

Board of Zoning Appeals Staff Report

File: V-21-2
Applicant: John & Martha Stone and their Agent, Tina Stone Maitland
Property Location: Adjacent to 4404 Darvills Rd., Blackstone, Virginia
Acreage: Approx. 1.05 acres
Tax Map Parcel: 52-24C
Current Zoning: Agricultural, General, District A-2

SUMMARY OF CASE

The applicants, John & Martha Stone and their Agent, Tina Stone Maitland, are seeking a variance from Zoning Ordinance Section 22-75. - Yards, which requires structures in the Agricultural, General, District A-2 to be located 75 feet or more from the rear property line. The applicants are requesting a variance of 22 feet from the minimum setback of 75 feet. The subject parcel is located adjacent to 4404 Darvills Rd., Blackstone, Virginia, and is designated as Tax Map Parcel 52-24C, and is currently zoned as Agricultural, General, District A-2.

ATTACHMENTS

The following are included:

- Application
- Location Map

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. 22-75. - Yards.

In agricultural district A-2, the yard regulations shall be as follows:

- (1)Side yards. The minimum side yard for each main structure shall be 35 feet and the total width of the two required side yards shall be 70 feet or more.
- (2)Rear yards. Each main structure shall have a rear yard of 75 feet or more.

CASE ANALYSIS

The applicants are seeking a variance of 22 feet from the rear yard setback to construct a single-family dwelling on Tax Map Parcel 52-24C, which is a part of Appomattox Manor Section 2, which was recorded in August 2005. The subject property is zoned Agricultural, General, District A-2 and is approximately 1.05 acres in area. The applicant desires to build a single-family dwelling on the subject property and due to the irregular shape and size of the property a 22 foot front-yard variance is needed to be able to locate the proposed dwelling within the rear yard setback.

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 53 feet from the rear property line, does prevent the dwelling from being constructed. The irregular shape and size of the property located in the A-2 zoning district prevent the property from being developed; therefore, the irregular shape and size of the property unreasonably restricts the utilization of the property. In addition the property cannot be expanded to the rear due to the abutting property being in a conservation easement that restricts the property from expanding into the conservation area which does constitute a physical hardship not imposed by the applicant.

For case, V-21-2, staff recommends **APPROVAL** of the variance of 22 feet from the rear yard setback requirement for a proposed dwelling due to the irregular shape and size of the property and inability to adjust the rear property line to allow for additional acreage to be added to the existing parcel 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 parcel is an old nonconforming lot under the A-2 zoning.

- (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 35 feet and meet the front yard setback of 105 feet from the centerline of Route 40.

- (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 irregular shape and size of the lot 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 agriculturally 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-21-2, to grant the request for a variance of 22 feet from the minimum rear yard setback of 75 feet.