

MEMORANDUM

TO: Chapel Hill Board of Adjustment

FROM: Ben Hitchings, Director, Planning and Development Services
Jake Lowman, Senior Planner
Becky McDonnell, Planner II

SUBJECT: 1141 Smith Level Road: Dimensional Variance
(PIN 9777-64-0073, Project #19-078)

DATE: August 1, 2019

Attached for your consideration is an application for a variance from floor area regulations for accessory apartments in the Residential-Low Density 5 (R-LD5) zoning district, in Appendix A of the Chapel Hill Land Use Management Ordinance.

INTRODUCTION

The applicant, Heather Washburn, is requesting a variance from the maximum floor area for a detached accessory apartment. The subject property is located at 1141 Smith Level Road, at the intersection of Woodward Way (Attachment 4). The property is in the Residential-Low Density 5 (R-LD5) zoning district and the Orange County Property Identifier Number is 9777-64-0073.

The attached applicant's materials include an application form, narrative, statement of justification, site plan, floor plan options, and area map (Attachment 4).

EXISTING CONDITIONS

The 10.16 acre subject lot is in the Residential-Low Density 5 zoning district, and contains an existing 1,293 square foot single-family residence and four existing accessory structures, with gravel driveways on both Smith Level Road and Woodward Way. The lot slopes moderately downward to the west, and the vegetation is principally hardwood trees.

BACKGROUND

June 21, 2019: Application submitted for a Dimensional Variance by Heather Washburn

May 18, 2018: Zoning Compliance Permit issued for the construction of a new single-family residence at 111 Woodward Way, which is on the same zoning lot as 1141 Smith Level Road, conditioned upon the reduction of floor area of the existing 1,293 square foot single-family residence to no greater than 750 square feet in order to be considered an accessory apartment.

March 24, 2015: Subject property acquired by property owners, Donald and Heather Washburn.

DESCRIPTION OF VARIANCE REQUEST

The Chapel Hill Land Use Management Ordinance (LUMO) permits accessory apartments in all residential zoning districts, with limits on the allowed floor area as defined in Appendix A. Detached accessory apartments may be up to 750 square feet, or 75% of the floor area of the primary dwelling unit, whichever is more restrictive. The applicant has obtained a Zoning Compliance Permit for the construction of a new single-family residence at 111 Woodward Way, which is on the same zoning lot as 1141 Smith Level Road, conditioned such that the floor area of the existing 1,293 square foot single-family residence be reduced to no more than 750 square feet in order to meet the standards for an accessory apartment, prior to issuance of a Certificate of Occupancy for the new residence. The applicants are requesting a dimensional variance to exceed the 750 square foot limit, and have provided three options for the variance request.

Option 1 would leave the existing cottage as-is, and would exceed the 750 square foot limit by 543 square feet. **Option 2** would involve converting the existing enclosed porch to an open porch, and would exceed the floor area limit by 457 square feet. **Option 3** would involve converting the front porch as well as a rear office and storage area into an open porch, and would require a 118 square foot variance. These proposed improvements are shown on the attached floor plans (Attachment 4).

DISCUSSION

If the variance is granted for the proposed construction, the applicants would be required to obtain a Residential Zoning-Building Permit for work on the existing structure and for the conversion to an accessory apartment, prior to beginning construction. In addition, an as-built survey would be prerequisite to a receiving a Certificate of Occupancy, to verify that the construction doesn't exceed the variance granted.

PROCEDURE

Section 4.12.2 of the Land Use Management Ordinance addresses variances from dimensional regulations. In order to grant the variances, the Board of Adjustment must make the following findings:

- A. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicants or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

If the Board is able to make all the above findings for the requested dimensional variance, based on the evidence presented at the hearing, the Board may approve the variance request for the subject lot. If the Board fails to make one or more of the above findings, the Board must deny the request. The Board may also choose to approve a lesser extent for a requested variance or fewer than total number of requested variances.

RECOMMENDATION

Staff Recommendation: We recommend that the Board of Adjustment review the variance request.

Resolution A would approve the Dimensional Variance request.

Alternative Resolution A would approve the Dimensional Variance request, without chair summary.

Resolution B would deny the Dimensional Variance request.

Attachments:

1. Resolution A, approving a dimensional variance request.
2. Alternative Resolution A (without chair summary), approving a dimensional variance request.
3. Resolution B, denying a dimensional variance request.
4. Applicant's materials including application form, narrative, statement of justification, site plan, and floor plan options.
5. Area map of subject lot.