



Spartanburg County

Planning and Development Department

Board of Zoning Appeals MINUTES

September 29, 2020

Members

Present:

Jack Gowan, Jr., Chairman
Michael Padgett, Vice Chairman
Louise Rakes
Kae Fleming
Thomas Davies
Jason Patrick

Members

Absent:

Glenda Brady
Marion Gramling
Angela Geter

Staff Present:

Joan Holliday, Interim Planning Director
Telly Shinas, Development Manager
Richard Carpenter, Planner IV
Rachel Dill, Development Coordinator
Ginny DuPont, County Attorney

NOTICE: Pursuant to Section 30-4-80 of the S.C. Code of Laws, the annual notice of meetings for this Board was provided on or before January 1, 2015 via the County website. In addition, the Agenda for this Meeting was posted on the bulletin board at the entrance to the Administration Building as well as on the County's website and was emailed to all persons, organizations, and news media requesting notice.

1. Call to Order

Chairman Jack Gowan, Jr. called the meeting to order.

2. Approval of Minutes of June 30, 2020 Meeting

Thomas Davies made a motion to approve the minutes. Kae Fleming seconded the motion which carried with an affirmative vote of 6 to 0.

3. Unfinished Business –

Vice Chairman, Mike Padgett asked if County Attorney, Ginny Dupont, had researched requirements regarding setbacks for open decks (no roof structure) as requested in the previous meeting. Ms. Dupont said that the matter was still being looked into.

4. New Business –

A. Variance Request:

Ambica 9 LLC- 4019 South Church Street Ext., Spartanburg

Tax Map Number: 6-29-07-019.01
 Variance on front setback
 Variance on side setback
 Variance on front plant strip

Rick Carpenter was sworn in and presented the Staff Report for Ambica 9 LLC.

Variance Request
 Staff Report
 Case # VAR-07-2020

Ambica 9 LLC			
Meeting Date: September 29, 2020			
Reference Name	4019 S. Church St.	Jurisdiction	County (ULMO)
Factual Dates	Variance Application Received	7/1/2020 & 9/14/2020	
	Deadline for Variance	9/1/2020	
	Public Notice	8/3/2020	
	Adjoining Property Owner Notification	8/7/2020 & 9/14/2020	
	Variance Signs Posted on Property	8/10/2020 & 9/1/2020	
Applicant	Hitesh Patel		
Applicant Status	Owner/Operator		
Map Number	6-29-07-019.00		

Request:

1. The applicant is requesting to reduce the front setback to 22.9' from 50' as required in section 2.02-1 Dimensional Standards, Table 3b – Commercial & All Other Uses – Setbacks & Other Requirements

Section 2.02-1 Table 3b Front Yard Setback	
Code Requirement	Requested Setback
50 Feet	22.9 Feet

Background Information:

The subject site is currently developed and is occupied by Roebuck ABC. The applicant is proposing an 864 square foot expansion to the existing liquor store. The current structure, which was constructed in 1975, is approximately 960 square feet. The existing liquor store was constructed prior to the Unified Land Management Ordinance taking effect.

Total Acreage:

6-29-07-019.00 (.16ac.), 6-29-07-018.00 (0.017ac.)

Applicable Ordinance and Zoning:

Unified Land Management Ordinance (ULMO) Section 2.02-1, Dimensional Standards Table 3b, Commercial & All Other Uses – Setbacks and Other Requirements

Staff Planner(s):

Richard Carpenter – Planner IV

Staff Position:

Roebuck ABC is a nonconforming use based on an insufficient bufferyard, insufficient setbacks from street right-of-ways along South Church Street and McAbee Road, and the side setback per Section 4.06-1 Types of Nonconformities. Section 4.06-5 Change of Nonconforming Use states that existing nonconforming structures may expand to any size provided the use can meet setback, bufferyard, and parking requirements.

Currently, the Roebuck ABC does not meet Section 2.02-5 Off-Street Parking and Loading – 4 Design Standards (a)(d)(e). The parking spaces along the store frontage do not meet the minimum standards for space length based on the available space between the concrete walkway and property line. Section (d) states that all off-street parking spaces shall be separated from walkways, sidewalks, streets, or alleys, and required yards and buffer areas by a wall, fence, curbing, or other protective device. The parking spaces for the subject property and the adjacent arterial and collector streets are not separated by any curbing or other protective device. Additionally, the subject parcel does not meet the requirement for landscaping, curbing or other approved barriers along boundaries to control entrance and exit of vehicles or pedestrians. It is these issues that would not allow the applicant to add additional parking along the front of the establishment.

Roebuck ABC would need to acquire one (1) additional variances to meet these requirements to alter their non-conforming use. The front yard plant strip requirement is being partially waived by planning staff. Doing so will allow the applicant to avoid obtaining a third variance.

Staff Analysis:

Under the South Carolina Local Government Comprehensive Planning Enabling Act (Section 6-29-800 of the South Carolina Code of Laws), the Board/Commission is required to base their consideration for a variance on the following four (4) criteria found below.

1. Are there extraordinary and exceptional conditions pertaining to the particular piece of property?

Staff Analysis. The subject parcel is a corner lot and has two (2) street frontages, one along S. Church Street, and along McAbee Road. South church Street is classified as an arterial street with a front setback of fifty (50) feet from the street right-of-way. McAbee Road is classified as a collector street and has a setback of forty (40) feet from the street right-of-way.

See Attachment 2 for the applicant’s response to the hardship caused by strict application of the ordinance.

2. Do the extraordinary conditions that exist on your property apply generally to other properties in the area?

Staff Analysis. It is staff interpretation that a variance request based on front yard setbacks along HWY 221, as it relates to the uniqueness of the property, does meet the test set by Bennet v. Sullivan’s Island Board of Adjustment. This parcel is a corner lot and is unique in that it has two (2) front yard setbacks instead of only one (1). It is this combination of front yard setbacks that make this parcel unique to the immediate commercially developed area.

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

3. Because of the extraordinary conditions identified in #1 above, will applying the requirements of the Unified Land Management Ordinance to this particular piece of property effectively prohibit or unreasonably restrict the utilization of the property?

Staff Analysis. Strict application of the ordinance would limit the applicant's ability to expand their business in the direction that they desire. Due to its non-conforming state, Roebuck ABC would need to severely alter their proposed design concept in order to meet parking and setback requirements. The combination of both front yard setbacks significantly limits the applicant's available options for expansion.

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

4. Will the authorization of a variance be of substantial detriment to adjacent property or to the public good? Will the character of the area be harmed by the granting of the variance?

Staff Analysis. The proposed development project would not increase parking, nor would it encroach further into the front yard setback. The parking will not increase along the storefront, and it is staff interpretation that the development would not be of substantial detriment to adjacent property or to the public good.

See Attachment 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 above mentioned hardship, which is not self-imposed, would severely limit the applicant's ability to expand the business without a variance. Without a variance, the applicant would have access to approximately 581 square feet of developable space.

Attachments:

1. Context map
2. Application
3. Adjacent property notification
4. Side view of project site
5. Frontal view of project site
6. Site restrictions

Mr. Carpenter presented the Board with an aerial view, site plan, plat, and surrounding properties of 4019 South Church Street Ext. He showed the board several images that clarified the issues the applicant had experienced.

Mr. Padgett asked for the exact front setback variance request from the required 50 feet front setback. Mr. Carpenter said that the requested amount was 28.1 feet. Mr. Padgett asked if the addition was to be built in line with the existing facility. Mr. Carpenter said that it would be built

in line with the existing structure. Mr. Padgett also inquired as to whether the parking spaces would be increased. Mr. Carpenter stated that the parking spaces would actually be decreased and lose one space due to the front plant strip that was agreed upon by the applicant and planning staff. He added that the corner parking lot space would be removed and a plant strip would be installed to alleviate a potential safety issue.

Chairman Gowan opened the public hearing for anyone to speak in favor of the variance request regarding the front setback. There being none, he asked if anyone present would like to speak in opposition of the variance. There being none, he closed the public hearing for the board to discuss among themselves.

Mike Padgett made a motion to grant the front setback variance based 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. Thomas Davies seconded the motion. The motion carried with a vote of 6 to 0.

B. Variance Request:

Rick Carpenter, already sworn in, presented the following Staff Report for Ambica 9 LLC’s second variance request.

Variance Request
Staff Report
Case # VAR-06-2020

Ambica 9 LLC			
Meeting Date: September 29, 2020			
Reference Name	4019 S. Church St.	Jurisdiction	County (ULMO)
Factual Dates	Variance Application Received	7/1/2020 & 9/14/2020	
	Deadline for Variance	9/1/2020	
	Public Notice	8/3/2020	
	Adjoining Property Owner Notification	8/7/2020 & 9/14/2020	
	Variance Signs Posted on Property	8/10/2020 & 9/1/2020	
	Applicant	Hitesh Patel	
Applicant Status	Owner/Operator		
Map Number	6-29-07-019.00		

Request:

2. The applicant is requesting to reduce the side setback to 5’ from 15’ as required in section 2.02-1 Dimensional Standards, Table 3b – Commercial & All Other Uses – Setbacks & Other Requirements

Section 2.02-1 Table 3b Front Yard Setback	
Code Requirement	Requested Setback
15 Feet	5 feet

Background Information:

The subject site is currently developed and is occupied by Roebuck ABC. The applicant is proposing an 864 square foot expansion to the existing liquor store, which was constructed in 1975. The existing liquor store was constructed prior to the Unified Land Management Ordinance and does not meet the required front or side yard setbacks, and the buffer strip requirement.

Total Acreage:

6-29-07-019.00 (.16ac.), 6-29-07-018.00 (0.017ac.)

Applicable Ordinance and Zoning:

Unified Land Management Ordinance (ULMO) Section 2.02-1, Dimensional Standards Table 3b, Commercial & All Other Uses – Setbacks and Other Requirements

Staff Planner(s):

Richard Carpenter – Planner IV

Staff Position:

Roebuck ABC is a nonconforming use based on an insufficient bufferyard, insufficient setbacks from street right-of-ways along South Church Street and McAbee Road, and the side setback per Section 4.06-1 Types of Nonconformities. Section 4.06-5 Change of Nonconforming Use states that existing nonconforming structures may expand to any size provided the use can meet setback, bufferyard, and parking requirements. The applicant’s proposed encroachment into the side yard setback is the least intrusive option for the proposed development due to double front yard setbacks. Expanding the business towards Benny Lane would give the applicant the ability to retain parking along McAbee Road and not encroach into the front setback.

Roebuck ABC would need to acquire one (1) additional variances to meet these requirements to alter their non-conforming use. The front yard plant strip requirement is being partially waived by planning staff. Doing so will allow the applicant to avoid obtaining a third variance.

Staff Analysis:

Under the South Carolina Local Government Comprehensive Planning Enabling Act (Section 6-29-800 of the South Carolina Code of Laws), the Board/Commission is required to base their consideration for a variance on the following four (4) criteria found below.

1. Are there extraordinary and exceptional conditions pertaining to the particular piece of property?

Staff Analysis. The subject parcel is a corner lot that has two (2) street frontages, one along South Church Street, and one along McAbee Road. South church Street is classified as an arterial street with a front setback of fifty (50) feet from the street right-of-way. McAbee Road is classified as a collector street and has a setback of forty (40) feet from the street right-of-way. In order to expand the existing structure, the applicant must encroach into one of the front setbacks and the side yard

setback. It is the position of the structure and the imposed setbacks that create extraordinary conditions with strict application of the ordinance.

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

2. Do the extraordinary conditions that exist on your property apply generally to other properties in the area?

Staff Analysis. It is staff interpretation that a variance request based on side yard setbacks along South Church Street, as it relates to the uniqueness of the property, does meet the test set by *Bennet v. Sullivan's Island Board of Adjustment*. This parcel is unique in that it has two front yard setbacks, with the structure positioned within three of the four setbacks imposed on the property. While many commercial properties along South Church Street exhibit some of the same characteristics as the subject area, they do not, generally, have multiple front setbacks and structure orientation difficulties compounded.

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

3. Because of the extraordinary conditions identified in #1 above, will applying the requirements of the Unified Land Management Ordinance to this particular piece of property effectively prohibit or unreasonably restrict the utilization of the property?

Staff Analysis. Due to the extraordinary conditions identified in the first criteria, literal interpretation of the ordinance would make compliance unduly excessive. Due to its non-conforming state, Roebuck ABC would need to severely alter their proposed design concept in order to meet parking and setback requirements. Encroaching into the side yard setback would be less impactful as it would allow the applicant the option to retain the parking that is established along McAbee Road. It is these restrictions that would unreasonably restrict the utilization of the property with strict application of the ordinance.

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

4. Will the authorization of a variance be of substantial detriment to adjacent property or to the public good? Will the character of the area be harmed by the granting of the variance?

Staff Analysis. The proposed expansion would match the existing storefront and not encroach into the adjacent Benny Lane. The parking and traffic will not increase along with the side yard setback, and it is staff interpretation that this would not be contrary to the public interest. Approving the variance would be in the spirit of the ordinance and allow for substantial justice to be done. Additionally, the adjacent property owner has agreed to sell the applicant a portion of property in order to accommodate the proposed construction.

See Attachment 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 above mentioned hardship, which is not self-imposed, would severely limit the applicant's ability to expand the business without a variance. Without a variance, the applicant would have access to approximately 581 square feet of developable space.

Attachments:

- 7. Context map**
- 8. Application**
- 9. Adjacent property notification**
- 10. Side view of project site**
- 11. Frontal view of project site**
- 12. Site restrictions**

Chairman Jack Gowan, Jr. asked if the side setback would cause a detriment for ingress and egress for the adjacent private drive. Mr. Carpenter said that it would not cause a problem and that the developer had been in touch with the owner of the private drive to potentially purchase some of the land.

Mike Padgett made a motion to grant the side setback variance based 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. Kae Fleming seconded the motion. The motion carried with a vote of 6 to 0.

Chairman Jack Gowan, Jr. moved on to the third variance request for the planting strip for Ambica 9 LLC. Mr. Carpenter explained that the request for a variance on the front plant strip was approved administratively and did not need to be considered by the Board. Chairman Gowan asked if the plant strip would cause an issue with site triangles. Mr. Carpenter said that the plant material to be used would be low growth and would not interfere with the site triangle.

C. Variance Request:

McCarter Mechanical-685 John Dodd Road, Spartanburg
Tax Map Number: 2-54-00-003.03
Variance on Property Screening

Richard Carpenter informed the Board that the variance request for McCarter Mechanical was withdrawn.

5. Other Business –

Introduction of new planning staff members. Richard Carpenter, Planner IV and Telly Shinas, Development Manager.

6. Adjournment

There being no other business, Thomas Davies made a motion to adjourn. Kae Fleming seconded the motion. The motion carried with a vote of 6 to 0.