

Board of Zoning Appeals Staff Report

File:	V-22-1
Applicant:	Gerald and Juanita Massengill
Property Location:	Adjacent to/south of 7501 Claiborne Road, Sutherland
Acreege:	5.026 acres
Tax Map Parcel:	19-71C
Current Zoning:	Agricultural, General, District A-2

SUMMARY OF CASE

The applicants, Gerald and Juanita Massengill, and their agent, Jesse Severt, 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, and Section 22-74. – Frontage, which requires permitted uses in the Agricultural, General, District A-2 to have 400 feet of frontage at the building setback line. The grandfathered plat shows a 237.01 foot building setback line at a lot width of 300 feet. The applicants are requesting to reduce the building setback line to 147 feet at a lot width of 287 feet. The subject parcel is located on Claiborne Road, Sutherland, Virginia, and is designated as Tax Map Parcel 19-71C, which is currently zoned 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 the health, safety and general welfare of the public.*” These 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. of the Zoning Ordinance states that “*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 SECTIONS

The Code of Virginia provisions relevant to this variance request include:

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.

Boards of zoning appeals shall have the following powers and duties:

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance 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, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, 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 relevant to this variance request include:

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. 22-74. - Frontage.

The minimum frontage of permitted uses in agricultural, general, district A-2 shall be 400 feet, at the building setback line.

CASE ANALYSIS

The applicants are seeking a variance from the setback and frontage requirements of the A-2 District in order to construct a single-family dwelling on Tax Map Parcel 19-71C. The subject property is 5.026 acres. The A-2 District requires a minimum front setback of 105 feet from the centerline of Claiborne Road (Route 631), however, the property must also maintain the minimum road frontage at the building setback line. While the minimum frontage currently required by the A-2 District is 400 feet, the minimum frontage was 300 feet at the time the subject property was created in 2000. The subject property is not 400 feet wide at any point from the front to the rear. Therefore, a minimum setback of 237.01 feet from the centerline of Claiborne Road is required to comply with a minimum frontage of 300 feet at the building setback line, all of which is reflected on the recorded grandfathered plat.

Due to the topography of the subject property, the applicants are requesting to reduce 1) the minimum front setback from 237.01 feet to 147 feet and 2) the minimum frontage at the building setback line from 300 feet to 287 feet. The topography on the rear portion of the subject property begins to slope and fall towards Hatcher Run which is located over 400 feet to the south. The requested variance would reduce the front setback by a total of 90.01 feet and the frontage at the building setback line by a total of 13 feet.

Strict application of the ordinance, or requiring the dwelling to comply with the minimum setback and frontage requirements, would prevent the dwelling from being constructed and restrict utilization of the property. The topography on the rear portion of the property is a physical hardship not imposed by the applicant.

For case V-22-1, staff recommends **APPROVAL** of a variance of 90.01 feet from the front setback requirement and 13 feet from the minimum frontage required at the building setback line for a proposed single-family dwelling, due to the topography on the rear portion of the property. Sec. 15.2-2309 of the Code of Virginia states 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 topography on the rear of the property is 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;”**

There is no indication that the granting of the variance will be of any detriment to the adjacent property owners. The proposed dwelling will still comply with the minimum side and rear yard

setbacks of 35 feet and 75 feet, respectively. The proposed front setback of 147 feet exceeds the requirement of 105 feet from the centerline of Claiborne Road (Route 631).

- (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 topography of the subject property is not so general that it could be remedied with an amendment to the ordinance, specifically by amending the building setback requirement for agricultural, general 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 of the variance will not result in a use that is not permitted on the property nor change the A-2 zoning classification 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.”**

Relief is not available by a special exception process and a modification of the ordinance is not in progress at this time.

BOARD OF ZONING APPEALS ACTION

The final statement of action should 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-22-1, to grant the request for a variance of 90.01 feet from the front setback of 237.01 feet, and a variance of 13 feet from the minimum frontage of 300 feet at the building setback line.