

Chairman Jack Gowan opened the public hearing.

Mr. Gowan asked if anyone was present to speak in favor of the variance.

Mike Lavoy was sworn in. Mr. Lavoy said he represented the owner and wished to offer some background. He stated that there were mistakes made by ignorance of the original applicant since it was his first project. Mr. Lavoy said that the former owner was able to obtain two building permits without first having a permit from Planning and said that the fault laid partly with Spartanburg County since the issue was not found during previous inspections. He stated that when a complaint was made about land disturbance, the error was discovered and the prior owner walked away without disclosure to the current applicants. Mr. Lavoy said that when the information was brought to light the current applicants contacted Planning in an attempt to correct the problem. He said that they were informed the variance process would be necessary to proceed with the development.

Mr. Lavoy stated that with his background as a special engineer he felt the safety concern of the structure was not an issue since it was not located in the SCDOT right of way. Mr. Lavoy added that there was another home close by that also sat in the same orientation and was in non-compliance. He reiterated that Spartanburg County employees had made visits to the site and given other approvals without noticing the problem.

He also said that they were willing to take down the other foundation and install a cul de sac per Spartanburg County Public Works, but that they would like for the board to consider granting a variance on the referenced structure.

Chairman Jack Gowan asked Mr. Lavoy if he had copies of the building permits. Mr. Lavoy said he did not have them, but could email copies to the board. He showed the board permit images from his phone. Joan Holliday asked for a copy of the image for the record as Exhibit A. Chairman Gowan instructed Mr. Lavoy to send Joan Holliday images to be added to the record.

Mike Padgett asked if there was due diligence done for the property. Mr. Lavoy said that it was not included in the information obtained for the property during that time.

Chairman Gowan thanked Mr. Lavoy and asked if anyone else wished to speak in favor of the variance. There being none, Mr. Gowan asked if anyone was present to speak in opposition. There being none, Chairman Gowan closed the public hearing.

The Board discussed the request among themselves.

Mike Padgett remarked that the builder signs off on permits that state the builder is responsible for complying with all Spartanburg County Ordinances and spells out setbacks.

Tom Davies asked how the issues came to light. Rick Carpenter said that Mr. Lavoy was correct in saying that the stop work order was issued after a complaint was made to the Engineering Division of Public Works about land disturbance.

Tom Davies made a motion to deny the variance request for a reduction in the front setback to 3.9 feet from 40 feet on the determination that the request does not meet all the criteria for granting a variance as set forth in Section 5.02-2(2) of the ULMO and the SC Local Government

Comprehensive Planning Enabling Act (SC Code of Laws, Title 6, Chapter 29) as expressed in the Staff Report. Angela Geter seconded the motion. The motion carried with a vote of 5 to 1 with Jason Patrick voting against the motion.

- B. Variance Request:**
- 4116 Anderson Mill Rd.**
- Tax Map Number: 6-24-00-058.01**
- Variance On Bufferyard**

Rick Carpenter, already sworn in, presented the following staff report(s):

Variance Request
Staff Report

White Oak Manor			
Meeting Date: May 25, 2021			
Reference Name	4116 Anderson Mill Rd.	Applicable Zoning Ordinance	ULMO
Zoning District		Partial Restrictive	
Factual Dates	Variance Application Received	4/27/2021	
	Deadline for Variance	4/27/2021	
	Public Notice	5/9/2021	
	Adjoining Property Owner Notification	5/10/2021	
	Variance Signs Posted on Property	5/10/2021	
	Pre-Submittal Meeting(s)		
Applicant	Will Rogan		
Applicant Status	Acting Agent		
Map Number	6-24-00-058.01		
Variance Case Number	VAR-09-21		

Request:

The applicant is requesting to reduce the bufferyard required in Section 2.02-2 Bufferyards

Type	Requirement	Request
Bufferyard	Bufferyard 5	Complete Reduction

Background Information:

The subject site is currently vacant, and the lot is approximately 9.12 acres in size. The applicant has proposed developing the site into a skilled nursing home. This proposed development would include a 65,375 square foot facility that contains 100 beds for residents. According to the applicant, the size of the facility is predicated on the size of another facility that is being replaced. The residents from another facility are scheduled to be moved to this location upon completion.

Total Acreage:

6-24-00-058.01 – Approximate parcel acreage is 9.12 ac.

Applicable Ordinance and Zoning:

Section 2.02-2 Bufferyards - Unified Land Management Ordinance.

Staff Planner(s):

Richard Carpenter – Planner IV

Staff Position:

Staff has determined that the proposed nursing home facility has a required bufferyard 5 along the southern boundary line. The applicant only has one bufferyard option due to spacing constraints created by the facility design. An eight (8) foot tall masonry wall would be the only bufferyard option that the applicant has available without altering their building design. The masonry wall allows for a bufferyard of five (5) feet instead of the alternative fifty (50), or twenty-five (25) foot options. However, the applicant is seeking to completely reduce this buffer requirement based on topography and functionality.

The proposed 65,375 square foot structure is considered medium intensity commercial in the Unified Land Management Ordinance. Per the applicant, the placement of the structure is predicated on topography and the occupancy load for the facility. Placement of the masonry wall, which would meet the Ordinance as it is written, would prove to be non-functional due to topographical constraints. The grade of the site at the boundary line abutting the residential properties is significantly lower than the finished grade of the facility. Therefore, if the wall were installed, it would serve no functional purpose. To satisfy the intent of the Ordinance, the applicant has worked with County staff to create an alternative landscaping plan that would buffer the commercial use from neighboring residential properties.

The applicant could meet the Ordinance by constructing the masonry wall or by proposing a smaller structure that could accommodate an alternative buffer configuration. However, the masonry wall would not be functional due to topography, and reducing the size of the structure would result in too few beds for residents. Staff support the variance request on the condition that the applicant install the submitted alternative landscape plan.

Staff Analysis:

The board may grant a variance for an unnecessary hardship if it makes and explains in writing all of the following findings.

5. There are extraordinary and exceptional conditions pertaining to the particular piece of property

Staff Analysis. The hardship for this site is based on site topography, the proposed size of the facility, and the functionality of the bufferyard requirement. The site does contain varied topography and will require retaining walls for the proposed design. The topography and proposed facility design would render the eight (8) foot masonry wall non-functional and require a variance or alternative design to achieve compliance.

See Exhibit 2 for the applicant's response to the hardship caused by strict application of the Ordinance.

6. These conditions do not generally apply to other property in the vicinity

Staff Analysis. The conditions subjected to the site do not generally apply to other adjacent properties. Parcels in the general vicinity appear to be somewhat consistent in topography.

See Exhibit 2 for the applicant's response to the hardship caused by strict application of the Ordinance.

7. 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.

Staff Analysis. The Strict application of the ordinance would not eliminate the applicant's ability to utilize this parcel for commercial purposes. However, the applicant would need to alter the design of the proposed structure to achieve compliance.

See Exhibit 2 for the applicant's response to the hardship caused by strict application of the Ordinance.

8. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the area will not be harmed by the granting of the variance.

Staff Analysis. The authorization of a variance, as it relates to the bufferyard reduction for the proposed structure, should not have a negative impact on overall community character if the recommended condition of approval is granted. The alternative landscape plan would meet the intent of the Ordinance and serve as a functional buffer between the commercial and residential use.

See Exhibit 2 for the applicant's response to the hardship caused by strict application of the Ordinance.

The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance.

Staff Analysis. The primary argument for this variance is the location of the structure in relation to the bufferyard requirements. This commercial project could proceed at this location with a smaller structure or a structure in an alternative location on the parcel.

Exhibits:

- 5. Context map**
- 6. Application**
- 7. Site design**
- 8. Frontal view of project site**

Rick Carpenter explained to the board that there were two site plans for their review. He said that one was the original site plan and the other was an alternative compliance plan. [The applicant was requesting a complete reduction in the required bufferyard 5.](#)

Mr. Carpenter showed the board aerial images of the property and referenced the residential homes adjacent to the parcel, future detention ponds, and the topography of the land. He told the board that in order to satisfy the ordinance, an 8' masonry wall was required for a commercial use adjacent to residential uses. He referred to the site plan without vegetation and said that due to the topography, an 8-foot masonry wall would not serve its intended purpose.

Mr. Carpenter directed the board to the second site plan and explained that it was an alternative compliance plan. He said that the applicant's main concern was that a reduction in the facility size would hinder the housing of the 100 beds assigned to future residents upon completion. He also stated that since the wall would not be serving its purpose that staff introduced the alternative compliance plan as a more suitable option. Mr. Carpenter said that the alternative compliance plan would satisfy the purpose of the ordinance and not diminish the functionality of the home. He said that staff supports the approval of the variance request contingent upon the installation of the alternative compliance plan.

Angela Geter asked if the applicant was satisfied with the alternative plan. Mr. Carpenter said that after much deliberation and discussion the applicant was not opposed to the alternative plan.

Chairman Jack Gowan asked what was going on with the rest of the parcel. Mr. Carpenter stated that it was green space and that no other plans were submitted to move the structure to the other areas.

Mike Padgett asked if the bordering residential property owners had expressed concerns about the alternative compliance plan instead of the required 8' masonry wall. He said that some individuals had voiced the opinion of anything less than the required 8' wall would not be sufficient. He added that the applicant could put up the 8' masonry wall, but it would not be as beneficial or serve its intended use as well as the alternative plan.

Chairman Jack Gowan asked for the length of the rear property line and how much of it would be affected by the changes in grade. Mr. Carpenter replied that it was 690' and roughly 2/3 of rear property would be affected.

Chairman Jack Gowan opened the public hearing and asked if anyone wished to speak in favor of the variance.

Clay Thrower was sworn in. Mr. Thrower said he was with Cyprus Engineering and provided a grading plan. He said that the planting of materials and the topographic land would provide a more suitable buffer for the residents. He also stated that the other portion of land would be used for other things that included detention ponds.

The Board reviewed the grading plans and discussed among themselves.

Jason Patrick asked what the mature height of the plants would be. Mr. Thrower said they would be roughly 25-30'. Darrell Weathers, County Landscape Administrator, stated that the applicant would be able to meet the requirement for trees per 100' and that there could be a blend of wall and plant material.

There was discussion among the Board members.

Darrell Weathers said that the slope could be referenced to by looking at the fence on an adjacent property and said it is a significant drop off.

Tip Pitts said that he was there to speak in support of the layout and that the intent was to satisfy the ordinance with the proposed plan.

Mr. Gowan asked if anyone else was there to speak in favor of the variance. There being none, Mr. Gowan asked if anyone was present to speak in opposition.

Saville Williams was sworn in. Ms. Williams stated that the neighbors did not receive notice and that additional fences had been installed since the referenced photos were taken. She expressed that other neighbors had not received the notification about the variance request meeting. Ms. Williams said that she and others felt the neighbors were not taken into consideration when the site was planned. She said that there was already a natural buffer in place. Tom Davies asked if she wanted the wall. She replied she did not want a wall and the trees could damage their private retaining walls and fences. Mike Padgett asked if her fence was a foot off the property line. Ms. Williams said that her fence and others were along the property line. Mr. Padgett said that a fence on a property line is joint ownership and that it belongs to both properties.

Angela Geter asked if the trees would be against the fence. Chairman Jack Gowan and Darrell Weathers said the planting distance would be a minimum of 6' from the wall. Mr. Weathers asked the applicant what the height of the trees would be planted. They said 6' to 8'.

Philip Canteline was sworn in. Mr. Canteline said that he was one of the property owners with a fence and he did not want trees directly behind it because of his wife's allergies. Mr. Canteline said he did not move to Spartanburg for he and his wife to have an eyesore in the backyard and that the retention ponds in the area were in bad shape and breed mosquitos. Tom Davies asked if he wanted an 8' wall. Mr. Canteline said that he did not want an 8' wall, and he did not want another retention pond with stagnant water.

Chairman Jack Gowan asked if anyone else wished to speak in opposition of the variance. There being none, he closed the public hearing.

The Board discussed the project among themselves.

Chairman Jack Gowan said that the applicants would like to install a more natural buffer instead of the concrete wall and that, in doing so, sounds like an attempt to be a good neighbor.

There was much discussion about retention ponds and Chairman Jack Gowan stated that the variance was not about retention ponds and reiterated that it was a state requirement to prevent flooding and storm water runoff.

Tom Davies addressed the members of the audience and said that the adjoining property owners were sufficiently notified by a notice in the paper as well as the posting of signs along the property. Philip Canteline disagreed that signs were posted. Darrell Weathers stated that he had posted the signs himself.

Angela Geter made a motion to approve the variance request for the alternative compliance plan on the determination that the request meets all the criteria for granting a variance as set forth in

Section 5.02-2(2) of the ULMO and the SC Local Government Comprehensive Planning Enabling Act (SC Code of Laws, Title 6, Chapter 29) as expressed in the Staff Report. Jason Patrick seconded the motion. The motion carried with a vote of 6 to 0.

4. Other Business - None

5. Adjourn

There being no other business, Mike Padgett made a motion to adjourn. Angela Geter seconded the motion. The motion carried with a vote of 6 to 0.