

V19-02
6604 Pamela Street

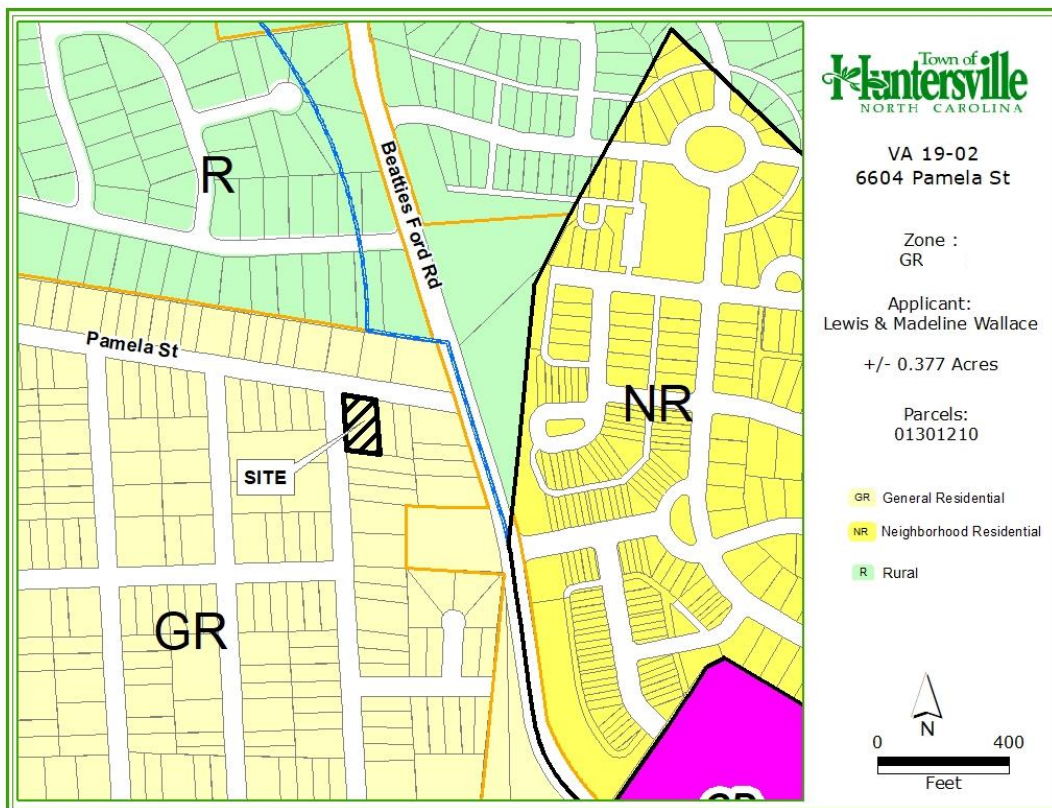
Case #: V19-02
Address: 6604 Pamela Street, Huntersville, NC 28078
Parcel ID: 013-01-210
Acreage: +/- 0.377
Property Owners/Applicants: Lewis and Madeline Wallace
Staff: Sierra Saumenig – Planner I

The applicants (property owners), Lewis and Madeline Wallace, are requesting a variance from **Article 3.2.3.d.3**, for a 0.7' and 0.4' variance from the required 10' side yard setback. See *Exhibit A* for the variance application.

Article 3.2.3.d.3

- 3) In the absence of a subdivision sketch or preliminary plan approved prior to the effective date of this ordinance, the following lot dimensions shall apply:

Minimum Lot Size	Minimum Lot Width	Minimum Front Yard	Minimum Rear Yard	Minimum Side Yards	Minimum Corner Lot Side Yard
20,000	90'	40'	50'	10'	20'



STAFF FINDINGS OF FACT ON V19-02 6604 PAMELA STREET

1. The property is located at 6604 Pamela Street, Huntersville, NC 28078
2. The property owners are Lewis and Madeline Wallace who purchased the property on October 23, 1974 (*See Exhibit B*).
3. The house was built in 1979.
4. The house is located in Biltmore Park which was subdivided under Mecklenburg County regulations in 1964. The subdivision plat does not state setback information.
5. The Biltmore Park Declaration of Restrictions states that the house should not be built nearer than 10 feet to the side lot line but the covenants allows a 10% deviation from any required setback line (*See Exhibit C*).
6. The home was not in violation at the time it was built.
7. On June 30, 1999, the Town of Huntersville's zoning jurisdiction was expanded to include Biltmore Park. The Town zoned this subdivision, General Residential (GR).
8. This property is subject to Article 3.2.3.d.3 of the Huntersville Zoning Ordinance that states that properties in the General Residential zoning district have minimum side yard setbacks of 10'.
9. The property (house) today sits at 9.6' and 9.3' on the required 10' side yard setback.
10. The Town of Huntersville can grant administrative waivers for violations that do not deviate more than 3% of the standards (Article 11.3.3). In this case, that would be 9.7' encroachment of the side yard setback.
11. If staff granted an administrative waiver, the house would still be in violation by 1.2" and 4.8". This is minimal and would be a hardship to require the property owners to remove 1.2" and 4.8' of their home.
12. As of August 13, 2019, the house located at 6604 Pamela Street is under contract for purchase.
13. The potential buyer obtained a survey as part of the normal closing process and discovered that the side of the house encroaches (house sits at 9.3'/9.6') on the 10' side yard setback.
14. On August 13, 2019, Flint Foley, who is representing the Wallace's, submitted a variance application on their behalf for a variation from Article 3.2.3.d.3

Findings of Fact with Staff's Position (ordinance standards are in italics):

Please see Exhibit A for the applicant's responses to the required criteria for granting a variance.

In considering any variance request, the following *Standards for Granting a Variance* (Article 11.3.2.e) must be addressed with findings of fact:

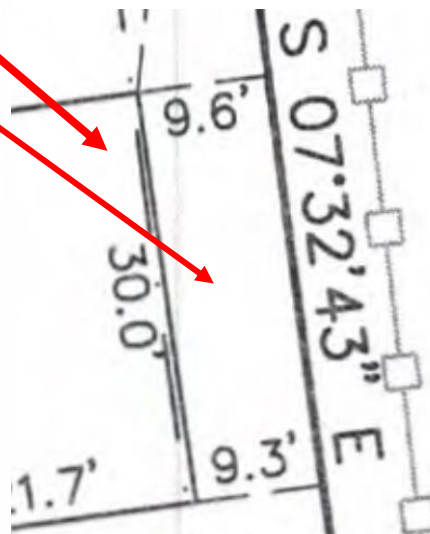
Standards for Granting a Variance. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- 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.

Applicable Facts:

- a. The strict application of the Ordinance (Article 3.2.3.d.3) requires that properties located in the General Residential Zoning District have a minimum 10' side yard setback.
- b. The applicant's state that they purchased the home prior to Huntersville expanding its jurisdiction to include Biltmore Park.
- c. The applicants also state the side yard setback of the subject property

- is 9.3' at its shortest distance. (See image below).
- d. The unnecessary hardship is that if an administrative waiver was granted first, the property owners would still have to remove 4.8" and 1.2" of their home.



It is Staff's position that:

While the Zoning Ordinance states that properties in the General Residential should have a minimum of a 10' side yard setback, this home was constructed in 1979 which was before the Town of Huntersville's zoning jurisdiction expanded to include Biltmore Park (in 1999). At the time the home was built, it was not in any violation. The unnecessary hardship is that if the variance is not granted, the property owners would have to remove 4.8" and 1.2" of the eastern side of their home (if an administrative waiver was granted first).

Staff's position is that this criteria has been satisfied.

- 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.*

Applicable Facts:

- a. All property located in the Town of Huntersville's General Residential Zoning District must comply with Article 3.2.3.d.3 regarding minimum setbacks.
- b. The applicant states the property is unique because "the overlap (side yard setback encroachment) existed since the property was built in 1979" and the property was built prior to it being taken into Huntersville's jurisdiction.
- c. Its staff's opinion the property is unique because Biltmore Park is an old neighborhood that was previously under Mecklenburg Subdivision regulations.
- d. The house was built in 1979 and at the time, it was not in violation because the Restrictive Convents allowed a 10% deviation from setback lines.

It is Staff's position that:

Biltmore Park was under Mecklenburg County and the subdivision plat did not state setback information, only the Restrictive Covenants did. The home was not built in violation at the time.

Staff's position is that this criteria has been satisfied.

- 3) *The hardship did not result from actions taken by the applicant 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.*

Applicable Facts:

- a. The applicants state that they unknowingly purchased the property with the house already in violation.
- b. The applicants also state the setback violation is minimal and not noticeable.
- c. It is staff's opinion that the house was not in violation when the Wallace's purchased the property.
- d. The violation began in 1999, when the Town took the subdivision over.

It is Staff's position that:

At the time the home was built, it met the 10% deviation from the setback line that the restrictive covenants allowed for. Since the home only became in violation when the Town of Huntersville expanded its jurisdiction, staff feels that the hardship was not a result from actions taken by the property owners.

Staff's position is that this criteria has been satisfied.

- 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.*

Applicable Facts:

- a. The intent of the GR zoning district is to “permit the completion and conformity of conventional residential subdivisions already existing or approved in sketch plan form by the Huntersville Board of Commissioners prior to the effective date of these regulations or by the Charlotte-Mecklenburg Planning Commission under the prior jurisdiction of Mecklenburg County.
- b. Additionally, the intent of the GR zoning district is to provide 10’ side yard setbacks.
- c. The condition is existing and to date, staff has not received any complaints from adjacent property owners.
- d. The applicant states that’s the intent of the ordinance is to provide sufficient space between neighborhood properties and that granting this variance would not go against that spirit.

It is Staff’s position that:

Staff concludes that while the house is in violation of the 10’ side yard setback, the violation is minimal and there are no safety concerns and is not interfering with neighborhood properties.

Staff’s position is that this criteria has been satisfied.

STAFF POSITION:

The applicant is seeking a variance from **Article 3.2.3.d.3** for a 0.7’ and 0.4’ variance from the required 10’ side yard setback. Staff’s position is that this request does meet the four Ordinance requirements for granting a variance, as outlined on pages 2-5 of this report.

ATTACHMENTS:

Exhibit A – Variance Application

Exhibit B – Corporate Deed for Lewis and Madeline Wallace

Exhibit C – Biltmore Park Restrictive Covenants

EXAMPLE MOTION: V19-02, 6604 PAMELA DRIVE

Planning Department	Board of Adjustment
<p>APPROVAL: In considering staff's position for V19-02, a request by Lewis and Madeline Wallace for a variance from Article 3.2.3.d.3, the Planning Department requests approval of the variance request based on a finding that the request does meet all four criteria, outlined in the zoning ordinance, for granting a variance.</p> <p>The Planning Department believes that the request does meet all of the four criteria for granting a variance. Suggested findings of fact to support approval are listed on page 2 of this staff report.</p>	<p>APPROVAL: In considering the findings of fact for V19-02, a request by Lewis and Madeline Wallace for a variance from Article 3.2.3.d.3, the Board of Adjustment grants approval of the variance request based on a finding that the request meets all four criteria, outline in the zoning ordinance, for granting a variance.</p> <p>The Board of Adjustment finds the request meets the four criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i></p>
	<p>DENIAL: In considering the findings of fact for V19-02, a request by Lewis and Madeline Wallace for a variance from Article 3.2.3.d.3, the Board of Adjustment denies the variance request based on a finding that the request does not meet criteria <i>(name the criteria the Board finds is not met)</i> for granting a variance.</p> <p>The Board of Adjustment finds the request does not meet the criteria for granting a variance based on the following findings of fact: <i>(explain findings of fact)</i></p>