

VIRGINIA: MINUTES OF THE ORGANIZATIONAL AND REGULAR MEETING FOR THE DINWIDDIE COUNTY BOARD OF ZONING APPEALS HELD IN THE BOARD MEETING ROOM OF THE DINWIDDIE COUNTY GOVERNMENT CENTER BUILDING ON THE 18st DAY OF SEPTEMBER 2019 AT 7:00 P.M.

PRESENT: TRACY SHEETS CHAIRMAN
LANCE EVERETT
WILSON YAGER VICE CHAIRMAN
WILLIAM SEAY
DONNIE BOSTIC

OTHERS: JAMIE SHERRY ZONING ADMINSTRATOR
MICHAEL DREWRY COUNTY ATTORNEY

IN RE: CALL TO ORDER

The Chairman called the meeting to order at 7:00 p.m.

IN RE: ROLL CALL

The roll was taken and four members were present. Mr. Seay arrived right before the public hearing.

IN RE: APPROVAL OF AGENDA

The Chairman asked if there were any additions or corrections to the agenda. He said since there are none he would entertain a motion to accept the agenda as presented.

Mr. Everett made a motion to accept the agenda as presented. Mr. Bostic seconded it and with Mr. Bostic, Mr. Everett, Ms. Sheets and Mr. Yager voting “Aye” the Agenda was accepted as presented.

IN RE: MINUTES

The Chairman asked if there were any additions or corrections from the January 19, 2018 Organizational/Regular meeting minutes. He said since there are none he would entertain a motion to accept the minutes as presented.

Ms. Sheets made a motion to accept the minutes as presented. Mr. Everett seconded it and with Mr. Bostic, Mr. Everett, Ms. Sheets and Mr. Yager voting “Aye” the Minutes were accepted as presented.

IN RE: CITIZEN COMMENTS

The Chairman opened the citizen comment period and asked if anyone had signed up to speak. He said since there is no one he was closing the citizen comments portion of the meeting.

IN RE: PUBLIC NOTICE

Mr. Seay arrived during Ms. Sherry's presentation of the case.

Board of Zoning Appeals Staff Report

File:	V-19-1
Applicants:	Central Baptist Church, and their agent, H. Keith Henshaw
Property Address:	6405 Courthouse Road, Church Road, Virginia
Acreage:	2.40 Acres
Tax Map Parcel:	17-56
Current Zoning:	Agricultural, General, District A-2

SUMMARY OF CASE

The applicant, Central Baptist Church, and their agent, H. Keith Henshaw, are seeking a variance from Section 22-73. – Setback, which requires structures in the agricultural, general, district A-2 to be located 105 feet or more from the centerline of any street right-of-way. The applicant is requesting a variance of 18 feet from the minimum setback of 105 feet. The subject parcel is located at 6405 Courthouse Road, Church Road, Virginia, and is designated as Tax Map Parcel 17-56, and is currently zoned as Agricultural, general, district A-2.

ATTACHMENTS

The following are included:

- Application
- Location Map
- Pictures

PURPOSE OF THE STANDARD:

As described in Section 22-2, of the Dinwiddie County Zoning Ordinance, the regulations of the zoning ordinance are for the “*purpose of promoting health, safety, and the general welfare of the public.*” The zoning regulations are also a planning tool utilized by the County for improving the orderly development of land.

More specific to this application, Sec. 22-70. States:

Generally, agricultural, general, district A-2 covers the portion of the county into which urban-type development could logically expand as the need occurs. As a general rule it surrounds residential sections. This district is established for the specific purposes of:

1. Providing for the orderly expansion of urban development into territory surrounding incorporated areas within or adjacent to the county;
2. Confining such development to such locations as can feasibly be supplied urban-type facilities; and
3. Discouraging the random scattering of residential, commercial and industrial uses into the area.

APPLICABLE CODE SECTION

The Code of Virginia provisions, which are relevant to this variance request are:

Sec. 15.2-2201. Definitions

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

Sec. 15.2-2309. Powers and duties of boards of zoning appeals.

The Board of Zoning Appeals has authority to grant a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

“Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.”

The Dinwiddie County Code provisions, which are relevant to this variance request are:

Sec. 22-73. - Setback.

Structures in agricultural, general, district A-2 shall be located 105 feet or more from the centerline of any street right-of-way, except that signs may be erected up to the property line, however, such signs shall not block the view of traffic from a roadway. This shall be known as the "setback line".

Sec. 22-1. - Definitions

Nonconforming structure: An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage or other area regulations of this chapter, or is designed or intended for a use that does not conform to the use regulations of this chapter for the district in

which it is located, either at the effective date of the ordinance from which this chapter derives [September 1, 1964] or as a result of subsequent amendments to such ordinance or this chapter.

Sec. 22-250. - Extension or enlargement.

- (a) A nonconforming structure to be extended or enlarged shall conform with the provisions of this chapter.

CASE ANALYSIS

The applicant is seeking a variance of 18 feet from the front yard setback for a single-family dwelling located at 6405 Courthouse Road, Church Road, Virginia and is designated as Tax Map Parcel 17-56. The subject property is zoned Agricultural, general, District A-2 and contains a portion of the Central Baptist Church building, as well as a single-family house which is currently being use as the church parsonage and is the subject of this request. The house was built in 1953, prior to the adoption of the Zoning Ordinance in September 1964.

The reason for this request is to allow for an addition to be built onto the house. The proposed addition would be on the north side of the property. The addition would fall within the required minimum 105 foot setback from the centerline of the street right-of-way, which is Route 627/Courthouse Road. The addition is not anticipated to impact the side yard setback requirement of a minimum of 35 feet from the northern property line.

The house, which was constructed in 1953, predates the adoption of the Dinwiddie County zoning ordinance, which was adopted in September 1964. Adoption of the ordinance created the legal nonconforming status of the building, as it does not met the setbacks of the district. Because of its nonconforming status, it is now subject to Article VI of the Dinwiddie County Code –Nonconforming uses. In this case, any expansion or enlargement of the house must meet the requirement of Sec. 22-250. - Extension or enlargement, which only allows for an addition of a nonconforming structure to be allowed if it meets the minimum required setbacks.

AUTHORIZATION FOR GRANTING VARIANCES

The Code of Virginia, specifically Sec. 15.2-2309. Powers and duties of boards of zoning appeals, states:

The Board of Zoning Appeals has authority to grant a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

“Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of

the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;

(iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.”

STAFF EVALUATION

Strict application of the ordinance, meaning not allowing the building to be expanded within 105 feet from the centerline for the front setback for the A-2 zoning district, does not prevent the building from being used. In fact, there is nothing preventing it from being used as a house, therefore does not unreasonably restrict the utilization of the property.

In addition, there is no hardship due to a physical condition relating to the property or improvements to the property. The building may be expanded outside the front yard setback, to the north, to the south and to the rear of the house. The applicant states the septic systems is located in the rear of the house, although it may not be ideal for the applicant, the septic system could be relocated. The same holds true for the parking area to the south of the house, the side facing the church.

Additionally, and most importantly, the property could be rezoned to the Residential, limited, R-1 zoning district. Rezoning the property would allow the house to be expanded within the allowed confines of the ordinance, as the front setback in this zoning district is a minimum of 65 feet from the centerline of any street right-of-way. As indicated in the Dinwiddie County Comprehensive Land Use Plan, the subject property is located within the Rural Conservation Area, which allows for low-density residential development.

For case, V-19-1, staff recommends **DISAPPROVAL** of the variance of 18 feet from the front yard setback requirement for an existing building because it does not meet the requirement of the Code of Virginia for a variance. The Code of Virginia states in 15.2-2309 that, notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and

- (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;**

The applicant did not create the hardship as the building was made nonconforming when the zoning ordinance was adopted in 1964.

- (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;**

In the event the variance is granted, there is no indication that the use will be of any detriment to the adjacent property owner, as the addition will fall within the allowed side yard setback of 35 feet.

- (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;**

The situation should be remedied with an amendment to the ordinance, specifically to the zoning map by rezoning the portion of the property, where the house is located, to the Residential, limited R-1 zoning district, to allow for the expansion of the building.

The rezoning would be supported by the Dinwiddie County Comprehensive Plan, as the plan has the subject property located within the Rural Conservation Area, which allows for low-density residential development.

- (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and**

Granting the variance would not add to or subtract from to the legal uses of the property.

- (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.**

There is no relief in this instance offered by a special exception or the process for modification of the ordinance.

BOARD OF ZONING APPEALS ACTION:

The final statement of action would be similar to the following. If a BZA member chooses to make this motion, it should be read aloud:

I move that the Board of Zoning Appeals adopts the following resolution:

WHEREAS, the Code of Virginia, specifically § 15.2-2309, states that the Board of Zoning Appeals shall grant a variance if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:

- i. the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
- ii. the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- iii. the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
- iv. the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and

- v. the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application; and

WHEREAS, the Board (FINDS AS TRUE or DOES NOT FIND AS TRUE) the factual statements and rationale set forth in the staff report,

BE IT THEREFORE RESOLVED THAT pursuant to Virginia Code Section 15.2-2309, after full examination of the facts and law related to the case, the Board of Zoning Appeals finds the foregoing criteria are (MET or NOT MET) and the Board of Zoning Appeals (APPROVES or DENIES) variance request V-19-1, to grant the request for a variance of 18 feet from the minimum setback of 105 feet.

Mr. Sherry asked if there were any questions.

Mr. Yager asked if the current building and church were constructed at the same time.

Ms. Sherry said she does not believe they were.

Mr. Everett asked if rezoning the property was a difficult and costly process.

Ms. Sherry said a rezoning does cost more money (an additional \$1,000.00), but the process is not difficult.

Ms. Sheets asked if the applicant rezoned the property, would that give them a permanent relief to do the addition and remodeling of the parsonage.

Ms. Sherry said that is correct. The property would no longer be non-conforming. It would be a legal structure meeting all applicable sections of the zoning ordinance.

Mr. Seay asked if the main reason for disapproval has to do with the eighteen-foot setback that does not go with the guidelines of their zoning.

Ms. Sherry said that is correct. The property does not meet the code requirement for strict application. There is an opportunity for them to build out in other places. The ordinance is not so restrictive that it prevents them from expanding. There could be an amendment to the ordinance via the zoning map. The zoning map is actually a part of the zoning ordinance, and if that were changed to R-1, for example, they would be allowed to expand. Those are the reasons staff is recommending disapproval.

Mr. Everett asked Mr. Drewry if there would be any liability on the Board's part if we granted the variance.

Mr. Drewry said variances were created in the State of Virginia, so that a local government could not take property from a homeowner because it was too restrictive on its setbacks. It has to be a hardship. What the State of Virginia does not want a BZA (Board of Zoning Appeals) to do is legislate. That just means, if a zoning ordinance needs to be changed, the State prefers a locality to change it. With that being said, I want to make it known that this is not a true variance case. This is an ordinance amendment case. Therefore, Mr. Everett, the liability that you are referring to will

only happen if this case gets an approval. Because someone who may be disgruntled about the approval can appeal this case within the next thirty days, and I will not be able to protect your approval decision. The reason I will not be able to is because, the case is not a legal variance case and it could be overturned. No one will be coming after you personally for liability.

Mr. Everett asked if there has been any opposition to this case.

Mr. Sherry said there has not been any opposition.

Mr. Drewry wanted the Board members to know that, even though he is here to explain or answer any of the Board member's questions, he represents his client, Dinwiddie County. The Board of Zoning Appeals is its own body appointed by the Court. His client, Dinwiddie County, could appeal this case if they felt it was setting a bad precedent.

The Chairman asked if there were any more questions for Ms. Sherry. He said if not would the applicant like to come forward and add anything.

Mr. H. Keith Henshaw who resides at 16500 Hanna Drive, Sutherland VA, said he would answer any of the questions the members have.

Mr. Yager asked if the purpose of the addition was to add on to the house or church.

Mr. Henshaw said the addition is for the house. It is the parsonage for the Pastor.

Mr. Yager asked why the addition could not be place on the other side of the parsonage.

Mr. Henshaw said there is a garage on that side and the addition would eat into the parking area.

Mr. Everett asked why the addition could not be place on the backside of the parsonage.

Mr. Henshaw said there is a septic drain field behind the house. Building the addition on the backside of the house would require us to tear it up and move it. That would be very costly.

The Chairman asked if there any more questions for the applicant. He said since there are none he was opening the public hearing portion of the case. He asked if anyone had signed up to speak.

Mr. Barrett Chappell who resides at 4704 Stone Glen Drive, Church Road, VA, said he appreciates Ms. Sherry's analysis, but he wanted to give the members more grounds to grant the variance within the code section that is given. He said on page three of the staff report and beginning with the last paragraph in the first sentence it says, "Shall grant a variance if the strict application of the terms of the ordinance would unreasonably restrict to the utilization of the property." I believe that is the case here as the Pastor would not be able to stay in the parsonage without the addition. The sentence also says, "Or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements there on." This would alleviate the hardship of not being able to put the addition on the back of the property because of the septic system. It would also alleviate the hardship of not being able to put the addition on the parking lot side.

The Chairman asked if anyone else had signed up. He said since there is no one he closed the public hearing portion of the case. He opened the discussion among the members.

Mr. Drewry reminded the members that Ms. Sherry could not analyze this case in any other direction but denial. The issue is that in Section 22-250 it says, "A non-conforming structure, one that was present when the zoning ordinance was put in place, shall not be extended or enlarged unless it conforms to the provision of the Zoning Code. There are two provision in the Dinwiddie Code that complies with the Virginia Code and they prohibit Ms. Sherry from approving this variance Case, because if she did, she would be out of compliance with the Virginia Code and she would have gotten an earful from me.

Mr. Seay said he is sorry the church had to come here. Ms. Sherry does an excellent job. She has presented us with facts from the County. However, this is rural property. I cannot penalize the church for this one time accordance.

Ms. Sheets made a motion and read the following: WHEREAS, the Board FINDS AS TRUE the factual statements and rationale set forth in the staff report,

BE IT THEREFORE RESOLVED THAT pursuant to Virginia Code Section 15.2-2309, after full examination of the facts and law related to the case, the Board of Zoning Appeals finds the foregoing criteria are MET and the Board of Zoning Appeals APPROVES variance request V-19-1, to grant the request for a variance of 18 feet from the minimum setback of 105 feet. It was seconded by Mr. Seay and with Mr. Seay, Mr. Bostic, Mr. Everett, Mr. Sheets and Mr. Yager voting "AYE" the variance request was approved.

IN RE: BOARD MEMBER COMMENTS

Ms. Sheets said she appreciates all the hard work from staff on this case.

IN RE: ZONING ADMINISTRATOR COMMENTS

Ms. Sherry thanked all the members for their time and service since she has been a part of the BZA. She said it has been a pleasure working with the Board of Zoning Appeals members. However, this will be her last meeting. She has accepted a position in Goochland County.

IN RE: ADJOURNMENT

The Chairman said if there is nothing else, she would entertain a motion for adjournment. Mr. Everett made a motion to adjourn and Ms. Sheets seconded it and with all members presents voting "AYE" the meeting adjourned at 738 p.m.

Respectfully submitted:

Jamie Sherry, Principal Planner/
Zoning Administrator

Signed: _____
Wilson Yager, BZA Chairman

Dated: _____

DRAFT