-a18c-7d20f2fc6ebd.png](#)



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From: Robert Tacy <rjtacy@gmail.com>

Sent: Tuesday, September 26, 2023 3:16 PM

To: Ashley Davis <ADavis@lanastersc.net>

Cc: Matthew Blaszyk <mblaszyk@lanastersc.net>; Rev David Bender <DMBender33@aol.com>; Dick Bonner <dick.bonner64@gmail.com>

Subject: Re: Faith Presbyterian Church

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Ashley,

Thank you so much for the information and clarifications. Most of this is what I expected. It is interesting that Rev. Bender is listed as the registered agent; we had thought it would be the President of the Corporation. I think I will come in person. Is there any particular time that is best ... or that I should avoid?

Also, is this considered my conference with you? Again thank you for your help and hopefully I will meet you on Monday or Tuesday.

Jan Tacy

(my husband is Robert and we share the same email)
803-577-1032

On Tue, Sep 26, 2023 at 2:43 PM Ashley Davis <ADavis@lancastersc.net> wrote:

Robert,

1. It is up to you all to determine what you are requesting a variance for as there were a number of outstanding comments. With that said, if the goal is to receive a variance to the side setback, then you would be requesting a variance from the INS Side setback in UDO section 2.4.
2. This ordinance went into effect on 11.28.2016; I believe the church was able to fall under the prior setbacks based on UDO Section 1.1.7.C.2 as an application may have been filed but the plans had not yet been approved at the adoption date of this ordinance.
3. The application fee is \$375 and is payable to Lancaster County. This fee does not fall under the fee waiver in section 7-25 as it is not a building permit or plan review fee; it is a zoning variance fee. This fee goes towards the cost the county incurs when meeting legal noticing requirements established by the state.
4. The Property Owners signature should be a legal signatory of "Faith Presbyterian Church USA". It appears based on available state records that a David Michael Bender is listed as the Registered Agent for this Non-Profit.
5. You can submit in person (only one copy is needed), or you can submit though the Evolve Portal found at the link below:

<https://evolvepublic.infovisionsoftware.com/lancaster/?portal=project>

-Ashley



Ashley Davis, *Deputy Planning Director*
Planning

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From: Robert Tacy <rjtacy@gmail.com>

Sent: Tuesday, September 26, 2023 1:44 PM

To: Ashley Davis <ADavis@lancastersc.net>; Matthew Blaszyk <mblaszyk@lancastersc.net>

Cc: Rev David Bender <DMBender33@aol.com>; Dick Bonner <dick.bonner64@gmail.com>

Subject: Re: Faith Presbyterian Church

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Ashley and Matthew,

One more question. Regarding the fee of \$375, would that be covered by:

Sec. 7-25. - Schedule of permit fees.

(9)*Religious institutions.* The first thirty thousand dollars (\$30,000.00) in combined building permit fees and plan review fees shall be waived for work on a sanctuary, church educational facility (except pre-school, K—12 school, or post-secondary school facilities), and family life center facility of a religious institution. Other facilities of a religious institution, including, but not limited to, a manse, parsonage, or a denominational administrative facility, shall have standard fees assessed. Proof of designation as a religious institution shall be by submission of the appropriate Internal Revenue Service documentation.

Thanks. Hope to get together soon.

Jan Tacy

On Mon, Sep 25, 2023 at 7:44 AM Robert Tacy <rjtacy@gmail.com> wrote:

Good morning Ashley and Matthew,

This is Jan Tacy and I will be preparing Faith's Variance Application and presenting Faith's appeal to the BZA. I see from the BZA website that applicants must confer with you, Ashley, prior to submission. Therefore, I would like to meet with you or speak on the phone as soon as possible.

We want to have our appeal heard at the November 14, 2023 BZA meeting, which means I need to make our submission by October 3, 2023. Please let me know when we can get together. I apologize for the short timeframe but I have been out of town for the last two weeks on a trip that had been preplanned. I am meeting with Rev. David Bender and Dick Bonner today at 10:30 am, but am otherwise available all week.

I do have questions:

1. Confirm we are appealing Section 2.4 District Development Standards of the current UDO

adopted 11.28.2016, which sets the setback requirement of 35 ft for side, rear, and street side in properties zoned Institutional District (INS). Is 11.28.2016 when the 35 ft setback went into effect?

2. Clarify when Faith was rezoned to INS and how we would have been notified.
3. Confirm the application fee is \$375.00 and is payable to who?
4. The first page of the Variance Application which requests property information asks for the property owner of record. The property is owned by Faith Presbyterian Church USA. Who signs for the church? The Pastor? Also, is this page "Form 1"?
5. Do I submit the application in person and, if so, do I need an appointment? How many copies? Will I receive a case # after submission?

Looking forward to meeting or talking with you in the near future. Thank you for your help and insight throughout this process.

Sincerely,
Jan Tacy
803-577-1032

ATTACHMENT 5:

Zoning Variance Criteria

ZONING VARIANCE CRITERIA

- i. THAT THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THIS ORDINANCE;
- ii. THAT IF THE APPLICANT COMPLIES WITH THE PROVISIONS OF THE ORDINANCE, THE PROPERTY OWNER SEEKING THE VARIANCE CAN SECURE NO REASONABLE RETURN FROM, OR MAKE NO REASONABLE USE OF HIS PROPERTY;
- iii. THAT SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST WHICH ARE PECULIAR TO THE LAND, STRUCTURE OR BUILDING INVOLVED AND WHICH ARE NOT APPLICABLE TO OTHER LANDS, STRUCTURES OR BUILDINGS LOCATED IN THE SAME LAND DEVELOPMENT DISTRICT;
- iv. THAT THE VARIANCE WILL NOT MATERIALLY DIMINISH OR IMPAIR ESTABLISHED PROPERTY VALUES WITHIN THE SURROUNDING AREA;
- v. THAT THE SPECIAL CONDITIONS AND CIRCUMSTANCES REFERENCED IN III, ABOVE, RESULT FROM THE APPLICATION OF THIS ORDINANCE AND NOT FROM THE ACTIONS OF THE APPLICANT;
- vi. THAT THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THIS ORDINANCE AND PRESERVES ITS SPIRIT;
- vii. THAT THE VARIANCE IS THE MINIMUM NECESSARY TO AFFORD RELIEF; AND
- viii. THAT THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE HAVE BEEN ASSURED AND SUBSTANTIAL JUSTICE HAS BEEN DONE

Agenda Item Summary

Ordinance # / Resolution #:

Contact Person / Sponsor:

Department: Board of Zoning Appeals

Date Requested to be on Agenda: 1/9/2024

Issue for Consideration:

Points to Consider:

Recommendation:

ATTACHMENTS:

Description	Upload Date	Type
Staff Report	1/2/2024	Exhibit
Application	1/2/2024	Exhibit
Location Map	1/2/2024	Exhibit
Deed	1/2/2024	Exhibit
Recorded Plat	1/2/2024	Exhibit
Outen Letter in Support	1/2/2024	Exhibit

REQUEST: Application by Dustin Floyd, requesting a variance from Unified Development Ordinance Sec. 2.4 District Development Standards: Setbacks

PROPERTY LOCATION: 504 Oakhaven Drive

TAX MAP NUMBER: TM# 0088K-0A-008.00

ZONING DISTRICT: Rural Neighborhood (RN) District

HEARING NOTICES: Published 12/23/2023 The Lancaster News
Signs posted 12/21/2023
Agenda posted online and in Administration Bldg Lobby 01/02/2023

OVERVIEW:

The applicant is requesting a variance from Unified Development Ordinance (UDO) Section 2.4 District Development Standards: Setbacks, to allow a 10-foot side setback instead of 35 feet.

Background

The subject property is approximately 0.79 acres and is located at 504 Oakhaven Drive, east of Kershaw-Camden Highway. The property is zoned Rural Neighborhood (RN) District. The applicant discovered that his contractor conducted unpermitted work when building an 840-square-foot garage and sought information from the Building Department for retroactive inspection and approval. He was informed by the Building Department staff that the structure did not meet required setbacks, because accessory structures over 600 square feet in area must meet the same setbacks as a principal structure. In this case the correct setbacks would be 20 feet from the Mountain Laurel Road side (southern boundary) and 25 feet from the rear property line (eastern boundary). The structure as built encroaches into the rear setback by 15 feet.

The relief requested is a reduction of the rear setback to 10 feet.

RELATION TO THE UNIFIED DEVELOPMENT ORDINANCE:

UDO Section 2.4, Purpose/Limitations

The following tables outline the primary development standards for each base zoning district in Lancaster County. For development on infill lots and additions to existing development, the standards in Chapter 1 shall also apply.

SECTION 2.4 STANDARD		ZONE: Rural Neighborhood (RN)
1. DEVELOPMENT STANDARDS		
A. District/Development Area (min)		n/a
B. Development/District Exterior Setback/ Buffer		n/a
C. Density (max)		n/a
D. Open Space (min)		Exempt
E. Park Space (min)		Exempt
2. LOT STANDARDS		
A. Lot Area (min)		1.0 acre
B. Lot Width at Front Setback (min)		130 lf
C. Pervious Surface (min)		50%
3. PRINCIPAL BUILDING		
A. Principal Front Setback (min)		40 ft
B. Street Side/Secondary Front Setback (min)		20 ft
C. Side (from adjacent lot) Setback (min)		20 ft
D. Rear Setback (min)		25 ft
E. Other Standards		n/a
4. ACCESSORY STRUCTURE		
A. Side Setback		5 ft
B. Rear Setback		5 ft
C. Other Standards		See Below (1, 2)
5. PARKING CONFIGURATION		
A. Parking Location per Section 9.3		7.2.3
B. Parking in Exterior Setback/Buffer		n/a
6. BUILDING HEIGHT		
A. Principal Building (max)		35 ft
B. Accessory Structure (max)		35 ft
C. Additional Height Permitted with Additional Setback		1 ft additional height permitted with each 2 ft horizontal setback

1. *Accessory structures over 600 sf must comply with principal setback requirement.*
2. *No accessory structures may be located on corner lots between the street and wall line of the principal structure.*
3. *For any nonresidential structure which is located immediately adjacent to a single-family residential use or district, the lot boundary line minimum distance shall be determined as follows: For every foot building height, the developer shall provide setbacks equal to the height of the building. At no time shall the setback be less than what is indicated in the above table.*
4. *The Development/ District Exterior Setback/ Buffer shall not apply between adjacent LI and HI districts. A waiver of these requirements may be granted by the Administrator for LI and HI lots existing at the adoption date of this ordinance which do not meet the specified minimum District/ Development Area. In such instances the building setback standards for the AR District shall apply. A waiver of these requirements may also be granted by the Administrator in order to permit access to an adjacent railroad right-of-way.*

UDO Section 9.2.12, Variances - Standard of Review

A. PURPOSE/LIMITATIONS

- 1. Purpose:** The variance process administered by the Board of Zoning Appeals is intended to provide limited relief from the requirements of this ordinance in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of the land in a manner otherwise allowed under this ordinance.
- 2. Financial Hardship Not Sufficient Ground for Variance:** It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this ordinance may impose on property owners in general or to increase the profitability of a proposed development.
- 3. Use Variances Not Permitted:** In no event shall the Board of Zoning Appeals grant a variance which would allow the establishment of a use which is not otherwise allowed in a land development district or which would change the land development district classification or the district boundary of the property in question. Nor shall the Board grant a variance which would allow the establishment of a use set forth herein as requiring certain conditions or standards under conditions or standards less than those minimums.
- 4. Authority Limited to this Ordinance/ Conflicts with other Laws Prohibited:** In no event shall the Board of Zoning Appeals grant a variance which would conflict with the International Building Code, as amended, or any other state code unless otherwise authorized by duly enacted applicable laws and regulations.

C. FORMAL REVIEW

1. Action by the Board of Zoning Appeals

- a. Upon receipt of the request for a variance from the Administrator, the Board of Zoning Appeals shall hold a quasi-judicial hearing on the request.
- b. After conducting the hearing, the Board of Zoning Appeals may: deny the application; conduct an additional public hearing on the application; or grant the application. It shall take a majority vote of the Board to grant a variance.
- c. A decision by the Board of Zoning Appeals shall be made within 30 days of the date of the hearing.
- d. The Board of Zoning Appeals, as established by Lancaster County, shall hear and decide requests for variances from the requirements of the standards for the Flood Damage Prevention standards located in Chapter 8.

2. Standard of Review

- a. **General Variance Requests:** The Board of Zoning Appeals shall not grant a variance unless and until it makes all of the following findings:
 - i. That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this ordinance;
 - ii. That if the applicant complies with the provisions of the ordinance, the property owner seeking the variance can secure no reasonable return from, or make no reasonable use of his property;

- iii. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings located in the same land development district;
- iv. That the variance will not materially diminish or impair established property values within the surrounding area;
- v. That the special conditions and circumstances referenced in iii, above, result from the application of this ordinance and not from the actions of the applicant;
- vi. That the variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit;
- vii. That the variance is the minimum necessary to afford relief; and
- viii. That the public health, safety and general welfare have been assured and substantial justice has been done.

UDO Section 1.1.4, Purpose and Intent

The regulations contained in the UDO have been adopted in accordance with the Comprehensive Plan for Lancaster County, South Carolina, as adopted, in order to:

- A.** Promote a strong, diverse economy that supports a wide variety of businesses and enterprises.
- B.** Provide sustainable, well-managed growth that maintains quality of life, protects open space and environmental quality, retains the natural character of the region, and maximizes the efficiency of the infrastructure investments.
- C.** Promote a safe and healthy environment with good air and water quality.
- D.** Support increased collaboration among jurisdictions on issues that transcend boundaries, including growth management, transportation, and environmental concerns, in a manner that recognizes both regional and local needs.
- E.** Promote community leadership and cooperative volunteerism for all residents.
- F.** Create high quality educational opportunities that are available to all residents.
- G.** Encourage community and stakeholder collaboration in development decisions, which are predictable, fair, and cost effective.
- H.** Preserve open space, farmland, natural beauty, and critical environmental areas.
- I.** Strengthen and direct development towards existing communities.
- J.** Encourage mix of land uses with compact building design and walkable neighborhoods.
- K.** Create a range of housing opportunities and choices.
- L.** Foster distinctive, attractive communities with a strong sense of place.

UDO Section 1.4.7 Accessory Uses and Structures

The purpose of this section is to establish standards for accessory uses and structures in Lancaster County's land use jurisdiction. Except as provided elsewhere in this chapter, it shall be unlawful for any person to erect, construct, enlarge, move, or replace any accessory use or structure without first obtaining a Zoning Permit from the Administrator.

A. GENERAL

- 1. Accessory Uses and Structures:** Accessory uses and structures may only be used for purposes permitted in the district in which they are located.
- 2. Not for Dwelling Purposes:** Accessory structures shall not be used for dwelling purposes except as approved Accessory Dwelling Units (see Section 5.2.3).
- 3. Building Permits May Be Required:** Depending on the size of the structure and the incorporation of various improvements (e.g., electrical, plumbing), a building permit may also be required.

B. LOCATION, MAXIMUM NUMBER, AND MAXIMUM AREA

Standards	Single-Family/Two-Family Lots – Less than ½ Acre	Single-Family/Two-Family Lots – ½ Acre to 2 Acres	All Other Uses and Lots Larger than 2 Acres
1. Permitted Location	Side/rear yard only	Side/rear yard only	Permitted in all yards – may not be closer than 30 ft. to right-of-way
2. Maximum Number Permitted	2	2	No maximum
3. Maximum Building Footprint	750 sq. ft. per structure; Aggregate area no greater than 75% of the principal structure	1500 sq. ft. per structure; Aggregate area no greater than 75% of the principal structure	No maximum

C. OTHER REQUIREMENTS

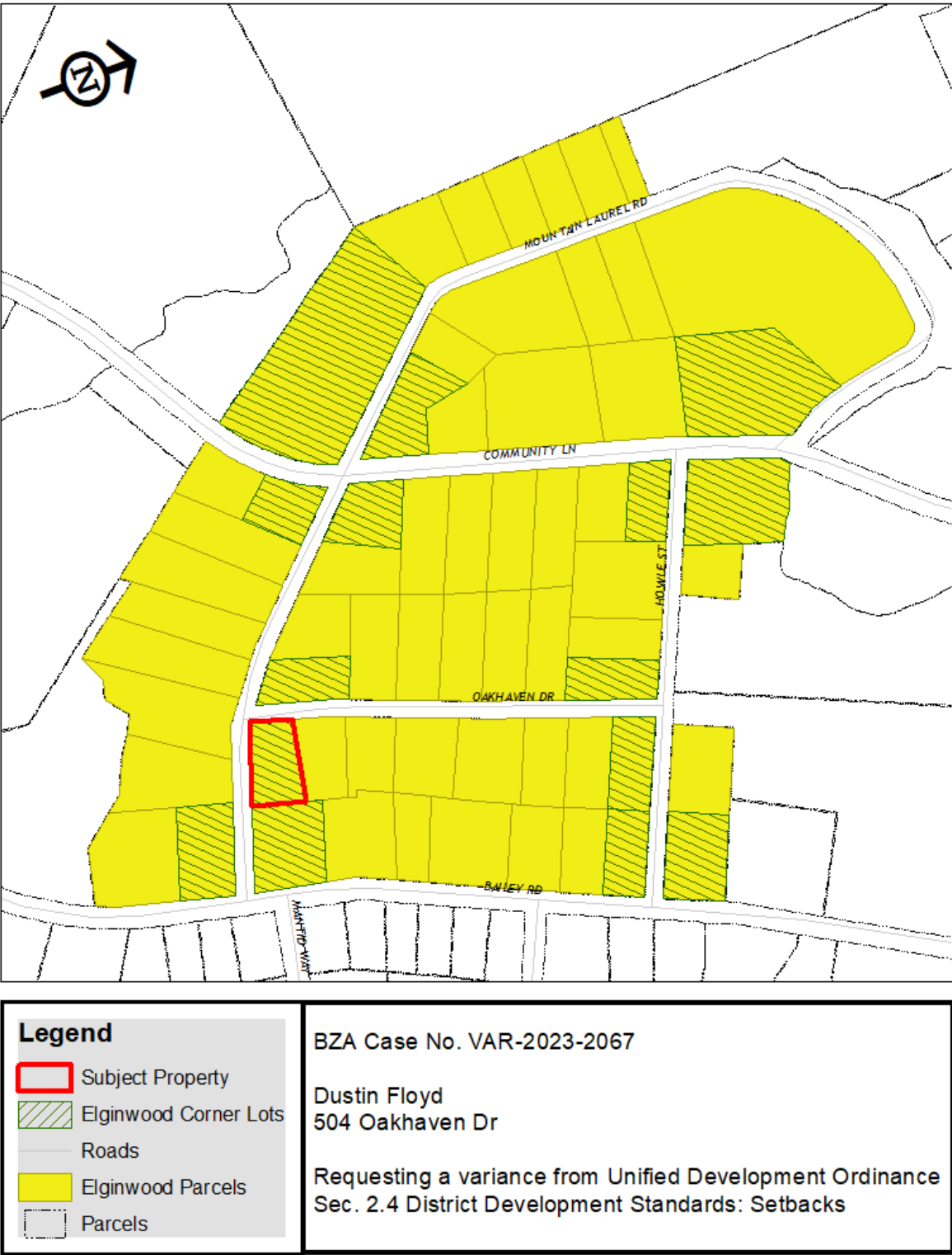
- 1. Distance to Single Family Dwelling:** No accessory uses and/or structures shall be closer than the distance specified in the currently-applicable building code to a single family dwelling; except that an unenclosed (open on all sides) carport and/or an unenclosed breezeway no wider than 9 feet at its widest point may be attached to or placed any distance from a principal building.
- 2. Lighting:** Exterior lighting for accessory uses and/or structures shall meet the requirements by which principal structures are governed as set forth in Chapter 7.

D. EXCEPTIONS

The following accessory uses are exempt from the locational requirements of this section and the setback requirements in Chapter 2 as noted below:

1. Transit shelters and bicycle racks may be located in the front or side yard as necessary.
2. Backflow preventers and other customary utility structures may be located in the front yard as necessary.
3. Gatehouses and gazebos, including security gatehouses, may be located in the front yard provided they do not have a footprint greater than 100 square feet.
4. Neighborhood entrance ground signs may be located in the front or side yard of a lot according to the standards of Chapter 7.
5. Neighborhood gatehouses including security gatehouses, may be located in the front yard provided they do not have a footprint greater than 250 square feet.
6. Up to 2 small accessory uses and/or structures, child play structures, or backyard pens/coops located in the side or rear yard are exempt from the limitations in Chapter 2. To be considered exempt, such accessory buildings shall not, under the International Building Code, be required to obtain a building permit.

Findings of Fact - Property:

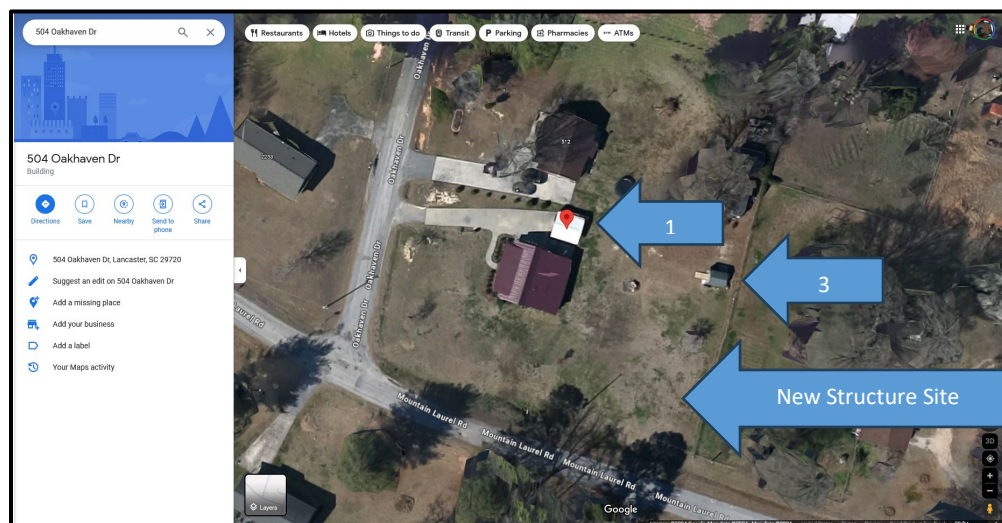


- The applicant is the owner of property located at 504 Oakhaven Dr, in the Elginwood subdivision. (*Source: Application; Lancaster County Assessor's Office Property Card*) The property is measured using *Lancaster County GIS* at 34,255 square feet, or 0.78 acres.
- The property is zoned Rural Neighborhood (RN). (*Source: Lancaster County Official Zoning Map*)
 - The minimum lot size in RN is 1.0 acres (43,560 sq ft). (*Source: Lancaster County UDO*)
 - RN minimum setbacks for the principal structure(s) on site are found in *Section 2.4 of the Lancaster County Unified Development Ordinance (UDO)* and are as follows:
 - Front setback 40 ft
 - Side setback, yards or streets 20 ft
 - Rear setback 25 ft
 - RN minimum setbacks for accessory structures are different based on the accessory structure size. (*Source: Section 2.4 of the Lancaster County UDO*)
 - If the accessory structure is 600 square feet or less in area, then the accessory structure may be constructed at minimum five feet from the property line of either the side or rear yard.
 - If the accessory structure exceeds 600 square feet in area, then the accessory structure must meet the same setbacks as the principal use (being 40 feet from the front street, 20 feet from the side yard or side street, and 25 feet from the rear yard property line).
- The property is located in the Elginwood subdivision, and the following information was gathered using *Lancaster County's GIS data*:
 - Elginwood is primarily located between Community Ln, also known as S-29-362, and Bailey Rd, also known as S-172.
 - Both Bailey Rd and Community Ln are state-owned secondary roads.
 - Elginwood is served internally by additional state roads, including:
 - Howle St (S-585)
 - Mountain Laurel Rd (S-586 and S-642)
 - Oakhaven Dr (S-587)
 - The first sale of property in the Elginwood subdivision was recorded in 1965, meaning that the Elginwood subdivision was approved prior to Lancaster County's entry into zoning and subdivision regulations in 1994.
 - Elginwood is made up of 64 lots:
 - The smallest lot is 0.35 acres.
 - The largest lot is 6.41 acres.
 - The average lot size in the neighborhood is 1.13 acres.
 - 38 of the 64 lots are less than 1.0 acre in area and are sub-standard to today's UDO standards. These lots are grandfathered in at their current size. They may be increased in size but may not be reduced in size.
 - Elginwood has 15 lots that have two street frontages (corner lots):
 - The smallest corner lot is 0.64 acres.
 - The largest corner lot is 4.66 acres.
 - The average corner lot size is 1.26 acres.
 - Eight of the 15 lots are less than 1.0 acre in area and are sub-standard to today's UDO standards. These lots are grandfathered in at their current size. They may be increased in size but may not be reduced in size.

- The property has more accessory buildings than the code allows. *(Sources: 2021 aerial photography from Lancaster County GIS, site visits, UDO Section 1.4.7.B)*
 - UDO Section 1.4.7.B.2 states that single family lots between 0.5 acres and 2 acres are allowed a maximum of two accessory uses and/or structures on premises.
 - The applicant's property is reported to be 0.78 acres, which falls within the section's guidelines. *(Source: application)*
 - When a property has a code compliance issue at the point of application, staff will advise the customer that the property has to be brought into compliance before construction may begin. In order to make the lot approvable for the garage, the owner would have had to remove any/all but one of the outbuildings/carports that are on the property prior to construct. *(Source: Lancaster County policy)*



Above: Screenshot of Subject Property via Lancaster County GIS 2021, Identifying Three (3) Existing Outbuildings.
Below: Screenshot of Subject Property via Google Maps ©2024, Identifying Two (2) Existing Outbuildings.





Above Photo Taken 12/28/2023, Viewing the Subject Property from Mountain Laurel Rd



Above Photo Taken 12/28/2023, Viewing the Subject Property Oakhaven Dr

Findings of Fact – Activities:

- On September 7, 2023, Mr. Floyd contracted with Longhorn Steel Structures to purchase a building measuring 28 ft wide x 30 ft long x 11 ft tall. *(Source: Copy of contract attached to application for permit)*
- Near the end of October 2023, Mr. Floyd contacted the Building Services department to ask about receiving a post-construction permit. He indicated that he hired a contractor to locate a standalone garage on his property and the contractor did not pull a permit prior to construction. Mr. Floyd was advised to fill out a form for a permit, and staff would review it post-construction. *(Source: Staff reports)*
- On October 24, 2023, Mr. Floyd submitted a Residential Permit Application indicating that the garage was 28x30x11 (feet). The approximate location of the garage was sketched on a survey of the property and included with the application. *(Source: Lancaster County files)*
 - When staff reviewed the information, the building was shown as being located 10 feet from the rear property line.
- On October 26, 2023, Lancaster County Zoning staff marked the permit application as “Not Approved.” The comments provided were as follows:
 - “The setbacks do not meet the UDO requirements for this zoning district. After speaking to the homeowner, it is my understanding the building is already there and will have to ask for a variance for the side yard setbacks.” *(Source: Not Approved Letter dated 10-26-2023)*
 - After discussion with staff, it was determined that the “side yard” comment was incorrect and should have listed “rear yard setbacks.”
- In November 2023, Mr. Floyd met with Development Services Director Allison Hardin to discuss his options, and Director Hardin outlined the variance process for Mr. Floyd. *(Source: Staff reports)*
- On November 22, 2023, Mr. Floyd submitted an application for variance to the Lancaster County Planning and Zoning department. *(Source: Lancaster County files)*
- On December 5, 2023, Mr. Floyd brought a letter written by his neighbor, Frances Outen, in support of the variance request. Letter was dated December 2, 2023. *(Source: Lancaster County files)*

STAFF RECOMMENDATION: Staff concludes that the code could have been met had a permit been sought prior to construction and does not support the variance application.

ATTACHMENTS:

1. Variance Application
2. Location Map
3. Deed
4. Recorded Plat
5. Letter from Frances Outen dated December 2, 2023.

STAFF CONTACT:

Allison Hardin, Development Services Director with Shannon Catoe, Zoning Director
ahardin@lancastersc.net | 803-416-9422



BOARD OF ZONING APPEALS
VARIANCE APPLICATION

IF YOU REQUIRE ASSISTANCE WITH THIS APPLICATION, PLEASE CONTACT THE PLANNING OFFICE AT 803-285-6005. THE COMPLETED APPLICATION, THE APPLICATION FEE OF \$275.00 SF RESIDENTIAL/ \$375.00 COMMERCIAL AND ALL ADDITIONAL SUPPORTING DOCUMENTS ARE REQUIRED TO BE SUBMITTED.

THE FOLLOWING INFORMATION MUST BE PROVIDED FOR THE REQUEST:

PROPERTY INFORMATION:

TAX MAP NUMBER: 16105 00801K-0A-008.00

STREET ADDRESS: 504 Oakhaven dr

CITY/ STATE/ ZIP CODE: Lancaster, SC, 29720

LOT DIMENSIONS/ LOT AREA: .79 PLAT BOOK/PAGE: _____

CURRENT ZONING RN

CLASSIFICATION: _____

PROPERTY OWNER OF RECORD:

NAME: Dustin Floyd

ADDRESS: 504 Oakhaven dr

CITY/STATE/ZIP CODE: Lancaster, SC, 29720 TELEPHONE 803-804-5947

EMAIL ADDRESS: dustinmf@comperium.net

SIGNATURE OF OWNER/ DATE: Dustin Floyd 10/31/2023

I HAVE APPOINTED THE INDIVIDUAL OR FIRM LISTED BELOW AS MY REPRESENTATIVE IN CONJUNCTION WITH THIS MATTER RELATED TO THE BOARD OF ZONING APPEALS.

AGENT OF OWNER:

NAME: _____

ADDRESS: _____

CITY/STATE/ZIP CODE: _____ TELEPHONE: _____

EMAIL ADDRESS: _____

SIGNATURE OF AGENT/ DATE: _____

SIGNATURE OF OWNER/ DATE: _____

VARIANCE APPLICATION

DATE FILED: _____ APPLICATION NO. _____

1. APPLICANT HEREBY APPEALS TO THE BOARD OF ZONING APPEALS FOR A VARIANCE FROM THE STRICT APPLICATION TO THE PROPERTY DESCRIBED IN THE NOTICE OF APPEAL (FORM 1) OF THE FOLLOWING PROVISIONS TO THE UNIFIED DEVELOPMENT ORDINANCE:

Section 2.4.3 Setback

SO THAT A ZONING PERMIT MAY BE ISSUED TO ALLOW USE OF THE PROPERTY IN A MANNER SHOWN ON THE ATTACHED PLOT PLAN, DESCRIBED AS FOLLOWS:

Reduce 20ft Setback by 10ft

FOR WHICH A ZONING OFFICIAL HAS DENIED A PERMIT ON THE GROUNDS THAT THE PROPOSAL WOULD BE IN VIOLATION OF THE CITED SECTION (S) OF THE UNIFIED DEVELOPMENT ORDINANCE.

Section 2.4.3 Setback

2. THE APPLICATION OF THE ORDINANCE WILL RESULT IN UNNECESSARY HARDSHIP, AND THE STANDARDS FOR A VARIANCE SET BY STATE LAW AND THE ORDINANCE ARE MET BY THE FOLLOWING FACTS:

- i. THAT THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THIS ORDINANCE;

I hired contractor to build my car garage
Came to find out after building was put up and
done he did not pull a permit, and built my garage to
close to the property line.

- ii. THAT IF THE APPLICANT COMPLIES WITH THE PROVISIONS OF THE ORDINANCE, THE PROPERTY OWNER SEEKING THE VARIANCE CAN SECURE NO REASONABLE RETURN FROM, OR MAKE NO REASONABLE USE OF HIS PROPERTY;

Tearing this garage down would destroy my yard.

- iii. THAT SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST WHICH ARE PECULIAR TO THE LAND, STRUCTURE OR BUILDING INVOLVED AND WHICH ARE NOT APPLICABLE TO OTHER LANDS, STRUCTURES OR BUILDINGS LOCATED IN THE SAME LAND DEVELOPMENT DISTRICT;

My lot is a corner lot does not have lot
of space to build on like other lots.

- iv. THAT THE VARIANCE WILL NOT MATERIALLY DIMINISH OR IMPAIR ESTABLISHED PROPERTY VALUES WITHIN THE SURROUNDING AREA;

No feel like it would bring value to the
area, Also neighbor love it and are okay with it

- v. THAT THE SPECIAL CONDITIONS AND CIRCUMSTANCES REFERENCED IN III, ABOVE, RESULT FROM THE APPLICATION OF THIS ORDINANCE AND NOT FROM THE ACTIONS OF THE APPLICANT;

Corner lots have more setbacks

- vi. THAT THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THIS ORDINANCE AND PRESERVES ITS SPIRIT;

Garage is accessory building and is required to have 5 feet in section 2.4.4

- vii. THAT THE VARIANCE IS THE MINIMUM NECESSARY TO AFFORD RELIEF; AND

Yes. 10 feet is minimum required to meet code

- viii. THAT THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE HAVE BEEN ASSURED AND SUBSTANTIAL JUSTICE HAS BEEN DONE

No. Impact to Public Health, Safety and Welfare

3. THE FOLLOWING DOCUMENTS ARE SUBMITTED IN SUPPORT OF THIS APPLICATION: (A PLOT PLAN MUST BE SUBMITTED)

Date: 11/22/23

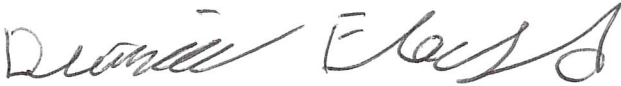
Applicant Signature:

[Signature] Elard

Dear Board Members.

I hired an individual that does grading, concrete and landscaping work. He laid the concrete slab for the building. When I paid the gentleman to do the grading and pour the concrete, apparently he did not pull a permit. I didn't know anything about permits, placement of structures, etc.. The building is only 10 ft from the side of the property line. I am asking for a variance to see if it would be okay to keep the building in its current location on my property. I have already spent \$40,000 on the garage, and financially I would not be able to tear the building down and replace it. I know it is my responsibility, because it is my property. However, I didn't know he did not pull a permit or build the building up to the proper set points. I would greatly appreciate some leniency for my lack of knowledge.

Sincerely,

A handwritten signature in black ink, appearing to read "Dustin Floyd". The signature is fluid and cursive, with the first name "Dustin" and last name "Floyd" clearly distinguishable.

Dustin Floyd



State License Exemption Request For Homeowners
Lancaster County, South Carolina

Owner Builder Form To Act As Builder

State law requires residential construction in excess of two hundred dollars (\$200.00) in labor and material to be done by licensed builders and specialty contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of the property, to act as your own builder even though you do not have a license. You must supervise the construction yourself. You may build or improve a one-family or two-family residence. The building must be for your own use and occupancy. It may not be built for sale or rent. If you sell or rent a building you have built yourself within two years after construction is complete, the law will resume that you built it for sale or rent, which is a violation of this exemption. You may not hire an unlicensed person as your residential builder or specialty contractor. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal licensing ordinances. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations.

To qualify for this exemption, you as the owner of the residential building or structure must promptly file as a matter of public record a notice with the Register of Deeds, indexed under the owner's name in the grantor's index, stating that the residential building or structure was constructed by the owner as an unlicensed builder. Failure to do so revokes the statutory exemption. By signing this form, you acknowledge receiving the "Disclosure Statement" required to be filed, your responsibility as outlined and will abide by all applicable laws, ordinances, building code and zoning code regulations.

Description of work: car shop 28x30x11

Address: 504 oakhaven dr TMS# 0088K-0A-008.00

Owner(s) signature: Dustin Michael Floyd

Printed Name(s): Dustin Michael Floyd

Witness 1: Samantha Faulkenberry Witness 2: Debbie Wright

Printed Name: Samantha Faulkenberry Printed name: Debbie Wright

State of South Carolina

County of Lancaster

The foregoing instrument was acknowledged before me this date: Oct 24 2023

By: Dustin Michael Floyd (name of person acknowledged)

Sworn and subscribed before me this 24 day of Oct, 2023

Deborah Wright (Seal)

Notary Public for South Carolina

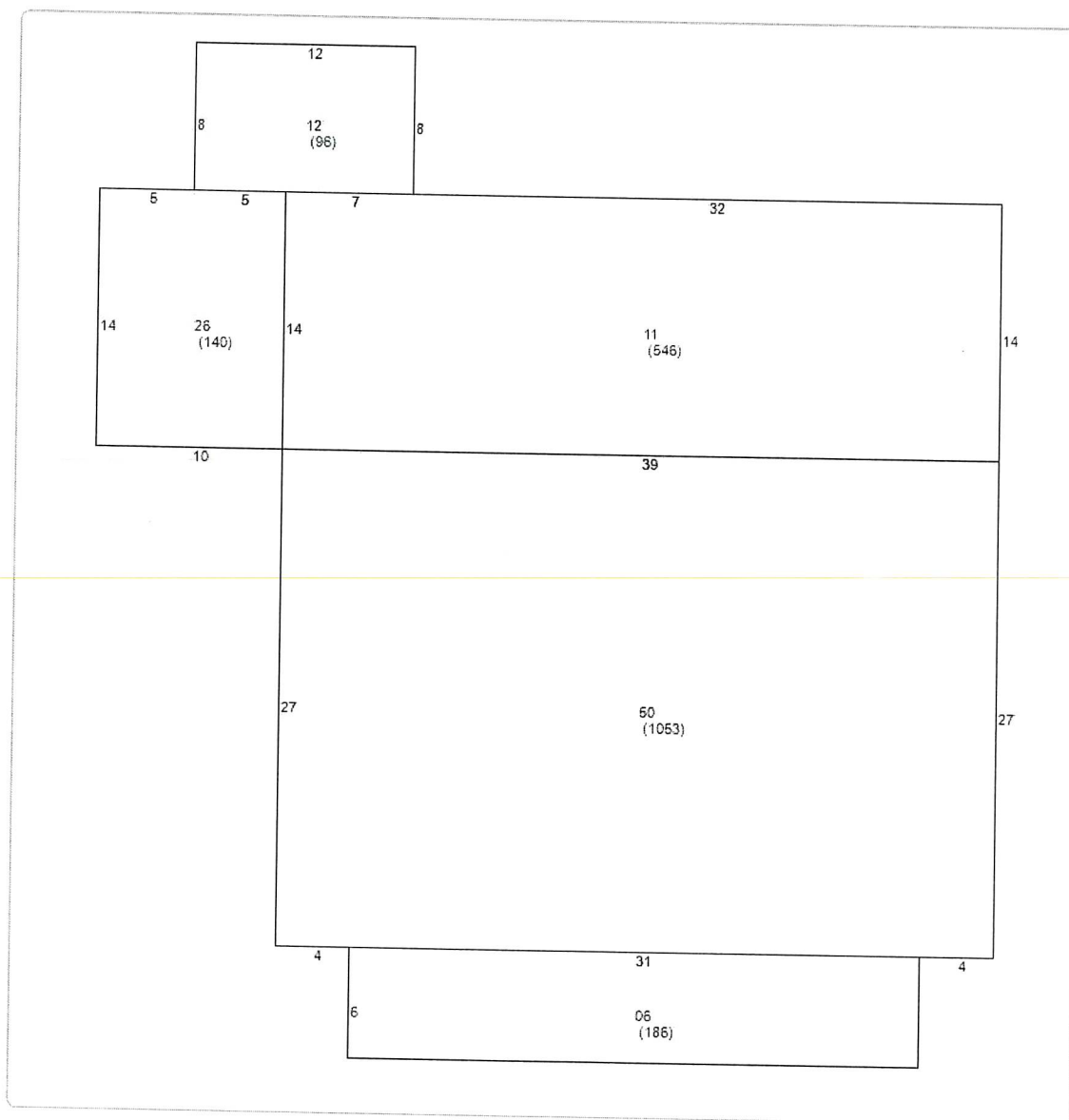
My Commission Expires: 2-6-24

Assessed Values

	2023	2022	2021	2020
Market Land Value	\$12,500	\$12,500	\$12,500	\$12,500
+ Market Improvement Value	\$117,700	\$117,700	\$117,700	\$111,100
+ Market Misc Value	\$0	\$0	\$0	\$0
= Total Market Value	\$130,200	\$130,200	\$130,200	\$123,600
Taxable Land Value	\$12,500	\$12,500	\$12,500	\$12,500
+ Taxable Improvement Value	\$117,700	\$117,700	\$117,700	\$111,100
+ Taxable Misc Value	\$0	\$0	\$0	\$0
- Ag Credit Value	\$0	\$0	\$0	\$0
= Total Taxable Value	*\$130,200	*\$130,200	*\$130,200	*\$123,600
Assessed Land Value	\$500	\$500	\$500	\$500
+ Assessed Improvement Value	\$4,708	\$4,708	\$4,708	\$4,444
+ Assessed Misc Value	\$0	\$0	\$0	\$0
= Total Assessed Value	\$5,208	\$5,208	\$5,208	\$4,944

*This parcel is subject to the value cap

Sketches



No data available for the following modules: Commercial Building Information, Mobile Home Information, Accessory Information, Photos.

Experiencing Lancaster County, SC through GIS Technology

Parcel Summary

Parcel ID 0088K-0A-008.00
 Account # 17844
 Millage Group 01 - County - County
 Land Size 125 FRONT FEET
 Location Address 504 OAKHAVEN DR
 Lancaster 29720
 Zoning RN : Rural Neighborhood
 Neighborhood 54
 Property Use Code Qualified Residential (QR)
 Plat Book 16105
 Plat Page 0000
 Block#
 Lot# 2

Scanned Property Card

Property Card

Note: Property Cards are current as of 4/1/2020 and are no longer updated

Owner Information

FLOYD DUSTIN MICHAEL
 504 OAKHAVEN DR
 LANCASTER SC 29720

Land Information

Land Use	Number of Units	Unit Type	Land Type	Frontage	Depth	AgUse Value
QualRes (QR)	125.00	FRONT FEET	SITE	0	0	\$0

Building Information

Building ID 17690
 Style Single Family Dwelling / 37
 Gross Sq Ft 2,021
 Finished Sq Ft 1,599
 Stories 1 Story
 Condition Average
 Interior Walls
 Exterior Walls Brick with 5% Alum\Vinyl
 Year Built 1980
 Garage
 Porch
 Effective Year Built 2000
 Foundation Perm Footing
 Roof Type Gable
 Roof Coverage Corg Metal
 Flooring Type Vinyl with 50% Carpet
 Heating Type Reverse Cycle Pump
 Bedrooms
 Full Bathrooms 1
 Half Bathrooms 0
 3/4 Bathrooms 0
 Grade C
 Grade Description
 Number of Fire PI 1
 Unit Description

Rooms

Bedrooms

Code	Description	Sketch Area	Finished Area	Perimeter
06	COVERED PRCH	186	0	74
11	FRAME ADDN	546	546	106
12	FRAME DECK	96	0	40
50	ONE STORY	1,053	1,053	132
26	SLAB	140	0	48
TOTAL		2,021	1,599	400

Sales Information

Sale Date	Sale Price	Instrument Number	Deed Book	Deed Page	Sale Qualification	Vacant or Improved	Grantor	Grantee
10/30/2017	\$130,000	DEED	1093	87	Qualified	Improved	MIZELL JUDY & LEWIS E FLOYD	FLOYD DUSTIN MICHAEL
9/15/2003	\$53,300		0208	0224	Unqualified - FORECLOSURE SALE	Improved	MIZELL JUDY & LEWIS E FLOYD	MIZELL JUDY & LEWIS E FLOYD

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Developed by
 **Schneider**
GEOSPATIAL



DEVELOPMENT SERVICES

101 N. MAIN STREET, P O BOX 1809, LANCASTER SOUTH CAROLINA, PHONE (803) 285-1969 EMAIL PERMITS@LANCASTERCOUNTYSC.NET

RESIDENTIAL PERMIT APPLICATION

Date: 10/24/23

Permit Type (Please Check All that apply):						
Building w/zoning ☒	Demo ☐	Zoning Only ☐	Gas ☐	Plumbing ☐	Mechanical ☐	Electrical ☐
Interior Remodeling only ☐	Pool ☐	House Move ☐	Job Cost\$ <u>40,000</u>			

- New building must provide well/septic approval or tap fee verification.

Address of Construction Location: 504 oakhaven dr

Description of work: Putting up garage 28x30x11

Subdivision: _____ Lot Number: _____ Parcel ID: _____

Other structure on property _____

Property Owner(s): Dustin Michael Floyd Phone #: 803-804-5997

Mailing Address: 504 oakhaven dr

Email: dustinmf@comporium.net

Contractor: _____ SC Contractors License #: _____

Phone # _____ Address: _____

Email: _____

Electrical Sub: _____	SC License #: _____
Mechanical Sub: _____	SC License #: _____
Plumbing Sub: _____	SC License #: _____
Water provider: _____	Electrical Provider: _____
Sewer provider: _____	Gas Provider: _____

Heated Sq Ft _____	Unheated Sq Ft _____	Basement Sq Ft _____	Garage Sq Ft <u>840</u>
Porch Sq Ft _____	Deck Sq Ft _____	Number of stories _____	Number of Bedrooms _____
Bathrooms _____	Heat source _____	Gas _____	(half pound or two-pound system) Electric source _____
Water Type _____	Sewer Type _____		

Is this a part of a Homeowner Association? Yes/No, if yes please provide letter of approval.

***Acknowledgement of SC 6-29-1145: IS THIS TRACT OR PARCEL OF LAND RESTRICTED BY ANY RECORDED COVENANT THAT CONFLICTS WITH OR PROHIBITS THE ACTIVITY YES/NO?

*****Acknowledgement of Asbestos Regulations***** Federal and State Asbestos regulations require responsible parties to have SCDHEC licenses building inspector inspect regulated structures for the presence of asbestos and to obtain SCDHEC required project licenses. Please ensure that these requirements are met prior to conducting any abatement, renovations or demolition activities. Contact the SCDHEC Asbestos Section if you have any questions.

The homeowner acting as his/her own contractor assumes all risks, liability and the responsibility for the structural integrity of this structure and agrees to live in the home and not offer it for rent for a period of two years per the South Carolina Homeowner exemption. I further understand that the Development Services Department will not intervene in any dispute between the homeowner and contractor.

I understand that if this statement is found to be false then the permit issued pursuant to this application will be rendered null and void and the sole recourse of any one relying upon this permit in purchasing the property or in providing goods or services to the applicant or for the benefit of the property shall be against the applicant and not against Lancaster County who, pursuant to South Carolina Code 6-29-1145 is issuing the permit in reliance of this statement by applicant.

Any information provided on this document may be subject to the South Carolina Freedom of Information Act and may be disclosed to third parties in accordance with applicable law.

X
Contractor/Agent Signature

X
Print

X *Danijela*
Property Owner Signature

X 10/24/23
Print



ACCESSORY BUILDING LETTER OF ACKNOWLEDGEMENT

DATE: 10/24/23

TO: LANCASTER COUNTY ZONING DEPARTMENT

FROM: Dustin Michael Floyd TAX MAP# 16105 0088K-0A-008.00

ADDRESS: 504 Oakhaven Dr

TYPE AND SIZE OF STRUCTURE: 28x30x11 Car Garage

TYPE AND SIZE OF EXISTING STRUCTURES: 12x24 Storage Building

EXAMPLE (Detached Garage, Storage Building, Workshop, etc.)(10X12)

I am requesting to construct a detached accessory building on the above-referenced property. **This building will NOT be used for any commercial activity or as living quarters (temporarily or permanently).**

It is my responsibility to make sure that the use of the building is in accordance with Lancaster County Unified Development Ordinance.

Description of use: Car Shop

Plumbing: ☐ Yes ☒ No Location: ☐ 1st Floor ☐ 2nd Floor

Electrical: ☐ Yes ☒ No Location: ☐ 1st Floor ☐ 2nd Floor

Lancaster County reserves the right to randomly inspect the accessory building to verify it is being utilized as stated above. If at any time the use of the accessory building is not in compliance with the approved applicable , Lancaster County has the authority, including but not limited to, issue a summons to appear before a Magistrate Judge, assess a \$500.00 per day fine, request the power be disconnect to the structure, etc., to bring structure into compliance.

By signing below, you verify that you have read and understand the above information.

Print Name: Dustin Michael Floyd Date: 10/24/23

Any information provided on this document may be subject to the South Carolina Freedom of Information Act and may be disclosed to third parties in accordance with applicable law.



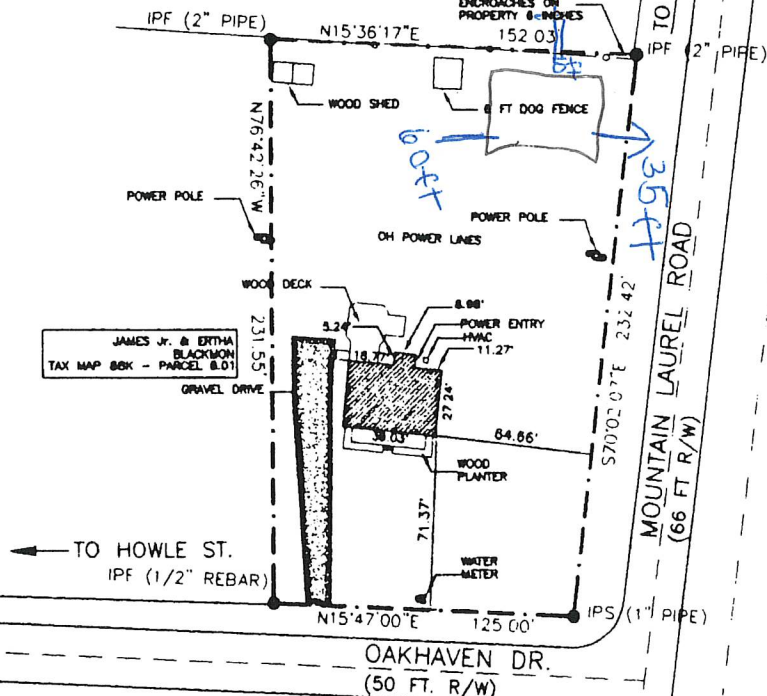
VICINITY MAP

GRAPHIC SCALE



(IN FEET)
1 inch = 60 ft.

J.C. OUTEN
PLAT BOOK 13, PAGE 85
TAX MAP 88K - PARCEL 8



TO HOWLE ST.
IPF (1/2\" REBAR)

OAKHAVEN DR.
(50 FT. R/W)

TO BAILEY RD.
MOUNTAIN LAUREL ROAD
(66 FT R/W)

LANCASTER COUNTY, S.C.

NOV 21 4 25 PM '95

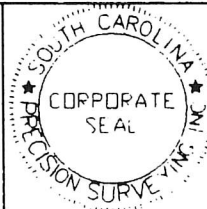
OFFICE OF THE CLERK OF COURT



Clyde S. Bragg, Jr.

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO ENCROACHMENTS, PROJECTIONS, OR SETBACKS AFFECTING THE PROPERTY OTHER THAN THOSE SHOWN.

NOTE THIS PROPERTY DOES NOT LIE WITHIN A DESIGNATED FLOOD PRONE AREA



DATE AUGUST 15, 1995
PRECISION 1/10000+

PLAT

COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

THE SAME BEING OF CERTAIN PROPERTY LOCATED IN ELGINWOOD ACRES ALSO SHOWN AS LOT #2 ON A RE-DIVISION PLAT OF J.C. OUTEN LANDS BY JACK SMITH, RLS, DATED MARCH 23, 1973, REVISED AUGUST 12, 1980, AND RECORDED AS PLAT 4850 IN THE OFFICE OF THE CLERK OF COURT FOR LANCASTER COUNTY. CURRENT TAX MAP IS 88K, PARCEL P.

SURVEYED FOR
DEBORAH C. INGRAM

SURVEYED BY
PRECISION SURVEYING, INC
1351 CHARLOTTE ROAD - PO BOX 1146 - LANCASTER, SC - 29721

#16105

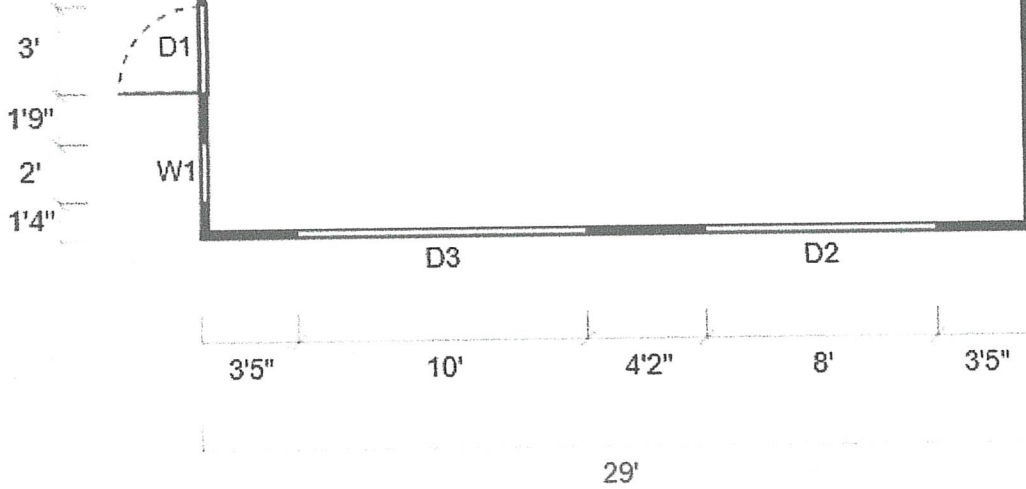
LEFT SIDE

FRONT

19'11"

28'

BACK



RIGHT SIDE

SYMBOL LEGEND

D1	Solid Fiberglass Door	W1	24W x 36H Windows
D2	8'x8' Garage Door	D3	10'x10' Garage Door
Closed Wall			



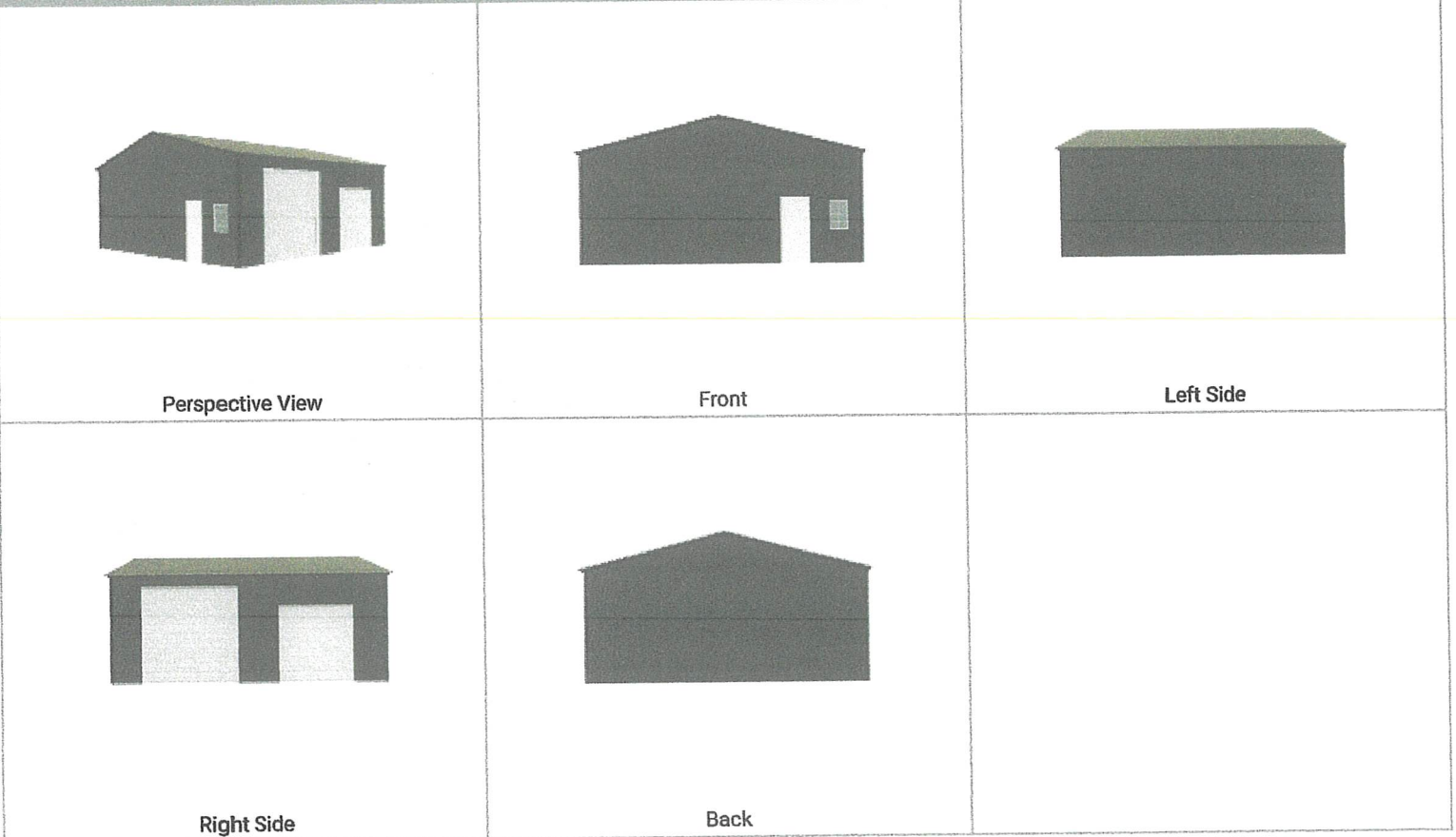
Longhorn Steel Structures
109 Buckeye Lane
Pilot Mountain, NC 27041
980-222-9935
longhornsteelstructurs@gmail.com

Customer Order - Sep 7, 2023

Ship To		Dealer	
Name	<u>DUSTIN FLOYD</u>	Order #	
Billing Address	<u>504 OAKHAVEN DR.</u>		robertp@bennettcoastal.com
City	<u>LANCASTER</u>	State	<u>SC</u> Zip Code <u>29720</u>
Install Address	<u>SAME</u>		
City		State	SC Zip Code 29720
Email	<u>DUSTINMF@COMPORIUM.NET</u>	Phone #	<u>803-864-5997</u> Mobile #

Building Info	Size	Color	Anchoring & Site Preparation
Style: Garage	28' X 30' X 11' Width X Roof Length X Leg Height	Roof Clay ☐	Engineer Certified: Certified
Roof Overhang: 6"		Trim: Black ☐	
Roof Style: Vertical Style		Gable End Siding Charcoal ☐	
Gauge: 14-Gauge Framing		Side Wall Siding Charcoal ☐	
Leg Style: Standard			
Brace: Standard Brace			

Building Images



Section	Description	Quantity	Amount
	Structure Details		
	Style: Garage	1	-
	Base Price: 28'x30'	1	\$4,095.00
	Roof: Clay	1	-
	Trim: Black	1	-
	Gable End Siding: Charcoal	1	-
	Side Wall Siding: Charcoal	1	-
	Roof Style: Vertical Style	1	-
	Roof Overhang: 6"	1	-
	Trusses: Triple Wide	1	-
	Leg Style: Standard	1	-
	Gauge: 14-Gauge Framing	1	-
	Brace: Standard Brace	1	-
	Engineer Certified: Certified	1	-
	Leg Height: 11'	1	\$650.00
	Left Side: Fully Enclosed	1	\$542.50
	Left Side Siding: Horizontal	1	-
	Right Side: Fully Enclosed	1	\$542.50
	Right Side Siding: Horizontal	1	-
	Front End: Fully Enclosed	1	\$1,615.00
	Front End Siding: Horizontal	1	-
	Back End: Fully Enclosed	1	\$1,615.00
	Back End Siding: Horizontal	1	-
	Roll Doors & Ramps		
	8'x8' Garage Door	1	\$632.50
	10'x10' Garage Door	1	\$885.50
	Doors & Ramps		
	Solid Fiberglass Door	1	\$347.88
	Windows & Accessories		
	24W x 36H Windows	1	\$200.00
	Frameouts		
	Corner Style: Square (Traditional)	2	-
	Additional Options		
	1/4" Double Bubble Insulation: Roof	1	\$870.00
	1/4" Double Bubble Insulation: Left Sidewall	1	\$319.00
	1/4" Double Bubble Insulation: Right Sidewall	1	\$319.00
	1/4" Double Bubble Insulation: Back Wall	1	\$364.00
	1/4" Double Bubble Insulation: Front Wall	1	\$364.00
	Colored Screws	1	\$175.00
	Material Surcharge		\$1,305.22
	Additions and Adjustments		
All	SALE	1	-\$759.65
	Additional Fees		
	Sidewall Frameout	2	\$275.00
		Subtotal:	\$14,357.45
		Sales Tax (8%):	\$1,148.60

Section	Description	Quantity	Amount
		Total Order Amount:	\$15,506.05
		Deposit Required to Order:	\$2,153.62
		Final Balance Due at Installation:	\$13,352.43

Signatures

Customer Signature:

Diana Elard

Date:

9/7/23

Delivery Notes:

Dealer or Manufacturer Signature:

Robert P. Pappas

Date:

9/7/23

Purchase Agreement & Terms

Prices, Payment and Risk of Loss

- Prices contained in Seller's published price lists, if any, are subject to change without notice. Prices in individual written quotations or proposals are firm only for a period of (30) days from the date of the quotation after which Buyer should inquire of Seller as to their validity and request a written confirmation or revision. Prices do not include taxes. Buyer agrees to pay all applicable sales or other taxes levied with respect to Goods (and replacements) in the Agreement, unless exempt therefrom. All prices are in United States dollars. The buyer shall pay all government fees levied on the installation and inspection of the Goods. Buyer shall pay upon receipt of all invoices rendered by Seller for any such items Seller may pay and for the goods.
- Longhorn Steel Structures INC reserves the right to update or change any pricing discrepancies made by dealers.
- Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, and manufacturing required by changes requested by Buyer after the date of any quotation. An additional labor charge will be added to orders for buildings being installed over RVs, Campers, Large Obstacles, Retaining Walls, Docks, Decks, Over Fences, etc. Including carrying materials due to obstructions in between material and jobsite.
- The customer expressly agrees that the carport/garage/barn/etc. shall remain property of Longhorn Steel Structures INC until payment is made in full.
- Longhorn Steel Structures INC hereby retains a purchase money security interest in said building as set forth in Section 9 of the Uniform Commercial Code as enacted in the state where the building is being installed. Failure to pay will result in repossession of the unit. This does not relieve the customer of liability for specific performance of the contract including legal fees and court costs, at the seller's expense.
- Longhorn Steel Structures INC holds the right to make any exceptions to the above clause. If payment is made in check and the check is returned NSF, Buyer will be responsible for additional expenses incurred by Seller as a result of the returned check. The seller reserves the right to charge additional fees as allowed by law for checks returned NSF. These fees include a \$35 service charge.
- Longhorn Steel Structures INC will not be responsible for down payment refunds. The independent dealer will have this responsibility if a refund is legally due.
- Longhorn Steel Structures INC holds the right to cancel any order at any time.
- A restock fee of 5% of the building subtotal or \$150 whichever is greater will be added for customer cancellations within 72 hours of installation date. Restock fees will also be applicable to unprepared and unlevel installation sites.
- The remaining balance will be due upon installation of your metal building in the form of cash or certified/cashier's check (NO PERSONAL CHECKS). **In the event that the remaining balance is over \$20,000 half of the remaining balance must be paid at the time of scheduling.**

- **The remaining balance due to be paid in FULL at time of completion of building, to Longhorn Steel Structures INC, by Cashier's Check, Money Order, Visa, Master Card, American Express, or Discover Card. NO PERSONAL CHECKS OR COMPANY CHECKS are accepted. (PAYING REMAINING BALANCE WITH CREDIT/DEBIT CARD WILL RESULT IN AN ADDITIONAL 3.7% PROCESSING FEE)**

Customer Signature: *Drew Elms*

Date: 4/7/23

Delivery

- Shipping and installation dates are estimated based on Seller's present engineering and manufacturing capacity and scheduling and may be revised by Seller upon receipt or scheduling of Buyer's order. All shipping dates are approximate and shall be computed from the date of entry of the order on Seller's books. All shipping order or acceptance, letter of credit, down payment, and other conditions as specified in the Agreement, and of all drawings, information, and approvals necessary to provide the Goods and to grant any credit proposed in the Agreement. Delivery dates may be rescheduled due to bad weather conditions, installers running behind, accidents, etc. Buyer agrees to give Seller up to 5 installation attempts to deliver said product.

Workmanship Warranty

- All buildings have a 1- Year workmanship warranty effective upon day of installation (manufactured panels are warranted for 20 years assuming regular care and maintenance, installation workmanship is warranted for 365 days). Any installation concern must be reported within 365 days beginning on the date of installation. Longhorn Steel Structures INC is not liable for any damage as a result of inclement weather. Unlevel lots and customer modifications will void said warranty.
- Longhorn Steel Structures INC strongly recommends buildings longer than 31 feet to be vertical roofs to avoid possible leaks and/or rust in between seams. Buildings purchased 32 feet or longer that do not have vertical roofs will forfeit the 20-year limited warranty on paneling.
- **Base price reflects only roof & framing; sides, ends, colored screws, sealant, etc.... are optional features.** Frames on all buildings are 1 foot shorter than roof length. Roofs have 6" overhang on front and back. Frame lengths are as follows: 21'=20' Frame, 26'=25' Frame, and so on. Cement pad to match frame length.

Customer Responsibilities

- The customer is responsible for all Site preparation, including the following: before delivery, you shall designate a site on your property and prepare such Site for installation of the Unit. Which preparation shall include; Making the site level **LONGHORN STEEL STRUCTURES DOES NOT PROVIDE ANY GROUNDWORK, LEVELING, GRADING, CONCRETE, ETC..**, moving all electrical wire less than 30 feet above the intended height of the Unit, removing all underground utilities below the Site, and requested by you as a written change order and approved in writing by Longhorn Steel Structures INC. Any change requested by you constitutes your consent to resulting changes in the purchase price.
- It is the responsibility of the customer to provide the factory approved independent contractor installers with the location of any underground cables, gas lines, or other utilities. This may include contacting the utility company to request that the locations of the underground utilities be marked. Longhorn Steel Structures INC is not responsible for any damage caused to underground utilities. The customer agrees to indemnify and hold harmless Longhorn Steel Structures INC from any liability and costs, including attorney fees, for such damages. The customer is responsible for obtaining building permits as needed for installation.

Warranty Disclaimer

- There are no warranties which extend beyond the description on the face hereof. The warranties in this agreement are in lieu of all other warranties express or implied, including

without limitation, any warranties of merchantability or fitness for a particular purpose, which are expressly disclaimed. Buyer must have original copy of this document at time of claim.

- This warranty extends only to the original purchaser of the product warranted by this document. Buyer must have original copy of this document at time of claim. Said warranty does not extend to transferee owners of the product.

Limitation on Liability

- In no event will the seller be liable to the buyer and/or any third parties for any incidental damages. Consequential damages, special damages, exemplary damages or labor charges, including without limitation lost revenues and profits, even if it has been advised of the possibility of such damages. Buyer must have original copy of this document at time of claim.

Exclusions and Limitations

- Longhorn Steel Structures INC does not warrant any products not installed and anchored by a factory approved installer utilizing a factory approved anchoring system. Installation by anyone other than a factory approved installer utilizing a factory approved system will VOID your warranty. Damages from improper anchoring, strong winds, snow or ice are not considered defects. Longhorn Steel Structures INC does not warrant or guarantee any product in snow or ice to prevent collapse. Longhorn Steel Structures INC does not warrant any temporary anchoring systems (e.g., rebar) utilized by the customer, nor shall Longhorn Steel Structures INC be in any way responsible for damage caused using temporary anchoring systems. Additionally, Longhorn Steel Structures INC does not warrant any damage caused to the product resulting from or after movement of the structure from the **original installation point**.

Modification of Structure Voids Warranty

- Any modification, addition, deletion, substitution, etc. to the structure without express written design approval by Longhorn Steel Structures INC will VOID all warranties. Our products are designed and specifically engineered to provide superior performance as manufactured. Any changes to the design by the Buyer could compromise the structural integrity of the unit.

Claims Procedure

- Longhorn Steel Structures INC must have a reasonable opportunity to inspect the claim and not begin any repairs prior to said inspection or the terms of the warranty could be voided. Longhorn Steel Structures INC, Inc. holds the right to require proof (e.g., photos), if needed, via email or mail before writing up any repairs and/or claim
- This order becomes a contract between Longhorn Steel Structures and you. Upon acceptance hereof, this order and such acceptance shall have been deemed to be a contract embodying all oral and written understandings and agreements between you and Longhorn Steel Structures. The deposit received herein by Longhorn Steel Structures shall be held by Longhorn Steel Structures as security for the completion of the contract. Upon receipt of the balance of the purchase price, the said deposit shall be applied to the purchase price herein. Should you breach or unilaterally rescind or cancel this contract, the deposit herein shall be forfeited to Longhorn Steel Structures and applied to cover the claim for damages.
- Longhorn Steel Structures shall not be bound by any condition, definition, representation or warranty other than as expressly set forth herein. Longhorn Steel Structures reserves the right, at any time before installation of the Unit, to reject this Order or cancel this contract by notice in writing to you. Upon giving such notice, Longhorn Steel Structures will refund any deposit received from you. You agree that such a refund shall be your exclusive remedy for such cancellation.

I have read the terms and conditions of this contract; by signing this contract. I agree to all conditions set forth herein and should I fail to make payment in full at time of delivery I understand and agree to all Longhorn Steel Structures, Inc. to pick up the Notice Inviting Tender (NIT) and acknowledge that I will remain liable for all applicable charges and fees associated with the initial setup and delivery as well as any legal fees incurred. I AGREE TO ALL THE TERMS ABOVE.

Customer Signature: *Nick Bennett*
Pricing Table (For Internal Use): - Region 1

Date: 9/7/23

This estimate is provided by Longhorn Steel Structures. Use of this estimate with any other company violates the terms and conditions of Longhorn Steel Structures and will be subject to legal action.



BBC Lancaster
Lancaster, SC, 29720
8032853445
nick.bennettbuildings@gmail.com

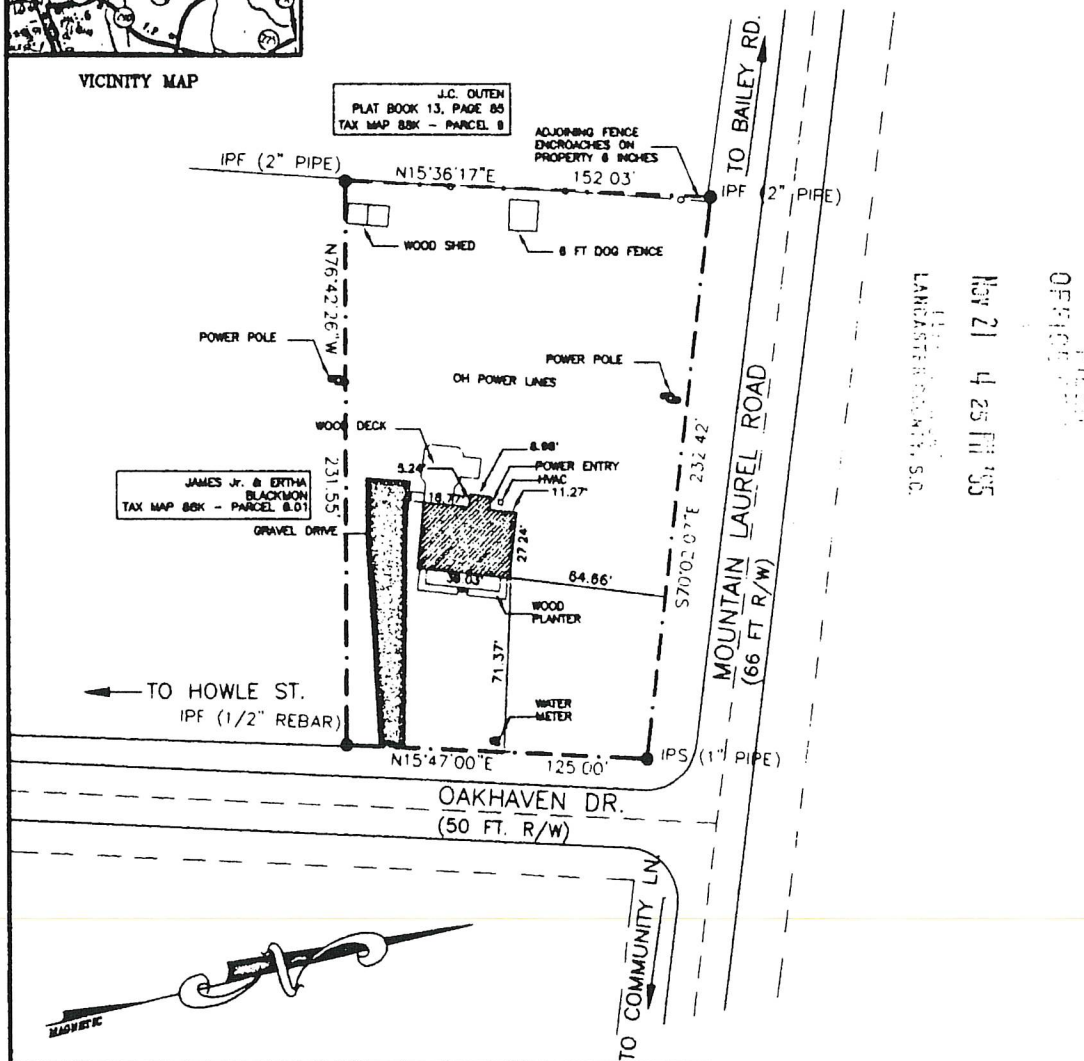


VICINITY MAP

GRAPHIC SCALE



(IN FEET)
1 inch = 60 ft.

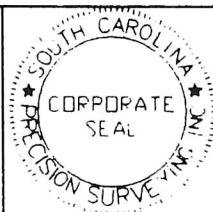


FILED
OFFICE
Nov 21 4 25 PM '95
LANCASTER COUNTY, S.C.

Clyde S. Boyd, Jr.

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO ENCROACHMENTS, PROJECTIONS, OR SETBACKS AFFECTING THE PROPERTY OTHER THAN THOSE SHOWN.

NOTE THIS PROPERTY DOES NOT LIE WITHIN A DESIGNATED FLOOD PRONE AREA



DATE AUGUST 15, 1995
PRECISION 1/10000+

PLAT

COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

THE SAME BEING OF CERTAIN PROPERTY LOCATED IN ELGINWOOD ACRES ALSO SHOWN AS LOT #2 ON A RE-DIVISION PLAT OF J.C. OUTEN LANDS BY JACK SMITH, RLS, DATED MARCH 23, 1973, REVISED AUGUST 12, 1980, AND RECORDED AS PLAT 4890 IN THE OFFICE OF THE CLERK OF COURT FOR LANCASTER COUNTY. CURRENT TAX MAP IS 88K, PARCEL P.

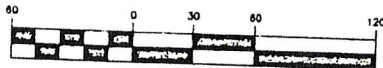
SURVEYED FOR
DEBORAH C. INGRAM

SURVEYED BY
PRECISION SURVEYING, INC.
1351 CHARLOTTE ROAD - PO BOX 1146 LANCASTER, SC - 29701

#16105

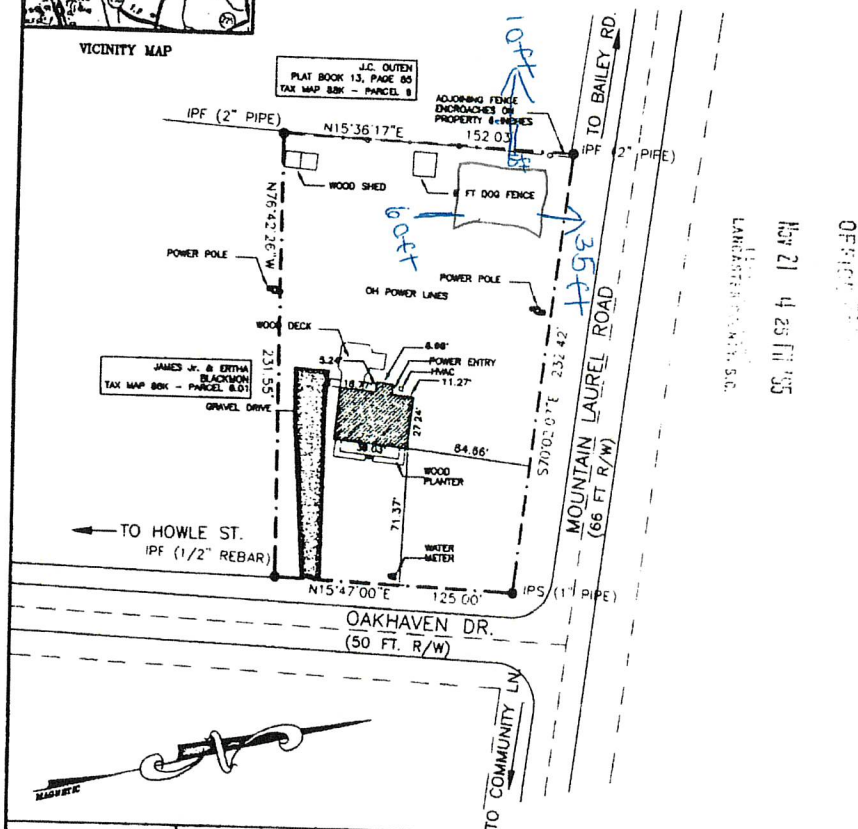


GRAPHIC SCALE



(IN FEET)
1 inch = 60 ft.

VICINITY MAP

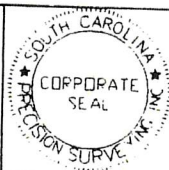


OFFICE
NOV 21 4 25 PM '95
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DATE AUGUST 15, 1995
PRECISION 1/10000+

PLAT

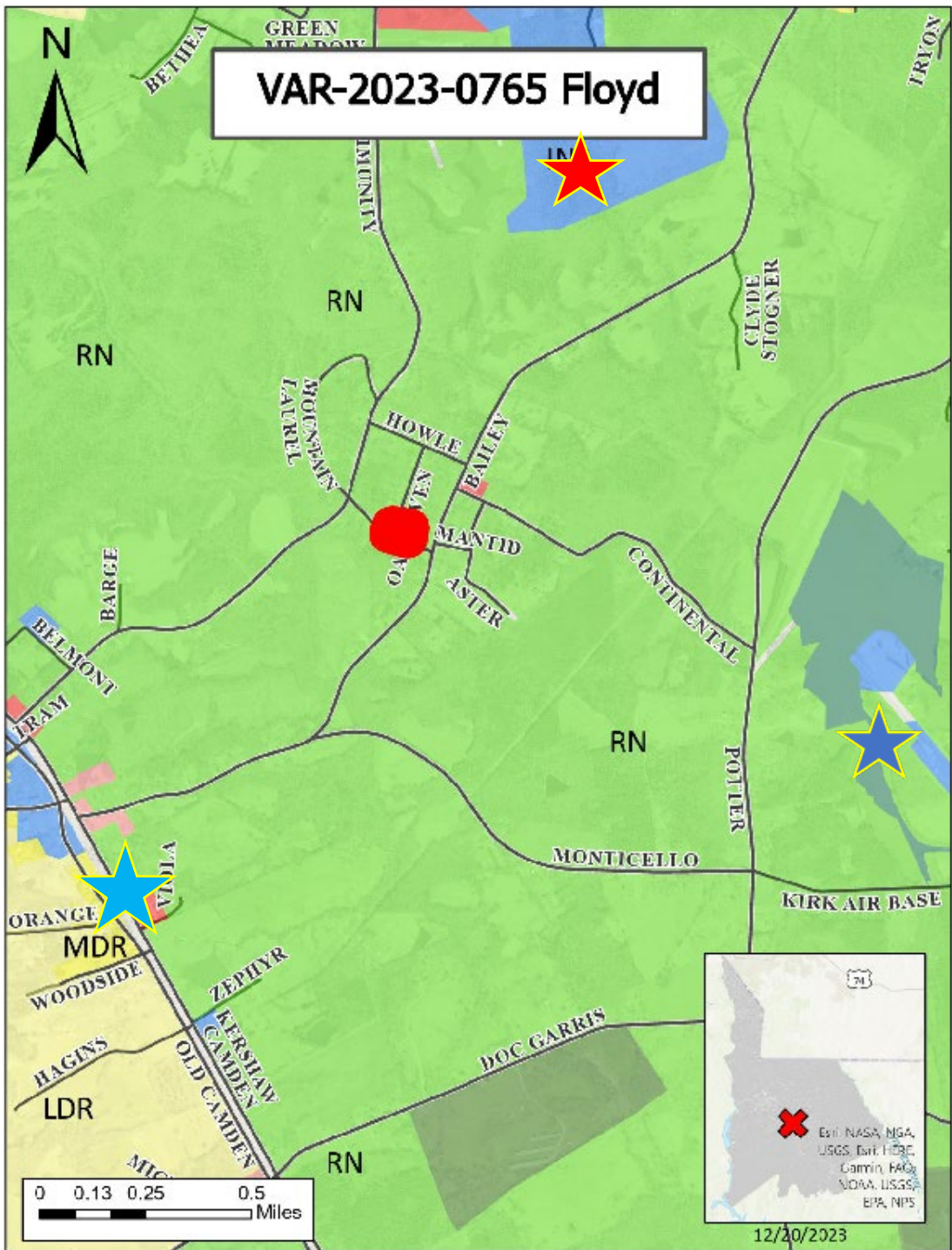
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STATE OF SOUTH CAROLINA

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SURVEYED FOR
DEBORAH C. INGRAM

SURVEYED BY
PRECISION SURVEYING, INC.
1301 CHARLOTTE ROAD - PO BOX 1146 - LANCASTER, SC - 29721

#16105



Proposal:

Variance Request Sec 2.4 District Development Standards: Setbacks (504 Oakhaven Drive)



Subject Property



Kirk Air Base

Lancaster Children's Home

Elgin Farm & Feed

PREPARED BY TRIMNAL & MYERS, LLC

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

DEED
RECORDING FEES \$10.00
STATE TAX \$338.00
COUNTY TAX \$143.00

PRESENTED & RECORDED:

11-01-2017 09:36 AM

JOHN LANE
REGISTER OF DEEDS
LANCASTER COUNTY, SC
By: JOHN LANE REGISTER

BK:DEED 1093

PG:87-88

RECORDED THIS 1st DAY
OF NOVEMBER, 2017
IN BOOK 0 PAGE 0



Auditor, Lancaster County, SC

KNOW ALL MEN BY THESE PRESENTS, THAT **Judy Mizell and Lewis E. Floyd** (hereinafter called "Grantors") in the State aforesaid, for and in consideration of the sum of One Hundred Thirty Thousand and no/100ths (\$130,000.00) Dollars, to them paid by **Dustin Michael Floyd** (hereinafter called "Grantee/s") in the State aforesaid (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these Presents (do(es) grant, bargain, sell and release, unto the said:

Dustin Michael Floyd, his/their Heirs and/or Assigns Forever:

All that certain piece, parcel or lot of land with any and all improvements thereon, lying, being and situate in Lancaster County, State of South Carolina, approximately 4 1/2 miles southeast of Lancaster, near or in Elginwood Acres, at the intersection of Oakhaven Drive and Mountain Laurel Road, and being more particularly shown, described and designated on plat of survey entitled 'Plat Surveyed for Deborah C. Ingram' prepared by Clyde S. Bryce, RLS, dated August 15, 1995 and recorded in the Register of Deeds Office for Lancaster County as Plat No. 16105. Reference to said plat is craved for a more minute description.

Being the property conveyed to Judy Mizell and Lewis E. Floyd by Deed recorded September 22, 2003 in Deed Book 208 Page 224, see also deed recorded December 10, 2003 in Deed Book 219 Page 43 in the Register of Deeds Office for Lancaster County, South Carolina.

TMS# 0088K-0A-008.00

Grantee's Address: 504 Oakhaven Drive, Lancaster SC 29720

This conveyance is made subject to all existing easements, restrictions, rights of way and/or encroachments.

TOGETHER will all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said **GRANTEE/S**, Their Heirs and/or Assigns forever.

AND the said **GRANTOR/S** do hereby bind themselves and their heirs and/or assigns to warrant and forever defend all and singular the said premises unto the said **GRANTEE/S**, Their Heirs and/or Assigns, against Themselves and Their Heirs and/or Assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS our Hand(s) and Seal(s) this 30 day of October in the year of our Lord 2017.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Quaker Beary
Witness #1

[Signature]
Witness #2

Judy Mizell
Judy Mizell
Lewis E. Floyd
Lewis E. Floyd

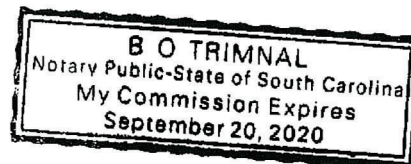
STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER) ACKNOWLEDGEMENT

I, *B O Trimnal*, Notary Public for the State of SC,

do hereby certify that **GRANTOR/S** personally appeared before me this day and acknowledged the due execution of the foregoing deed.

Sworn before me this 30 day
Of October, 2017.

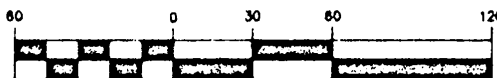
[Signature]
Notary Public for the State of SC
My Commission Expires: 9 120 120





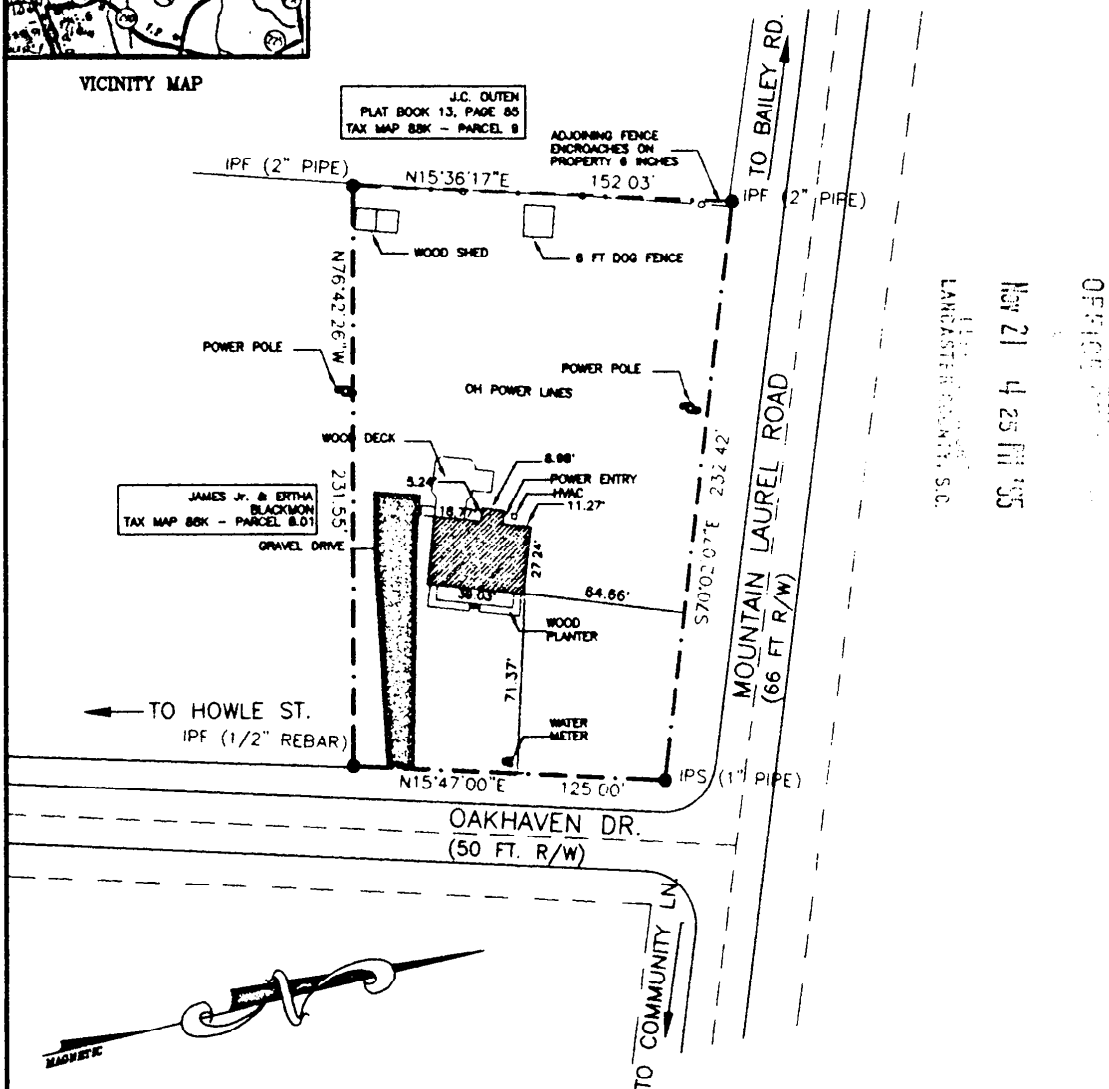
VICINITY MAP

GRAPHIC SCALE



(IN FEET)

1 inch = 60 ft.



OFFICE OF THE
CLERK OF COURT
LANCASTER COUNTY, S.C.
MAY 21 4 25 PM '95

Clyde S. Bryant, Jr.

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO ENCROACHMENTS, PROJECTIONS, OR SETBACKS AFFECTING THE PROPERTY OTHER THAN THOSE SHOWN.

NOTE THIS PROPERTY DOES NOT LIE WITHIN A DESIGNATED FLOOD PRONE AREA



DATE AUGUST 15, 1995

PRECISION 1/10000+

PLAT

COUNTY OF LANCASTER
STATE OF SOUTH CAROLINA

THE SAME BEING OF CERTAIN PROPERTY LOCATED IN ELGINWOOD ACRES ALSO SHOWN AS LOT #2 ON A RE-DIVISION PLAT OF J.C. OUTEN LANDS BY JACK SMITH, RLS, DATED MARCH 23, 1973, REVISED AUGUST 12, 1980, AND RECORDED AS PLAT 4880 IN THE OFFICE OF THE CLERK OF COURT FOR LANCASTER COUNTY. CURRENT TAX MAP IS 88K, PARCEL P.

SURVEYED FOR
DEBORAH C. INGRAM

SURVEYED BY



PRECISION SURVEYING, INC.
1351 CHARLOTTE ROAD - PO BOX 1146 - LANCASTER, SC - 29721

#16105

Frances Outen
587 Bailey Rd

Dustin Floyd

I, Frances H. Outen, am a neighbor of Dustin Floyd.
His charcoal building is close to my property line.
This letter states that it is okay with me that
his building is 10 feet from my property line.

Sincerely Frances H Outen

Frances H Outen

Date: December 2, 2023