

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 17<sup>TH</sup> DAY OF MARCH AT 7:00 P.M.

PRESENT:	TRACY SHEETS WILLIAM SEAY WILSON YAGER DONNIE BOSTIC LANCE EVERETT	VICE SCHAIRMAN CHAIRMAN
OTHERS:	MARK BASSETT MICHAEL DREWRY (Webex by phone)	PLANNING DIRECTOR ASST. COUNTY ATTORNEY

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**IN RE: CALL TO ORDER**

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

**IN RE: ROLL CALL**

The Chairman asked for the roll to be called. All members were present.

**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.

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

**IN RE: MINUTES**

The Chairman said you have the minutes from the January 20, 2021 Organizational/Regular meeting before you. He asked if there were any corrections.

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

**IN RE: CITIZEN COMMENTS**

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

**IN RE: PUBLIC HEARING**

**Board of Zoning Appeals Staff Report**

File:	V-21-1
Applicant:	Mike Christopher
Property Location:	Southwest quadrant at River Road and Kenneth Drive, North Dinwiddie
Acreage:	Approx. 0.35 acres
Tax Map Parcel:	9H-6-31
Current Zoning:	Residential, Limited, District R-1A

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**SUMMARY OF CASE**

The applicant, Mike Christopher, is seeking a variance from Section 22-129. – Setback, which requires structures in the Residential, Limited, District R-1A to be located 65 feet or more from the centerline of any street right-of-way.

The applicant is requesting a variance of 13 feet from the minimum setback of 65 feet. The subject parcel is located at the southwest quadrant at the intersection of River Road and Kenneth Drive, and is designated as Tax Map Parcel 9H-6-31, and is currently zoned Residential, Limited, District R-1A.

## **ATTACHMENTS**

The following are included:

- Application
- Location Map
- Concept Plan
- Subdivision Plat, Appomattox Manor Sec. 2

## **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. 22-126. States:

Residential, limited, district R-1A is composed of certain quiet, low-density residential areas plus certain open areas where similar residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children and to prohibit all activities of a commercial nature. To these ends, development is limited to relatively low concentration and permitted uses are limited basically to single-unit dwellings and two-family duplexes providing homes for the residents, plus certain additional uses, such as schools, parks, churches and certain public facilities that serve the residents of the district.

## **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. 22-129. - Setback.**

Structures in residential, limited, district R-1A shall be located 65 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 13 feet from the front yard setback to construct a single-family dwelling on Tax Map Parcel 9H-6-31, which is a part of Appomattox Manor Section 2, which was recorded in August 2005. The subject property is zoned Residential, Limited, District R-1A and is approximately 15,230 square feet in area. The applicant desires to build a single-family dwelling on the subject property and due to the existence of wetlands on the property a 13 foot front-yard variance is needed to be able to locate the proposed dwelling outside of the wetlands.

**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 dwelling to be constructed within 65 feet from the centerline for the front setback for the R-1A zoning district, does prevent the dwelling from being constructed. The existence of the wetlands prevent the property from being developed; therefore, the wetlands unreasonably restricts the utilization of the property. The existing wetlands on the rear portion of the property is a physical hardship not imposed by the applicant. Additionally, there is a future right-of-way dedication for River Road which extends along the front portion of the property which further encroaches onto the front-yard of the subject property.

For case, V-21-1, staff recommends **APPROVAL** of the variance of 13 feet from the front yard setback requirement for a proposed dwelling due to the physical hardship of the wetlands on the rear portion of the 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 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 wetlands on the rear of the property are naturally occurring.

- (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 dwelling will fall within the allowed side yard setback of 15 feet and meet the rear 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 existence of the wetlands is not so general that it could be remedied with an amendment to the ordinance, specifically to the zoning map by amending the building setback requirement for residential limited zoned property.

- (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 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-21-1, to grant the request for a variance of 13 feet from the minimum setback of 65 feet.

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

There was some general conversation about the setback numbers that were listed in the staff report and the numbers listed on the site drawing.

The Chairman said since there are no more questions for Mr. Bassett. Would the applicant or his representative like to come forward and add anything.

Mr. Hampton Gordon, 14331 Courthouse Road, Dinwiddie VA, the agent for the applicant came forward to give a little more insight on the numbers related to the front setback.

The Chairman asked if there were any questions for the applicant's agent. 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 or was on the phone line that wanted to speak. He said since there isn't anyone he was closing the public hearing. He asked the Board members if they had anything else they wanted to add and if not he would entertain a motion.

Ms. Sheets made a motion and read the following: I move that the Board of Zoning Appeals adopt 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 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-21-1, to grant the request for a variance of 13 feet from the minimum setback of 65 feet. It was seconded by Mr. Seay.

AYES:           Mr. Seay, Mr. Bostic, Mr. Everett, Ms. Sheets, Mr. Yager  
NAYS           None

**IN RE:           BOARD MEMBER COMMENTS**

No member had any comments.

**IN RE: ZOINING ADMINISTRATIRO COMMENTS**

Mr. Bassett did not have any comments.

**IN RE: ADJOURNMENT**

The Chairman said if there is no further business he would entertain a motion for adjournment. Ms. Sheets made a motion to adjourn and Mr. Seay seconded it and with all members present voting "AYE" the meeting adjourned at 7:27 p.m.

Respectfully submitted:

Mark Bassett  
Planning Director/Zoning Administrator

Signed: \_\_\_\_\_  
Wilson Yager, BZA Chairman

Dated: \_\_\_\_\_