



South Carolina Planning Education Advisory Committee (SCPEAC)

February 8, 2024

NOTICE OF DECISION

Title of Program: Board of Zoning Appeals Variance Training

Organization: York County Planning Department

The following action has been taken by the SCPEAC on this application:

APPLICATION RECEIVED Date: December 4, 2023

APPLICATION REVIEWED Date: December 6, 2023

ACCEPTED WITHOUT OBJECTION Date:

- a) X ACCREDITED for: 165 min. CE credits: 3.0
- b) _____ DENIED ACCREDITATION
- c) _____ RETURNED for more information

If accredited:

- a) Authorized Course No.: 2023-08
- b) Date of accreditation: December 6, 2023

Certification Signature, MASC Administrative Representative: *L.P. Floyd*

Certification Signature, SCPEAC Representative: *Stephanie Monroe Tilerson*

**For further information, contact Urica Floyd at 803-354-4754
or the committee at SCPEAC@masc.sc.**

APPLICATION FOR ACCREDITATION OF A CONTINUING EDUCATION PROGRAM

NOTE: This certification form, together with the required information referenced therein, shall be submitted to the Committee. If no objections are raised by a member of the SCPEAC within 10 business days of receipt, the continuing education program shall be considered accepted. If an objection is raised, a teleconference meeting shall be scheduled with appropriate public notice, as soon as reasonably possible, to review the application.

Applications are due no later than 30 days prior to the first scheduled presentation of a program or class. The Committee will consider extenuating circumstances where the 30 day deadline cannot be met.

1. Name and address of organization providing or sponsoring the orientation program:

- a. Organization Name: _____
- b. Address: _____
- c. City: _____ State: _____ Zip Code: _____
- d. Telephone: _____ Email: _____

2. Contact Information:

- a. Name of Contact Person: _____
- b. Title: _____
- c. Telephone: _____ Email: _____

3. Information on program:

- a. Title of Program: _____
- b. Date(s) & Location(s): _____
- c. Brief description of the program and its content: _____

4. Method of presentation: _____

5. Description of materials to be distributed: _____

6. When are materials distributed (before or at the time of the program): _____

7. Instruction time: Indicate the total number of minutes of instruction time: _____

NOTE: Breaks, meals, and introduction should not be counted. A reasonable period of Q & A should be included and counted.

8. Method of Advertisement (describe how you plan to notify local officials of program): _____

9. Required attachments:

- a. Brochure, if available
- b. Course Presenter(s) and credentials (include brief resumes and qualifications)
- c. Copies of all handouts and course materials
- d. Evaluation Form and method of evaluation (each program must be evaluated)

10. Certification. By submitting this application, the applicant agrees to:

- a. Allow in-person observation, without charge, of the Program by the SCPEAC Committee members. Any food, travel, or lodging costs will be the responsibility of the Committee member(s).
- b. The applicant acknowledges that its approval for this Program may be withdrawn for violations of the regulations or failure to comply with the agreements and representations contained herein and as may be required by the SCPEAC.

11. Application and program materials shall be submitted:

- a. Electronically to each of the Committee members emails as listed on the website (<https://www.scstatehouse.gov/SCPEAC/members.htm>).

A. *There are extraordinary and exceptional conditions pertaining to the particular piece of property;*

Analysis: Due to the road expansion and Pennies for Progress projects, the site has lost swaths of property along both rights-of-way. However, there is a narrow one-foot wide strip of land that staff believes a sign could be located in. Staff believes the proposed 20 square foot sign is more than what they need. Therefore, staff finds the proposed variance **does not meet** this criteria.

B. *These conditions do not generally apply to other property in the vicinity;*

Analysis: All the properties along this road have lost frontage. And yes, the subject property may have lost an extra 100 feet. However, since all the lots have lost some, this condition applies to all properties in the vicinity. Therefore, staff finds the proposed variance **does not meet** this criteria.

C. *Because of these conditions the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;*

Analysis: There is one place on site in which the sign can be placed without the necessity of a variance; the one foot wide narrow landscape strip. And yes, it may be pretty difficult to see from the road, it will be visible to drivers with excellent eyesight. Because the applicant has other alternatives to the proposal that do not require a variance, staff finds the proposed variance **does not meet** this criteria.

D. *The authorization of the 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.*

Analysis: Staff believes the proposed location of the sign will make for an unattractive appearance from the road which will be substantially detrimental to the public good. Therefore, staff finds the proposed variance **does not meet** this criteria.

BZA Variance Training Survey Questionnaire

Directions: Please indicate your level of agreement or disagreement with each of these statements regarding your recent participation in the Variance training. Place an "X" mark in the box of your answer.

How long have you been on the Board?

	Excellent	Good	Fair	Poor	Comments
1. Quality of Instruction					
2. Relevance of Material					
3. Organization of Course					
4. Participation					
5. Interest of material					
6. Length of training was sufficient					

Additional Comments:

Rachel E. Grothe, MCRP
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(714) 366-9971
R.Grothe@Gmail.com

Education

California Polytechnic State University, San Luis Obispo, CA
Master of City and Regional Planning with distinction - June 2014
California State University Dominguez Hills, CA
Bachelor of Arts Sociology with honors in the major - May 2012

Work Experience

Zoning Administrator

County of York, SC

12/20-current

- Supervises a staff of eight, including, Planners, Code Enforcement Officers, a Landscape Architect and Zoning Technicians.
- Interprets and applies applicable local code, ordinances and regulations to land use related issues.
- Receives, reviews, prepares and processes projects including applications for variances, special exceptions and subdivision plats.
- Writes clear and concise staff reports and provides recommendations to the Board of Zoning Appeals.
- Delivers effective presentations to the Board of Zoning Appeals.
- Work closely with Code Enforcement staff to initiate enforcement proceedings when violations occur.
- Provides written decisions regarding the interpretation of the zoning code.
- Serves as the liaison and performs all necessary functions in support of the Board of Zoning Appeals.

Associate Planner/Planner II

City of Spartanburg, SC

4/19-12/20

- Received, reviewed, prepared and processed projects including applications for rezones, variances, special exceptions, architectural designs, site plans and subdivision plats.
- Reviewed complex planning studies, development applications and reviewed consultant proposals.
- Assisted other City departments to conduct research and prepare reports for community development related matters, and participated in neighborhood planning efforts with the public.
- Informed and advised City employees, Councilmembers and other board members about interpretation of the zoning ordinance and the City's comprehensive plan.
- Served as a liaison and performed all necessary functions in support of Planning Commission, Board of Zoning Appeals and Historic Architecture Review Board.

Associate Planner I

City of Santa Cruz, CA

6/16-3/19

- Provided information to the public at the counter, over the phone and via email regarding zoning, planning permits and property specific information.
- Advised and conferred with architects, builders, attorneys, contractors, engineers and the general public regarding City development policies, standards and guidelines.
- Prepared and presented detailed reports on development proposals including use permits, variances and design permits to government bodies.
- Managed short term rental program including approvals and providing information to the public.
- Reviewed plan checks for building permits.
- Provided consultations to homeowners on the feasibility of legalizing unpermitted ADUs.
- Checked commercial, industrial and residential development plans for zoning clearance; process permit applications.

Assistant Planner

County of Santa Clara, CA

7/15- 5/16

- Provided information to the public at the counter, over the phone and in writing regarding various County policy documents and procedures.
- Interacted with the public including owners, builders, architects and engineers by providing accurate information in a friendly and timely manner.
- Conducted reviews of various development applications including use permits, site approvals and other County applications.
- Reviewed building permit plans for conformance with County standards.
- Managed the Williamson Act Program and acted as the Planning liaison to other involved departments and the public regarding entering into new contracts and non-renewal of contracts.

Assistant Planner

M Group-Consulting Code Enforcement City of Santa Clara

9/14-6/15

- Received complaints of code violations from the public, City staff and others; conducted field surveys and inspections and investigated to determine compliance with codes and locate unlicensed activities.
- Evaluated information pertaining to relevant ordinances and recommended appropriate course of action.
- Contacted responsible parties, issued notices, initiated other corrective action, and followed-up to ensure compliance with codes and ordinances; performed fieldwork to post notices and distributed materials.
- Responded to general inquiries from the public, City staff, and others, interpreted and explained City codes, ordinances, policies, and procedures pertaining to code enforcement.

Planning Intern

City of Arroyo Grande-Arroyo Grande, CA

4/13-9/14

- Assisted the public at the front counter, in writing and by phone with parcel data including questions pertaining to zoning regulations, permitted uses, other land use issues, and the City's development process, all while practicing excellent customer service.
- Prepared staff reports for projects and presented findings at community meetings.
- Acted as a consultant to the City in the creation of a historic preservation plan as a part of my degree.

Visitor Center Program Director

Friends Outside- California Men's Colony-San Luis Obispo, CA

7/12-10/13

- Recruited, trained and supervised Children's Activities Coordinator and Transportation Coordinator.
- Assisted visitors with information and resources regarding prison rules and regulations.
- Maintained accurate and complete fiscal reports, submitting them on time.
- Supervised record keeping regarding childcare, transportation and any other services provided.
- Maintained professional working relationships with prison staff in to facilitate program goals.

Volunteer Experience

Board Member-Secretary

7/19-8/20

Uplift Outreach Center, Spartanburg, SC

The mission of the Uplift Outreach Center is to support LGBTQ+ youth and provide them with a safe and affirming place to be their complete selves.

Historic Landmark Commissioner

5/15-6/16

City of San Jose, CA

- Heard staff reports and provided recommendations on projects involving alterations to landmark buildings.
- Maintained the Historic Resources Inventory and where appropriate, added properties identified through proposals to the inventory.



Board of Zoning Appeals Variance Training

September 2023



Powers, Duties, and Responsibilities of the Board

- Derived from SC Planning Enabling Act of 1994
 1. Appeals – alleged errors of Zoning Code decisions made by administrative staff
 2. Variances – requested relief from specific Zoning Code requirements
 3. Special Exceptions – authorize uses to be located on specific sites under specific conditions
 4. Remand – ability to send cases related to first three powers back to staff for more information

@planningpeeps

"YOU WERE DOING 46 IN A 35"

"CAN I GET A VARIANCE?"

"HERE'S YOUR TICKET"

Purpose of a Variance

To permit modifications of an otherwise legitimate restriction in the exceptional case where, due to unusual conditions, it becomes more burdensome than intended, and may be modified without impairment to the public purpose.

Powers, Duties, and Responsibilities of the Board


From SC Code of Laws, Section 6-29-800

- (A)(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 an unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the four required findings

ALL FINDINGS MUST BE MET. It is incumbent upon the applicant to demonstrate there is an unnecessary hardship.

Test of Hardship (AKA Findings of Fact)

- 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.



Extraordinary and Exceptional Circumstances

(special characteristics)

Examples:

- Severe topography, unique natural feature
- Unusual shape of parcel
- Nonconformity created by a public project (road widening)
- Infrastructure locations (water/sewer line in the way and cannot be moved elsewhere)



Conditions Do Not Apply to Other Property in Vicinity

(uniqueness)

- Elements:
 - The *extraordinary and exceptional* conditions
 - That apply to this *particular* piece of *property*
 - *Do not apply* to *other property* in the *vicinity*.
- Examples—think of this as the opposite of the first finding
 - If the extraordinary/exceptional condition on the subject property is severe topography, then nearby parcels do not also have severe topography.

Unreasonably Restrict Utilization of Property (hardship)

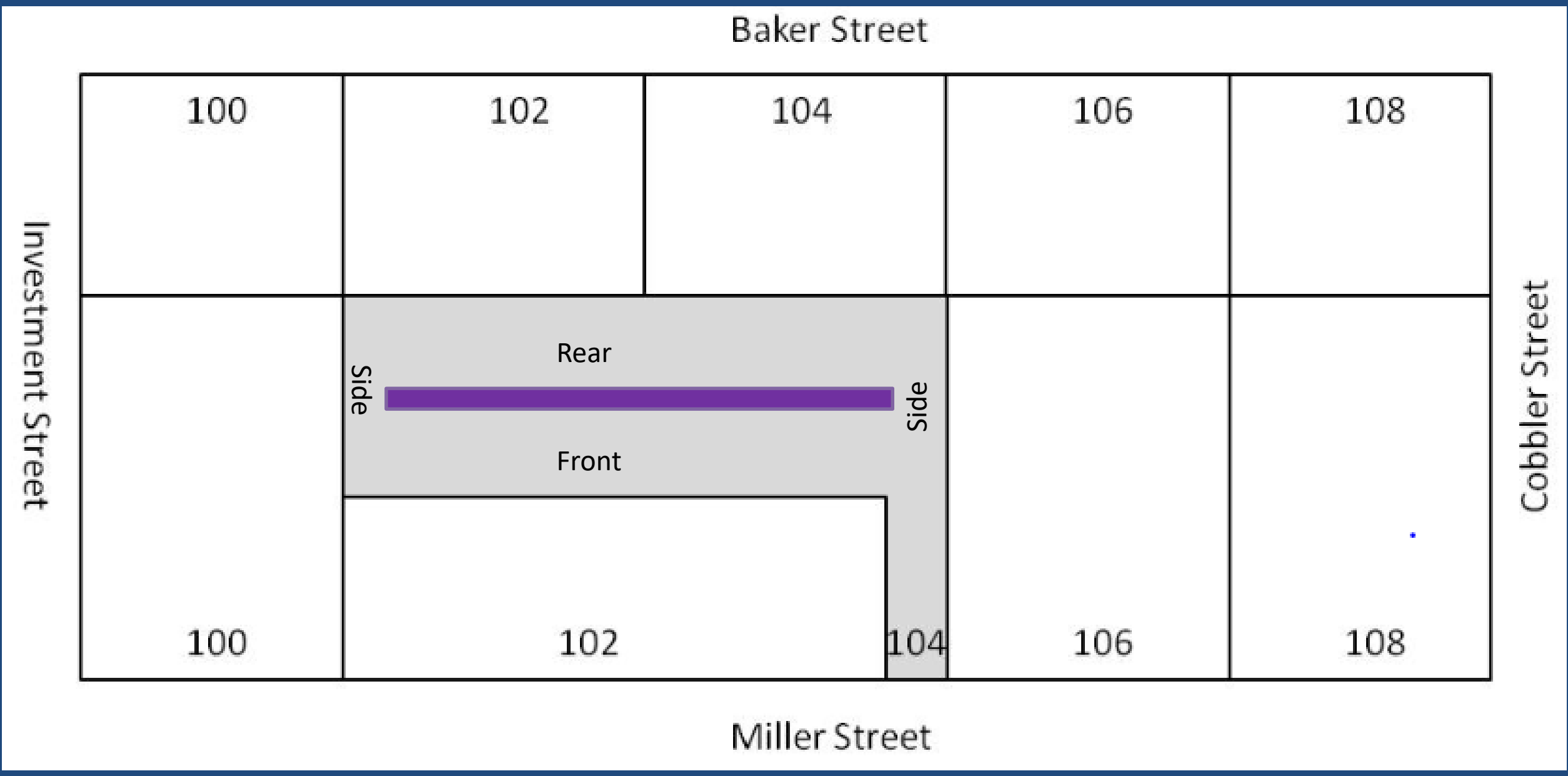
- Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
- Elements:
 - ***Due to*** the property's ***extraordinary and exceptional*** conditions,
 - if we applied the ordinance's requirements to this particular piece of property,
 - the ***use*** of the property would be ***effectively prohibited*** or ***unreasonably restricted***.

Questions to consider:

- Is there no viable use of the property due to the regulation?
- Is there no viable alternative to a variance?
- Would the proposed structure or location be possible without the extraordinary property condition?

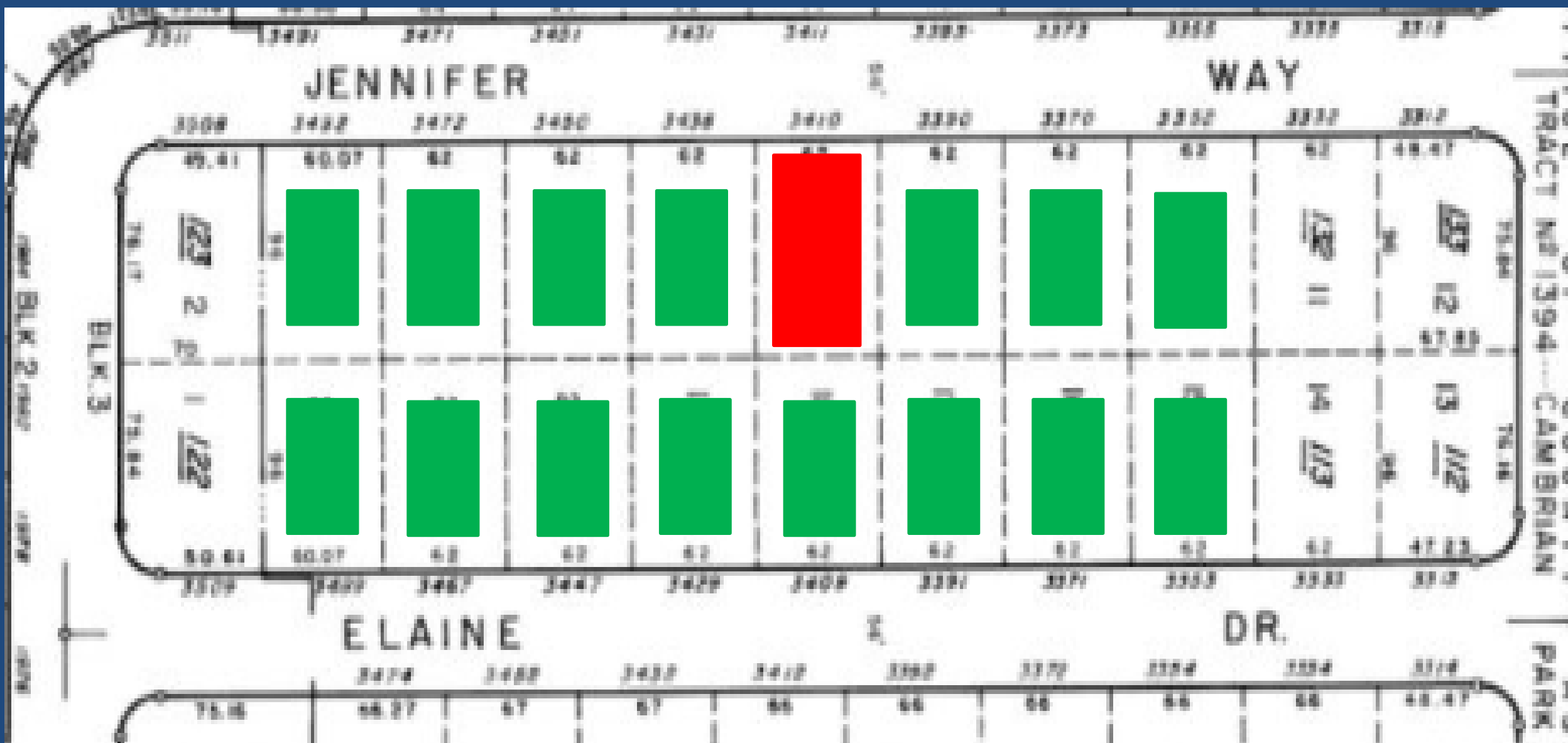
Hardship, continued

- Examples:
 - If the Board does not grant the request for a variance to reduce the required setback for a home, the property owners will not be able to build anything on their lot due to the unusual shape of their lot.
 - If the Board does not grant a variance to place a sign closer to a setback line than otherwise would be allowed, no one will be able to see the sign due to a cluster of grand trees that are in the way, but that the County will not allow to be removed.



What is NOT a Hardship

- Examples:
 - Property owner is requesting a setback variance to build a 6,000 s.f. home. The lot is traditional in shape, and similar to lots in the neighborhood that have 2,000 s.f. homes, which fit within the setbacks.
 - Property owner is requesting permission to cut down several grand trees in order to construct a large addition on their home. There is another location, however, they will need to install a retaining wall, which will add significant cost to the project.





Convenience

The fact that a certain design feature or the location of design elements may be more aesthetically pleasing or more conveniently located, such as a taller roof or location of an addition, generally is not a hardship.

Substantial Detriment

(public harm)

- Examples:
 - Granting a setback variance for a new home will **NOT** cause public harm because the existing homes on adjacent parcels are set back the same proposed distance and the new home will not create visibility problems for travelling vehicles.
 - Granting a buffer variance for a pool within the LW buffer **WOULD HARM** the public good, as the preservation of the buffer is important to the health of the lake.



Variance – Should Be Sparingly Granted

Granting a variance is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions in regulation.



Statutory Standards

The Board must follow statutory standards. In exercising its discretion, the Board is not left free to make any determination that appeals to its sense of justice. It must abide by and comply with the standard prescribed by statute and the local ordinance.

Conduction of Board Business

- The proper conduction of a Board meeting is governed by County Ordinances, Board Bylaws, and Robert's Rules of Order.
- All questions should be asked of applicants and/or staff during the presentations.
- The Chair is tasked with closing the public hearing portion of the meeting then requesting that a motion be made to allow the Board to consider what action it will take.

Motions

- A member of the Board should “move that we [approve or deny] the request for the [variance/special exception].”
- The motion will require a second in order to open the item for discussion.
- Neither the maker nor the seconder is committed to voting favorably on the motion. The purpose of the motion is to provide an opportunity for discussion and a vote.

Motions (Continued)

- Once a motion and second have been made, the Chair should recite the information so that the motion is formally before the Board for consideration
- Example: “There is a motion and second to approve the variance.” At that time, the Chair should open the item for discussion, and the member who made the motion has the floor to begin discussion.
- The purpose of the discussion is to consider the appropriate criteria and establish the findings by the Board.
- Example: after discussion, the chair says, “If there is no further discussion, we have a motion to approve the variance.”
 - “All those in favor”
 - “All those opposed”

Responsibility of Staff

To make the job of the Board easier by ...

- Providing the Board with enough information in order to make an informed decision;
- Provide staff analysis and findings of fact with supporting evidence to the Board and, if approved, to the applicant (in writing);
- Recommend conditions of approval;
- Act as the subject matter expert and answer any questions about the Zoning Code and the project;
- All the paperwork!

Staff will ALWAYS make findings....

- I promise you won't hurt our feelings if you don't agree with us.
- However, if you do not agree with one or more staff findings, the Board must make new findings.
- State of SC says the Board MUST MAKE THE FINDINGS IN WRITING. (Staff notes your findings and does this for you. Easy, right?!)
- Findings protect the Board's decision should it be appealed to Circuit Court.
- If you agree with staff, you can simply say as much and that you accept the findings as presented. (See, making your life easier!)

Finding Exercise

- Scenario: Board does not agree with staff's findings and recommendation for denial of a setback variance for a sign.
 - Write out your findings on your worksheet **APPROVING** the variance.

Limitations on Granting a Variance

Per SC Code of Laws, Section 6-29-800(2)(d)(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:
 - 155.1080(B) – Airport Overlay variances require input from the FAA and the airport
 - 155.1080(C)(3) – Variance cannot be granted that would create a new lot that is less than the minimum lot size.
 - 155.1080(E) – Due to compounding property access issues in the County, variance requests for the minimum lot width requirements of this Chapter are strongly disfavored.

Conditions of Approval

Per SC Code of Laws, Section 6-29-800(2)(d)(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.



General Authority of the Board

A Board of Zoning Appeals (BZA) is a quasi-judicial board, which has authority to hear specific types of cases authorized by South Carolina law. The legislature established three types of cases over which the BZA has jurisdiction: (1) appeals from decisions of administrative official; (2) variance requests; and (3) special exception requests. S.C. Code Ann. § 6-29-800(A) (1976, as amended). York County's Ordinances reflect those same classifications in Section 155.1227

Review of Board Decisions on Appeal

On appeal, the review of a zoning board decision by a circuit court is limited to determining whether a board decision is correct as a matter of law. S.C. Code Ann. § 6-29-840. Whether a Board erred as a matter of law has been the subject of numerous decisions of the South Carolina Court of Appeals and the South Carolina Supreme Court, and that determination includes consideration of the following factors: whether a decision is found to be arbitrary, capricious, has no reasonable relationship to a lawful purpose, or if the decision reflects an abuse of discretion. See *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000); see also *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997); see also *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 755 (1953).

Board Decisions Continued...

There exists a plethora of case law delving into the finer points of decisions made by Zoning Boards, including issues involving vested rights, due process, nonconforming uses, etc. ...

For example, what is the overarching principle of variances?

- A variance is a deviation from the standard rule set forth by County Council. As a result, the primary point in case law is that variances are the exception to the default rules that everyone must follow.
“Granting a variance is an exceptional power [that] should be sparingly exercised and can be validly used only [when] a situation falls fully within the specified conditions.” *Rest. Row Assocs., v. Horry County*, 335 S.C. at 215, 516 S.E.2d at 445-46 (1999) (*emphasis added*).

Thus, in considering whether to grant a variance, it is critical that the Board considers the statutory criteria (also adopted as part of the York County Code of Ordinances) and facts presented when discussing a variance request before a vote is taken to grant or deny a request. This ensures that the Board has followed statutory requirements, County ordinances, and authoritative case law in making its decision. As such, it becomes a defensible decision in the event it is appealed. The record should be reflective that the evidence supports the Board’s decision.