

Board of Zoning Appeals



Minutes of the Thursday, August 1, 2019 Regular Meeting

Members of the Board of Zoning Appeals

Wesley Summers

Chairman

Jim Newman

Kevin Scaggs

Kathie Stallworth

Lynn Stenbridge

1. **Call to Order** – Chairman Wesley Summers called the meeting to order at 7:00 p.m.
2. **Roll Call** – Board members present: Chairman Summers, Kathie Stallworth, and Jim Newman. Board members Kevin Scaggs and Lynn Stenbridge were absent. Also in attendance: Kuleigh Baker, Planner, Planning & Development, Lisa Cook, Secretary of Planning and Development, and members of the public.
3. **Approval of Minutes** – The minutes of the July 11, 2019, regular meeting were approved as written with one amendment. Mrs. Stenbridge noted that the press was not present at meeting. Mr. Newman moved that the minutes be approved as amended. Mrs. Stenbridge seconded the motion and the motion was approved unanimously.
4. **Confirmation of Agenda** – There were no changes to the agenda.
5. **ZV19-006** -- A request by John and Nancy Whitley for a variance to allow for accessory structures on a vacant lot as prohibited by Section 4.2.3, Establishment of Accessory Structures and Uses of the North Augusta Development Code. The application affects ±2.41 acres zoned R-14, Large Lot Single-Family Residential located at 1063 Old Plantation Road, Tax Parcel Numbers 002-07-01-007 and 002-07-01-006.
 - a. **Public Hearing** – The purpose of the hearing is to receive public comment on the application.
 - b. **Consideration** – Application ZV19-006

Chairman Summers briefly reviewed the public meeting participation guidelines and read the application summary. The public hearing was opened at 7:05 p.m.

Chairman Summers asked if Mrs. Baker had information she would like to share.

Mrs. Baker stated staff received the application as a minor plat and the owners own both 1053 and 1063 Old Plantation Road. She explained that currently at 1053 Old Plantation Road there is an existing residence, a walled garden and garage, and the applicants are wanting to re-subdivide the lot where 1063 Old Plantation Road will be a vacant lot that can be sold with the two accessory structures on the site.

Chairman Summers asked if staff had discussed this with applicant. Mrs. Baker stated there have been a few discussions with the applicant and their surveyor about some different ways they could go about this application. She explained one option would be to sell the vacant lot and have someone build the structure and then come back and re-subdivide the lots with the accessory structures once there is a primary use established and it is also possible that they could move the structures. Mr. Summers asked if they would have to move the garden. Mrs. Baker replied that they would have to move or remove the structures.

Mrs. Stallworth questioned if one of the structures is the garden. Mrs. Baker answered yes stating it is a walled garden.

The applicant, Mrs. Nancy Whitley, was sworn in by Chairman Summers. She stated that some of the options that were discussed was removing the garden. Mrs. Whitley explained that the garden is a unique feature that has a fire pit in the middle, some antique bricks, and a lot of thought and care has went into it. She said they would like to sell the lot separately and the interested buyer would like the structures as they are and they plan on building a house. Mrs. Whitley explained when they purchased the land that is for sale the existing storage building was already on the property and the current owner would also like to keep that so they may maintain the property during the time they are going to be building their house. She said it would be sad to see the garden taken down because it would bring a lot of value to the next owner.

Chairman Summers asked if the property away from the main house was being sold. Mrs. Whitley answered that when they bought the property it was 2.5-acres and they bought the adjoining property for an additional 2.5-acres which they subdivided into 3.5 and 1.5-acres and built the garden there. She explained they want to go back to the original 2.5 and 2.5-acres because it is a large lot and some people do not want the 5-acres.

Chairman Summers stated there are ten items the Board must consider in an individual case of unnecessary hardship, and find yes for, in every case in order to the grant the variance. He explained if any one of these items the Board finds no on the variance will not be granted and the applicant cannot come back for one year. Mr. Summers stated by putting the lots together and now wanting them separated tells the Board that the hardship was created and the only way a Boards decision can be reversed is by going to court and he wants to avoid this for the applicant.

Mr. Kyle Flanagan was sworn in by Chairman Summers. He stated that he and his wife would love to purchase the 2.5-acre property and his understanding was the sale could go through if the garden wall and storage shed were knocked down. Mrs. Baker replied that is correct if there are no accessory structures on that lot we would be able to move forward with the subdivision. Mr. Flanagan stated he is buying the lot for the lot and if the garden was not there he would still purchase it, but feels it is a waste to tear down the storage shed and the garden when it was there when Mrs. Whitley purchased the property.

Chairman Summers stated the hardship was caused by combining the properties. He said the Board can grant a continuance for up to a year. Mrs. Baker explained Mr. Flanagan would be restricted to building his house on the current subdivision of the land and it would not include the structures. She said the structures would have to be sold with the existing house.

Mr. Flanagan stated the only issue he has is the placement of the house because he has had the Department of Public Health perform a percolation test on the property for septic. He referred to the submitted boundary survey and explained the house could not be built on the current 1.5-acres for it will cross halfway in the middle of the joined properties.

Mrs. Stallworth asked for clarification that the property Mrs. Whitley bought was pre-code stating it is a pre-existing structure and it is grandfathered in. Mrs. Baker stated there are some time limits on the grandfathering. She explained this would be creating a new non-conforming lot and it is not a non-conforming lot of record as it sits now.

Chairman Summers asked for a repeat of what the applicant's options are. Mrs. Baker explained the options would be to remove the accessory structures and buy the subdivided lot the way you would like to purchase it or you would have to build the house on the parcel that is currently divided and later re-subdivide to add the accessory structures to the lot that will then have a primary use.

Cliff Russell, with Carbon Construction, was sworn in by Chairman Summers. He stated he works with DHEC a lot and builds houses with wastewater systems and by large part they ask where you are going to put a house and they design the septic system and drain field accordingly.

All comments and questions from the Board were addressed by Staff and the applicant.

Chairman Summers closed the public hearing at 7:42 p.m.

After reviewing the findings, Chairman Summers asked for a motion from the Board.

After a motion made by Mr. Jim Newman, and duly seconded by Mrs. Kathie Stallworth, and joined by Chairman Summers voted unanimously for a continuance of one year for Application ZV19-006, a request for a variance to allow for accessory structures on a vacant lot as prohibited by Section 4.2.3, Establishment of Accessory Structures and Uses of the North Augusta Development Code, in order to allow for more facts to be gathered and the two parties to work on the details with the Planning Department.

6. **ZV19-007** -- A request by Mary Ann Jones Turner, Doris Jones Rodriguez, and the Joseph Edward Jones Life Estate for a variance of Section 3.8.5.4.5, Access Spacing on Public Streets of the North Augusta Development Code. The application affects ±1.1 acres zoned GC, General Commercial located along Knox Avenue, Tax Parcel Numbers 006-20-09-010, 006-20-09-011, and 006-20-09-014.
 - a. **Public Hearing** – The purpose of the hearing is to receive public comment on the application.
 - b. **Consideration** – Application ZV19-007

Chairman Summers read the application summary and opened the public hearing at 7:45 p.m. and asked if Mrs. Baker had information she would like to share.

Mrs. Baker stated the applicant is proposing a senior housing development that is apartment style and they are requesting an access drive that is closer than 150-feet to Walker Avenue along Knox Avenue.

The applicant, David Banks, of Southern Partners Engineering Company, was sworn in by Chairman Summers. He stated he is working for a developer of low country residential communities and they are in the process of doing their diligence for this property and while looking at the ordinance they found there was a possible conflict and want to insure everything meets code. Mr. Banks said the layout they are presenting in order to do this location would be within 145-feet and request a variance from the 150-foot requirement. He explained the plan was to initially line the driveways up with the Doctors Care across the street and he spoke with a DOT representative who preferred a protected turn lane.

Mrs. Stallworth questioned if the left turn lane would be extended onto Walker Avenue. Mr. Banks explained there are currently two left turn lanes on both sides going to Walker Avenue into Summerhill and they merge over from one to the other and they would extend the left turn lane to Walker Avenue to incorporate two cars as a safe haven to the driveway.

Chairman Summers asked if DOT has given preliminary approval. Mr. Banks answered they have said this is where they like the driveway and a traffic study would not be required and he would have to submit a plan which would come with the same plans submitted to the City that would include what is presented to the Board.

Mr. Henry Jones was sworn in by Chairman Summers. He stated the proposed property development is adjacent to his property and questioned the effect the property change will have to his property.

Mrs. Stallworth remarked there would have to be a buffer of a certain width and appropriate lighting. Mrs. Baker replied that is correct and at the time of site plan approval staff would look at the buffering, there would be additional buffering for the actual parking spaces, and a lighting plan would need to be submitted. She said the applicant has spoken to the minimal traffic impact.

Mr. Jones asked if the driveway to the parking lot would be close to his property. Mr. Banks answered yes stating the parking lot is closer to the houses and the building fronts on Knox Avenue. Mr. Jones questioned, if approved, how soon construction would start. Mr. Newman answered within a year.

All comments and questions from the Board were addressed by Staff and the applicant.

Chairman Summers closed the public hearing at 7:56 p.m.

Mr. Newman asked how many parking spaces are required for the facility. Mr. Banks replied that the sketch plan is going before the Planning Commission because the required parking is fifty-two spaces and they are requesting a reduction to forty.

Chairman Summers questioned if they are allowed to have fewer parking spaces can the driveway be moved 5-feet. Mr. Banks answered no, explaining that the proximity to the entrance would allow the potential of someone being hit.

Chairman Summers stated the Board needs to ensure that the houses behind the development are buffered.

After some discussion and reviewing the findings, the Board found in the affirmative that the appeal meets all of the standards required to issue the variance. Chairman Summers asked for a motion from the Board.

After a motion made by Mr. Jim Newman, and duly seconded by Mrs. Kathie Stallworth, joined by Chairman Wes Summers voted unanimously to approve the application with the following condition:

1. The addition of Buffer, Type-A is followed along with a maintained hedge row along the back of the buffer.

7. **ZV19-008** -- A request by Summer Lakes Development, LLC for a variance to allow a greater maximum front setback than permitted as required by Article 3, Zoning Districts, Table 3-3 Dimensional Standards of the North Augusta Development Code. The application affects ± 1.98 acres zoned R-7, Small Lot Single-Family Residential located at 1799 Womrath Road, Tax Parcel Number 012-13-04-014.
- a. **Public Hearing** – The purpose of the hearing is to receive public comment on the application.
 - b. **Consideration** – Application ZV19-008

Chairman Summers read the application summary and opened the public hearing at 8:21 p.m. and asked if Mrs. Baker had information she would like to share.

Mrs. Baker stated the property on Womrath Road is residential and there are not very many existing houses and they have sizeable acreage. She said the applicant came in earlier this year to subdivide the lot into two parcels, and is now seeking to request a larger setback which would be in line with the surrounding properties, and if the Board grants the variance he plans to combine the properties to build a larger single-family house further off the road to match the existing setbacks of the neighboring property.

The applicant, Cliff Russell, was sworn in by Chairman Summers. He explained that he is a single-family residential home builder and he purchased the property a year ago with a plan to build patio homes and learned that there is an ordinance in this particular area that limits the setbacks which was, as explained to him, to help urbanize and bring buildings closer to the road and have parking behind the buildings. Mr. Russell stated he understands this applies here but the rest of the surroundings were built before the ordinance was in place. He explained a 2,500-square foot house by the road would be out of character and would destroy the very countryish neighborhood.

Mr. Newman questioned how far back the build was going to be on the property. Mr. Russell answered he is requesting 65-feet.

All comments and questions from the Board were addressed by Staff and the applicant.

Chairman Summers closed the public hearing at 8:28 p.m.

After some discussion and reviewing the findings, the Board found in the affirmative that the appeal meets all of the standards required to issue the variance. Chairman Summers asked for a motion from the Board.

Mr. Jim Newman motioned to approve application number ZV19-008, a request by Summer Lakes Development, LLC for a variance to allow a greater maximum front setback than permitted as required by Article 3, Zoning Districts, Table 3-3 Dimensional Standards of the North Augusta Development Code with no conditions. Mrs. Kathie Stallworth seconded the motion. The vote was approved unanimously.

6. **Adjourn** – With no objection, Chairman Summers adjourned the meeting at 8:35 p.m.

Respectfully Submitted,



Libby Hodges, AICP, Director of Planning and Development
Secretary to the Board of Zoning Appeals

Department of Planning and Development



Project Staff Report

ZV19-009 417 W. Woodlawn Ave Lot Subdivision

Prepared by: Kuleigh Baker

Meeting Date: September 5, 2019

SECTION 1: PROJECT SUMMARY

Project Name	417 W. Woodlawn Ave Lot Subdivision
Applicant	Jeff Partl
Address/Location	417 W. Woodlawn Ave.
Parcel Number	007-06-14-039
Total Development Size	± 0.42 acres
Existing Zoning	R-14, Large Lot Single-Family Residential
Overlay	NA
Variance Requested	Table 3-3, Dimensional Standards, Minimum Lot Width for the R-14, Large Lot, Single-Family Residential Zoning District

SECTION 2: BOARD OF ZONING APPEALS CONSIDERATION

Per NADC § 18.4.5.4.2, the Board of Zoning Appeals shall hear and decide appeals for variances from the requirements of Article 3, Zoning Districts, and Article 13, Signs, when strict application of the regulations would result in unnecessary hardship.

A variance may be granted in an individual case of unnecessary hardship if the Board of Zoning Appeals makes and explains in writing, all of the following:

1. An unnecessary hardship exists;
2. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
3. The conditions do not generally apply to other property in the vicinity;
4. Because of the conditions, the application of this Chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
5. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance. Harm to the character of the district may include structures that are significantly out of scale, and the creation or potential for the creation of

excessive noise, light, traffic or incompatible late night activity. (Rev. 12-1-08; Ord. 2008-18)

6. In the approval of an application for a variance from the provisions of Article 13, Signs, regulating the size, height, appearance, or location of a sign, the Board of Zoning Appeals shall also find that no alternative signage solution that complies with the provisions of Article 13 is available and would provide adequate visibility, recognition and understanding.
7. The Board of Zoning Appeals may not grant a variance the effect of which would be:
 - a. To allow the establishment of a use not otherwise permitted in a zoning district.
 - b. To extend physically a nonconforming use of land.
 - c. To change zoning district boundaries shown on the official zoning map.
8. If the unnecessary hardship is self-imposed by the applicant the variance should not be granted.
9. The fact that property may be utilized more profitably, should a variance be granted, shall not be considered grounds for a variance.
10. In granting a variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to promote the public health, safety, or general welfare.

Based on these findings of fact, the Board of Zoning Adjustment may approve, approve with conditions, or deny the request.

SECTION 3: PUBLIC NOTICE

Per NADC Table 5-1, 6. Variance, the application and description were advertised via a public notice describing the variance request and advertising the scheduled date of the Board of Zoning Appeals hearing in *The Star* and www.northaugusta.net on August 21, 2019. A written notice of the variance request and scheduled date of the Board of Zoning Appeals hearing was mailed to the owners of property within 200 feet of the subject property on August 19, 2019. The property was posted with the required public notice on August 21, 2019.

SECTION 4: SITE HISTORY

The existing residence was built in 1932 on Lot 25 and a portion of Lot 24 of Block 9 on a plat dated 1912 prepared by George W. Summers. Due to fire damage, several of the homes on the block have recently been renovated. A demolition permit for the house at 417 W. Woodlawn Ave. was issued on July 18, 2019. Should the variance request be approved by the Board of Zoning Appeals to allow for a smaller lot width than permitted by Table 3-3, Dimensional Standards for the R-14, Large Lot, Single-Family Residential Zoning District, the applicant intends to subdivide the parcels and develop two single-family residences, one on each resulting lot.

SECTION 5: EXISTING SITE CONDITIONS

	<u>Existing Land Use</u>	<u>Future Land Use</u>	<u>Zoning</u>
Subject Parcel	Residential	Low Density Residential	R-14, Large Lot, Single-Family Residential
North	Residential	Low Density Residential	R-14, Large Lot, Single-Family Residential
South	Residential	Low Density Residential	R-5, Mixed Residential
East	Residential	Low Density Residential	R-14, Large Lot, Single-Family Residential
West	Residential	Low Density Residential	R-14, Large Lot, Single-Family Residential

Access – The site currently has access from W. Woodlawn Ave.

Topography – The subject property is relatively flat, sloping gently from the Northeast to Southwest.

Utilities – Existing water and sanitary sewer are available. Final capacity analysis will be provided by Engineering and Utilities prior to permitting.

Floodplain – None noted.

Drainage Basin – This site is located within the Crystal Lake Basin as designated on the City of North Augusta Stormwater Management’s Drainage Basin Map. The 2014 Stormwater management Stream Water Quality Assessment Summary lists the Crystal Lake Basin as 100% within the city limits and reports an overall fair water quality. This means studies have indicated water quality impairments in several categories, but it is improved over the poor status reported in 2007. This basin has been ranked as a high priority for water quality improvements through best management practices and other water quality improvement projects.

SECTION 6: STAFF EVALUATION AND ANALYSIS

The minimum lot width for the R-14, Large Lot, Single-Family Residential Zoning District is 70 feet. The applicant is requesting a minimum lot width of 50 feet so that the existing parcel can be subdivided into two lots that will be developed into single-family residences to match the surrounding neighborhood.

Following are the dimensional standards for the R-14, Large Lot, Single-Family Residential Zoning District.

TABLE 3-3 DIMENSIONAL STANDARDS (Rev. 12-1-08; Ord. 2008-18)

A	B	C	D	E	F	G	H	I	J	K	L
Zoning District and Use Types	Minimum Lot Size (sq. ft)	Maximum Gross Density (du/ga)	Floor Area Ratio	Impervious Surface Ratio	Minimum Lot Frontage (ft)	Minimum Lot Width (ft)	Maximum Building Height (ft)	Minimum Front Setback (ft)	Maximum Front Setback (ft)	Minimum Side Setback (ft)	Minimum Rear Setback (ft)
2. R-14, Large Lot, Single-Family Residential	14,000	3.5	—	0.3	40	70	35	25	--	8	20

Following is analysis required by NADC §5.1.4.5.b (Staff commentary is bulleted):

1. An unnecessary hardship exists;
 - The applicant states the surrounding properties zoned R-14, Large Lot Single-Family Residential do not meet the 70 foot minimum lot width and the code

would require building a home that does not match the scale of the other houses on the street.

2. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
 - The applicant states 4 smaller lots are adjacent to the subject property and subdividing 417 W. Woodlawn Ave. will continue the string of smaller lots on the 400 block.
3. The conditions do not generally apply to other property in the vicinity;
 - The applicant states a similar concentration of smaller lots does not exist in the general area.
4. Because of the conditions, the application of this Chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
 - The applicant states the minimum lot width requirements prohibits building a residence with a similar house to lot ratio as the other homes on the same side of the street.
5. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance. Harm to the character of the district may include structures that are significantly out of scale, and the creation or potential for the creation of excessive noise, light, traffic or incompatible late night activity. (Rev. 12-1-08; Ord. 2008-18)
 - The applicant states the two proposed single-family residences will fit into the architectural style of the other houses on the smaller lots and will not be detrimental to the adjacent properties or harm the character of the district.
6. (does not apply)
7. The Board of Zoning Appeals may not grant a variance the effect of which would be:
 - a. To allow the establishment of a use not otherwise permitted in a zoning district.
 - Single-family residential uses are allowed in the R-14, Small Lot Single-Family Residential zoning district.
 - b. To extend physically a nonconforming use of land.
 - Single-family residential uses are allowed in the R-14, Small Lot Single-Family Residential zoning district. Any non-conforming structure on site will be removed.

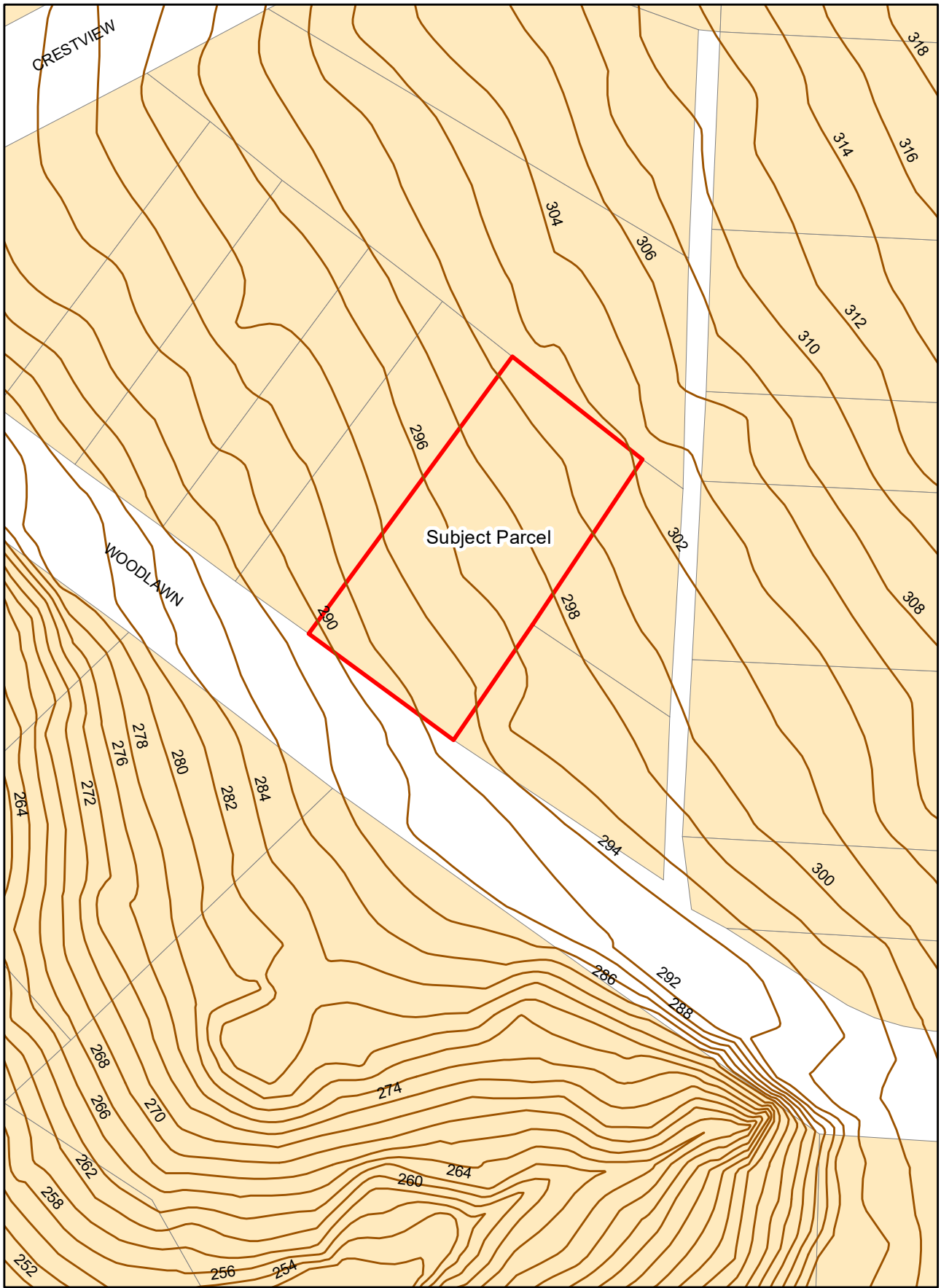
- c. To change zoning district boundaries shown on the official zoning map.
 - The variance does not change the zoning district boundaries.
8. If the unnecessary hardship is self-imposed by the applicant the variance should not be granted.
 - The unnecessary hardship is created by pre-existing lot lines and not self-imposed by the applicant.
9. The fact that property may be utilized more profitably, should a variance be granted, shall not be considered grounds for a variance.
 - Staff recognizes that the property may be utilized more profitably if developed as two single-family residential lots, but it is not the sole purpose of the variance request.
10. In granting a variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to promote the public health, safety, or general welfare.
 - Staff notes that the approved residential site plan will expire 2 years from the date of approval if the applicant fails to secure a Certificate of Occupancy.

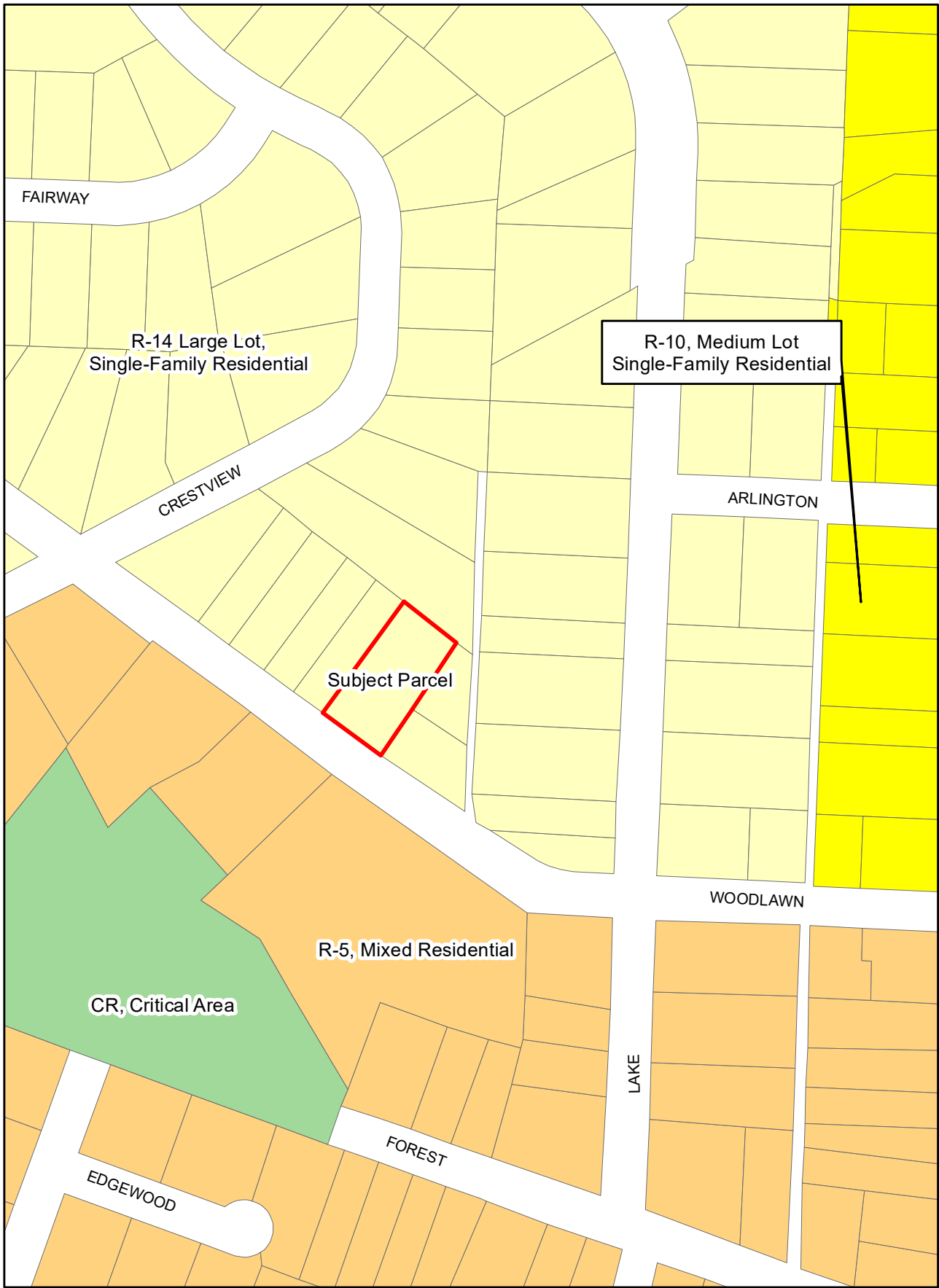
SECTION 7: ATTACHMENTS

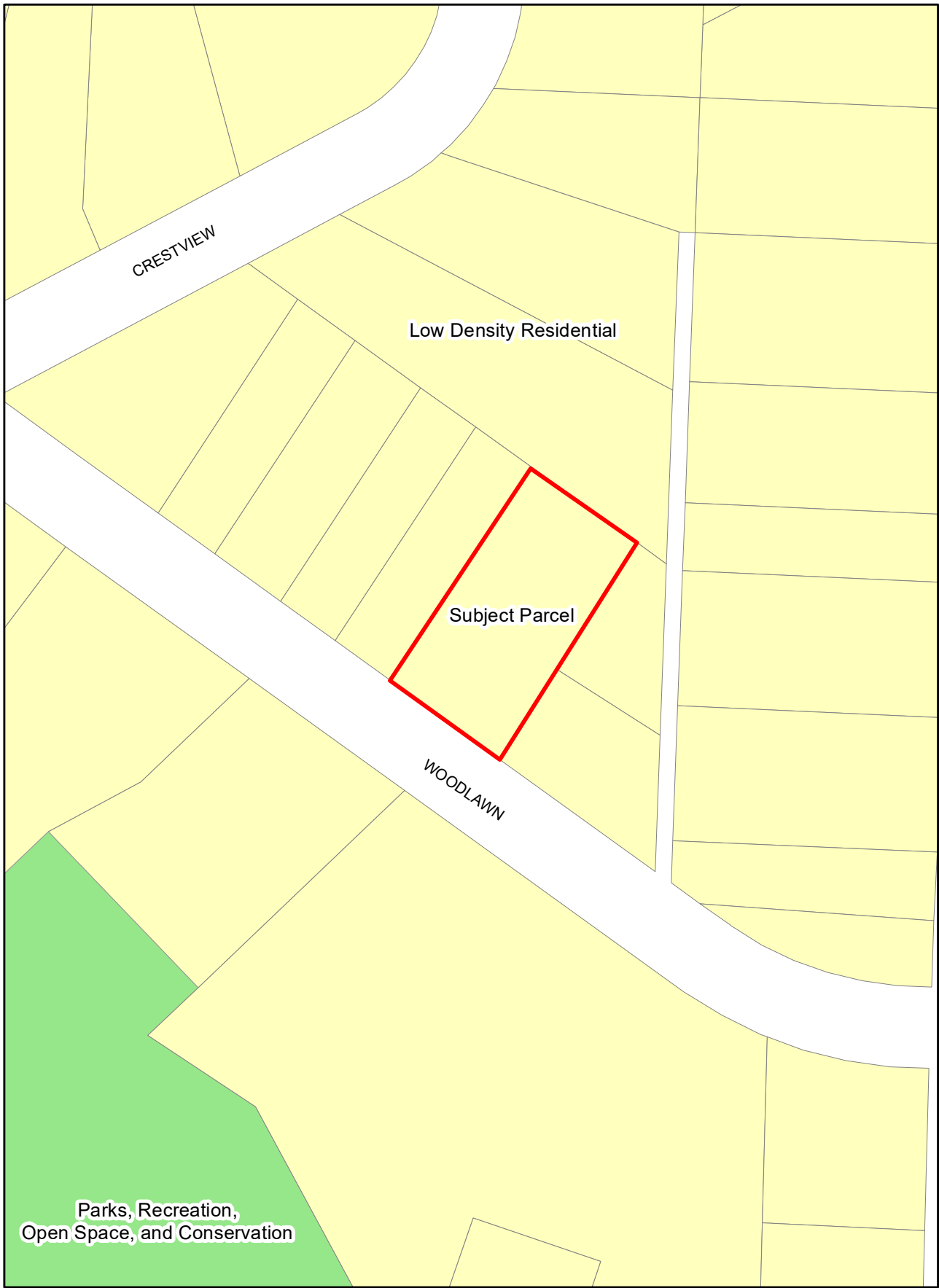
- 1) Aerial
- 2) Topography
- 3) Current Zoning
- 4) Future Land Use
- 5) Public Notice
- 6) Site Photos
- 7) Application Materials

cc. Jeff Partl, jeff@powerserve.net









August 19, 2019

RE: A request by Jeff Partl for a variance of the minimum lot width required in Article 3, Table 3-3, Dimensional Standards of the North Augusta Development Code. The application affects ±0.42 acres zoned R-14, Large Lot Single-Family Residential located at 417 W. Woodlawn Ave., Tax Parcel Number 007-06-14-039.

Please note: Your property is not included in the variance request. You are receiving this notice only because you own property within 200 feet of the proposed project area.

Dear North Augusta Property Owner:

The Department of Planning and Development has received a request by Jeff Partl for a variance of the minimum lot width required for properties in the R-14, Large Lot, Single-Family Residential Zoning District as listed in Article 3, Table 3-3, Dimensional Standards, of the North Augusta Development Code. The application affects ±0.42 acres zoned R-14, Large Lot Single-Family Residential located at 417 W. Woodlawn Ave., Tax Parcel Number 007-06-14-039.

The North Augusta Board of Zoning Appeals will hold a public hearing at its regular monthly meeting beginning at 7:00 PM on Thursday, September 5, 2019, in the Council Chambers, North Augusta Municipal Center, 100 Georgia Avenue, North Augusta, South Carolina. You are welcome and encouraged to attend and participate in this public hearing. Following the public hearing, the Board of Zoning Appeals will consider and decide on the application.

Copies of the application and related documentation will be available for public inspection on August 29, 2019 in the Department of Planning and Development on the second floor of the North Augusta Municipal Center, 100 Georgia Avenue, North Augusta, South Carolina.

A map of the project area is enclosed, along with a copy of the public hearing notice that will be published in *The Star* on August 21, 2019. If you have any questions about this application or need additional information, please contact the Department of Planning and Development at 803-441-4221.

Sincerely,



Libby Hodges, AICP, Director
Department of Planning and Development

City of
North Augusta, South Carolina
Board of Zoning Appeals

PUBLIC HEARING NOTICE

The North Augusta Board of Zoning Appeals will hold a public hearing at its regular monthly meeting beginning at 7:00 PM on September 5, 2019, in the Council Chambers, North Augusta Municipal Center, 100 Georgia Avenue, North Augusta, South Carolina, to receive public input on the following application:

ZV19-009 -- A request by Jeff Partl for a variance of the minimum lot width required for properties in the R-14, large Lot, Single-Family Residential Zoning District as listed in Table 3-3 Dimensional Standards of Article 3, Zoning Districts of the North Augusta Development Code. The application affects ±0.42 acres located at 417 W. Woodlawn Ave., Tax Parcel Number 007-06-14-039.

Documents related to the application will be available for public inspection after August 29, 2019 in the offices of the Department of Planning and Development on the second floor of the Municipal Center, 100 Georgia Avenue, North Augusta, South Carolina, 803-441-4221. All citizens and property owners interested in expressing a view on any matter that is the subject of a public hearing are encouraged to attend.

CITIZEN ASSISTANCE:

Individuals needing special assistance or a sign interpreter to participate in the meeting are asked to please notify the Department of Planning and Development at 803-441-4221 at least 48 hours prior to the meeting.



In-progress demolition of 417 W. Woodlawn Ave.



419 and 417 W. Woodlawn Ave.



Existing shared driveway for 419 and 417 W. Woodlawn Ave.



Side yard to east of 417 W. Woodlawn Ave. with second driveway curb cut.



Looking West towards Crestview Drive.



South side of W. Woodlawn Ave. with larger lot sizes.



View of primary driveway and accessory building at 417 W. Woodlawn Ave.



Existing driveway access to 417 W. Woodlawn Ave



PAF

AUG 5

Notice of Appeal

Please type or print all information



Staff Use Only

Application Number ZV19-009

Date Received 08-02-19

Review Fee \$200⁰⁰

Date Paid 08-02-19

1. Project Name 417 W. WOODLAWN AVE.

Project Address/Location 417 W. WOODLAWN AVE

Total Project Acreage .42 Current Zoning R-14

Tax Parcel Number(s) 007-06-14-039

2. Applicant/Owner Name JEFF PARTL Applicant Phone 706-533-1834

Mailing Address 452 ARRINGTON AVE

City N. AUGUSTA ST SC Zip 29841 Email jeff@POWERSERVE.NET

3. Is there a Designated Agent for this project? Yes No
If Yes, attach a notarized Designation of Agent form. (required if Applicant is not property owner)

4. Engineer/Architect/Surveyor DAVID LOPEZ License No. _____

Firm Name _____ Firm Phone _____

Firm Mailing Address _____

City _____ ST _____ Zip _____ Email _____

Signature _____ Date _____

5. Is there any recorded restricted covenant or other private agreement that is contrary to, conflicts with or prohibits the use or activity on the property that is the subject of the application?
(Check one.) yes no

6. In accordance with Section 5.1.2.3 of the North Augusta Development Code, I hereby request the City of North Augusta review the attached project plans. The documents required by the City of North Augusta, as outlined in Appendix B of the North Augusta Development Code, are attached for the City's review for completeness. The applicant acknowledges that all documents required by the City must be correct and complete to initiate the compliance review process by the City.

J-H K. Partl

8/1/2019

Applicant or Designated Agent Signature

Date

JEFF PARTL

Print Applicant or Agent Name

Board of Zoning Appeal

My name is Jeff Partl and I have partnered with Mike Brinson of Brinson Properties to renovate homes in North Augusta, SC. We both live in downtown North Augusta and have a vested interest in the continued revitalization of our downtown. We've renovated 1007 West Ave and 419 W. Woodlawn Ave. Both represent the high quality work we deliver.

I purchased both 419 and 417 W. Woodlawn Ave from Paul and Julie Gazda in December 2018. 417 W. Woodlawn Ave is zoned R-14, Large Lot, Single-Family Residential. The minimum lot width is 70 feet and the minimum lot size is 14,000 square feet. We would like to subdivide 417 W. Woodlawn into two 50 foot wide lots in order to build a Single-Family Residential home on each lot that fits into the look of the other house on that side of the street. See Attachment A - 417 W. Woodlawn Ave.

Historical Precedence

A plat of W. Woodland Avenue registered on June 25, 1916 was found when researching the property at the Aiken County Government office. See Attachment B - *Historical Plat recorded in 1916*. It shows that 417 W. Woodlawn Ave was originally 2 smaller lots; as represented by lot #25 and lot #24. Sometime after that date the lots were combined. This is also supported by the Aiken County mapping software which also shows 2 lots when you click on the Historic Lot Lines option (shown as green dotted line). See Attachment C - *Aiken County Mapping with Historical Lot Lines*

Explanation of the zoning variance requested:

417 W. Woodlawn Ave is zoned R-14, Large Lot, Single-Family Residential. The minimum lot width is 70 feet and the minimum lot size is 14,000 square feet. The property is 100 feet wide and approximately 18,000 square feet. We are asking for a variance to the minimum lot width and the minimum lot size. We want to subdivide 417 W. Woodlawn into two 50 foot wide lots in order to build a Single-Family Residential home on each lot that fits into the architectural style of the other homes on the smaller lots. We are asking for a variance to the minimum lot size because the two resulting lots will be approximately 9,000 square feet. We can meet all the other zoning requirements of R-14, Large Lot, Single-Family Residential. See Attachment D - *Site Plan*

18.4.5.4.2.b.1 - Unnecessary Hardship Exists

The other properties on the street, except the corner lot, are zoned R-14, Large Lot, Single-Family Residential and don't meet the minimum lot width of 70 feet. Building a home that meets all zoning requirements would require building a large home that didn't match the scale of the other houses on that side of the street. See Attachment E - *400 Block of W. Woodlawn Ave*.

18.4.5.4.2.b.2 - Extraordinary and exceptional conditions pertaining to the property

The exceptional condition unique to this property is that there are 4 small lots (.22 acres and 50 ft wide lots) adjacent to 417 W. Woodlawn. Subdividing 417 W. Woodlawn Ave will continue to string of smaller lots. See *Attachment F - Homes on 400 Block of W. Woodlawn Ave.*

18.4.5.4.2.b.3 - The conditions don't generally apply to other property in the vicinity

This concentration of adjacent smaller lots (.22 acres and 50 ft wide lots) does not exist in the general area.

18.4.5.4.2.b.4 - Because of the conditions, the application of this Chapter to this property would effectively prohibit or unreasonably restrict the utilization of the property

The minimum lot width and minimum lot size for R-14, Large Lot, Single-Family Residential prohibits building a house of a similar house/lot ratio to other homes on the same side of the street on this block.

18.4.5.4.2.b.5 - The authorization of a variance will not be a substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by granting the variance.

We plan is to build two Single-Family Residential homes that fit into the architectural style of the other houses on the smaller lots. See *Attachment G - Street Elevation*. This variance will not be detrimental to the adjacent properties or harmful to the character of the district. In fact, I believe two new homes would enhance the character of the district.

18.4.5.4.2.c - variance from the provisions of Article 13, Signs

Not applicable

Respectfully Submitted,

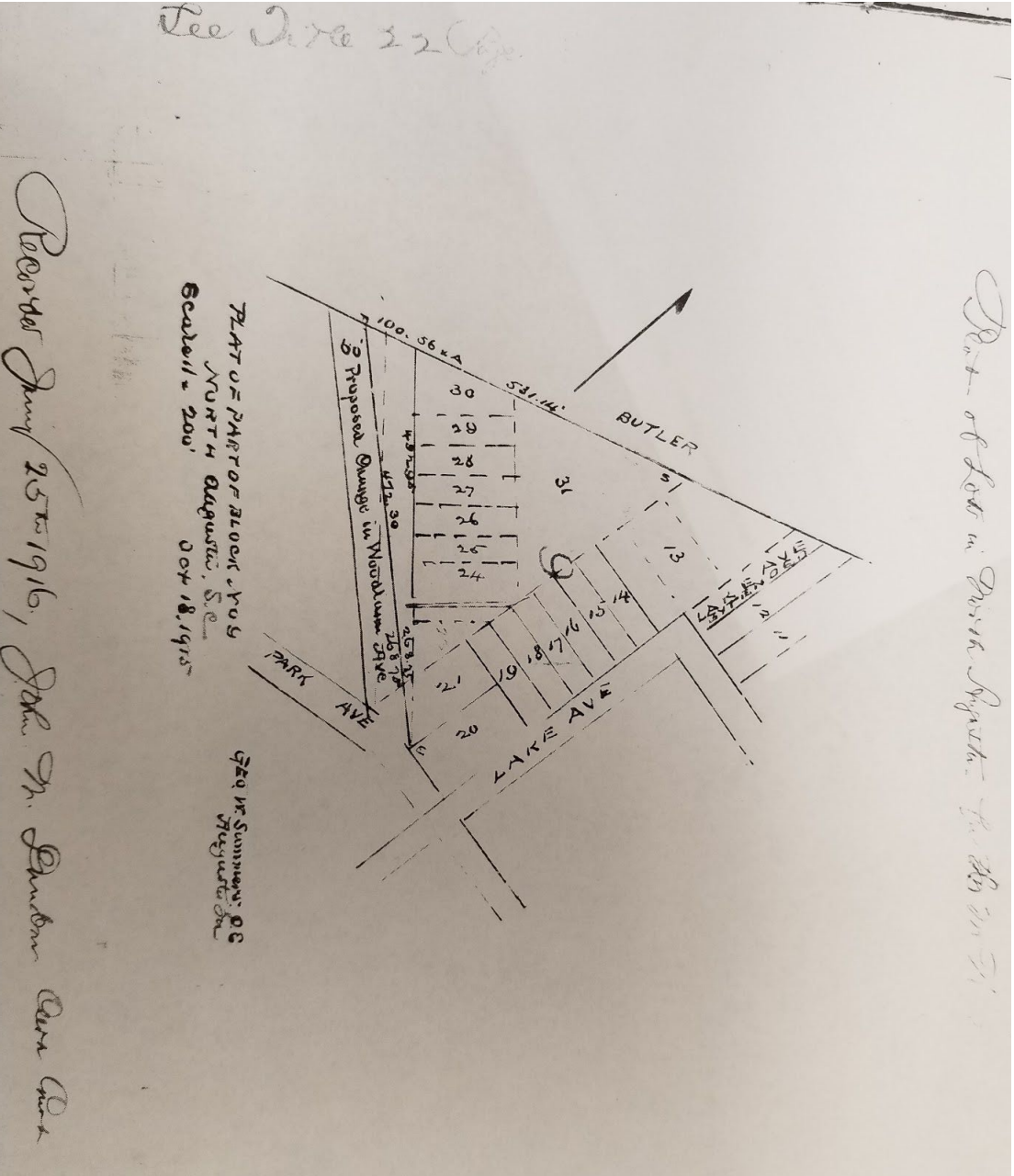


Jeffrey K. Partl

Attachment A - 417 W. Woodlawn Ave



Attachment B - Historical Plat recorded in 1916



Attachment C - Aiken County Mapping with Historical Lot Lines

The screenshot displays the qPublic.net web application interface for Aiken County, SC. The top navigation bar includes links for Layers, Map, Search, Results, Sales List, Sales Search, Sales Results, Report, Pictometry Imagery, and Home. The main map area shows an aerial view with overlaid lot lines: a solid white line for current boundaries and a dashed green line for historical boundaries. A yellow line indicates a road, labeled "WEST WOODLAWN AVENUE S283". A red line outlines a specific area on the left. The interface includes a search bar, a legend, and a layers panel on the right. The layers panel lists various data layers with checkboxes, including Property, GIS County Address Search, GIS Subdivision Search, GIS Road Search, GIS Parcel Search, Administrative Boundary, Emergency Response, Environment, Grids, Places Of Interest, Planning, Political, Property, GIS Address Points, Subdivision Lot Numbers, Parcels, Land Hooks, Historic Lot Lines, Building Footprints, Building Footprints 2016, Building Footprints 2007, Special Tax Districts, Zip Codes, Yearly Sales, Transportation, Utilities, 2016 Aerial Photos, and 2014 Aerial Photos. A scale bar at the bottom left indicates 50 feet.

qPublic.net™ Aiken County, SC

Layers Map Search Results Sales List Sales Search Sales Results Report Pictometry Imagery Home

Layer List Legend

Quick Links:

- Property Search
- View Map
- GIS County Address Search
- GIS Subdivision Search
- GIS Road Search
- GIS Parcel Search

Layers:

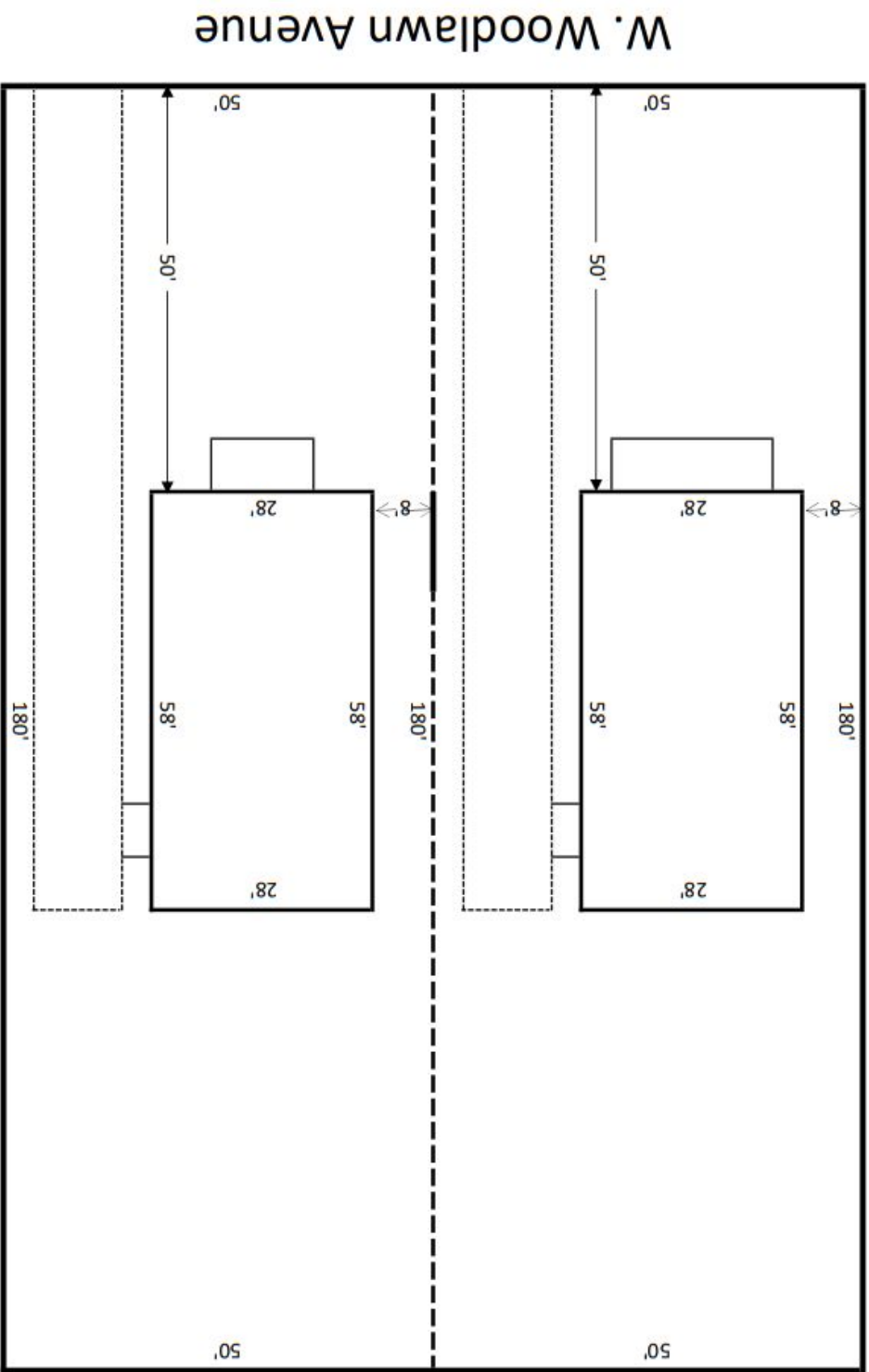
- Administrative Boundary
- Emergency Response
- Environment
- Grids
- Places Of Interest
- Planning
- Political
- Property
- GIS Address Points
- Subdivision Lot Numbers
- Parcels
- Land Hooks
- Historic Lot Lines
- Building Footprints 2016
- Building Footprints 2007
- Special Tax Districts
- Zip Codes
- Yearly Sales
- Transportation
- Utilities
- 2016 Aerial Photos
- 2014 Aerial Photos

Restore Layer Defaults

50 ft

Attachment D - Proposed Site Plan

Proposed site plan for 417 W, Woodlawn Avenue



Attachment F - Homes on 400 Block of W. Woodlawn Ave.

425 W. Woodlawn Ave



Attachment F - Homes on 400 Block of W. Woodlawn Ave.

423 W. Woodlawn Ave



Attachment F - Homes on 400 Block of W. Woodlawn Ave.

421 W. Woodlawn Ave



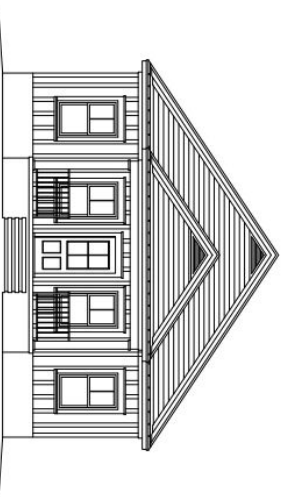
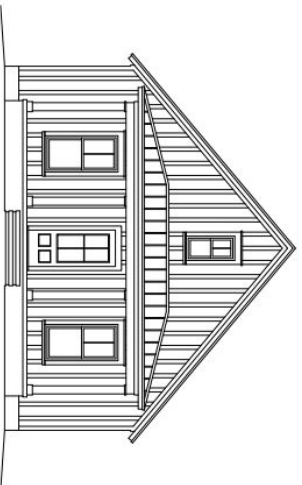
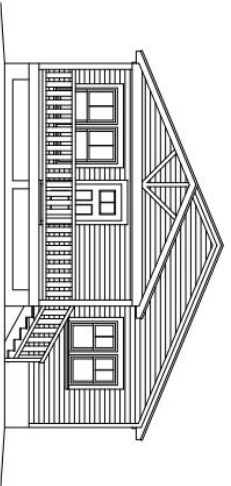
Attachment F - Homes on 400 Block of W. Woodlawn Ave.

419 W. Woodlawn Ave



Attachment G - Street Elevation

The image below represents the style of house we plan to build on 417 W. Woodlawn Ave. The actual houses built may vary.

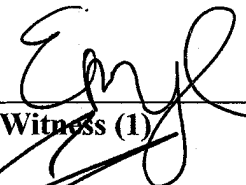


A STREET ELEVATION OF:
419, 417 A, 417 B W. WOODLAWN AVE.
NORTH AUGUSTA, S.C.

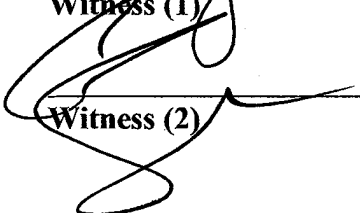
AND the Grantor does hereby bind themselves, their Heirs, Assigns, Executors and Personal Representatives to warrant and forever defend, all and singular, the premises unto the Grantee, its Heirs and Assigns, against itself and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, to all Grantor's right, title and interest thereto during its period of ownership of this property.

WITNESS Grantor's Hand(s) and Seal(s), this 20th day of December, 2018.


SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF



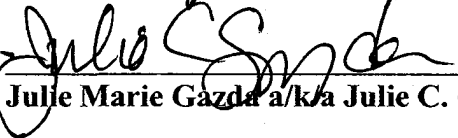
Witness (1)



Witness (2)



Paul Gazda (L.S.)



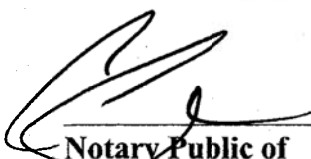
Julie Marie Gazda a/k/a Julie C. Gazda (L.S.)

State of Georgia)
)
County of Columbia)

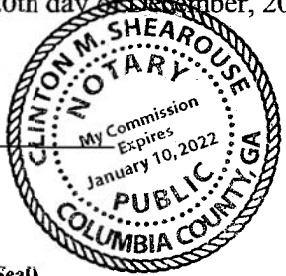
ACKNOWLEDGMENT

I, Clinton M. Shearouse, the undersigned Notary Public, do hereby certify that Paul Gazda and Julie Marie Gazda a/k/a Julie C. Gazda, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me, this 20th day of December, 2018.



Notary Public of
My Commission Expires:



(Notary Seal)

Exhibit "A"

ALL that lot or parcel of land with improvements thereon, situate, lying and being in the State of South Carolina, County of Aiken, City of North Augusta, and being known and designated as Lot 25, Block 9, and the southwestern portion of Lot 24, Block 9, as shown on a plat dated 1912, prepared by George W. Summers CE and recorded in the office of the RMC for Aiken County, South Carolina. Refence is also made to a plat dated March 3, 1943, prepared for C.W. Rourk by Joe L. Grant, CE recorded in said RMC's Office. Reference is made to said plats for a more complete and accurate description of the metes, bounds and location of said property. Said lot is bounded and measured as follows: Beginning at an iron pipe on the corner of Lot 24 of Block 9 and Woodlawn Avenue and fronting along said Woodlawn Avenue a distance of 100 feet to an iron pipe; thence along Lot 26 of Block 9 for a distance of 209 feet to an old established fence; thence along said fence line for a distance of 90 feet, more or less, thence along the remaining portion of Lot 24 of Block 9 for a distance of 205.2 feet to the Point of beginning, all measurements being more or less. Said lot is bounded on the northeast by Lot 31 of Block 9 of said plat; southeast by the remaining portion of Lot 24, of Block 9, of said plat; southwest by Woodlawn Avenue; and northwest by Lot 26 of Block 9 of said plat. Reference is further made to a revised plat of Block 9 showing said Lots 24 and 25 with the proposed change of Woodlawn Avenue. Tax Parcel No. 007-06-14-038 & 007-06-14-039

This conveyance is made subject to easements, restrictions, reservations, agreements and covenants of record, if any, current taxes, and to any state of facts that is apparent or that an accurate survey or inspection of the hereby conveyed would disclose.

Said property is conveyed subject to and with notice of the following matters: a) drainage easements, building setback lines, and all other matters shown on the plat of record; b) general utility easements and road right-of-way grants and easements.

Said property is hereby conveyed subject to any and all other easements and restrictions of record in the aforesaid Clerk's office.

This being the same property conveyed to Paul Gazda and Julie Marie Gazda by deed of William Mundell AKA William J.G. Mundell and Valerie Mundell AKA Valerie A. Mundell, dated September 15, 2006 and recorded on September 19, 2006 in Book/Volume 4089, at page 2359, aforesaid RMC Office.

Tax map & parcel number: 007-06-14-039

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 417 W. Woodlawn Ave., North Augusta, South Carolina 29841, bearing Aiken County, Tax Map Number 007-06-14-039, was transferred by Paul Gazda and Julie Marie Gazda a/k/a Julie C. Gazda to CAME Properties, LLC on December 20, 2018.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit); _____
(If exempt, please skip items 4-7, and go to item 8 of this affidavit)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ / No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section on this affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$50,000.00.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes", the amount of the outstanding balance of this lien or encumbrance is: \$ _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in Item 4 above here:	<u>\$50,000.00</u>
(b) Place the amount listed in item 5 above here: (If no amount is listed, place zero here)	<u>\$0.00</u>
(c) Subtract line 6(b) from line 6(a) and place result here:	<u>\$50,000.00</u>

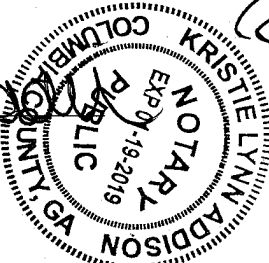
CS 185.⁰²

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$0.00.
8. As required by Code Section 12-24-70, I state that I am a responsible person connected with the transaction as: Closing Attorney.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 20th day
of December, 2018.

Kristie Lynn Addison
Notary Public for Georgia



[Signature]
Responsible Person Connected with the Transaction
Clinton Shearouse
Print or type the above name here

Chairman Summers asked if Mrs. Baker had information she would like to share.

Mrs. Baker stated staff received the application as a minor plat and the owners own both 1053 and 1063 Old Plantation Road. She explained that currently at 1053 Old Plantation Road there is an existing residence, a walled garden and garage, and the applicants are wanting to re-subdivide the lot where 1063 Old Plantation Road will be a vacant lot that can be sold with the two accessory structures on the site.

Chairman Summers asked if staff had discussed this with applicant. Mrs. Baker stated there have been a few discussions with the applicant and their surveyor about some different ways they could go about this application. She explained one option would be to sell the vacant lot and have someone build the structure and then come back and re-subdivide the lots with the accessory structures once there is a primary use established and it is also possible that they could move the structures. Mr. Summers asked if they would have to move the garden. Mrs. Baker replied that they would have to move or remove the structures.

Mrs. Stallworth questioned if one of the structures is the garden. Mrs. Baker answered yes stating it is a walled garden.

The applicant, Mrs. Nancy Whitley, was sworn in by Chairman Summers. She stated that some of the options that were discussed was removing the garden. Mrs. Whitley explained that the garden is a unique feature that has a fire pit in the middle, some antique bricks, and a lot of thought and care has went into it. She said they would like to sell the lot separately and the interested buyer would like the structures as they are and they plan on building a house. Mrs. Whitley explained when they purchased the land that is for sale the existing storage building was already on the property and the current owner would also like to keep that so they may maintain the property during the time they are going to be building their house. She said it would be sad to see the garden taken down because it would bring a lot of value to the next owner.

Chairman Summers asked if the property away from the main house was being sold. Mrs. Whitley answered that when they bought the property it was 2.5-acres and they bought the adjoining property for an additional 2.5-acres which they subdivided into 3.5 and 1.5-acres and built the garden there. She explained they want to go back to the original 2.5 and 2.5-acres because it is a large lot and some people do not want the 5-acres.

Chairman Summers stated there are ten items the Board must consider in an individual case of unnecessary hardship, and find yes for, in every case in order to the grant the variance. He explained if any one of these items the Board finds no on the variance will not be granted and the applicant cannot come back for one year. Mr. Summers stated by putting the lots together and now wanting them separated tells the Board that the hardship was created and the only way a Boards decision can be reversed is by going to court and he wants to avoid this for the applicant.

Mr. Kyle Flanagan was sworn in by Chairman Summers. He stated that he and his wife would love to purchase the 2.5-acre property and his understanding was the sale could go through if the garden wall and storage shed were knocked down. Mrs. Baker replied that is correct if there are no accessory structures on that lot we would be able to move forward with the subdivision. Mr. Flanagan stated he is buying the lot for the lot and if the garden was not there he would still purchase it, but feels it is a waste to tear down the storage shed and the garden when it was there when Mrs. Whitley purchased the property.

Chairman Summers stated the hardship was caused by combining the properties. He said the Board can grant a continuance for up to a year. Mrs. Baker explained Mr. Flanagan would be restricted to building his house on the current subdivision of the land and it would not include the structures. She said the structures would have to be sold with the existing house.

Mr. Flanagan stated the only issue he has is the placement of the house because he has had the Department of Public Health perform a percolation test on the property for septic. He referred to the submitted boundary survey and explained the house could not be built on the current 1.5-acres for it will cross halfway in the middle of the joined properties.

Mrs. Stallworth asked for clarification that the property Mrs. Whitley bought was pre-code stating it is a pre-existing structure and it is grandfathered in. Mrs. Baker stated there are some time limits on the grandfathering. She explained this would be creating a new non-conforming lot and it is not a non-conforming lot of record as it sits now.

Chairman Summers asked for a repeat of what the applicant's options are. Mrs. Baker explained the options would be to remove the accessory structures and buy the subdivided lot the way you would like to purchase it or you would have to build the house on the parcel that is currently divided and later re-subdivide to add the accessory structures to the lot that will then have a primary use.

Cliff Russell, with Carbon Construction, was sworn in by Chairman Summers. He stated he works with DHEC a lot and builds houses with wastewater systems and by large part they ask where you are going to put a house and they design the septic system and drain field accordingly.

All comments and questions from the Board were addressed by Staff and the applicant.

Chairman Summers closed the public hearing at 7:42 p.m.

After reviewing the findings, Chairman Summers asked for a motion from the Board.

After a motion made by Mr. Jim Newman, and duly seconded by Mrs. Kathie Stallworth, and joined by Chairman Summers voted unanimously for a continuance of one year for Application ZV19-006, a request for a variance to allow for accessory structures on a vacant lot as prohibited by Section 4.2.3, Establishment of Accessory Structures and Uses of the North Augusta Development Code, in order to allow for more facts to be gathered and the two parties to work on the details with the Planning Department.

6. **ZV19-007** -- A request by Mary Ann Jones Turner, Doris Jones Rodriguez, and the Joseph Edward Jones Life Estate for a variance of Section 3.8.5.4.5, Access Spacing on Public Streets of the North Augusta Development Code. The application affects ±1.1 acres zoned GC, General Commercial located along Knox Avenue, Tax Parcel Numbers 006-20-09-010, 006-20-09-011, and 006-20-09-014.
 - a. **Public Hearing** – The purpose of the hearing is to receive public comment on the application.
 - b. **Consideration** – Application ZV19-007

Chairman Summers read the application summary and opened the public hearing at 7:45 p.m. and asked if Mrs. Baker had information she would like to share.

Mrs. Baker stated the applicant is proposing a senior housing development that is apartment style and they are requesting an access drive that is closer than 150-feet to Walker Avenue along Knox Avenue.

The applicant, David Banks, of Southern Partners Engineering Company, was sworn in by Chairman Summers. He stated he is working for a developer of low country residential communities and they are in the process of doing their diligence for this property and while looking at the ordinance they found there was a possible conflict and want to insure everything meets code. Mr. Banks said the layout they are presenting in order to do this location would be within 145-feet and request a variance from the 150-foot requirement. He explained the plan was to initially line the driveways up with the Doctors Care across the street and he spoke with a DOT representative who preferred a protected turn lane.

Mrs. Stallworth questioned if the left turn lane would be extended onto Walker Avenue. Mr. Banks explained there are currently two left turn lanes on both sides going to Walker Avenue into Summerhill and they merge over from one to the other and they would extend the left turn lane to Walker Avenue to incorporate two cars as a safe haven to the driveway.

Chairman Summers asked if DOT has given preliminary approval. Mr. Banks answered they have said this is where they like the driveway and a traffic study would not be required and he would have to submit a plan which would come with the same plans submitted to the City that would include what is presented to the Board.

Mr. Henry Jones was sworn in by Chairman Summers. He stated the proposed property development is adjacent to his property and questioned the effect the property change will have to his property.

Mrs. Stallworth remarked there would have to be a buffer of a certain width and appropriate lighting. Mrs. Baker replied that is correct and at the time of site plan approval staff would look at the buffering, there would be additional buffering for the actual parking spaces, and a lighting plan would need to be submitted. She said the applicant has spoken to the minimal traffic impact.

Mr. Jones asked if the driveway to the parking lot would be close to his property. Mr. Banks answered yes stating the parking lot is closer to the houses and the building fronts on Knox Avenue. Mr. Jones questioned, if approved, how soon construction would start. Mr. Newman answered within a year.

All comments and questions from the Board were addressed by Staff and the applicant.

Chairman Summers closed the public hearing at 7:56 p.m.

Mr. Newman asked how many parking spaces are required for the facility. Mr. Banks replied that the sketch plan is going before the Planning Commission because the required parking is fifty-two spaces and they are requesting a reduction to forty.

Chairman Summers questioned if they are allowed to have fewer parking spaces can the driveway be moved 5-feet. Mr. Banks answered no, explaining that the proximity to the entrance would allow the potential of someone being hit.

Chairman Summers stated the Board needs to ensure that the houses behind the development are buffered.

After some discussion and reviewing the findings, the Board found in the affirmative that the appeal meets all of the standards required to issue the variance. Chairman Summers asked for a motion from the Board.

After a motion made by Mr. Jim Newman, and duly seconded by Mrs. Kathie Stallworth, joined by Chairman Wes Summers voted unanimously to approve the application with the following condition:

1. The addition of Buffer, Type-A is followed along with a maintained hedge row along the back of the buffer.

7. **ZV19-008** -- A request by Summer Lakes Development, LLC for a variance to allow a greater maximum front setback than permitted as required by Article 3, Zoning Districts, Table 3-3 Dimensional Standards of the North Augusta Development Code. The application affects ±1.98 acres zoned R-7, Small Lot Single-Family Residential located at 1799 Womrath Road, Tax Parcel Number 012-13-04-014.
- a. **Public Hearing** – The purpose of the hearing is to receive public comment on the application.
 - b. **Consideration** – Application ZV19-008

Chairman Summers read the application summary and opened the public hearing at 8:21 p.m. and asked if Mrs. Baker had information she would like to share.

Mrs. Baker stated the property on Womrath Road is residential and there are not very many existing houses and they have sizeable acreage. She said the applicant came in earlier this year to subdivide the lot into two parcels, and is now seeking to request a larger setback which would be in line with the surrounding properties, and if the Board grants the variance he plans to combine the properties to build a larger single-family house further off the road to match the existing setbacks of the neighboring property.

The applicant, Cliff Russell, was sworn in by Chairman Summers. He explained that he is a single-family residential home builder and he purchased the property a year ago with a plan to build patio homes and learned that there is an ordinance in this particular area that limits the setbacks which was, as explained to him, to help urbanize and bring buildings closer to the road and have parking behind the buildings. Mr. Russell stated he understands this applies here but the rest of the surroundings were built before the ordinance was in place. He explained a 2,500-square foot house by the road would be out of character and would destroy the very countryish neighborhood.

Mr. Newman questioned how far back the build was going to be on the property. Mr. Russell answered he is requesting 65-feet.

All comments and questions from the Board were addressed by Staff and the applicant.

Chairman Summers closed the public hearing at 8:28 p.m.

After some discussion and reviewing the findings, the Board found in the affirmative that the appeal meets all of the standards required to issue the variance. Chairman Summers asked for a motion from the Board.

Mr. Jim Newman motioned to approve application number ZV19-008, a request by Summer Lakes Development, LLC for a variance to allow a greater maximum front setback than permitted as required by Article 3, Zoning Districts, Table 3-3 Dimensional Standards of the North Augusta Development Code with no conditions. Mrs. Kathie Stallworth seconded the motion. The vote was approved unanimously.

6. **Adjourn** – With no objection, Chairman Summers adjourned the meeting at 8:35 p.m.

Respectfully Submitted,



Libby Hodges, AICP, Director of Planning and Development
Secretary to the Board of Zoning Appeals


Department of Planning and Development



Memorandum # 19-020

City of North Augusta

To: North Augusta Board of Zoning Appeals

From: Libby Hodges, AICP, Director of Planning and Development 

Subject: **Review of Rules of Procedure and Public Meeting Participation Guidelines**

Date: August 28, 2019

Staff requests that the Board of Zoning Appeals review the Rules of Procedure and Public Meeting Participation Guidelines. These rules regulates the order of business and provides details for elections and various other functions of the Board. The most recent revision was adopted in 2010.

The Board of Zoning Appeals is governed largely by state law. For reference, the applicable section of state law applicable is as follows:

SECTION 6-29-780. Board of zoning appeals; membership; terms of office; vacancies; compensation.

(A) As a part of the administrative mechanism designed to enforce the zoning ordinance, the zoning ordinance may provide for the creation of a board to be known as the board of zoning appeals. Local governing bodies with a joint planning commission and adopting a common zoning ordinance may create a board to be known as the joint board of appeals. All of these boards are referred to as the board.

(B) The board consists of not less than three nor more than nine members, a majority of which constitutes a quorum, appointed by the governing authority or authorities of the area served. The members shall serve for overlapping terms of not less than three nor more than five years or after that time until their successors are appointed. A vacancy in the membership must be filled for the unexpired term in the same manner as the initial appointment. The governing authority or authorities creating the board of zoning appeals may remove any member of the board for cause. The appointing authorities shall determine the amount of compensation, if any, to be paid to the members of a board of zoning appeals. None of the members shall hold any other public office or position in the municipality or county.



SECTION 6-29-790. Board of zoning appeals; officers; rules; meetings; notice; records.

The board shall elect one of its members chairman, who shall serve for one year or until he is re-elected or his successor is elected and qualified. The board shall appoint a secretary who may be an officer of the governing authority or of the zoning board. The board shall adopt rules of procedure in accordance with the provisions of an ordinance adopted pursuant to this chapter. Meetings of the board must be held at the call of the chairman and at such other times as the board may determine. Public notice of all meetings of the board of appeals shall be provided by publication in a newspaper of general circulation in the municipality or county. In cases involving variances or special exceptions conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. The chairman or, in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the board and must be a public record.

SECTION 6-29-800. Powers of board of appeals; variances; special exceptions; remand; stay; hearing; decisions and orders.

(A) The board of appeals has the following powers:

(1) to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;

(2) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

(a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;

(b) these conditions do not generally apply to other property in the vicinity;



(c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

(d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

(i) The board may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance. Other requirements may be prescribed by the zoning ordinance.

A local governing body by ordinance may permit or preclude the granting of a variance for a use of land, a building, or a structure that is prohibited in a given district, and if it does permit a variance, the governing body may require the affirmative vote of two-thirds of the local adjustment board members present and voting. Notwithstanding any other provision of this section, the local governing body may overrule the decision of the local board of adjustment concerning a use variance.

(ii) In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare;

(3) to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance; and

(4) to remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review. A party's motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded



matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

(B) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of appeals notice of appeal specifying the grounds for the appeal. If no time limit is provided, the appeal must be taken within thirty days from the date the appealing party has received actual notice of the action from which the appeal is taken. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed other than by a restraining order which may be granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(D) The board must fix a reasonable time for the hearing of the appeal or other matter referred to the board, and give at least fifteen days' public notice of the hearing in a newspaper of general circulation in the community, as well as due notice to the parties in interest, and decide the appeal or matter within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

(E) In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

(F) All final decisions and orders of the board must be in writing and be permanently filed in the office of the board 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.



SECTION 6-29-810. Contempt; penalty.

In case of contempt by a party, witness, or other person before the board of appeals, the board may certify this fact to the circuit court of the county in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

SECTION 6-29-820. Appeal from zoning board of appeals to circuit court; pre-litigation mediation; filing requirements.

(A) A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

(B) A property owner whose land is the subject of a decision of the board of appeals may appeal either:

- (1) as provided in subsection (A); or
- (2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825.

Any notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

(C) Any filing of an appeal from a particular board of appeals decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).

SECTION 6-29-825. Pre-litigation mediation; notice; settlement approval; effect on real property; unsuccessful mediation.

(A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted, and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person



who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of appeals.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

- (1) the local legislative governing body in public session; and
- (2) the circuit court as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

- (1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or
- (2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

- (1) in the same manner as provided by law for appeals from other judgments of the circuit court; or



(2) by filing an appeal pursuant to subsection (F).

SECTION 6-29-830. Notice of appeal; transcript; supersedeas.

(A) Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.

SECTION 6-29-840. Determination of appeal; costs; trial by jury.

(A) At the next term of the circuit court or in chambers, upon ten days' notice to the parties, the presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board is charged with the costs, and the costs must be paid by the governing authority which established the board of appeals.

(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of appeals, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.



SECTION 6-29-850. Appeal to Supreme Court.

A party in interest who is aggrieved by the judgment rendered by the circuit court upon the appeal may appeal in the manner provided by the South Carolina Appellate Court Rules.

SECTION 6-29-860. Financing of board of zoning appeals.

The governing authority may appropriate such monies, otherwise unappropriated, as it considers fit to finance the work of the board of appeals and to generally provide for the enforcement of any zoning regulations and restrictions authorized under this chapter which are adopted and may accept and expend grants of money for those purposes from either private or public sources, whether local, state, or federal.

**North Augusta Board of Zoning Appeals
Rules of Procedure
February 26, 2009
Amended December 2, 2010**

These Rules of Procedure are adopted by the North Augusta Board of Zoning Appeals pursuant to S.C. Code §6-29-790 to facilitate the performance of its duties and functions in accordance with the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 as amended, Chapter 29 of Title 6 of the South Carolina Code of Laws and the North Augusta Development Code, Chapter 18 of the City of North Augusta Code of Ordinances. These Rules of Procedure restate and supplement the provisions contained in Articles 5 and 18 of the North Augusta Development Code (NADC) and replace the Rules of Procedure adopted by the Board of Zoning Appeals on June 11, 1998.

I. Name

The official name shall be the "North Augusta Board of Zoning Appeals", also referred to herein as the "Board of Zoning Appeals" or "Board".

II. Members and Appointment

The Board of Zoning Appeals shall consist of five (5) members appointed by the City Council upon recommendation by the Mayor, and shall serve four (4) year terms, or until successors are appointed, whichever is later. Upon a vacancy created by a resignation of any member, the vacancy shall be filled for the unexpired term in the manner as are original appointments.

III. Order of Interpretation

It is the intention of these Rules of Procedure that all questions arising in connection with the enforcement of the provisions of the North Augusta Development Code shall be presented first to the Director of the Department of Planning and Economic Development for an interpretation and that such question shall be presented to the Board of Zoning Appeals only on appeal from the Director.

IV. Officers

The officers of the Board of Zoning Appeals shall be a Chairman and a Vice-Chairman elected for one (1) year terms at the last meeting of the Board in each calendar year. The officers of the Board may serve consecutive terms. The Director of the Department of Planning and Economic Development shall serve as Secretary to the Board.

A. Chairman – The Chairman shall be a voting member of the Board of Zoning Appeals and shall:

1. Call meetings of the Board;

2. Preside at meetings and hearings and swear in witnesses;
3. Act as spokesperson for the Board;
4. Sign documents for the Board;
5. Have Orders of the Board served on parties; and
6. Perform other duties approved by the Board.

B. Vice-Chairman – The Vice-Chairman shall exercise the duties of the Chairman in the absence, disability or disqualification of the Chairman. In the absence of the Chairman and Vice-Chairman, an acting Chairman shall be elected by a majority of the members present at any regular meeting.

C. Secretary – The Secretary shall:

1. Provide and publish notices of appeals and meetings;
2. Assist the Chairman in preparation of agendas;
3. Ensure that property involved in appeals for variances and special exceptions is properly posted and that adjacent property owners are notified;
4. Keep recordings and minutes of meetings and hearings;
5. Maintain Board records as public records;
6. Sign and certify documents for the Board;
7. Serve Board decisions on parties;
8. Attend to Board correspondence; and
9. Perform other duties normally carried out by a secretary.

V. Meetings

A. Time and Place – An annual schedule of regular meetings shall be adopted, published and posted at the municipal center prior to January 1 of each year. Meetings shall be held at the place stated in the notices, and shall be open to the public.

B. Special Meetings – Special meetings may be called by the Chairman upon twenty-four (24) hours notice, posted and delivered to all Board members and local news media. The agenda of a special meeting shall be limited to the items specified in the call for the special meeting. Meetings shall be held at the place stated in the notices, and shall be open to the public.

C. Agenda – A written agenda shall be furnished by the Secretary to each member of the Board of Zoning Appeals and the news media and shall be posted at least five (5) days prior to each regular meeting and at least twenty-four (24) hours prior to a special meeting. Items may be added to the agenda at a regular meeting by majority vote if public notice is not required. Items may be removed from the agenda or postponed at any meeting by majority vote. The agenda shall consist of the following order of business:

North Augusta Board of Zoning Appeals
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1. Call to Order
 2. Roll Call
 3. Approval of Minutes
 4. Confirmation of Agenda
 5. Appeal Review and Consideration (see Section VI.B.)
 6. Staff Reports
 7. Adjournment
- D. Quorum** – A majority of the members of the Board of Zoning Appeals shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.
- E. Motions** – Motions shall be restated by the Chairman before a vote is taken. The names of the Board members making and seconding a motion shall be recorded in the minutes of the meeting. Motions should be stated in the positive whenever possible. Motions shall include conditions on the approval as recommended in the staff report and approved or specified by the Board and applicable findings of fact and conclusions of law.
- F. Actions Not Requiring a Motion** – The following Board of Zoning Appeals meeting actions do not require a motion:
1. Call meeting to order
 2. Recognize a quorum
 3. Approval of Minutes
 4. Confirmation of Agenda
 5. Acceptance of Staff Reports
 6. Adjournment.
- G. Voting** – A member must be present to vote. Each member shall vote on every question unless disqualified by law. The question of disqualification shall be decided by the member affected, who shall:
1. Announce the reason for the disqualification;
 2. Execute a recusal form to be placed in the minutes; and
 3. Refrain from deliberating or voting on the question.
- H. Public Input** –
1. Deliberations and voting shall be conducted in public.
 2. A Board member may not vote on a matter which he or she has not heard, including public hearings, staff and applicant presentations, public comment and Board discussion.
- I. Conduct** – No person shall speak at a Board of Zoning Appeals meeting unless invited to do so by the Chairman. During a public hearing public

testimony may be provided only after the speaker is recognized by the Chairman. All public comment shall be directed to the Chairman.

- J. **Ex Parte Communication and Appearance of Fairness** – Except at a public meeting, no member of the Board of Zoning Appeals should discuss with any citizen any matter which will be coming to the Board for action. If a Board of Zoning Appeals member receives such communication, the member should immediately inform the citizen that he or she should not discuss the pending matter and terminate the conversation. If a Board of Zoning Appeals member has received ex parte information the member may continue to participate in consideration of the matter; however, the Board member should disclose the extent, nature and content of the ex parte communication to the Board at the hearing or meeting, and affirm his or her objectivity in the matter.

VI. **Appeal Process**

- A. **Calendar** – An appeal shall be marked with the date of receipt and placed on the Board of Zoning Appeals agenda in the order received. Applications shall be heard in the order on the agenda unless otherwise set by the Board for good cause shown.
- B. **Notice** – Public notice of a hearing of the Board shall be published in a local newspaper, on the City's website and posted on the property affected at least fifteen (15) days prior to the hearing. A copy of the public notice shall be mailed by regular mail to the owners of record of all property within two hundred (200) feet of the subject property at least fifteen (15) days before the hearing. The notice shall contain a description of each matter to be heard and identify the applicant and property affected.
- C. **Withdrawal of Appeal** – Any appeal may be withdrawn by written notice delivered to the Secretary at any time prior to the scheduled hearing or verbally and in person at the hearing prior to action by the Board of Zoning Appeals. Withdrawn appeals may be refiled after twelve (12) months and shall be placed on the calendar according to the date refiled.
- D. **Continuances** – The hearing of an appeal may be continued one (1) time by the Board of Zoning Appeals for good cause shown including the collection and delivery of additional evidence.
- E. **Disposition** – The Board of Zoning Appeals may deliberate and make a final disposition of an appeal by majority vote of members present at the hearing and qualified to vote provided that not less than a quorum are qualified to vote. The vote may be taken at the same or at a subsequent meeting.

- F. **Form of Order** – An order shall be issued disposing of a matter by granting or denying relief with such conditions as may be deemed necessary, or affirming, modifying or reversing an administrative decision. A matter may be dismissed for lack of jurisdiction. Findings of fact and conclusions of law shall be separately stated in an order.
- G. **Rehearing** – The Board of Zoning Appeals, at its discretion, may grant a rehearing of an appeal which has been dismissed or denied. A written request for rehearing shall be filed with the Secretary within fifteen (15) days after delivery of the order. Said request shall be accompanied by any new evidence which could not have been presented at the initial hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome.
- H. **Orders and Documents** – The Secretary shall prepare and serve all orders of the Board of Zoning Appeals in appropriate form. Copies of all notices, correspondence, documentary evidence, orders and forms shall be maintained as public records.
- I. **Stay of Proceedings** – An appeal stays all legal proceedings in furtherance of the action from which the appeal has been taken, unless the Director certifies to the Board of Zoning Appeals that, by reason of facts stated in the certification, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed unless by a restraining order which may be granted by the Board or by a court of competent jurisdiction.

VII. **Quasi-Judicial Public Hearings**

- A. **Generally** – The procedures herein apply to any application for a variance, appeal, special exception or any other action pursuant to the NADC which is considered quasi-judicial under South Carolina law. In making quasi-judicial decisions, the Board of Zoning Appeals must ascertain the existence of facts, investigate the facts, hold hearings, weigh evidence and draw conclusions from them as a basis for official action, and exercise discretion of a judicial nature. In the land use context, quasi-judicial decisions involve the application of land use policies to individual situations, such as variances and appeals of administrative determinations. These decisions involve three (3) key elements: the finding of facts regarding the specific proposal, the exercise of some discretion in applying the standards of the NADC and reaching conclusions of the applicable law in the case. Due process requirements for quasi-judicial decisions mandate that all fair trial standards be observed when these decisions are made. This includes an evidentiary hearing with the right of the parties to offer evidence; cross-examine adverse witnesses; inspect

documents; have sworn testimony; and have written findings of fact and conclusions supported by competent, substantial and material evidence.

- B. Conduct of Hearing** – Any person or persons may appear at a public hearing and submit evidence either individually or as a representative. Each person who appears at a public hearing shall state, for the record, his or her name, address and, if appearing on behalf of an organization or group, the name and mailing address of the organization or group. The hearing shall be conducted in accordance with the procedures as set forth below. At any point, members of the Board may ask questions of the appellant, staff or public. The order of proceedings shall be as follows:
1. The Director or appropriate staff member shall present a description of the appeal and a written or oral recommendation. The recommendation shall address each factor required by §XII to be considered prior to action or approval on the appeal;
 2. The appellant shall present any information or evidence that the appellant deems appropriate;
 3. Public testimony shall be heard;
 4. The Director or other staff member may respond to any statement made by the appellant or any public comment;
 5. The appellant may respond to any testimony or evidence presented by the staff or public; and
 6. The Board shall close the public portion of the hearing and conduct deliberations.

VIII. Public Hearings

- A. Public Notice** – The Secretary to the Board of Zoning Appeals shall give the notice required by §5.1.3 of the North Augusta Development Code.
- B. Public Hearing Process** – In matters brought before the Board of Zoning Appeals, the procedures specified in §5.1.4, North Augusta Development Code, shall be followed. Matters in which additional time is granted may be moved to the end of the agenda. A Board of Zoning Appeals public hearing shall include the following order of business:
1. Appeal summary read by the Chairman
 2. Open public hearing
 3. Staff sworn presentation of appeal and recommendation, testimony and response to questions from Board
 4. Appellant sworn testimony and response to questions from Board
 5. Public sworn testimony
 6. Staff response to appellant and public testimony
 7. Appellant response to public testimony
 8. Close public hearing

9. Consideration of appeal
10. Motion and second (§5.E), including findings of fact and conclusions of law
11. Board discussion and deliberation of the motion
12. Amendment(s) to the motion, if any
13. Discussion of amendment(s)
14. Vote on the amendment(s)
15. Vote on the motion

- C. Separate Hearings for Appeals** – A separate public hearing shall be convened for each appeal. The public hearing for each appeal shall be advertised separately. More than one public hearing may be scheduled at a meeting. Each public hearing shall be opened and closed prior to Board of Zoning Appeals consideration and discussion of the appeal.
- D. Appearance** – The applicant or any interested party may appear in person, or be represented by an agent or attorney. The Board of Zoning Appeals may postpone or proceed to dispose of a matter in the absence of an appearance of the applicant or representative thereof. Any interested person or persons may appear at a public hearing and submit evidence, either individually or as a representative. Each person who appears at a public hearing shall state, for the record, his or her name, address and, if appearing on behalf of an organization or group, the name and mailing address of the organization or group.
- E. Witnesses** – Interested parties may present testimony under oath. Witnesses may be compelled to attend by subpoena which has been signed by the Chairman and served at least ten (10) days prior to a hearing. The Board of Zoning Appeals may call its own witnesses when deemed appropriate.
- F. Cross-Examination** – No party shall have the right to cross-examine witnesses; however, the opportunity to examine opposing witnesses may be freely extended by the Chairman when conducted in an orderly manner. Intimidation of witnesses shall not be allowed.
- G. Evidence** – Legible copies of relevant documents, photographs, maps, drawings, etc., will be received in the record without authentication. Relevant testimony which is not cumulative or hearsay will be received. The Chairman will rule on all evidentiary matters. Evidence may be placed in the record with an objection noted.

IX. Records

- A. Minutes** – The Secretary to the Board of Zoning Appeals shall electronically record and preserve all meetings and hearings of the Board as required by State record retention guidelines. The Secretary shall transcribe and sign minutes of each meeting within one (1) week of the meeting date. These minutes are unofficial and may be distributed to the appellant, the Mayor and City Council, members of the public and City staff prior to their approval by the Board at the next regular meeting. Written, approved minutes shall be maintained as public records.
- B. Attendance** – The minutes shall show the members in attendance at each meeting. If a member arrives late or leaves early, the arrival or departure time shall be recorded in the minutes. The Board of Zoning Appeals may recommend to the Mayor and City Council the removal for cause of any member who is absent for three (3) consecutive meetings without adequate reason.
- C. Reports** – The Secretary shall assist in the preparation and forwarding of all reports and recommendations to the Board in appropriate form. Copies of all notices, correspondence, documentary evidence, reports, forms and Orders shall be maintained as public records.
- D. Exhibits** – All petitions, letters, photographs, sketches, drawings, documents, study reports or results, architectural and engineering renderings and any item submitted by any persons, companies, agencies and City officials or staff as evidence for Board of Zoning Appeals consideration shall become a part of the record for the meeting at which they are submitted and shall be maintained as public records.
- E. Orders** –
1. An Order shall be issued disposing of an appeal by granting or denying relief with such conditions as may be deemed necessary; or affirming, modifying or reversing an administrative decision. An appeal may be dismissed for lack of jurisdiction.
 2. The Secretary shall draft the Order of the Board of Zoning Appeals.
 3. The Order shall be signed by the Chairman and the Secretary and shall include the legal description and accompanying map exhibit.
 4. Findings of fact and conclusions of law shall be stated in an Order.
 5. Copies of all executed orders shall be forwarded to appellants and other parties of interest by certified mail.
 6. A copy of the Order shall be submitted to the City Clerk for inclusion in the City's records in accordance with state law. A copy of the Order shall also

be filed in the records of the Board of Zoning Appeals maintained by the Department of Planning and Economic Development.

X. Expiration and Extension of Variance and Special Exception Approvals

The approval, or conditional approval, of a variance or a special exception, site specific development plans for the purposes of this section, by the Board of Zoning Appeals, and the associated site plan, if any, shall expire two (2) years from the date of approval unless a building permit has been issued and construction has commenced or, if no construction is required, the approved variance or special exception has been initiated. The applicant may apply for and the Board of Zoning Appeals may grant extensions on such approval for additional periods up to one (1) year each but not to exceed five (5) extensions. If an amendment to the North Augusta Development Code is adopted by the City Council subsequent to the variance or associated site plan approval that would preclude the initial approval, a request for an extension may not be granted.

XI. Appeals from Board of Zoning Appeals – Any person who may have a substantial interest in any decision of the Board of Zoning Appeals may appeal the decision pursuant to S.C. Code §6-29-820 to the circuit court in and for the counties of Aiken or Edgefield as applicable, filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within thirty (30) days after the decision of the Board is rendered.

XII. Review Procedures

A. Appeal from an Administrative Decision or Interpretation –

1. The Board of Zoning Appeals shall hear and decide appeals where it is alleged there is error in an Order, requirement, decision or determination made by an administrative official of the City in the enforcement of the North Augusta Development Code.
2. In an appeal regarding an administrative decision or interpretation, the scope of review shall be limited to determining whether the decision or interpretation by the Director was in accordance with the intent and requirements of the North Augusta Development Code and, accordingly, the Board will affirm, modify or reverse the decision.
3. In exercising its powers, the Board of Zoning Appeals, in conformity with the North Augusta Development Code, may reverse or affirm, wholly or partly, or may modify the order, requirement or decision of the Director or other administrative official and to that end shall have all powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

4. The approval of an appeal from an administrative decision shall be effective immediately and the Director shall implement the decision of the Board of Zoning Appeals.

B. Variance –

1. A variance is not a right. It may be granted to an applicant only if the applicant establishes compliance with the hardship criteria established in S.C. Code §6-29-800.
2. The Board of Zoning Appeals shall hear and decide appeals for variances from the requirements of Article 3, Zoning Districts, and Article 13, Signs, of the North Augusta Development Code when strict application of the regulations would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board of Zoning Appeals makes and explains in writing all of the following:
 - a. An unnecessary hardship exists;
 - b. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
 - c. The conditions do not generally apply to other property in the vicinity;
 - d. Because of the conditions, the application of the North Augusta Development Code to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
 - e. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance. Harm to the character of the district may include structures that are significantly out of scale, and the creation or potential for the creation of excessive noise, light, traffic or incompatible late night activity.
3. In the approval of an application for a variance from the provisions of Article 13, Signs, North Augusta Development Code, regulating the size, height, appearance, or location of a sign, the Board of Zoning Appeals shall also find that no alternative signage solution that complies with the provisions of Article 13 is available and would provide adequate visibility, recognition and understanding.
4. The Board of Zoning Appeals may not grant a variance the effect of which would be:
 - a. To allow the establishment of a use not otherwise permitted in a zoning district.
 - b. To extend physically a nonconforming use of land.
 - c. To change zoning district boundaries shown on the official zoning map.
5. If the unnecessary hardship is self imposed by the applicant, the variance should not be granted.
6. The fact that property may be utilized more profitably, should a variance be granted, shall not be considered grounds for a variance.

7. In granting a variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character or other features of the proposed building, structure or use as the Board may consider advisable to promote the public health, safety or general welfare.
8. The approval of a variance shall establish the conformity of an existing nonconforming use or structure. The approval of a variance associated with new construction shall authorize the applicant to apply for site plan approval pursuant to §5.6 of the North Augusta Development Code. No building permit may be issued until the site plan is approved. The approval of a variance does not automatically authorize any development activity.
9. A variance is perpetually binding on the property unless another appeal or variance request is brought and approved or the property is brought into compliance with the North Augusta Development Code through renovation or redevelopment or amendment to the Development Code.
10. Minor field alterations or minor revisions to approved variances or conditions associated with a variance may be approved by the Director if the project still meets the intent of the variance approval.

C. Special Exception –

1. Special exceptions are subject to additional scrutiny to insure that the health, safety and general welfare of the community and the area where the special exception use is proposed will not be harmed.
2. Permits for special exceptions shall be evaluated by the Board of Zoning Appeals on the basis of the following criteria:
 - a. That the special exception complies with all applicable development standards contained in the North Augusta Development Code and with the policies contained in the Comprehensive Plan;
 - b. That the special exception will be in substantial harmony with the area in which it is to be located;
 - c. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
3. In granting a special exception, the Board of Zoning Appeals may attach such additional stipulations, conditions or safeguards that, in its judgment, will enhance the proposed special exception use and promote the public health, safety or general welfare.

D. Conditional Use Permit Violations – Violations of any of the conditions applied to a conditional use permit shall be treated in the manner as set forth in §§5.1.6 and 5.11 of the North Augusta Development Code.

XIII. Procedures Not Specified and Robert's Rules of Order – The Board of Zoning Appeals shall decide by majority vote on issues not addressed by these Rules of Procedure. The Board may refer to the applicable provisions of Robert's Rules of Order for guidance in making its decision.

XIV. Adoption and Amendment

A. Adoption – These rules were adopted by vote of a majority of the members of the Board of Zoning Appeals on February 26, 2009 and amended on December 2, 2010.

B. Amendment – These rules may be amended at any regular meeting of the Board of Zoning Appeals by majority vote of the members of the Board at least seven (7) days after the written amendment is delivered to all members.

Date: December 2, 2010

By: OW. [Signature]
Chairman
North Augusta Board of Zoning Appeals

G.M. Goh
Secretary
North Augusta Board of Zoning Appeals

**Board of Zoning Appeals
Public Meeting
Participation Guidelines**

Thank you for attending tonight's meeting.

To ensure that all interested parties have the opportunity to address the Board of Zoning Appeals (Board) and to maintain proper decorum, the following rules of procedure shall be followed.

1. All members of the public in attendance at Board meetings are requested to acknowledge their presence by signing the attendance sheet near the entrance to the meeting room. A copy of all sign-in sheets shall be maintained as part of the minutes.
2. Any person or persons may appear at a public hearing and submit evidence either individually or as a representative. Each person who appears at a public hearing shall give his or her name and address in an audible tone of voice for the record and, if appearing on behalf of an organization or group, the name and mailing address of the organization or group.
3. No person shall speak at a Board meeting unless invited to do so by the Chairman. During a public hearing, public testimony may be provided only after the speaker is recognized by the Chairman. All public comment shall be directed to the Chairman. Interested parties may present testimony under oath administered by the Chairman.
4. No question shall be asked of an applicant or of a Board member except through the Chairman. No person, other than Board members and the person at the podium shall be permitted to enter into any discussion, either directly or through a Board member, without the permission of the Chairman.
5. No party shall have the right to cross-examine witnesses; however the opportunity to examine opposing witnesses may be freely extended by the Chairman when conducted in an orderly manner. Intimidation of witnesses shall not be allowed.
6. Each person addressing the Chairman shall, unless further time is granted by the Chairman, limit the address to five (5) minutes.
7. Each speaker is requested to speak one time only to save time and so that others who wish to speak may do so. Speakers should not repeat points that other speakers have made. The Board will consider all of the facts. Redundancy will delay the meeting.
8. No person, except City officials or their representatives, shall be permitted to go beyond the podium or to approach the dais without the express consent of the Chairman.
9. Legible copies of relevant documents, photographs, maps, drawings, etc. will be received in the record without authentication. Relevant testimony which is not cumulative or hearsay will be received. The Chairman will rule on all evidentiary matters. Evidence may be placed in the record with an objection noted.
10. Any person who speaks from the audience without being recognized, makes personal, impertinent or slanderous remarks or becomes boisterous may be requested by the Chairman to leave the meeting immediately.