



*City of Raleigh*  
*North Carolina*

To: File

From: Travis R. Crane, Planning and Zoning Administrator

Date: 12 May 2014

Re: UI-3-14/Interpretation of Non-Conforming Use

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The Board of Adjustment overturned the staff interpretation UI-3-14 at the May 12, 2014 meeting. This was BOA case number A-24-14, where the property owner requested an appeal to an official interpretation. The issue dealt with non-conforming uses; specifically related to a mobile home park. This mobile home park consists of two parcels with a number of mobile homes contained on the property. Over the years, mobile homes have been removed from the property, which has Industrial-1 zoning. The zoning district does not permit residential uses.

Staff opined that the addition of mobile homes to the properties would result in an expansion of a non-conforming use. The Board disagreed and overturned the staff's interpretation. The meeting minutes are attached to this memorandum. Official interpretation UI-3-14 is superseded by the Board's decision on May 12, 2014.

**RALEIGH BOARD OF ADJUSTMENT MINUTES**

The Raleigh Board of Adjustment met in regular session on Monday, May 12, 2014 at 1:00 p.m. in the City Council Chamber, Room 201 of the Raleigh Municipal Building, Avery C. Upchurch Government Complex, 222 W. Hargett Street, Raleigh, North Carolina with the following present:

**Board**

**Staff**

Charles Coble, Chairman, (City)  
J. Carr McLamb, Jr., Vice-Chairman (City)  
Tommy Jeffreys, Secretary (County)  
Timothy Figgins (City)  
Karen Kemerait (City Alternate)

John Silverstein, Attorney to the Board  
Assistant Planning Director Travis Crane  
Planning Administrator Eric Hodge  
Ralph Puccini, Assistant Deputy Clerk

**Absent**

Ted Shear (City)  
Brian Williams (City Alternate)

These are summary minutes unless otherwise indicated:

Chairman Coble called the meeting to order, introduced members of the Board and staff present at today’s meeting and read the rules of procedure.

Assistant Planning Director Travis Crane and Planning Administrator Eric Hodge were both sworn in with Mr. Hodge using a PowerPoint presentation in aid to presenting testimony.

The following items were discussed with actions taken as shown:

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**A-10-14 – 05/12/14**

**DECISION:** Denied

**WHEREAS**, Bunch Family Properties, LLC, property owner, requests a variance to the maximum time limit associated with the resumption of a nonconforming use pursuant to section 10-2146 of Part 10 of the zoning code and pursuant to article 10.3 of the Unified Development Ordinance for property zoned Industrial-1 and located at 0 Freedom Drive.

**SEE MINUTES FOR A-24-14**

**A-11-14 – 05/12/14**

**DECISION:** Denied

**WHEREAS,** Bunch Family Properties, LLC, property owner, requests a variance to the maximum time limit associated with the resumption of a nonconforming use pursuant to section 10-2146 of Part 10 of the zoning code and pursuant to article 10.3 of the Unified Development Ordinance for property zoned Industrial-1 and located at 841 Freedom Drive.

**SEE MINUTES FOR A-24-14**

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**A-24-14 – 05/12/14**

**DECISION:** Reversed the City’s interpretation that the leasing of spaces vacant in the mobile home park more than 365 days constitutes an expansion of a nonconforming use since the mobile home park has been in continuous operation

**WHEREAS,** Bunch Family Properties, LLC, property owner, requests an appeal of the administrative decision associated with the Code Interpretation Request (UI-3-14) related to expansion of a non-conforming use and structures associated with BOA Appeal A-10-14 and A-11-14.

Planning Administrator Eric Hodge (sworn) stated staff has no objection to the Board hearing all three (3) cases jointly. He stated staff reviewed the request regarding the existing mobile home park use noting the applicant wishes lease lots that are currently vacant. He cited Unified Development Ordinance (UDO) regulations supporting staff’s opinion that leasing these lots that were vacant for more than 366 days constituted the expansion of a nonconforming use. In response to questions, Mr. Hodge stated residential use is not allowed in Industrial districts unless an overlay permits it. He explained how nonconforming use can continue if the space is vacant less than 365 days and stated the subject spaces in the mobile home park have been vacant longer than 365 days. He noted the number of mobile homes on the lot had decreased over the years and that the property owners now want to increase the number of mobile homes to previous occupancy levels.

Discussion took place regarding staff’s opinion the request is an expansion a nonconforming use with Mr. Hodge reiterating staff’s opinion that the spaces cannot be used as they had been vacant for more than one year. Discussion also took place regarding the property owners’ inability to have more than one use on the lot without having to subdivide the lots. Also discussed was the issue regarding nonconforming residential structures being removed from the premises.

Chairman Coble questioned how the subject structures were not interpreted as “vehicles” as per the petitioners’ assertion with Assistant Planning Director Travis Crane (sworn) responding though the structures are registered as vehicles per the Department of Motor Vehicles, staff

considers them residential structures with Mr. Silverstein pointing out that these “vehicles” can be attached to real estate. Mr. Hodge noted staff defines a manufactured home as a “structure.”

Discussion took place regarding the terms “nonconforming use” versus “nonconforming structures” as defined in the UDO as well as staff’s interpretation of those definitions and the possibility of whether the Board could rule the use as permitted but the structures could not be replaced.

**Applicant**

Kathy Bunch Driver, (sworn) in response to questions, stated she is managing partner of the LLC and that the other partners are her brother Curt and sister Kaye. She stated the LLC owns both parcels, which were inherited from their parents. She stated her parents started the mobile park in 1969 with 30 spaces. She stated there is an on-site office which is the house that she grew up in and stated the property was rezoned to Industrial back in 1986; however, her neighbors to the north were zoned Residential-6. She stated as a result of the rezoning, her properties were the only ones rendered nonconforming.

Chairman Coble questioned what triggered the rezoning with Attorney David York, Smith Moore Leatherwood (sworn) responding that the City wanted to construct a landfill to the west of the property.

Mrs. Driver stated the mobile home park had never closed since 1969 and that both lots had been occupied. She stated all lots have utility hook ups and stated the City has in the past allowed permits for a space that was vacant for more than 365 days.

Chairman Coble questioned the current number of vacant spaces with Mrs. Driver responding there are 11 vacant spaces. She stated at least one space has been vacant at least 3 years and others as long as 12 years.

Mr. McLamb questioned how the spaces are designated with Mrs. Driver responding that each space has its own utility hook up and a driveway and each space is also marked by a low ditch around each space. She went on to talk about how most of the spaces had been occupied pointing out 19 spaces are currently occupied and that both lots of the mobile home park are more than 50% occupied.

Mrs. Driver went on to state that the City staff never advised her of the 365 day rule until 3 families applied for permits and were denied. She stated the first reason staff gave for the denial was the mobile homes did not meet setback requirements; however, once it was found that the setback requirements were met, staff then informed her that the 365 day rule was the reason for denying the permits. She stated staff advised her to apply for a variance for each parcel. She went on to state that staff’s ruling impedes her use of the property and stated she has five families awaiting approval to move onto the property. Mrs. Driver stated she had never had rental trailers and has always maintained the park as a neighborhood. She stated there is a clause

in the lease that states the trailers must be owner occupied. She stated if she is forced to close, State law requires that she give the trailer's owners six months' notice to vacate the property.

Attorney David York stated the issue before the Board is the use of the property. He asserted a 30 space mobile home park has always existed and stated he cannot find case law that supports designating a space within a lot being ineligible for use if it is vacant more than 365 days. He went on to compare the mobile home use to a nonconforming parking lot with vacant spaces available for leasing.

Discussion took place regarding the size of the subject lots and whether using the vacant space is consistent with the expansion of a nonconforming use with Mr. York asserting there has always been a 30 space mobile home park in existence and that his clients are not asking for additional spaces; just the ability to use the existing spaces. He talked about the replacement of mobile homes being inherent in running a mobile home park.

Discussion took place regarding residential uses and mobile home parks with Mr. Silverstein and Mr. York debating how sections of the UDO pertain to the subject properties with Mr. York asserting the vacant spaces could not be used for other purposes or else his client would have to be forced to close the park.

In response to questions, Mrs. Driver stated each space has its own street address and that mailboxes are grouped together at the end of each street.

Assistant Planning Director Crane talked about how staff arrived at its interpretation of the code stating it is the City's intent to amortize nonconforming uses over time. He talked briefly about how such amortizations take place with Attorney York responding one can replace a nonconforming use with another nonconformity as long as it is not an expansion of the use. He went on to state that by Staff's own admission, the property owners cannot use the vacant spaces for any other purpose. He went on to cite case law to support his position with Mr. Silverstein questioning whether the case talked about the length of time between the uses. Mr. York stated case law calls for fairness in the application of the zoning code and that staff's interpretation creates a forfeiture of use of his client's property.

Ms. Kemerait requested clarification as to whether if there is just one mobile home on a lot then the residential use continues for the whole lot and so long as there are 30 spaces then there is no expansion with Mr. York indicating that is correct. He went on to talk about the difficulty of proving the variance issue; therefore he wanted to emphasize the interpretation aspect of the case.

Mr. Silverstein advised the Board could not grant a variance due to state law; therefore the Board can only consider the interpretation aspect of the appeal.

Discussion took place regarding staff's consistency and interpretation in application of the code regarding use versus structure with Mr. York asserting this is not a case of restarting a use but a continuation.

Six people stood in support of the application.

**Opposition**

None

**Request for Notification**

None

**Findings of Fact**

1. Applicant seeks a variance from Raleigh City Code Section 10-2146, and Article 10.3 of the Unified Development Ordinance as it relates to the maximum time limit for resuming a nonconforming use of a mobile home park.
2. The Board has considered Applicant's verified application and the evidence and testimony adduced at the hearing.
3. In order to comply with Raleigh City Code Section 10-2146 and UDO Article 10.3, Applicant would have to resume a nonconforming use within 365 days.
4. Applicant is unable to comply with Raleigh City Code Section 10-2146 and UDO Article 10.3 because several lots have been vacant for more than 365 days.
5. Subsequent to filing requests for variances for the two lots that are together operated as one mobile home park, Applicants filed a request for a reversal of Staff's interpretation that allowing individual home sites that had been vacant for more than 365 days to be reoccupied would constitute an unlawful resumption of a nonconforming use.
6. Applicants' parents established the 30 space mobile home park on the two lots in 1969. Each lot has its own address. Applicants rent the spaces, and the lessees provide the mobile homes.
7. The zoning on the property was changed to an Industrial district in 1986, which made the mobile home park a nonconforming use.
8. The mobile home park has operated continuously since 1969, but several lots are now vacant, and some have been vacant for as long as 12 years.
9. Applicants do not wish to expand the park, but do wish to lease the spaces that have been vacant for more than a year for mobile home use.
10. The vacant spaces cannot be used in a manner that would be permissible under Industrial zoning district requirements.
11. The variances requested are use variances.

**Conclusions of Law**

1. Applicants' variance requests must be denied, as the Board is prohibited from granting use variances pursuant to G.S. 160A-388(d).
2. It is the operation of the mobile home park, not the occupancy of individual spaces that determines whether the use has been interrupted for more than 365 days.

3. Staff's interpretation that leasing spaces in this mobile home park that have been vacant for more than 365 days constitutes the resumption of a nonconforming use is reversed.

**Motion**

With respect to Cases A-10-14 and A-11-14, Chairman Coble moved to deny the variances requested. His motion was seconded by Mr. Figgins and received the following vote: Ayes – 5 (Coble, Figgins, Jeffreys, McLamb, Kemerait); Noes – none. Chairman Coble ruled the motion adopted and the variance requests are denied.

With respect to Case A-24-14, Chairman Coble moved to reverse the City's interpretation that the leasing of spaces that have been vacant in the mobile home park for more than 365 days constitutes an expansion of a non-conforming use, on the grounds that the mobile home park has been in continuous operation. His motion was seconded by Mr. McLamb and received the following vote: Ayes – 5 (Coble, McLamb, Jeffreys, Figgins, Kemerait); Noes – none. Chairman Coble ruled the motion adopted and the City's interpretation is reversed.

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**A-21-14 – 05/12/14**

**DECISION:** Approved as requested

**WHEREAS**, Ashton Smith, property owner, requests a .3 foot side yard setback variance and a 1.8 foot aggregate side yard setback variance pursuant to section 2.2.1 of the Unified Development Ordinance to legalize an existing structure and allow for its expansion resulting in a 4.7 foot side yard setback and a 13.2 foot aggregate side yard setback for property zoned Residential-6 and located at 2715 Van Dyke Avenue.

Planning Administrator Eric Hodge (sworn) referred to Staff's report included in the agenda packet and stated Staff is not opposed to the request.

**Applicant**

Ashton Smith, 2715 Van Dyke Avenue (sworn) stated the house was built in 1940 with only one bathroom and expressed her desire to add another bathroom and a closet noting it is less than 25% of the area of the square footage of the structure.

The existing setback of the dwelling was discussed with Ms. Smith stating it is her intent to install the bathroom and closet on the side of the house opposite the encroaching side of the house.

**Opposition**

None

**Request for Notification**

None

**Findings of Fact**

1. Applicant seeks a variance from Raleigh UDO Section 2.2.1 to legalize an existing dwelling and erect an addition.
2. The Board has considered Applicant's verified application and the evidence and testimony adduced at the hearing.
3. In order to comply with Raleigh UDO Section 2.2.1, Applicant would have to provide a minimum 5' side yard and 15' aggregate side yard setback for the existing dwelling.
4. Applicant is unable to comply with Raleigh UDO Section 2.2.1 because the house was erected prior to the enactment of setback requirements in the Raleigh City Code and UDO, and is therefore a legal nonconformity.
5. Applicant proposes an addition that would meet the setback requirements.
6. The addition exceeds 25% of the existing dwelling, so a variance is needed for the expansion.
7. The character of surrounding properties would not be adversely affected by the granting of the variance.
8. Denial of the variance would result in insignificant public benefit but would greatly harm Applicant.
9. The Board has also considered the following relevant factors:
  - (a) The character and use of buildings and structures adjoining or in the vicinity of the property mentioned in the application.
  - (b) The number of persons residing, studying, working in or otherwise occupying buildings adjoining or in the vicinity of the property mentioned in the application.

**Conclusions of Law**

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property.
3. The hardship did not result from actions taken by the Applicant or the property owner.
4. The variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured, and substantial justice is achieved.
5. This decision is subject to review for fraud, material misrepresentation, or other misconduct at the proceeding or for violations on the subject property of either any provision of the Raleigh UDO or an imposed limiting condition, and if such a determination is made by the Board, its prior decision may be reversed, modified, or affirmed.



**Motion**

Chairman Coble moved to approve the variances as requested. His motion was seconded by Mr. Jeffreys and received the following vote: Ayes – 5 (Coble, Jeffreys, McLamb, Figgins, Kemerait); Noes – none. Chairman Coble ruled the motion adopted and the variances granted.

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**A-22-14 – 05/12/14**

**DECISION:** Denied

**WHEREAS**, Transition Properties, property owners, request a 3.5 foot side yard variance and a 6.8 foot aggregate side yard setback variance pursuant to section 2.2.1 of the Unified Development Ordinance for a proposed carport resulting in a 1.5 foot side yard setback and a 8.2 foot aggregate side yard setback for property zoned Residential-6 and located at 2107 Breeze Road.

Planning Administrator Eric Hodge (sworn) referred to Staff’s report included in the agenda packet and explained the location of the proposed carport. He stated staff has found nothing unusual about the lot to necessitate a variance.

**Applicant**

Attorney Jessica Wilkie, from the Hanson Law Firm (sworn) talked about the location for the proposed carport and how it, in her opinion, meets the spirit of the proposed setback.

Mr. Hodge pointed out carports are not addressed in the UDO with regard to the percentage of encroachment into setbacks.

Eric Stajcer, 1309 Woodmanor Drive, (sworn) stated the previous owner had maintained the 10 feet beyond the property line for many years, however he did not know the parcel did not belong to that property. In response to questions, he stated he also proposes to add approximately 2,000 square feet to the rear of the dwelling which includes a second floor and a deck. He stated to add a carport or garage to the rear of the property would add more driveway and therefore is concerned with the amount of impervious surface. He stated there have been no objections from the neighbors.

Mr. Hodge pointed out there are no impervious surface regulations with regard to this property as it has been grandfathered in when the regulations were adopted.

**Opposition**

None

**Request for Notification**

None

**Findings of Fact**

1. Applicant seeks a variance from Raleigh UDO Section 2.2.1 to legalize an existing structure and erect an addition.
2. The Board has considered Applicant's verified application and the evidence and testimony adduced at the hearing.
3. In order to comply with Raleigh UDO Section 2.2.1, Applicant would have to provide a 5' minimum and 15' aggregate side yard setback.
4. Applicant desires to erect a carport that would result in a 1.5' side yard setback and a 6.8' aggregate side yard setback.
5. Applicant's lot does not have an unusual shape or unusual topography.
6. There are alternatives for Applicant to place a carport on the lot.
7. Strict compliance with the provisions of the ordinance would not deprive Applicant from the reasonable use of the property.
8. Applicant's hardship is not related to the unique circumstances of the property.
9. The variance requested is a significant deviation from the ordinance and is inconsistent with its intent and purpose.

**Conclusions of Law**

1. Applicant has presented insufficient evidence of unnecessary hardships to justify a variance of the strict letter of the ordinance.

**Motion**

Chairman Coble moved to deny the variance requested. His motion was seconded by Mr. McLamb and received the following vote: Ayes – 5 (Coble, McLamb, Jeffreys, Figgins, Kemerait); Noes – none. Chairman Coble ruled the motion adopted and the variance request is denied.

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**A-23-14 – 05/12/14**

**DECISION:** Approved as requested

**WHEREAS**, Big Oak Partners, property owners, request a .5 foot side yard setback variance and a 1 foot aggregate side yard setback variance pursuant to section 2.2.1 of the Unified Development Ordinance to legalize an existing dwelling and resulting in a 4.5 foot side yard setback and a 14 foot aggregate side yard setback for property zoned Residential-10 and located at 2016 Pine Drive.

Planning Administrator Eric Hodge (sworn) reviewed the request referring to staff's report included in the agenda packet. He stated no additional expansion is proposed and that staff is not opposed to the request.

How the nonconformity was created in the first place was discussed briefly.

**Applicant**

Attorney Tim Colgan, (sworn) representing the applicant, stated no changes are proposed for the structure; the owner just wishes to make sure all issues are taken care of prior to the property going up for sale. He stated the structure was built in 1974 and that the measurements for the survey were taken from the buildings' foundation. He stated the violation was discovered with regard to the buildings siding, he noted the most recent survey shows a 10 foot clearance on one side and 4.6 feet on the other side of the property.

**Opposition**

None

**Request for Notification**

None

**Findings of Fact**

1. Applicant seeks a variance from Raleigh UDO Section 2.2.1 to legalize an existing dwelling.
2. The Board has considered Applicant's verified application and the evidence and testimony adduced at the hearing.
3. In order to comply with Raleigh UDO Section 2.2.1, Applicant would have to provide a 5' minimum and 15' aggregate yard setback.
4. Applicant is unable to comply with Raleigh UDO Section 2.2.1 because the house was erected 4.5' from the side property line with a 14' aggregate side yard.
5. The dwelling was erected in 1974.
6. No expansion of the dwelling is planned.
7. The violation was found when a survey was done prior to the sale of the property, and a variance is necessary for the sale to be consummated.
8. The variance requested is only a slight deviation from the ordinance and is not inconsistent with the general purpose and intent of the ordinance.
9. The character of surrounding properties would not be adversely affected by the granting of the variance.
10. Denial of the variance would result in insignificant public benefit but would greatly harm Applicant.
11. The Board has also considered the following relevant factors:

- (a) The character and use of buildings and structures adjoining or in the vicinity of the property mentioned in the application.
- (b) The number of persons residing, studying, working in or otherwise occupying buildings adjoining or in the vicinity of the property mentioned in the application.

**Conclusions of Law**

- 1. Unnecessary hardship would result from the strict application of the ordinance.
- 2. The hardship results from conditions that are peculiar to the property.
- 3. The hardship did not result from actions taken by the Applicant.
- 4. The variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured, and substantial justice is achieved.
- 5. This decision is subject to review for fraud, material misrepresentation, or other misconduct at the proceeding or for violations on the subject property of either any provision of the Raleigh UDO or an imposed limiting condition, and if such a determination is made by the Board, its prior decision may be reversed, modified, or affirmed.

**Motion**

Chairman Coble moved to approve the variance as requested. His motion was seconded by Mr. Jeffreys and received the following vote: Ayes – 5 (Coble, Jeffreys, McLamb, Figgins, Kemerait); Noes – none. Chairman Coble ruled the motion adopted and the variance granted.

Chairman Coble declared a recess from 2:45 p.m. to 2:55 p.m.

At 2:55 p.m. Chairman Coble called the meeting back to order.

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**A-25-14 – 05/12/14**

**DECISION:** Deferred to the Board’s June 9, 2014 meeting

**WHEREAS,** Group Ventures Edwards Mill LLC, property owners, requests a variance from section 10-2084 of Part 10 of the zoning code to allow for off-site advertising on property zoned Office and Institution-1 and located at 3001 Edwards Mill Road.

Planning Administrator Eric Hodge (sworn) stated staff received a request from the applicant to defer the case in order to add an interpretation to the application.

Attorney Carl Young, representing the applicant, stated he would like the case deferred in order that his clients may file a code interpretation.

Assistant Planning Director Travis Crane stated staff has no objection to the deferral.

Chairman Coble ruled the case would be deferred to the Board's June 9, 2014 meeting.

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**A-26-14 – 05/12/14**

**DECISION:** Approved with the condition that the cooking facilities are removed as part of the renovation.

**WHEREAS,** Eliza J. and Christopher J. Stoecker, property owners, request two four foot side yard variances pursuant to section 2.2.1 of the Unified Development Ordinance to legalize an existing accessory structure resulting in a 1 foot side yard setback for property zoned Residential-4 and located at 1806 Glenn Drive.

Planning Administrator Eric Hodge (sworn) stated the subject structure is a guest house and that the fact that it is nonconforming restricts the amount of money spent on renovations to 15% of the tax value.

How the violations were determined was discussed with Mr. Hodge stating the proposed renovation budget was over 100% of the tax value of the structure.

**Applicant**

Attorney Isabel Worthy Mattox, P. O. Box 946, Raleigh, NC (sworn) representing the applicant, stated the guest house has been in its current location for more than 60 years. She stated the current owners did cosmetic updates to the main structure and now wish to make updates to the guest house. She stated current city code restricts the amount of money spent for renovating a nonconforming structure to 15% of the tax value which in this case approximately \$9,000, and that her clients propose to do more extensive renovations to match the quality of the main structure. She noted her clients propose to remove the kitchen and make other alterations which would bring the building up to code. She referred to a survey included in a packet of information she submitted to the Board.

Judson Root (sworn) stated he is the general contractor for the project and talked about how his clients considered various renovation alternatives. He noted the structure has been a rental unit for a number of years and that if his clients were to move the structure, it would have an adverse effect on mature oak trees on the property. He stated after evaluating various alternatives, it was found that the variance request was the best avenue to pursue. He talked about visual improvements to the structure noting there are letters of support from the neighbors included in the packet of information. In response to questions, Mr. Root stated the renovations will meet or exceed building code if the variance is allowed; however if his clients are restricted to the \$9,000 as required by code the structure could not be made habitable. He stated tenants have occupied this structure as recently as January of 2014. He stated the footprint of the structure would not expand and that there would be no further intrusion or impact on neighboring properties.

Current and proposed roofing materials for the structure were discussed briefly.

Attorney Mattox went on to talk about hardship and that the structure itself is sound and has been in place for 60 years. She also pointed out the irregular shape of the lot. She asserted an additional hardship would be moving the structure having adverse impact on mature oak trees on the property and talked about how the subject property abuts two service stations along Glenwood Avenue. She noted the rear of the subject structure provides a screening buffer to the surrounding neighbors from the service stations.

Discussion took place regarding the height of the wall behind the neighboring gas station and the wall of the accessory structure with Mr. Silverstein pointing out the owners of the gas station requested and got a variance for their wall with the neighboring property owners at that time expressing support for that wall.

Ms. Mattox urged the Board grant the variance from the 15% rule noting the property owners will remove the kitchen so the unit will not be rented out but will function as a guest suite. She pointed out there are letters of support from the surrounding neighbors included in the information packet.

Chairman Coble questioned if the clients would approve a condition that the kitchen be removed as part of the variance with Ms. Mattox pointing out the removal of the kitchen would be part of the permit process.

**Opposition**

None

**Request for Notification**

None

**Findings of Fact**

1. Applicant seeks a variance from Raleigh UDO Section 2.2.1 to legalize an existing accessory structure.
2. The Board has considered Applicant's verified application and the evidence and testimony adduced at the hearing.
3. In order to comply with Raleigh UDO Section 2.2.1, Applicant would have to provide a 5' side yard setback.
4. Applicant is unable to comply with Raleigh UDO Section 2.2.1 because the accessory structure was erected 1' from the rear property line.
5. The accessory structure was erected approximately 60 years ago, and has been most recently used as a residence.
6. Applicants desire to renovate the structure and use it as a guest house.
7. The accessory structure backs up to commercial properties on Glenwood Ave.

8. Since the accessory structure is nonconforming, renovation is limited to 15% of the tax value without a variance.
9. Applicants cannot meet the requirements of the Building Code for the renovation project without a variance.
10. Applicants will remove the kitchen facilities as part of the renovation project.
11. The character of surrounding properties would not be adversely affected by the granting of the variance.
12. Denial of the variance would result in insignificant public benefit but would greatly harm Applicant.
13. The Board has also considered the following relevant factors:
  - (a) The character and use of buildings and structures adjoining or in the vicinity of the property mentioned in the application.
  - (b) The number of persons residing, studying, working in or otherwise occupying buildings adjoining or in the vicinity of the property mentioned in the application.

**Conclusions of Law**

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property.
3. The hardship did not result from actions taken by the Applicant or the property owner.
4. The variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured, and substantial justice is achieved.
5. It is necessary and appropriate to impose the following condition and safeguard on the issuance of the variance: the kitchen facilities must be removed.
6. This decision is subject to review for fraud, material misrepresentation, or other misconduct at the proceeding or for violations on the subject property of either any provision of the Raleigh UDO or an imposed limiting condition, and if such a determination is made by the Board, its prior decision may be reversed, modified, or affirmed.

**Motion**

Chairman Coble moved to approve the variance as requested with the condition that the cooking facilities will be removed as part of the renovations. His motion was seconded by Mr. McLamb and received the following vote: Ayes – 5 (Coble, McLamb, Jeffreys, Figgins, Kemerait); Noes – none. Chairman Coble ruled the motion adopted and the variance with condition granted.

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**A-27-14 – 05/12/14**

**DECISION:** Approved as requested

**WHEREAS,** Annie Carrington, property owner, requests a 10 foot corner side yard variance pursuant to section 10-2075 of the part 10 zoning code for a proposed dwelling resulting in a 10

foot corner side yard for property zoned Residential-20 and Neighborhood Conservation Overlay District (Southpark) and located at 815 South East Street.

Planning Administrator Eric Hodge (sworn) referred to Staff's report in the agenda packet. He stated the subject property is located within the Southpark overlay which addresses his front yard setbacks; however, the overlay is silent with regard to corner side yards. He stated had the house been fronted on the side street there would not be an issue with the setback. He stated staff is not opposed to the request.

How the Unified Development Ordinance (UDO) and overlay district come into play with this case was discussed briefly.

Mr. Silverstein questioned whether there was any space between the right-of-way and the street itself with Mr. Hodge responding it is possible there is less than one foot from behind the side walk to the right-of-way line. He went on to state there is no sidewalk along the side street and that the proposed house will front on East Street. Mr. Hodge stated future overlays will address corner lots setbacks.

### **Applicant**

Annie Carrington, 815 South East Street, (sworn) in response to questions, stated the proposed dwelling will have setbacks similar to existing homes in the neighborhood.

### **Opposition**

None

### **Request for Notification**

None

### **Findings of Fact**

1. Applicant seeks a variance from Raleigh City Code Section 10-2075 to erect a dwelling.
2. The Board has considered Applicant's verified application and the evidence and testimony adduced at the hearing.
3. In order to comply with Raleigh City Code Section 10-2075, Applicant would have to provide a 20' corner side yard setback in the R-20 Neighborhood Conservation Overlay District.
4. Applicant is unable to comply with Raleigh City Code Section 10-2075 because the lot is not large enough to build a house that meets the corner side setback requirement.
5. The Overlay district provides a reduced front yard setback, but does not address the corner side.
6. If this house were oriented toward the side street, it would not need a variance.
7. The proposed setbacks are similar to other houses on the block face.



8. Strict compliance with the provisions of the ordinance would deprive Applicant from the reasonable use of the property.
9. Applicant's hardship is related to the unique circumstances of the property, namely its inadequate size to accommodate the required setbacks.
10. The Applicant's actions did not create the hardship or the practical difficulties.
11. The character of surrounding properties would not be adversely affected by the granting of the variance.
12. Denial of the variance would result in insignificant public benefit but would greatly harm Applicant.
13. Pursuant to Raleigh City Code Section 10-2141(b), the Board has considered the following relevant factors:
  - (a) The character and use of buildings and structures adjoining or in the vicinity of the property mentioned in the application.
  - (b) The number of persons residing, studying, working in or otherwise occupying buildings adjoining or in the vicinity of the property mentioned in the application.
  - (c) The public records and other competent testimony concerning the location of the zoning district boundary lines.
  - (d) The relation of the proposed application to conditions in the vicinity which have changed since the zoning district was originally determined.

### **Conclusions of Law**

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property.
3. The hardship did not result from actions taken by the Applicant or the property owner.
4. The variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured, and substantial justice is achieved.
5. This decision is subject to review for fraud, material misrepresentation, or other misconduct at the proceeding or for violations on the subject property of either any provision of the Raleigh City Code or an imposed limiting condition, and if such a determination is made by the Board, its prior decision may be reversed, modified, or affirmed.

### **Motion**

Chairman Coble moved to approve the variance as requested. His motion was seconded by Mr. Figgins and received the following vote: Ayes – 5 (Coble, Figgins, McLamb, Jeffreys, Kemerait); Noes – none. Chairman Coble ruled the motion adopted and the variance granted.

\*\*\*\*\*  
**MINUTES, APRIL 14, 2014 BOARD OF ADJUSTMENT MEETING – APPROVED AS AMENDED**

Chairman Coble indicated members of the Board received copies of the April 14, 2014 Board of Adjustment meeting. He indicated he has a small correction to make on Page 19 of the minutes

and gave the correction to Assistant Deputy Clerk Puccini. Chairman Coble moved to approve the minutes as amended. His motion was seconded by Mr. Jeffreys and a roll call vote resulted in all members voting in the affirmative except Mr. Shear and Mr. Williams who were absent. Chairman Coble ruled the motion adopted.

#### **REPORT OF THE BOARD'S ATTORNEY**

Mr. Silverstein indicated he has been contacted by producers of The Today Show with regard to the Euclid Street Case; however, he declined comment as the case is in litigation. He stated he has also been contacted by Yahoo News, and that an article on the case will be published in an upcoming issue of Vanity Fair. He stated staff compiled the case recorded and filed it with the Clerk of Court this past Tuesday, and that transcripts of the hearings are being prepared. He stated all counsel involved in the case agreed to wait until the transcripts are completed before filing briefs.

Mr. Silverstein stated the Greene case is on the court calendar for the end of June. He stated briefs were submitted and he has been retained to represent the City in this case.

Mr. Silverstein reminded the Board Members the June 9 meeting will start at 9:00 a.m.

#### **ADJOURNMENT**

There being no further business, Chairman Coble declared the meeting adjourned at 3:40 p.m.

Ralph Puccini  
Assistant Deputy City Clerk  
Clerk to the Board

jt/BOA05-12-14

**RALEIGH BOARD OF ADJUSTMENT  
DECISIONS**

**May 12, 2014**

**A-10-14 WHEREAS**, Bunch Family Properties, LLC, property owner, requests a variance to the maximum time limit associated with the resumption of a nonconforming use pursuant to section 10-2146 of the part 10 zoning code and pursuant to article 10.3 of the Unified Development Ordinance for property zoned Industrial-1 and located at 0 Freedom Drive.

**Decision:** Denied.

\*\*\*\*\*

**A-11-14 WHEREAS**, Bunch Family Properties, LLC, property owner, requests a variance to the maximum time limit associated with the resumption of a nonconforming use pursuant to section 10-2146 of the part 10 zoning code and pursuant to article 10.3 of the Unified Development Ordinance for property zoned Industrial-1 and located at 841 Freedom Drive.

**Decision:** Denied.

\*\*\*\*\*

**A-21-14 WHEREAS**, Ashton Smith, property owner, requests a .3 foot side yard setback variance and a 1.8 foot aggregate side yard setback variance pursuant to section 2.2.1 of the Unified Development Ordinance to legalize an existing structure and allow for its expansion resulting in a 4.7 foot side yard setback and a 13.2 foot aggregate side yard setback for property zoned Residential-6 and located at 2715 Van Dyke Avenue.

**Decision:** Approved as requested.

\*\*\*\*\*

**A-22-14 WHEREAS**, Transition Properties, property owners, request a 3.5 foot side yard variance and a 6.8 foot aggregate side yard setback variance pursuant to section 2.2.1 of the Unified Development Ordinance for a proposed carport resulting in a 1.5 foot side yard setback and a 8.2 foot aggregate side yard setback for property zoned Residential-6 and located at 2107 Breeze Road.

**Decision:** Denied.

\*\*\*\*\*

**A-23-14 WHEREAS**, Big Oak Partners, property owners, request a .5 foot side yard setback variance and a 1 foot aggregate side yard setback variance pursuant to section 2.2.1 of the Unified Development Ordinance to legalize an existing dwelling and

resulting in a 4.5 foot side yard setback and a 14 foot aggregate side yard setback for property zoned Residential-10 and located at 2016 Pine Drive.

**Decision:** Approved as requested.

\*\*\*\*\*

**A-24-14 WHEREAS**, Bunch Family Properties, LLC, property owner, requests an appeal of the administrative decision associated with the Code Interpretation Request (UI-3-14) related to expansion of a non-conforming use and structures associated with BOA Appeal A-10-14 and A-11-14.

**Decision:** Reversed the City's interpretation that the leasing of spaces that had been vacant in the mobile home park for more than 365 days constitutes an expansion of a nonconforming use even though the mobile home park has been in continuous operation throughout that period.

\*\*\*\*\*

**A-25-14 WHEREAS**, Group Ventures Edwards Mill LLC, property owners, request a variance from section 10-2084 of the part 10 zoning code to allow for off-site advertising on property zoned Office and Institution-1 and located at 3001 Edwards Mill Road.

**Decision:** Deferred to the Board's June 9, 2014 meeting.

\*\*\*\*\*


**A-26-14 WHEREAS**, Eliza J. and Christopher J. Stoecker, property owners, request two four foot side yard variances pursuant to section 2.2.1 of the Unified Development Ordinance to legalize an existing accessory structure resulting in a 1 foot side yard setback for property zoned Residential-4 and located at 1806 Glenn Drive.

**Decision:** Approved with the condition the cooking facilities are removed as part of the renovation.

\*\*\*\*\*

**A-27-14 WHEREAS**, Annie Carrington, property owner, requests a 10 foot corner side yard variance pursuant to section 10-2075 of the part 10 zoning code for a proposed dwelling resulting in a 10 foot corner side yard for property zoned Residential-20 and Neighborhood Conservation Overlay District (Southpark) and located at 815 South East Street.

**Decision:** Approved as requested.

  
\_\_\_\_\_  
Charles Coble  
Chairman, Raleigh Board of Adjustment

5/12/14  
\_\_\_\_\_  
Date



# Planning & Development

Zoning Division  
 One Exchange Plaza, Suite 300  
 Raleigh, North Carolina 27601  
 Phone 919-996-2626

## City of Raleigh Official Zoning Code Interpretation

Requested Interpretation		Case Number
<p>Applicant seeks an interpretation of Part 10, Code Sections 10-2146.1, 10-2146.2 and 10-2146.3 and Unified Development Ordinance Sections 10.3.2 and 10.3.3.</p> <p>Applicant seeks an interpretation of the above sections recognizing that due to the inherent transient and mobile nature of the land use, mobile home park, that periodic vacancies of individual mobile home parking sites on a given Tract (whether such vacancies be more or less than 365 days), do not effect a cessation of such use as to the Tract or any specific mobile home parking site provided such mobile home parking sites are continually available for rent.</p> <p>Also, Applicant seeks and interpretation that the Use in question is a 30-space mobile home park and that as long as those 30 spaces are continually available for rent, then no cessation of such use has occurred, considering the use has maintained an occupancy rate in excess of 50% at all times.</p> <p>Also, applicant seeks an interpretation of the above sections recognizing that mobile homes are not "structures", but are vehicles as evidenced by the following:</p> <ol style="list-style-type: none"> <li>by law must be titled as such by the North Carolina Division of Motor Vehicles;</li> <li>the City and Wake County tax mobile homes as personal property not real property; and</li> <li>loans which are secured by a lien on mobile homes are documented, not by mortgages or deeds of trust, but by UCC financing statements and/or physical possession by the creditor of the certificate of title.</li> </ol>		UI-3-2014
<p><b>Site Address/PIN:</b> Not Applicable</p>		
<p><b>Date Submitted:</b> 11 April 2014</p>	<p><b>Date Issued:</b> 21 April 2014</p>	<p><b>Code Sections Affected:</b> Part 10 Sections 10-2146.1; 10-2146.2 and 10-2146.3            UDO sections 10.3.2 and 10.3.3</p>

### STAFF ANALYSIS

Both the Part 10 code and the Unified Development Ordinance contain provisions related to nonconforming uses, structures and lots. The provisions in each code permit nonconformities to remain; however, expansion in the physical sense is constrained. Non-conforming uses may not cease for a period of time in excess of 365 days. The provisions in the part 10 zoning code are more expansive, while the UDO takes a more simplistic approach. Each code will be analyzed separately. The applicant seeks an interpretation related specifically to a mobile home park. The applicant is not specific in the request, but staff assumes that the source of the inquiry in this instance is related to a zoning district that does not permit manufactured housing. Manufactured housing is only permitted in certain zoning districts.

#### Part 10

Section 10-2146.1 begins with an intent statement. Nonconformities can remain; however, any alteration, expansion, and extraordinary renovations, maintenance and repair, rebuilding, reconstruction, extensions, resumption or change of use or relocation of a nonconformity will need a special use permit. The Board of Adjustment is empowered to grant a special use permit. Certain terms are defined in the Part 10 zoning code – phrases such as “Expansion of a non-conformity”, “non-conforming use”, “nonconforming structure” and “zoning nonconformity” are all defined. Certain terms are not defined. The terms “altering”, “expanding” and “changes” are intentionally not defined; the Code specifies that these terms are to be liberally construed.

Section 10-2146.2 provides the regulations for changes to nonconformities without need for a special use permit. These instances include normal repair and maintenance (limited to 15% of the tax value per annum); rebuilding or reconstruction of a nonconformity as a result of a casualty; expansions up to 25%; resumption of a nonconforming use that has been dormant for less than 365 days; and replacement of a nonconforming manufactured home that does not meet National standards where the mobile home has been removed within the past 365 days.

Section 10-2146.3 provides regulations for changes to nonconformities that require a special use permit. The categories are

similar to those contained within section 10-2146.2; although there is no allowance for replacement of nonconforming manufactured homes that do not meet national standards where the mobile home has been removed for longer than 365 days.

#### UDO

The Unified Development Ordinance contains nonconforming regulations in Article 10.3. Nonconforming uses, structures, and site elements are all contemplated. The Board of Adjustment is empowered to grant a special use permit for certain nonconformities. The Unified Development Ordinance contains similar language to allow nonconformities, but alteration, repair and replacement are subject to specific regulations.

Under the UDO, a nonconforming manufactured home would be considered a principle structure.

Language in section 10.3.3.H of the UDO and section 10-2146.2(6) contains regulations for replacement of manufactured homes. These sections permit replacement of manufactured homes provided certain standards are met. These sections are specific to replacement of manufactured homes that do not meet the current minimum standards prescribed by the United States Department of Housing and Urban Development. One such standard is that the period of time between the time the nonconforming manufactured home is removed and the time it is replaced with a standard manufactured home is less than 365 days. The Codes do not specify a remedy for nonconforming uses that have been dormant for more than 365 days. Staff would argue that the reason for the defined time period with no specific remedy to extend shows the intent to ultimately amortize nonconforming manufactured homes.

#### Staff Analysis

Manufactured homes are permitted in the Manufactured Housing (MH) zoning district. A manufactured home located within a zoning district that does not permit mobile homes is a nonconforming use and a nonconforming structure. This specific language in section 10.3.3.H and 10-2146.2(6) is counter to the applicant's argument. Both codes contemplate the removal and replacement of manufactured homes, given certain parameters. The applicant argues that the non-conforming use stays viable even if mobile homes are removed from the property. For example, the applicant states, a 30-space mobile home park can maintain the non-conforming use as long as 30 spaces are continually available for rent and the occupancy rate does not dip below 50%. Staff does not agree with this assertion.

Each one of the mobile homes constitutes a non-conforming structure, that coupled with the nonconforming use use, create two nonconformities. In staff's opinion, when one mobile home is removed for a period of more than 365 days, the ability to replace a mobile home on that vacated spot is lost.

### STAFF INTERPRETATION

The applicant raises two arguments: first, that the collection of nonconforming manufactured homes does not constitute the nonconformity; rather, the use is established by the presence of one manufactured home. Second, that a manufactured home should be treated not as a structure but as a vehicle, given the transitory nature. Staff disagrees with each argument.

A manufactured home in a zoning district that does not permit residential is a nonconforming structure and use. The zoning code is clear – nonconforming structures may only be expanded or reconstructed given certain parameters. Further, the text of section 10.3.3.H and 10-2146.2(6) provides a definitive window to replace a nonconforming manufactured home. The mere act of retaining a nonconformity based on the continual ability to rent a vacant space is counter to the provisions for nonconforming uses. Given that logic, every nonconforming use that goes vacant would perpetually be granted the right to resume as long as the property was available for sale or rent.

Staff further disagrees that a manufactured home is a vehicle. While the structure may be taxed and titled through an agency that primarily deals with vehicles, manufactured homes must meet federal standards established by the Department of Housing and Urban Development. The primary function of a manufactured home is to reside, not travel.

### SIGNATORY



Travis R. Crane, Planning and Zoning Administrator



# Planning & Development

Zoning Division  
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### SIGNATORY



Travis R. Crane, Planning and Zoning Administrator