

VIRGINIA: MINUTES OF THE REGULAR MEETING FOR THE DINWIDDIE COUNTY BOARD OF ZONING APPEALS HELD BOARD MEETING ROOM OF THE DINWIDDIE COUNTY GOVERNMENT CENTER BUILDING ON THE 15TH DAY OF SEPTEMBER AT 7:00 P.M.

PRESENT: TRACY SHEETS VICE SCHAIRMAN
LANCE EVERETT
DONNIE BOSTIC
WILLIAM SEAY

ABSENT: WILSON YAGER CHAIRMAN

OTHERS: MARK BASSETT PLANNING DIRECTOR
MICHAEL DREWRY ASST. COUNTY ATTORNEY

IN RE: CALL TO ORDER

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

IN RE: ROLL CALL

The Vice Chairman asked for the roll to be called and Mr. Yager was not present.

IN RE: APPROVAL OF AGENDA

The Vice Chairman said you have the agenda before you. She asked if there were any additions or corrections to the agenda. She said since there are none she would entertain a motion to accept the agenda as presented.

Mr. Everett made a motion that the agenda be accepted as presented. It was seconded by Mr. Seay and with Mr. Everett, Mr. Seay, Mr. Bostic and Ms. Sheets voting "Aye" the Agenda was accepted as presented.

IN RE: MINUTES

The Vice Chairman said you have the minutes from the May 19, 2021 Regular meeting before you. She asked if there were any corrections. She said since there are none she would entertain a motion to accept the minutes as presented.

Mr. Seay made a motion that the minutes be accepted as presented. It was seconded by Mr. Bostic and with Mr. Seay, Mr. Bostic, Mr. Everett and Ms. Sheets voting "Aye" the minutes were accepted as presented.

IN RE: CITIZEN COMMENTS

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

IN RE: PUBLIC HEARING

Board of Zoning Appeals Staff Report

File: V-21-3
Applicant: Anthony D. & Delores W. Jones
Property Location: 10321 Zilles Road Blackstone, VA
Acreage: 2.176 acres
Tax Map Parcel: 24-11B
Current Zoning: Agricultural, General, A-2

SUMMARY OF CASE

The applicants, Anthony D. Jones & Delores W. Jones, are seeking a variance from Zoning Ordinance 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 applicants are requesting a variance of 25 feet from the minimum setback of 105 feet. The subject parcel is located at 10321 Zilles Rd., Blackstone, Virginia, and is designated as Tax Map Parcel 24-11B, and is currently zoned as Agricultural, General, District A-2.

ATTACHMENTS

The following are included:

- Variance Application Package
- Location Map
- Google Earth Aerial

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".

CASE ANALYSIS

The applicant is seeking a variance of approximately 25 feet from the front yard setback to construct a foyer and garden sunroom on the front of the existing single-family dwelling on Tax Map Parcel 24-11B, which is located at 10321 Zilles Road. The subject property is zoned Agricultural, General, District, A-2 and is approximately 2.176 acres in area which is below the 3.0 acre minimum lot size required in the A-2 Zoning District. The applicant desires to build a foyer and garden sunroom on the front of the existing single-family dwelling on the subject property where there is an existing stoop and stairs leading up to the front of the house. The existing dwelling does not meet the required front setback in the A-2 Zoning District as the eastern portion of the dwelling is approximately 95 feet from the centerline of Zilles Road right-of-way, and the front setback requirement for A-2 zoned property is 105 feet from the centerline of the road right-of-way. Additionally, from the front door of the dwelling to the road centerline is approximately 100 feet.

Given the existing location of the dwelling, the dwelling is already within the required front setback. The subject dwelling was constructed in 2006 when the front setback requirement in the A-2 Zoning District was 75 feet from the road right-of-way, and it appears that even the existing stoop and stairs do encroach into the original front setback. The applicant is not the original property owner; therefore, the applicant is not responsible for the existing site conditions related to the encroachment into the front setback. The existing stoop is six feet in depth and the stairs project out an additional five feet from the stoop. To note, per Zoning Ordinance standards the stairs are not required to meet building setback requirements. As indicated in the applicants' variance request, the applicants are requesting to encroach into the front building setback with the proposed foyer and garden sunroom additions, and with the existing stoop the new additions would be increasing the encroachment by approximately four feet.

Further, to note as part of the evaluation of existing site conditions the front yard of the subject property is a low area of the property which does retain stormwater during rain events, and the applicants indicated to staff that a covered porch/foyer would help keep stormwater away from the foundation. Additionally, the front of the subject property does abut up against the additional widened road right-of-way needed for the approach to the railroad bridge on Zilles Road and there is a steep slope and guardrail at the top of the steep slope which separates the front yard from the roadway, which is unique to the subject property. Finally, the existing parcel is an elongated lot running parallel to Zilles Road, and as a result is the depth of the parcel is limited and limits the placement of the dwelling on the lot with respect to the front and rear property lines.

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 proposed foyer and garden sunroom to be constructed within approximately 80 feet of the centerline of the Zilles road right-of-way, does prevent

the proposed additions from being constructed. The existence of the additional road right-of-way needed for the bridge approach/embankment, the nonconforming lot size below the three-acre minimum lot size required in A-2 and elongated lot configuration, and the fact that the existing stoop already projects into the front setback do restrict the property from being further improved. Given the aforementioned property conditions, the site conditions unreasonably restrict the improvements proposed by the applicants.

For case, V-21-3, staff recommends **APPROVAL** of the variance of 25 feet from the front yard setback requirement for a proposed foyer and garden sunroom due to the conditions within the front yard of the subject property. 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 specific site conditions 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 applicants did not create the hardship as the dwelling was purchased after it was constructed in its current location, and the Virginia Department of Transportation (VDOT) did purchase additional right-of-way along the front yard as part of the railroad bridge improvement project.

- (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 owners, as the proposed addition into the front yard will be between the bridge embankment and no other property, and the road and dwelling are protected from one another by the embankment and the existing guardrail along Zilles Road.

- (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 conditions on the property are not so general that it could be remedied with an amendment to the ordinance, specifically to the zoning map by amending the front building setback requirement for dwellings in the A-2 zoning district.

- (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 the legal uses permitted on 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 Zoning Ordinance.

BOARD OF ZONING APPEALS ACTION:

The final statement of action would be similar to the following. If a Board of Zoning Appeals 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 unique conditions 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-21-3, to grant the request for a variance of 25 feet from the minimum setback of 105 feet.

Mr. Bassett asked if there were any questions from the Board members.

Mr. Everett asked if the property conformed to the setbacks in 2006.

Mr. Bassett said it did in the front of the house, but the stoop still encroached into the front setback.

Mr. Seay asked if the house was built in violation.

Mr. Bassett said that is not correct. It was built within the guidelines of our zoning.

The Vice Chairman asked if there were any more questions for Mr. Bassett. She said since there are none would the applicant like to come forward and add anything?

Mr. Anthony Jones, 10321 Zilles Road, Blackstone VA, came forward and said he agreed with what Mr. Bassett said, but wanted to add that he thought the setback should have been 30 feet and not 25 feet and that is because of the steps. There was some general conversation about that 30 feet that ensued. Mr. Jones wanted to know what the possibility was of him getting back his \$500 dollars. He said if there was some type of overlay in the County that addressed properties that fall into this same predicament as he does, meeting the year they were built setbacks, but not meeting the current setbacks, the fee for a variance could be waved.

There was some general conversation about whether the applicant needed 25 or 30 feet. Mr. Drewry stated that they could not address anything pertaining to 30 feet because the public hearing was only advertised for 25 feet. Mr. Drewry said if they were to do so they would be out of compliance with the legally advertised public hearing.

The Vice Chairman asked if there were any questions for the applicant. She said since there are none she was opening the public hearing portion of the case. She asked if anyone had signed up to speak or was on the phone line that wanted to speak. She said since there isn't anyone she was closing the public hearing. She asked the Board members if they had anything else they wanted to add and if not she would entertain a motion.

Mr. Bostic 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-21-3, to grant the request for a variance of 25 feet from the minimum setback of 105 feet. It was seconded by Mr. Everett and with Mr. Everett, Mr. Seay, Mr. Bostic and Ms. Sheets "AYE" V-21-3 was approved.

IN RE: BOARD MEMBER COMMENTS

The Vice Chairman asked the members if they had any questions. She said since there are none we will move to Zoning Administrator comments.

IN RE: ZONING ADMINISTRATIRO COMMENTS

The Vice Chairman asked Mr. Bassett if he had any comments. Mr. Bassett said he did not have any.

IN RE: ADJOURNMENT

The Vice Chairman said if there is no further business she would entertain a motion for adjournment. Mr. Seay made a motion to adjourn and Mr. Everett seconded it and with all members present voting "AYE" the meeting adjourned at 7:37 p.m.

Respectfully submitted:

Mark Bassett
Planning Director/Zoning Administrator

Signed: _____
Wilson Yager, BZA Chairman

Dated: _____