TO:	Board of Adjustment
FROM:	Gregory Gordos, Town Planner
DATE:	June 23, 2025
SUBJECT:	Application by CD Simmons, obo property owner Mr. and Mrs. Spencer, requesting a variance from Section D-917D.M.1(b)(4) Accessory Uses and Structures shall not be located closer to any adjacent right-of-way or street than the principal use/structure for the property located at 4222 Antioch Church Road (Parcel ID #06093008).

APPLICATION INFORMATION:

SUBMITTAL DATE:	May 30, 2025
APPLICANT:	Richard Allan Spencer
PROPERTY LOCATION:	4222 ANTIOCH CHURCH RD
PARCEL ID#:	06093008
LAND USE:	Traditional Residential
ZONING:	R-40 Single-Family District

BACKGROUND:

The subject parcel is approximately1.79 acres in a unique panhandle shape located behind another house on Antioch Church Road. This parcel as well as the adjacent parcel were recently developed by Classica Homes. The parcel is zoned R-40 with an existing house and surrounded by R-CD zones including the newer Falls at Weddington subdivision.

On April 14th, 2025, Mr. CD Simmons applied for a Zoning Permit for 4222 Antioch to construct a new pool and also a poolhouse for the Spencer family. Planning staff denied the permit as the accessory dwelling unit (ADU) pool house did not comply with zoning setbacks. The pool was later applied for separately and approved. An incomplete paper variance application was then dropped off to Town Hall, and lastly the revised application form included in your packet was resubmitted via email 5/30/2025.

No hardship was claimed bv the contractor or property in the application.

The unique flag lot shape ("from conditions that are peculiar to the property") and the orientation of the home does make it appear from entering the driveway that the poolhouse is located at the rear of the house. However, flag lots still consider the front property line those perpendicular to the roadway. In addition, Section D-917D.M.1(b)(4) applies to the any adjacent right-of-way, not just the property line.

RELATION TO THE UNIFIED DEVELOPMENT ORDINANCE:

M. Accessory Uses and Structures.
Accessory Uses and Structures. The purpose of this subsection is to establish standards for accessory uses and structures so that they contribute to the comfort and convenience of the principal use/structure, while not detracting from the character of the neighborhood. Accessory use and structures shall be customarily found in conjunction with the subject principal use; shall constitute only an incidental or insubstantial part of the total activity that takes place on the subject lot; and are integrally related to the principal use.
1. General Standards.
a. Establishment. Accessory structures must be constructed in conjunction with or after the principal structure.
Accessory structures may not be built prior to the construction of the principal structure.
b. Location and Setbacks.
1. Accessory uses and structures shall be located on the same lot as the principal use.
2. Accessory uses and structures, including swimming pools, shall be located at least 15 feet from any side or rear lot line. Pool decks, driveways, and similar "at grade" structures may be located within this setback area but shall be located at least 5 feet from any side or rear lot line.
3. Accessory structures such as hot tubs, whirlpools, jacuzzies, and the like, shall be required to be within the setbacks for a principal structure.
4. Accessory uses and structures shall not be located closer to any adjacent right-of-way or street than is the principal use/structure.
5. Well houses shall be allowed within any setback area, provided they are not located within 15 feet of a right-of-way or street, or within 5 feet of any side or rear lot line.

UDO Table 2, Lot and Buildings Standards

TABLE 2, LOT AND BUILDING STANDARDS							
Zoning District	Minimum Lot Size (sq. ft.)	Minimum Lot Width (ft.)	Minimum Setbacks (ft.)			Maximum Height (ft.)	Maximum Floor Area Ratio
			Front	Side	Rear		
R-80	80,000	150	65 (res.) 75 (other)	25 45 (corner)	60	35	N/A
R-60	60,000	125	60 (res.) 75 (other)	25 45 (corner)	60	35	
R-40	40,000	120	50 (res.) 75 (other)	15 25 (corner)	40	35	
R-40(D)	40,000	100	40	12	40	35	

R-CD (Conventional)	40,000	120	50	15	40	35	
R-CD (Conservation)	18,000	80	40	12	30	35	
RE	20,000	100	40	12	40	35	
ED	N/A	N/A	25	25	25	40	0.2
B-1 (CZ)							
B-2 (CZ)							
MX (CZ)							

UDO Section D-705(D), Variances.

1. When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the Board of Adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:
    a. The hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
    b. 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
    c. 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.
    d. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.
2. No change in permitted uses may be authorized by variance.
3. Additionally, no variances shall be granted by the Board of Adjustment for the following:
    a. Setbacks for signs and areas and/or height of signs.
    b. Setbacks for essential services, class III.
4. No variance for setbacks shall be granted which allows the applicant to reduce the applicable setback by more than 50 percent.
5. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.
6. Any order of the Board of Adjustment in granting a variance shall expire if a zoning permit, or certificate of occupancy for such use if a zoning permit is not required, has not been obtained within one year from the date of the decision.
7. The Board of Adjustment shall hold a hearing on all complete applications no later than 40 days after the application has been filed with the zoning administrator unless consented to by the applicant.

Attachments:

- Zoning Variance Application
- Zoning Application Submittal including plat
- Zoning Map of Subject Parcel