



THE BOARD OF ZONING APPEALS

November 28, 2023

7:00 pm

Colonial Courthouse

6504 Main Street

Gloucester, VA 23061

Pages

1. Call to Order
2. Roll Call and Establishment of Quorum
3. Establishment of the day, time and place for regular meetings for FY 23/24 1
4. Review and Approval of Minutes From October 24, 2023 Meeting 2
5. Public Hearings
 - a. V-23-03 Scoggins 17
6. Applications and Business Before the Board in December
7. Old Business
8. New Business
9. Adjournment

2024 BZA Meeting Schedule / Application Deadlines

<u>Cutoff Date</u>	<u>Meeting Date</u>	<u>Date Ad/Notices Due</u>	<u>Dates Ads Run</u>
November 27, 2023	December 19, 2023	December 5, 2023	December 7 & 14
December 29, 2023	January 23, 2024	January 9, 2024	January 11 & 18
January 26, 2024	February 27, 2024	February 13, 2024	February 15 & 22
February 23, 2024	March 26, 2024	March 12, 2024	March 14 & 21
March 29, 2024	April 23, 2024	April 9, 2024	April 11 & 18
April 26, 2024	May 28, 2024	May 14, 2024	May 16 & 23
May 24, 2024	June 25, 2024	June 11, 2024	June 13 & 20
June 28, 2024	July 23, 2024	July 9, 2024	July 11 & 18
July 26, 2024	August 27, 2024	August 13, 2024	August 15 & 22
August 23, 2024	September 24, 2024	September 10, 2024	September 12 & 19
September 27, 2024	October 22, 2024	October 8, 2024	October 10 & 17
October 25, 2024	November 26, 2024	November 12, 2024	November 14 & 21
November 29, 2024	December 17, 2024	December 3, 2024	December 5 & 12
December 27, 2024	January 28, 2025	January 14, 2025	January 16 & 23
January 24, 2025	February 25, 2025	February 11, 2025	February 13 & 20

All meetings begin at 7:00 p.m. and are held in the Colonial Courthouse

Schedule approved ____ by the Board of Zoning Appeals

**AT A REGULAR MEETING OF THE GLOUCESTER COUNTY BOARD OF ZONING APPEALS
HELD TUESDAY, October 24, 2023, AT 7:00 P.M. LOCATED IN THE COLONIAL COURTHOUSE
IN THE COURT CIRCLE, GLOUCESTER, VIRGINIA**

THERE WERE PRESENT: Mark J. Gandolfo
J. Wayne Horsley, Chairman
Mark Holthaus
Thomas Hostenske
James S. Leigh, Vice-Chairman
James Newton
Robert N. Ottarson

THOSE ABSENT:

ALSO IN ATTENDANCE: Anne Ducey-Ortiz, Director of Planning, Zoning & Environmental Programs
Tripp Little, Planner III, Board of Zoning Appeals Staff Liaison

Laura Walton, Board of Zoning Appeals Secretary

IN RE: CALL TO ORDER AND ROLL CALL / ESTABLISHMENT OF QUORUM

J. Wayne Horsley, Chairman, called the October 24, 2023, meeting of the Gloucester County Board of Zoning Appeals to order. Roll call established a quorum was present.

IN RE: APPROVAL AUGUST 22, 2023, MINUTES

Mr. Horsley: Okay, seeing as everyone hadn't had the opportunity to go over the August 22, 2023, minutes we will look at those at the next month to do the approval of those.

IN RE: PUBLIC HEARING FORMAT

Mr. Horsley: Okay tonight there was supposed to be three, two public hearings and one appeal. The two public hearings SE-23-04 and the variance V-23-02 will not be heard due to an advertising problem. So, if you're here for those. If you wish to leave that's up to you but we will be hearing application I mean, appeal 23-01 and that being, not being a public hearing, the only people speaking will be the staff and the applicant if the applicant is here. So, Mr. Little, whoever wants to present whichever one y'all want to do that.

IN RE: PUBLIC MEETING

Mr. Little: Anne is going to be presenting but thank you for acknowledging me and thanks for being here. Sorry about the mix up with the minutes we only have one case this evening. The other two were not properly advertised in the Gazette so it will have to be postponed until next month. The only case we do have tonight is Appeal 23-01 Richard Bryant and Anne's going to handle that one.

Ms. Ducey-Ortiz: Thanks Tripp. Good evening, everyone. I always get to be here when there's not fun cases.

Mr. Horsley: Anne, can you pull the mic a little closer to you, please?

Ms. Ducey-Ortiz: Is that better?

Mr. Horsley: Yes, yes, that's a lot better. Thank you.

Ms. Ducey-Ortiz: So, this is an appeal. So, I'm going to go through the staff report, then the applicant's response. I don't believe he's, he said he probably couldn't be here tonight. So, he probably won't be here if you have any questions and then you can make your decision. So, this is appeal by Richard Brian applicant on behalf of Marvin Reynolds, the property owner to the Board of Zoning Appeals under Article 14 section on appeals and it pertains to the assistant zoning administrator's issuance of a notice of violation under 5-1 compliance of district regulations. Section 14.21. This is not provided for in any district where the use is not specifically listed, it shall not be allowed. And so based on, then you'll see in the report on all the work that Denise Canada did she's our assistant zoning administrator that does enforcement, she classified it as a contractor's office and storage facility, which is not a permitted use in the single-family zoning district. So, I'm going to provide a summary of the staff report through the PowerPoint, but I would like to include the entire staff report in the minutes.

Ms. Ducey-Ortiz gave her PowerPoint presentation at this time.

Ms. Ducey-Ortiz: So, it's not the best picture, but it's the subject property located at 7778 Water's Edge Lane and as for the text map, parcels, 51 F (1)-6, it's the subdivision that's located behind the colonial point apartments back there. I'm not sure if you're familiar, it's kind of funny, how you can click it's like behind the carwash and you go back in a little better picture here. It's the subdivision on the water and so that's the property circled. In the staff report Denise provided you a timeline, again, she's been the one working her case, but essentially started last year in January 2022, she received a complaint, she visited the site, and one of the issues with it is the equipment wasn't always there. Often it was on job sites. And so again, I'm not going to read all this, it's in your packet. But she ended up Greg Gentry who also helps us on some of our inspections and code compliance, you know, would visit the site frequently and check on the site. And then this year, we've started getting more and more complaints on the property. And she went out there several times, she reopened the case, she also talked to the property owner, somebody who answered the door. And you know, they, they admitted that they were using the site, there's equipment there, more and more equipment and the neighbors, you know, constantly complaining that people are bringing, bringing things back and forth, that the employees need there in the morning. Again, we can only rely on the neighbors mostly, and then the site visits. So, in your packet are the pictures that Denise took on the site when she went out there. And you know, depending on what was occurring where they were working, the equipment was either on the site or not. She also spent some time going on Facebook and other sites to see and so obviously, there definitely is a business he is advertising. And again, all this is in your packet. And so, she usually does that before she kind of contacts the people because it makes him for, they take down their information. So, you know, we definitely have information that they're running a business. And then she also contacted our conditional revenue, and there was no record of a business license for cluttered up cheese service. This property had business licenses for landscaping, again, they were included. And you know, they said no equipment outside and stored on the site. So again, they those all had expired, and were in in different companies' names and none of them were Cut it Up Tree service. So based on that, Denise went to the site and made the determination that it was a contract with the office and storage facilities. She did hand deliver and sent a notice of violation, both the property owner and the owner of the business got a copy of the of the notice of violation. And after that after the notice of violation was read, he sent the invoice saying that he was actually doing work on the site, and that the company, he was there on the site working on the property. But again, no, there was no complaints have been going on for a year and a half. There is no business license that he could be working. And his property is a P.O. Box so that you know the

business is to a P.O. Box. So, you know we ask them if you have any business where are you running it? So, follow up. He came into the office, so I guess all of us bugging the Commissioner of Revenue. She, Peggy Pitts with the Commissioner of Revenues office contacted him say hey, your business license, you don't have an up-to-date business license. So, he came in to get his business license and of course he came up to zoning and he wanted a home occupation and he actually checked off heavy equipment on the site, and we're like, you can't have heavy equipment with a home occupation. So, you know, we explained to him, you're going to have to remove the equipment, if you get a home occupation, if you have met the ordinance and you can, you know, have 20% of the area's storage is supposed to be inside, so heavy equipment is not compatible with single family zoning. So, he was going to look for a place to put his equipment and come back. But as of today, he has not come back in the office. But he pretty much admitted that he has this equipment on site. That is where he keeps it so. So again, I'm not going to read all these definitions. So, these are the definitions that we use, you know, a contractor and contractor office and storage facility, he definitely is a contractor, you saw the pictures of heavy equipment that he has on there, he's seen sites clearing his advertisements talk about that, so that, you know, it fits under there, and he is storing it on that property. These are the this would if he was a home occupation, he would have to comply with this. And again, if he had employees, he would have to come to you for a special exception for type two home occupation. He says he has no employees, that is everyone that works with him lives in that house. The neighbors have said that's not true. But again, that stuff is really hard to prove. So, this is home occupation. And then this is you know, again, the compatibility with the district, the single family, the intent of the single-family district is to preserve residential areas and provide for future areas of similar character. So typically, when we look at home occupations and the type of equipment, you know, that's very industrial, heavy equipment, so we do a lot of pickup trucks and small box trucks and stuff, but nothing, you know, not as many easy, I'm actually in our new zoning ordinance update, we are specifying how many vehicles you can have associated with the home business. So again, based on that zoning staff, you know, made the determination and, you know, cited that section in the notice of violation that it was a use not provided for that a contractor's office and storage facility is not allowed in the single family. And the use was established without any zoning approval. And again, we couldn't approve it, because it's not a use listed within the ordinance. And, and again, he has been operating without a business license for this particular business. So, again, you know we always try to work with applicants and be fair. And so, Denise did talk to him about how he can get in compliance, essentially, he has to get the equipment off the site, find another spot for it. And then if he wanted to do a home occupation, he can have his home office there, and maybe one pickup truck or something. So. So, again, we worked, we tried to work with them, but that's how we decided to go ahead and move forward with a notice. So, these are just the sections of the ordinance that we relied on the district regulations the use is not provided for and then zoning permits required. So, it's up to you tonight to (inaudible) to either reverse or affirm wholly or partly or you can modify the notice based on what you heard tonight, and you needed a vote of at least four affirmative votes to uphold the decision.

A-23-01

STAFF REPORT

APPLICATION NO. (BZA) A-23-01 – An appeal upon application by Richard Bryant, applicant, on behalf of Marvin Reynolds, property owner, to the Gloucester County Board of Zoning Appeals under Article 14 of the Zoning Ordinance, Administrative Procedures, §14-11, Appeals. The appeal pertains to the Assistant Zoning Administrator's issuance of a Notice of Violation under Sections 5-1, Compliance with district regulations, Section 14-21. Uses not provided for. Section 14-21 provides in part: "In any district, uses not specifically permitted shall not be allowed." "Contractors' offices and storage facility" is not a permitted use in the SF-1 zoning district. Official schedule of district regulations¹ and Section 15-1. Zoning permits required. The Notice of Violation

¹ See Table of Permitted Uses: Single Family

(NOV)² states that, based on complaints received and investigated, a tree cutting service business named “Cut it Up Tree Service” has been established on the property along with the storage of heavy equipment associated with the business. A contractor’s office and storage facility is defined in Sec. 2-2 of the Zoning Ordinance as “The necessary office/administrative space as well as storage space for equipment associated with contractors.” A contractor is defined as “General service provider engaged in on-site erection, fabrication, installation, alteration, demolition, or removal of any structure, facility, material or addition thereto, including but not limited to, clearing of land, earth moving, and landscaping.” The property is zoned Single Family detached residential district (SF-1). The subject property is located at 7778 Waters Edge Ln, and is further identified as Tax Map parcel 51F(1)-6; RPC 26725. The property lies in the Gloucester Point Magisterial District.

Mr. Bryant’s appeal pertains to the determination that the property owners are in violation of the County Code as cited in the NOV dated August 15, 2023³. The NOV is based on the Assistant Zoning Administrator’s (AZA) investigation of a complaint (CE2220100010) regarding activity at the subject property. A summary of the events regarding the complaint is attached.⁴ In investigating the complaint, the AZA was able to document the activity based on information from the adjoining property owner about business being conducted the site and being advertised on Facebook (see attached email chain and screen shots from the Facebook)⁵. Storage of the equipment were also documented through pictures by the AZA during site visits – the photographs are from October 2022, June 2023 and August 15, 2023, when the NOV was sent and posted on the site⁶.

Advertisements on Facebook clearly indicate that Mr. Richard Bryant Jr. is operating “Cut It Up Tree Service.” The image below is from a NextDoorWeb Ad dated August 15, 2023. However, neither zoning nor the Commissioner of Revenue have record of a business license for this business. There are records of previous zoning permits for lawn businesses at this location⁷ and a business license for Richard Bryant Sr. from 2019, but no current permits for this or any other location for “Cut it Up Tree Service.”

The AZA spoke to Mr. Bryant on July 18, 2023, about the equipment and what was and wasn’t permitted based on a home occupation. They also discussed the lack of a business license. Mr. Bryant indicated he would come into the office to discuss the potential for a home occupation and what could and could not be stored on the site. A home occupation is limited in areas for storage and no outside storage of equipment is currently permitted.⁸ Mr. Bryant did not visit the office provide additional documentation.

² See Notice of Violation dated August 15, 2023

³ See Letter of Appeal dated August 15, 2023

⁴ See Summary of CE22010010

⁵ See Email Chain and Facebook Screenshots

⁶ See Site Photos – 10-2-22; 6-29-23; and 8-15-23 with Notice

⁷ See prior zoning permits Z16040196, Z15030126 and Z12090171

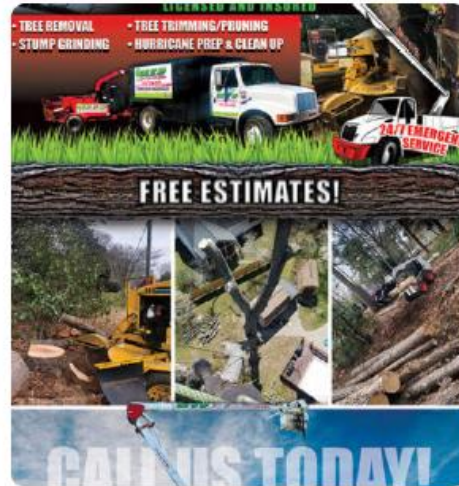
⁸ HOP Sec. 9-9. - Home occupations.

Home occupations are permitted in any residence subject to the following use limitations:

- (1) A home occupation must be conducted within a structure which is the bona fide residence of the principal practitioner or in an accessory building thereto which is normally associated with a residential use.

Our story

My name is Richard Bryant Jr, I am the proud owner of Cut It Up Tree Service. We're a second generation Tree Service fully licensed, insured, and accredited with the Better Business Bureau! My dad is our main climber who's been climbing since 1992. You'll also see my brother Austin along our side. In addition to us you'll get an arsenal of other well experienced staff we take pride working with.



SUMMARY:

Based on the receiving multiple complaints and subsequent investigation of the complaint through site visits, discussions and documentation provided on Facebook and NextDoor Advertising as well discussions with the complainant, a Notice of Violation (NOV) was sent to the complainant and the property owner indicating that a use was established on the site that was not permitted in the SF-1 zoning district in which it is located.

Subsequent to receiving the NOV, the complainant sent an email with attached letter and invoice stating that the equipment on the site is for work on the property⁹. However, the invoice is dated 6/10/23 and the complaints started on January 31, 2022. In addition, there is still no Business License and associated location, for “Cut it Up Tree Service”¹⁰ so regardless of whether you believe that they are working on this site or not, they appear to be operating a business out of Gloucester Point without a Gloucester County zoning permit or business license. Based on the information

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- (2) No alteration to the exterior of the principal residential building and accessory building shall be made which substantially changes the character thereof as a dwelling.
 - (3) Home occupations shall be reasonably compatible with the district in which they are located.
 - (4) The maximum floor area permitted for a home occupation shall be twenty-five (25) percent of the finished floor area of the residence. Storage of goods or products shall not exceed ten (10) percent of the finished floor area.
 - (5) An accessory structure may be used with the home occupation, provided that the combined total floor area devoted to the home occupation in the accessory structure and residence does not exceed twenty-five (25) percent of the finished floor area of the residence.
 - (6) No sign may be placed on the property advertising the home occupation.

⁹ See copy of Letter dated 8-31-23 and invoice dated 6-10-23.

¹⁰ Email Chain – 10-16-23 – No Business License for “Cut It Up Tree Service”

provided and investigated as described herein, the Zoning Office determined that the business was being operated at this location and that it was best described as a “contractor’s office and storage facility” which is not a permitted use in the SF-1 Zoning District. Therefore, after attempts to work with the occupant of the home and the business owner to correct the situation, a Notice of Violation was sent to the property owner and the business owner which was appealed by the business owner.

ZONING DETERMINATION:

Based on the information available to Zoning Staff from an adjoining property owner, visits to the site, information on Facebook and NextDoor, discussions with the complainant and using the definitions provided in the Zoning Ordinance under Section 2-2, staff classified the use of the property as a “contractor’s office and storage facility” which is a use not provided for in the SF-1 District.

The use was established without zoning approval and without compliance with the SF-1 zoning district regulations and therefore is in violation of the Gloucester County Zoning Ordinance. The property owner has not sought to clarify or correct the use by removing the equipment from the site and obtaining zoning approval at an appropriate location. Although not within the BZA’s or zoning staff’s authority, it appears that there is no business license for this business anywhere in the county.

BASIS FOR THE DETERMINATION:

It is the Zoning Administrator’s duty to enforce the Zoning Ordinance fairly and consistently. While the Department of Planning and Zoning always strives to enforce the ordinance in favor of the applicant, when possible, we must also enforce the ordinance consistently. Through complaints and information received from an adjacent property owner and subsequent follow-up with information on Facebook and in discussions with the complainant, the Assistant Zoning Administrator determined that the complainant had established a contractors office and storage facility, which is a use not provided for within the SF-1 district and therefore was in violation of the Zoning Ordinance. After several attempts to work with the complainant to achieve compliance, a Notice of Violation was sent to the property owner and the complainant/occupant. The decision was based on the following requirements of the Zoning Ordinance:

ARTICLE 2. – DEFINITIONS

Sec. 2-1. – Interpretation of terms or words.

For the purpose of this ordinance, certain terms or words used herein shall be interpreted as follows:

- (1) The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.
- (2) The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
- (3) The word "shall" is a mandatory requirement, the word "may" is a permissive requirement, and the word "should" is a preferred requirement.

- (4) The words "used" or "occupied" include the words "intended, designed, or arranged to be used or occupied."
- (5) The word "lot" includes the words "plot" or "parcel."

ARTICLE 5. - DISTRICT REGULATIONS

Section 5-1. - Compliance with district regulations.

The regulations for each district set forth by this ordinance shall be minimum regulations, except as otherwise specifically provided, and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided:

(1) No building, structure, or **land shall be used or occupied** and no building or structure or part thereof shall be erected, constructed, reconstructed, moved, or structurally altered **except in conformity with all of the regulations herein specified for the district in which it is located;**

(2) Except as otherwise permitted, no yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements set forth herein.

ARTICLE 14- ADMINISTRATIVE PROCEDURES

Sec. 14-21. - Uses not provided for.

In any district, **uses not specifically permitted shall not be allowed.** Persons desiring inclusion in the zoning ordinance of a use not specifically permitted may apply for an amendment to the ordinance, in accordance with the procedures set forth herein.

ARTICLE 15. – ENFORCEMENT

Sec. 15-1. - Zoning permits required.

No building or other structure which requires a building permit shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use without a permit therefor issued by the administrator. In the RC-1 and RC-2 districts, buildings or other structures associated with the production of agricultural or forestal products are exempt from obtaining a zoning permit.

On and after the effective date of this ordinance, no manufactured home which does not meet the standards promulgated in the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, the Federal Manufactured Home Construction and Safety Standards, or which contains a "defect" as defined by section 36-85.3 of the Code of Virginia, 1950, as amended, shall be the subject of a permit issued pursuant to this ordinance, regardless of proposed location.

Sec. 15-10. Violation and penalty.

All departments, officials and public employees of this jurisdiction which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this ordinance. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of this ordinance. Any such permit, if issued in conflict with the provisions of this ordinance, shall be null and void.

RELEVANT DEFINITIONS FROM THE ZONING ORDINANCE - SECTION 2-2. - DEFINITIONS:

The following definitions were reviewed in making the determination regarding the potential uses of the property based on the information described above:

Contractor: General service provider engaged in on-site erection, fabrication, installation, alteration, demolition, or removal of any structure, facility, material or addition thereto, including but not limited to, clearing of land, earth moving, and landscaping.

Contractors offices and storage facility: The necessary office/administrative space as well as storage space for equipment associated with contractors.

Dwelling, single-family: A building consisting of one (1) dwelling unit.

Dwelling unit: A single unit providing complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, but not including a tent, cabin, travel trailer, manufactured home, or room in a hotel or motel.

Home occupation, Type I: An accessory use of a dwelling unit for gainful employment involving the provision of goods and/or services in accordance with section 9-9 of this ordinance, and which does not generate any employee or customer traffic.

Home occupation, Type II: An accessory use of a dwelling unit for gainful employment involving the provision of goods and/or services in accordance with section 9-9 of this ordinance, and which generates employee and/or customer traffic.

DUTIES OF THE BOARD OF ZONING APPEALS:

Sec. 13-6. - Duties of the board of zoning appeals.

In exercising its duties, the board of zoning appeals may, as long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination as ought to be made. For the purpose of this ordinance, the board of zoning appeals has the following specific responsibilities:

- (1) **To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this ordinance.**
- (2) To authorize upon appeal or original application in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, where, owing to the special conditions, a literal enforcement of this ordinance will result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done; following the provisions of section 14-12 et seq.
- (3) To hear and decide upon applications for such special exceptions as may be authorized in the official schedule of district regulations. The board may interpret the map in such way as

to carry out the intent of this ordinance as it deems necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are complied with. No special exception may be granted except after notice and public hearing as provided in section 15.1-431 of the Code of Virginia.

- (4) To hear and decide applications for interpretation of the district map where there is an uncertainty as to the location of a district boundary. After notice to the owners of the property affected and all property owners within five hundred (500) feet of the affected property, by such question, and after public hearing with notice as required by section 15.1-431 of the Code of Virginia, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.
- (5) No provision of section 15.1-495 of the Code of Virginia shall be construed as granting the board the power to rezone property.
- (6) **To hear and decide appeals from the decision of the zoning administrator. However, no such appeal shall be heard except after notice and hearing as provided by section 15.1-431 of the Code of Virginia.**

Sec. 13-7. - Duties of zoning administrator, board of zoning appeals, legislative authority and courts on matters of appeal.

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the administrator, and that such questions shall be presented to the board only on appeal from the decision of the administrator, and that recourse from the decisions of the board shall be to the courts as provided by law. It is further the intent of this ordinance that the duties of the governing body in connection with this ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this section and this ordinance.

Ms. Ducey-Ortiz: And that's the end of my presentation again, Mr. Bryant's not here tonight, there are some neighbors from the neighborhood if you did have any questions for them. But that's my link to the staff report which is pretty much more detailed.

Mr. Horsley: Okay, seeing as the applicant I not here, is there questions for the staff?

Mr. Newton: I have one. The contractor is not the homeowner, is that right?

Ms. Ducey-Ortiz: He does not, No, he's not the homeowner. And I believe the owner does not live in the area. And but it's his grandfather is what he told us in the office. So, his grandfather owns the house. Supposedly his father, brother and he all live there, is what he said.

Mr. Horsley: Any other questions?

Mr. Gandolfo: So, Anne he's been into see the staff? He knows what he needs to do to come into compliance. Has he indicated if he's even trying to come into compliance?

Ms. Ducey-Ortiz: When he came last week, he was really upset about not getting his business license, which is pretty important. And so, he seemed earnest about trying to resolve the situation. But it isn't easy to find a place like you know, you can have to assume there's not a lot of places for people to rent to store

as much equipment as he has, so it might just be taking the time to find it. He did say that the reason why I did do the appeal is to try to get more time. So, when he came in the office, I said, you know, you pretty much admitting you're doing what we've sent you the notice for it, though, but he, I guess, was advised that that was the best thing for him to do to get more time. But

Mr. Gandolfo: I know we can't "what if" but assume the appeal is denied tonight. What's next for him? So, he's looking for time. From the county's point of view, does he get time? Or what would your office do to allow him? Yeah, so if we said, look, the appeal you know, that was a legitimate violation before, right. But he comes and says, I still need a little bit more time, Is that doable? What happens next?

Ms. Ducey-Ortiz: So, we always work with the applicant, and even though a judge would, so if he didn't appeal, it would, we would continue to say you need to clean up the site, you know, probably give them you know, 30 days, and then if you didn't we'd go get a summons, and then go to court, often the judge. Often, you know zoning is not very easy. The judge often gives more time, because it's a whole, you know, just like you present the case to the judge, he Oh, I'd need more time. So, and it's hard to say we don't bring many cases to court, which are the problems, that's kind of what we're trying to do. So, you know, the other thing we told them, you know, I didn't really put in the staff report, but, you know, yeah, like, his neighbors are watching him. So, you know, we've had we've gotten multiple calls today, you know, they were worried that we were rezoning the property. But, you know, it's a pretty nice neighborhood, if you go down there and his house, he is using it for storage of heavy equipment.

Mr. Gandolfo: In the reality for him, because it's clearly not acting within the zoning requirements is it could become a legal issue for him.

Ms. Ducey-Ortiz: Oh, yeah and the judge, you know, when you go to court, and he doesn't do it, you know, sometimes it's, if the judge says, give me more time, you know, you come back, and if you haven't done it, and you start getting fined, and so, and right now he is, he's operating without a business license, that's a whole other violation, not zoning, but you know, he can get into trouble with DPOR, you know, not just zoning. That's his problem right now.

Mr. Newton: Well, according to the ordinance, he can't come into compliance in that location there.

Ms. Ducey-Ortiz: No, he, the only thing he could do would be a home occupation, he would not be able to have his equipment there. But he, so he can get into how he got it, how he would get into compliance would be to remove all the equipment, find a legitimate place to put it. So that's going to be hard, you know, there's not a lot of places in the county or he can, you know, go put his business somewhere else at the commercial district.

Mr. Newton: And get his business license.

Ms. Ducey-Ortiz: Yes

Mr. Hostenske: So how long has he had with all the dates and the emails and things?

Ms. Ducey-Ortiz: He appealed on the 30th day, that so literally the day so he's, and I do believe in the correspondence. I mean Denise has been out there multiple times Denise has told them, the only way to get into compliance is to remove the, the equipment, so and then he was like, how much equipment and she's like, you can have your pickup truck. You know, everyone has pickup trucks, but he has a dump truck. He has quite a few pieces of equipment. So, the last thing he said was that he's working on the property. And again, that was because of the history and, you know, we knew that he'd been working on the property for a year and a half. That's really not...

Mr. Hostenske: So, from the from the, remove the first communication; telling him to remove equipment. How long has that been to this date?

Ms. Ducey-Ortiz: Let's see... Denise...

Mr. Little: It's been over a year; I believe it was June of last.

Ms. Ducey-Ortiz: I think Denise, she said that. She spoke to him on July 18, 2023. She discussed his heavy equipment not being permissible for the zoning ordinance. So, since July, she has been trying to get him to remove it.

Mr. Leigh: I've got a question. What about the business license? I mean, shouldn't you be operating systems?

Ms. Ducey-Ortiz: He shouldn't. I mean, we've contacted...

Mr. Leigh: Is that part of what we're working on tonight?

Ms. Ducey-Ortiz: No

Mr. Leigh: Okay.

Ms. Ducey-Ortiz: This is just zoning, so the Commissioner, I don't know what appeal process they have, but they had their own way of you know, that's another code.

Mr. Gandolfo: I think Tripp really wanted to answer something I asked.

Mr. Little: Yes. Regarding a question of time. If the appellate loses the appeal this evening. He does have the option of appealing to the Circuit Court and just like the Zoning Administrator has presumption of correctness. Tonight, the BZA would have the presumption of correctness if it were taken to circuit court but that would buy him some extra time.

Mr. Horsley: Any other questions?

Mr. Gandolfo: One more question, Anne. In one of the things, he basically told you guys is that his equipment was there because he was working on clearing some of his own property.

Ms. Ducey-Ortiz: So, in your packet, there's a notice, an invoice. So, the invoice has the name of his business with a P.O. box, but it says up in Gloucester Point or Hayes. So, I'm like okay, if that's your business, where do you operate out of, there's no answer. So, you know, he almost by doing that, it's like, okay, here's an invoice for a company that has no business license. Now, there is a business license for a lawn service company, but it's clearly a tree company. So, it's kind of backfired on him on that, but he that I think was his attempt to buy more time. A very nice young entrepreneur, but you know, {inaudible} he needs to figure out what to do.

Mr. Holthaus: How long is this business been operating at that site? At the subject property.

Ms. Ducey-Ortiz: We don't really know; I did talk to him about that when he came in because I said you don't have a business license. And he had a business license for the lawn company, and we have the zoning permit for that. And it clearly says no outside storage of equipment on that. But again, the last one we had was from 2019. So those are all included in your packet too. The three zoning permits for that property. So, he did say he switched like as he stopped doing lawn care and start doing tree care, but he never changed his license. So, he just started doing it.

Mr. Horsley: Okay, any discussion?

Mr. Gandolfo: It's clear to me he is in violation of the zoning ordinance as regarding the contracting portion of him having industrial equipment on the property.

Mr. Horsley: I don't blame the neighbors for being upset because it's a real nice neighborhood and somebody has to keep that road up and I don't know who's doing it, but that equipment going in and out is hard on the road and I agree that this is not in accordance with our ordinance. If there's no other discussion, we have a motion to either approve or disapprove this application, appeal A-23-01.

Mr. Leigh: Mr. Chairman, I move that we disapprove, is that the right verb?

Mr. Horsley: Deny.

Mr. Leigh: We deny?

Mr. Little: When you make your motion, I would suggest that you move to deny the application and affirm if that's what you're wanting to convey, that you deny the appeal and affirm the administrator's decision. And also, if you would for the record, please state your rationale for that.

Mr. Leigh: Alright, now you got me.

Mr. Little: The reason I, the reason I say that is if it does go to the Circuit Court for appeal, our minutes are going to be part of the records that the judge looks at and so it needs to be worded correctly and carefully.

Mr. Horsley: assure the T's are crossed and the all the T's are dotted, I's are crossed

Mr. Gandolfo: I make a motion that we deny the application A 23-01 and affirm the notice of violation dated August 15, 2023, based on the fact that the use of the property is in violation of Gloucester County code, Appendix B Zoning Section 5-1 in compliance with district regulations and Section 14- 21: uses are not provided for.

Mr. Holthaus: I second.

Mr. Horsley: Okay I have a motion and a second. All in favor say aye.

Board Members: Aye.

Mr. Horsley: All oppose? Okay application A-23-01 is denied.

Ms. Ducey-Ortiz: Thank you.

IN RE: APPLICATIONS AND BUSINESS BEFORE THE BOARD IN NOVEMBER

Mr. Horsley: We do have at least two applications for next month.

Mr. Little: Yes, Sir.

Mr. Horsley: At least.

Mr. Little: I spoke with the applicant for the gunsmithing business this afternoon as soon as I got the news about the mix up at the Gazette. He will not be here or probably will not be here at the end of next month. So, he asked about the possibility of having another meeting earlier. The Board does have the option of calling a special meeting. If you do that you need five days written notice to the other members, and I told

him the earliest that we will be able to do it based on advertising requirements would be the second week of November. Being that we've already got a case scheduled for the end of November. I don't know if I told him I didn't know if that would be palatable to you all or not, but that I would at least ask the question.

Mr. Gandolfo: Personally, I'm available to do that. We've done a number of these before it seems relatively straightforward. I'd like to give him an opportunity to come before us. It wasn't his fault. I guess that the paper didn't get it in otherwise we'd been hearing it right now. I'm available if the board wants to do it.

Mr. Leigh: What would be available?

Mr. Horsley: What date are we looking at?

Mr. Little: We're looking at I believe it's the 13th.

Mr. Horsley: 13th is a Monday,

Mr. Little: It would be the 14th.

Mr. Horsley: 14th?

Mr. Little: It would be that Tuesday.

Mr. Leigh: Yep.

Mr. Little: Tuesday after, I haven't checked yet to see if the rooms available, so that.

Mr. Horsley: It should be the Board of Supervisors are meets here on the 7th.

Mr. Little: They are meeting on the 8th, because of election day.

Mr. Horsley: Oh yeah, that's right they are meeting on eighth so yeah.

Mr. Little: It should, the room should be available, but we need to confirm that.

Ms. Walton: There isn't anything on the County Calendar, but I can confirm that tomorrow

Mr. Horsley: Planning Commission meets on the 1st.

Ms. Walton: Thursday.

Mr. Horsley: Thursday, don't they?

Mr. Little: First Thursday, yes. They meet on the second.

Mr. Horsley: I don't have any problem.

Mr. Newton: What was the reason he couldn't be here?

Mr. Little: He is a major in the army and will be deployed to the West Coast. He does some secret stuff.

Mr. Newton: I can do it.

Ms. Walton: So, confirm the 14th?

Mr. Horsley: As far as I'm concerned its

Mr. Gandolfo: I'm good.

Mr. Hostenske: I'm good too.

Mr. Leigh: I can do it.

Mr. Ottarson: I should be good. I'm not 100 percent sure.

{inaudible}

Mr. Little: Would you like to also do the variance the same night?

Mr. Horsley: The which one?

Mr. Little: The Variance for Mattress Warehouse.

Mr. Horsley: Oh yeah ok. Yeah, fine.

Mr. Gandolfo: Will that cancel out the

Mr. Little: No, we'll still have a meeting. But I talked to Anne about it a few minutes ago my thinking behind that was if you are unable to make a decision on either case at the special meeting. Then you could decide it at the already scheduled meeting right after Thanksgiving and fingers crossed. We wouldn't have a meeting in December.

Mr. Gandolfo: They would've been here anyway so we might as well do it anyway.

Mr. Leigh: Might as well do it.

Mr. Horsley: Yeah. Do you need a motion.

Mr. Little: Yes, and then we'll send out written notice to all the members.

Mr. Little: We have to give you five days' notice, or you have to give five days' notice written notice.

Mr. Horsley: Okay do I hear a motion?

Mr. Leigh: I want to make sure I understand that so we're doing a meeting on the 14th and the 28th.

Mr. Little: Yes, that's...

Mr. Leigh: Okay. We already have something scheduled for the 28th?

Mr. Little: We have another variance request.

Mr. Leigh: Well, I make a motion that we change. Well, not change the meeting but have a special meeting on November 14, 2023, for SE 23-04 and V-23-02

Mr. Hostenske: I'll second that.

Mr. Horsley: Okay I hear a motion and a second. All in favor say aye.

Board Members: Aye.

Mr. Horsley: Okay, now, you said we do have, we will have another application for the 28th.

Mr. Little: We do have one variance application. It's for property that you all have previously. I don't want to prejudice you too much. But the BZA has previously denied a variance for the same piece of property and the applicant is aware of it.

Mr. Newton: How many years ago

Ms. Walton: It was 2005 so 18 years ago.

IN RE: OLD BUSINESS

Mr. Horsley: All right. Do we have any, any old business? Okay no old business.

IN RE: NEW BUSINESS

Mr. Horsley: All right. Do we have any new business? Okay no new business. Well, we only got one more thing to do. Motion to adjourn.

IN RE: NEXT MEETING AND ADJOURNMENT

The next possible regularly scheduled meeting of the Gloucester County Board of Zoning Appeals will be a special meeting being held on Tuesday, November 14, 2023, at 7:00 p.m. in the Colonial Courthouse located in the Court Circle, Gloucester, Virginia.

Being no further business at this time, the Chairman adjourned the meeting, on motion by Mr. Gandolfo, seconded by Mr. Leigh, and carried unanimously by voice vote.

J. Wayne Horsley, Chairman

Laura Walton, Secretary



Gloucester County Board of Zoning Appeals
APPLICATION FOR VARIANCE

V-_____-_____
23-100003

APPLICANT INFORMATION:

Applicant Name: DAVID J. SCOGGINS
Mailing Address: P.O. BOX 976 GLOUCESTER PT. VA 23062
Phone: 757 870 8368 Email Address: SCOTADA@COX.NET

PROPERTY INFORMATION:

RPL-29619

E911 Address: PARCEL B, OLD PINETTA RD. GLOUCESTER, VA
Tax Map/Parcel #: 29-145B Magisterial District: Petsworth
Zoning District: SC-1
Property Owner Name: DAVID J. & JANET D. SCOGGINS
Mailing Address: P.O. BOX 976 GLOUCESTER PT. VA 23062
Phone: 757 870 8368 Email Address: SCOTADA@COX.NET

Variance Requested: (Check items that apply)

1. ☐ Variance from Property Line Setback Requirement

(Example: If a 100 ft. rear setback is required and actual distance to property line from structure will be 40 feet, applicant needs to request a 60-foot variance from rear setback.)

____ ft. variance from side yard setback (North, South, East, West)

____ ft. variance from rear yard setback

16 ft. variance from front yard setback (59 FEET FROM FRONT PROPERTY LINE)

2. ☐ Variance from Required Lot Size

Actual Lot Size _____ acres

Required Lot Size _____ acres

3. ☐ Variance from Parking Requirements

____ Spaces provided

____ Spaces required

4. ☐ Variance from Height Requirements

Maximum height of building _____ ft.

Requested height of building _____ ft.

5. ☐ Other – Explain

NARRATIVE STATEMENT - Explanation of variance being requested:

The narrative statement shall demonstrate that the requested variance conforms to all of the following standards:

- a. 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.
- b. 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.
- c. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
- d. 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.
- e. 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.
- f. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance.

Please attach separate page(s) if more space is needed

NARRATIVE ATTACHED

TAX MAP / PARCEL # 29-145B

(a.) The required 75 foot setback places our building site on a slope that our builder has deemed to be too steep to build on.

There is no other site on the lot that meets required setbacks.

(b.) There have been no alterations to the property that cause the need for the variance.

(c.) The home to the left of our lot fails to meet the 75 ft. setback and will not be affected by the variance of our setback.

The home to the right of us will not have direct view of our house and is otherwise unaffected by our variance.

The property directly across the street is wooded and vacant.

(d.) The topography of our lot is unique and therefore does not suggest that an amendment to the ordinance is required.

(e.) The requested variance does not change the permitted use of the lot as a building site for a 2 BR home.

(f.) The front setback variance is the only thing needed to use the lot as a building site for a 2 BR single family residence, as otherwise permitted.

No other exception is needed or requested.

List the names and addresses of owners or occupants of all abutting property and property immediately across the street, road or highway. Addresses should coincide with those in the Commissioner of the Revenue Property Records. (Please Print)

<u>Name</u>	<u>Mailing Address</u>	<u>Tax Map/Parcel#</u>
JOHN H. &	< GLOUCESTER VA 23061 >	
LAURA A. NORDHEIM	17548 OLD PINETTA RD.	29-148
ROBERT R. &		
TERESA A. McDONOUGH	1288 OLD PINETTA RD.	29-14
JESUS FERNANDEZ SOLIS	1285 OLD PINETTA RD.	29-145F
JAMEEL I. &		
KRISTINA L. KING	1245 OLD PINETTA RD.	29-145A

PRIVACY ACT STATEMENT: Information provided in this application will be used in the application review process and is a matter of public record once the application is filed.

CERTIFICATION: I agree to allow the members and representatives of the Board of Zoning Appeals and duly authorized personnel of Gloucester County to enter upon said premises at reasonable times to inspect and/or photograph site conditions for review of this application. In addition, I certify under penalty of law that this document and all attachments were prepared by myself or under my direction or supervision and the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

NOTICE: If the property owner(s) does not sign this application (below), written notice will be given to the property owner(s) within 10 days of the receipt of this application as required by Virginia Code § 15.2-2204.

Applicant (print): DAVID J. SCOGGINS

Applicant (signature): David J. Scoggins Date: 9-26-23

Property Owner (print): DAVID J. SCOGGINS

Property Owner (signature): David J. Scoggins Date: 9-26-23

Property Owner (print): JANET D. SCOGGINS

Property Owner (signature): Janet D. Scoggins Date: 9-26-23

NOTE: A completed Conflict of Interest Form must be submitted for each applicant and each property owner.

Applications for variances may be made by any property owner, tenant, government official, department, board, or bureau. Such applications shall be made to the Zoning Administrator, who shall promptly transmit the application and accompanying maps, plans, and/or other information to the Secretary of the BZA – who shall in turn place the matter on the Board's docket. The Zoning Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the BZA or appear as a party at the hearing. Within sixty (60) days of receipt of a completed application for a variance, and after public notice as required by §15.2-2204 of the Code of Virginia, the BZA shall hold a public hearing on the application for variance. Within thirty (30) days after the required public hearing, the BZA shall either approve or deny the application for variance.

SUBMIT APPLICATION TO: Gloucester County Department of Planning & Zoning
County Office Building Two, 6489 Main Street, Gloucester VA 23061 (804) 693-1224

APPLICATION FEE: \$275.00; Make check payable to Gloucester County; Payment is required with application and is NOT REFUNDABLE

FOR STAFF USE ONLY:

Case Number: _____ Date Application Received: _____
Fee Received: _____ Receipt Number: _____
Application Received By: _____

Conflict of Interest Statement

In accordance with Section 14-22 of the Gloucester County Zoning Ordinance, I certify that my application for variance, ___ zoning appeal, or ___ special exception is subject to the following:

Does any member of the Planning Commission, Board of Zoning Appeals, Historic Landmarks Commission, or governing body (Board of Supervisors) have any interest in the property which is the subject of this application/petition, either individually, or by ownership of stock in a corporation owning such land or partnership?

Yes No ✓

Does a member of the immediate household of any member of the Planning Commission, Board of Zoning Appeals, Historic Landmarks Commission, or governing body (Board of Supervisors) have any interest in the property which is the subject of this application/petition?

Yes No

If yes to either question above, please state:

Person's name: _____

Member of: _____

Nature of their interest: _____

I, JANET D. JOGGINS, hereby certify that the information contained in this conflict of interest statement is true and correct to the best of my knowledge.

James D. Scaggs
(Signature)

9/26/23
Date

CITY/COUNTY OF Gloucester
COMMONWEALTH OF VIRGINIA

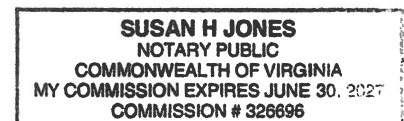
The foregoing instrument was subscribed and sworn before me this 26th day of September, 2023 by Janet D. Siggins.

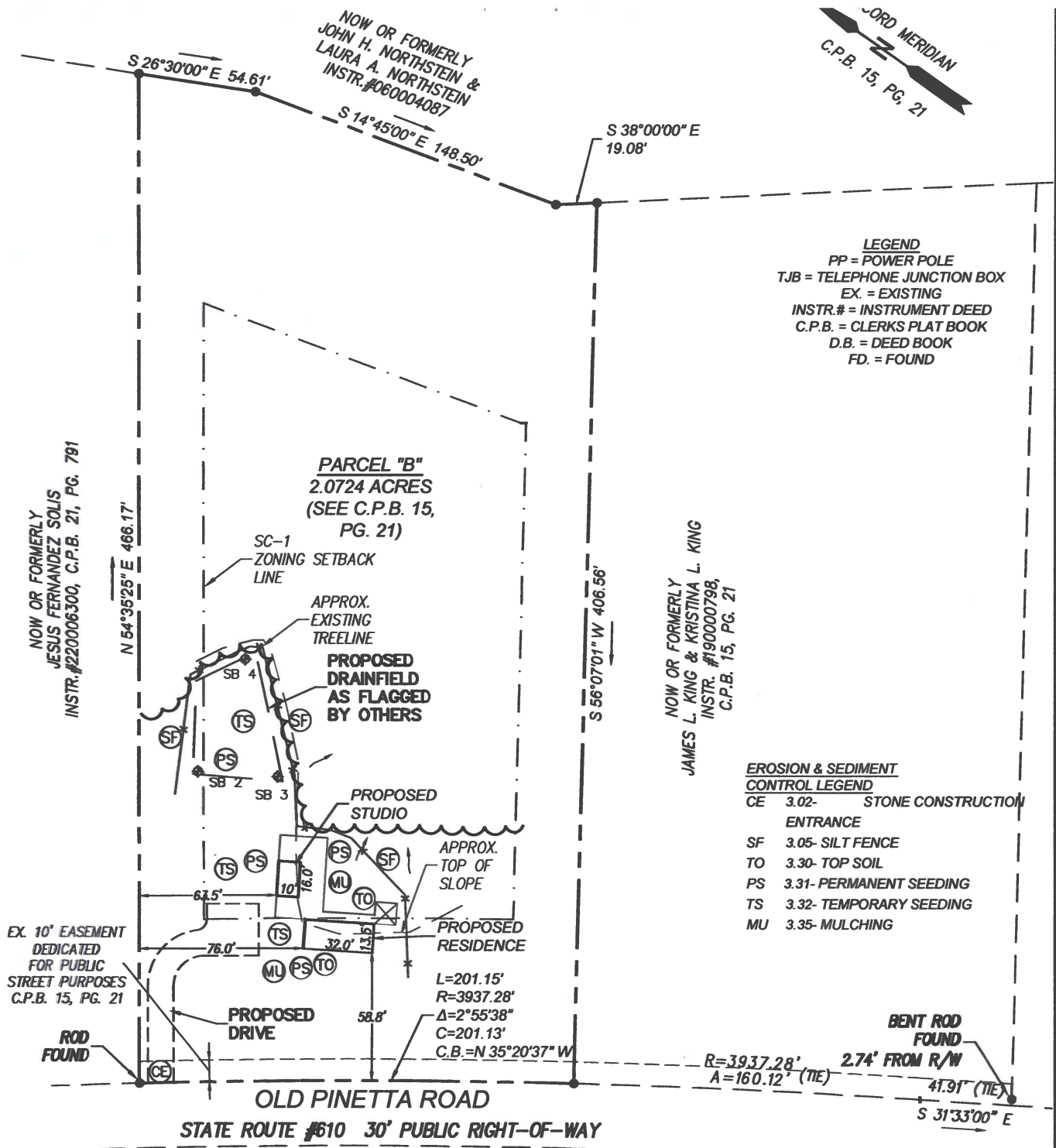
Susan Hines
Notary Public

(Seal)

Notary Registration Number: 326696

My commission expires: 6-30-27



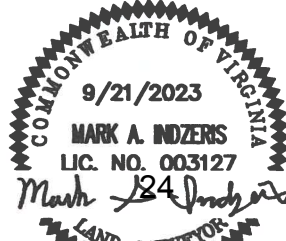


PROPOSED HOUSE LOCATION PLAN
 PARCEL 145B ON TAX 29
 PREPARED AT THE REQUEST OF
 DAVID SCOGGINS

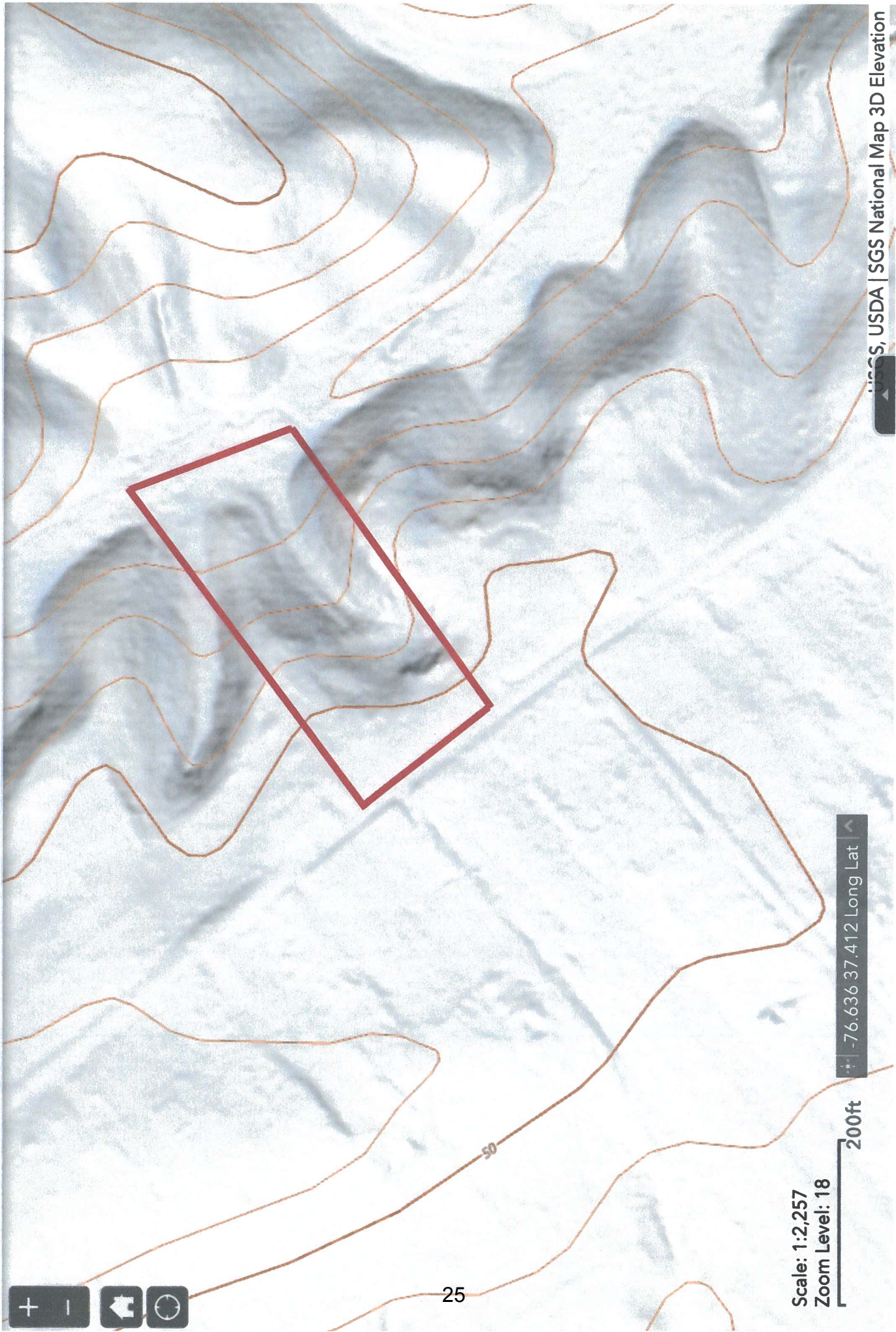
PETSWORTH DISTRICT
 GLOUCESTER COUNTY, VIRGINIA
 SEPTEMBER 21, 2023 SCALE 1"=50'

GENERAL NOTES

- TAX MAP #29-145B
 OWNER OF RECORD: DAVID J. SCOGGINS & JANET D. SCOGGINS
 REFERENCES: INSTR. #230001820, C.P.B. 15, PG. 21
- PHYSICAL ADDRESS: NONE ASSIGNED.
- FLOOD ZONE NOTE: THE SUBJECT PARCEL LIES IN ZONE X (NO BASE FLOOD ELEVATIONS DETERMINED) PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (F.I.R.M.) #51073C0095F DATED OCTOBER 21, 2021.
- THIS PLAN IS BASED ON A CURRENT FIELD SURVEY, FOUND GROUND EVIDENCE, RECORD, AND OTHER AVAILABLE INFORMATION. OTHER THAN SHOWN THERE MAY BE ADDITIONAL EASEMENTS, COVENANTS



REFERENCE MARK
 LAND SURVEYING, PLLC
 8330 ARK RD.
 GLOUCESTER, VA 23061
 804-815-1215



Scale: 1:2,257
Zoom Level: 18

200ft

-76.636 37.412 Long Lat

USGS, USDA | SGS National Map 3D Elevation



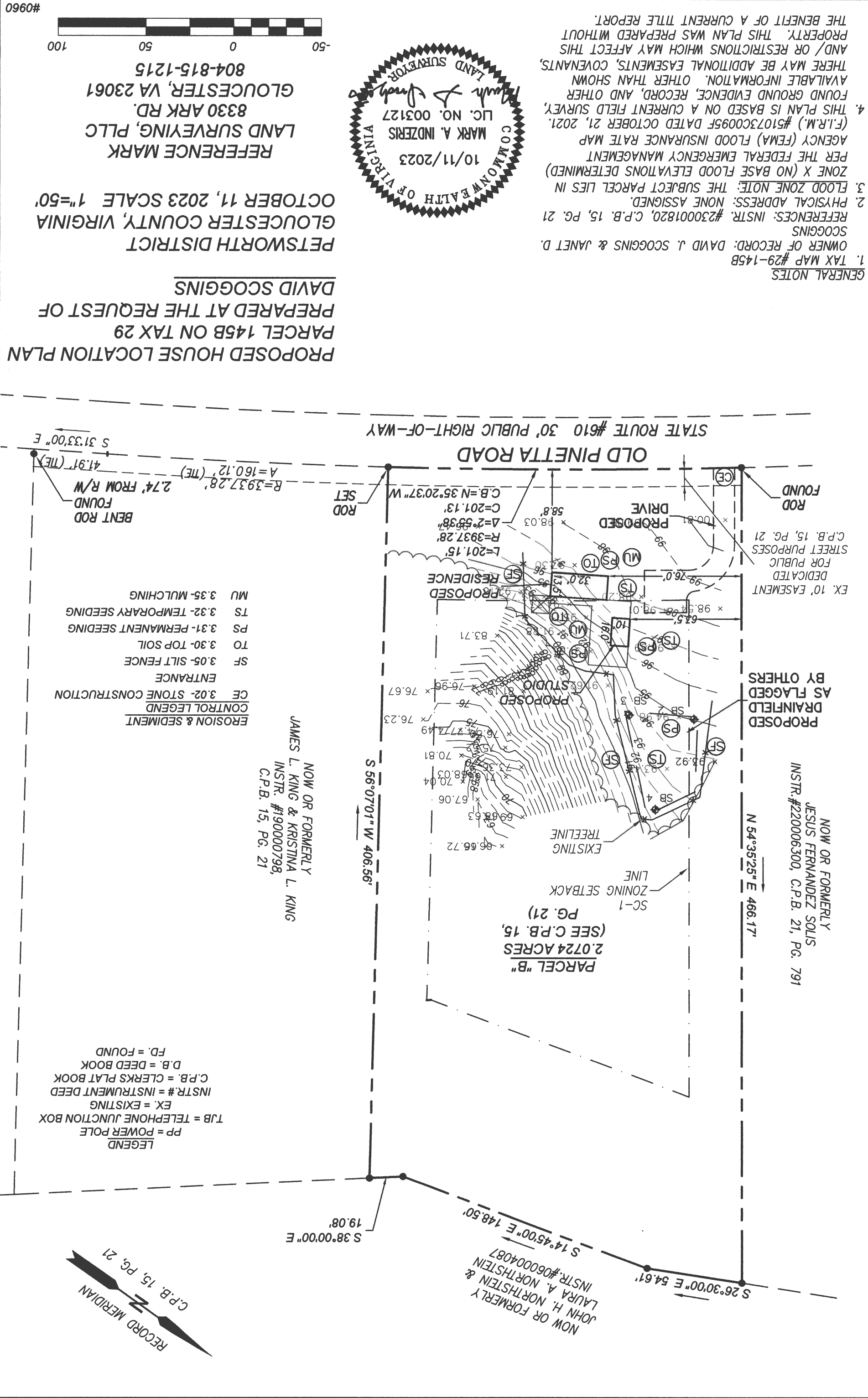


Scale: 1:2,257
Zoom Level: 18

200ft

... -76.637 37.412 Long Lat ^

USGS, USDA | SGS National Map 3D Elevation





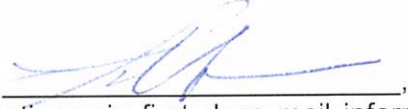
NOTICE TO PROPERTY OWNERS AND ADJACENT PROPERTY OWNERS
GLOUCESTER COUNTY BOARD OF ZONING APPEALS PUBLIC HEARING

This is to give notice to property owners and adjacent property owners concerning the application to the Gloucester County Board of Zoning Appeals described herein as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended.

APPLICATION NO. V-23-03 – A variance request by David J. Scoggins, applicant David J. & Janet D. Scoggins, property owners, under Article 14 of the Zoning Ordinance, Administrative Procedures, §14-12, Variances. The applicant is requesting a 16-foot variance from the 75' front yard setback requirement in the Suburban Countryside (SC-1) District. The subject property is located at RPC# 29619 and is more formally identified as Tax Map parcel 29-145B; the property lies in the Petsworth Magisterial District off of Old Pinetta Road, SR 610.

This application (**V-23-03**) is on file in the Office of Planning & Zoning, County Office Building Two, 6489 Main Street, Gloucester, Virginia and may be reviewed during normal office hours or on the County's website at:

<https://gloucesterva.gov/meeting-portal>

I, Laura Walton, Board of Zoning Appeals Secretary  hereby certify that on November 16, 2023, I sent notices via first-class mail informing property owners and adjacent property owners of the public hearing to be held on November 28, 2023 at 7:00 p.m. in the Colonial Courthouse, located in the Court Circle, 6504 Main Street, Gloucester, Virginia.

Property Owners and Adjacent Property Owners:

David J. & Janet D. Scoggins, Property Owners

Jesus Fernandez Solis, Adjacent Property Owner

Jameel & Kristina King, Adjacent Property Owner

Robert & Teresa McDonough, Adjacent Property Owner

Myra Nadine Cooke: c/o Mabel H. Cooke, Adjacent Property Owner

John & Laura Northstein, Adjacent Property Owner

NOTICE OF PUBLIC HEARINGS
GLOUCESTER COUNTY BOARD OF ZONING APPEALS

Pursuant to Section 15.2-2204 of the Code of Virginia, 1950, as amended, the Gloucester County Board of Zoning Appeals will hold a public hearing on November 28, 2023, beginning at 7:00 p.m. in the Colonial Courthouse, located in the Court Circle, 6504 Main Street, Gloucester, Virginia, to consider the following:

APPLICATION NO. (BZA) V-23-03 - A variance request by David J. Scoggins, applicant David J. & Janet D. Scoggins, property owners, under Article 14 of the Zoning Ordinance, Administrative Procedures, §14-12, Variances. The applicant is requesting a 16-foot variance from the 75' front yard setback requirement in the Suburban Countryside (SC-1) District. The subject property is located at RPC# 29619 and is more formally identified as Tax Map parcel 29-145B; the property lies in the Petsworth Magisterial District off of Old Pinetta Road, SR 610.

All interested parties are invited to attend this hearing to express their views. Citizen comments may also be submitted prior to the public hearing by three different methods:

- An online form is available on the County's website at: www.gloucesterva.info/citizencomment. Please follow the instructions on the Citizen Comment Submission form to indicate your comments are for this specific public hearing.
- Comments may also be submitted by calling and leaving a message at 804-824-2760. Follow the prompts to leave comments for this specific public hearing, and clearly indicate your name (including spelling if needed) and your magisterial district.
- Finally, comments may be submitted by US Mail to County Administration, ATTN: PUBLIC HEARING, 6489 Main Street, Gloucester, VA 23061. Any mailed comments must include your name, your magisterial district, and the title of this public hearing clearly printed at the top. Please type or print all comments legibly.

Comments submitted through one of these methods prior to the public hearing must be received no later than 12:00 p.m. (12:00 noon) on November 28, 2023, and will be read or played aloud during the public hearing up to the time limit set by the Chairman.

"Form letters," consisting of communications which are verbatim duplicates (other than the identifying information of the author/submitter) of one or more other communications received by the County pertaining to this matter to be considered at the public hearing, shall be read only once per letter, along with the list of persons submitting the same comments pursuant to such "form letter."

Persons requiring assistance to submit comments for the meeting should contact the Gloucester County Administrator's office at (804) 693-4042.

This application is on file in the Office of Planning and Zoning, County Office Building Two, 6489 Main Street, Gloucester, Virginia and may be reviewed during normal office hours or on the County's website at: <https://www.gloucesterva.info/640/Meeting-Portal>. The Office of Planning and Zoning may be contacted at (804) 693-1224 from 8:00 a.m. to 4:30 p.m. Monday through Friday.

James Wayne Horsley, Chairman
Gloucester County Board of Zoning Appeals



GLOUCESTER COUNTY
Planning, Zoning & Environmental Programs Department
6489 Main Street Gloucester, VA 23061
www.gloucesterva.info

V-23-03

STAFF REPORT

APPLICATION NO. (BZA) V-23-03 - A variance request by David J. Scoggins, applicant and David J. and Janet D. Scoggins, property owners, to the Gloucester County Board of Zoning Appeals under Article 14 of the Zoning Ordinance, Administrative Procedures, §14-12, Variances. The applicant is requesting a 16-foot variance from the front yard setback requirement of 75 feet for a principal dwelling. The subject property is located on the north side of Old Pinetta Road (State Route 610) and is further identified as Tax Map parcel 29-145B; RPC 29619; the property lies in the Petsworth Magisterial District and is zoned Suburban Country-side (SC-1).

The purpose of the request is to construct a single-family residence. The applicant states that the required 75 foot setback places their building site on a slope that their builder “has deemed too steep to build on.”



BACKGROUND:

The property was subdivided in 1979, prior to the County's adoption of zoning in 1984¹. It has been vacant since that time. When zoning was adopted, this property was probably zoned R-1 Rural. As part of the 1998 County-wide rezoning, the property was zoned SC-1. The setbacks are 75 feet for the front yard, 30 feet for the side yard, and 100 feet in the rear. Accessory structures can be five (5) feet from the side and rear property lines but cannot encroach into the front yard setback (75').

According to the County's assessment records², Mr. and Ms. Scoggins bought the property May 12, 2023. On September 26, 2023, they came to the County to apply for a variance³. They stated that their surveyor had advised them that they "qualified for a variance" due to the topography of the property. Prior to submitting the variance request, neither the surveyor nor the Scoggins had contacted the County regarding the criteria for granting one. Staff requested additional information, specifically topography, to justify the hardship based on topography. Staff also provided them with a copy of the staff report and minutes from a previous variance request (V-05-02) which was denied⁴ in case they wanted to withdraw their request. Mr. and Ms. Scoggins decided to move forward with the variance.

As with the previous variance (V-05-02), staff was able to demonstrate that the proposed house could fit within the required setbacks. Staff followed up with the applicant as to why they could not build in a location that met the requirements. After several emails back and forth about what constitutes a hardship, Ms. Scoggins indicated that the main reasons for not locating the house within the required setbacks were the aesthetics and proximity to the house on the adjacent lot. They purchased the lot based on its proximity to Mr. Scoggins' ailing parents so they could help take care of them. They planned to build their "final" home on this site, and they feel the location allowed by the ordinance would not result in an aesthetically pleasing home.

Staff visited the site on November 15th and took several pictures. The area shown on the survey (in red) below is nearly level. While the manufactured home on the adjacent parcel is close (about 11 feet) to the side property line, the Scoggins can use their required side setback (30') to install a buffer to provide privacy and screening. Please see the photos and plat markup on the following page.

¹ See Plat Larry & Carol Ann Smith approved 4-23-79 and recorded in the Clerk's office 4-26-1979

² See Vision Assessment Data and Ownership History

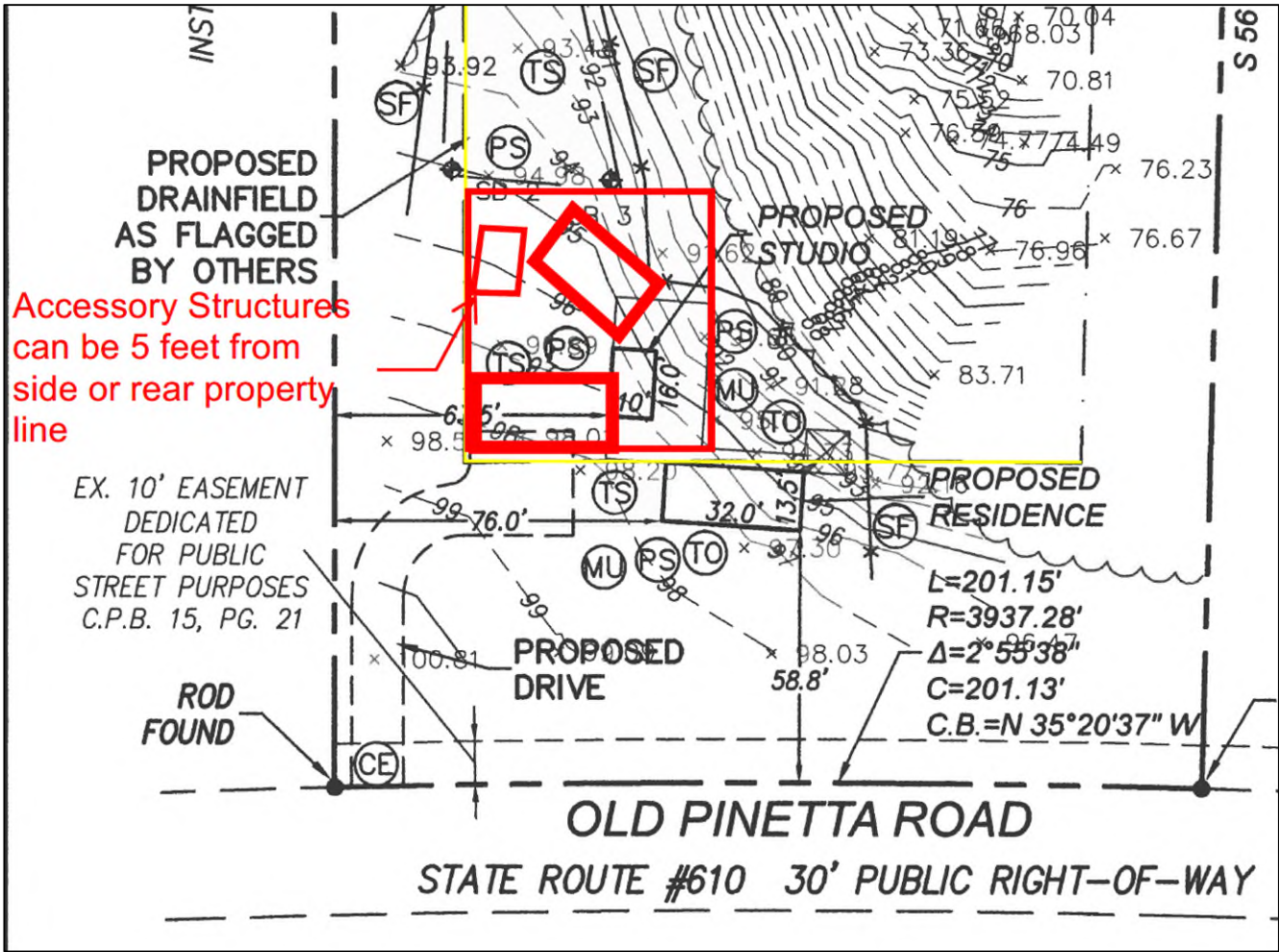
³ See staff timeline.

⁴ See V-05-03 – Staff report and BZA minutes

Looking along property line (left picture) and northwest from property corner (pink flag):



Survey Mark-up showing multiple locations for the house and accessory studio



ANALYSIS - CRITERIA FOR GRANTING A VARIANCE - CODE OF VIRGINIA § 15.2-2309. POWERS AND DUTIES OF BOARDS OF ZONING APPEALS. (IN PART):

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...**

The strict application of the terms of the ordinance would not unreasonably restrict the utilization of the property and existing structures for permitted uses within the zoning district. Furthermore, a hardship relating to the exceptional size/shape of the land must be demonstrated; cost of construction and/or aesthetics are not considered “hardships” that a variance is designed (or legally permitted) to alleviate. Based on the survey submitted and the site conditions noted in the field, it appears that a house can be located within the required setbacks and thus a hardship has not been demonstrated⁵.

From the Albemarle County Land Use Law Handbook, dated March 2022: “Variances should be granted only to achieve parity with other properties in the district; they should not be granted to allow the applicant to do what others in the zoning district may not do without a variance.”

View of the potential building area on the site:



⁵ See marked-up site plan showing multiple locations within the required setbacks

And, from § 15.2-2309.2 (cont'd):

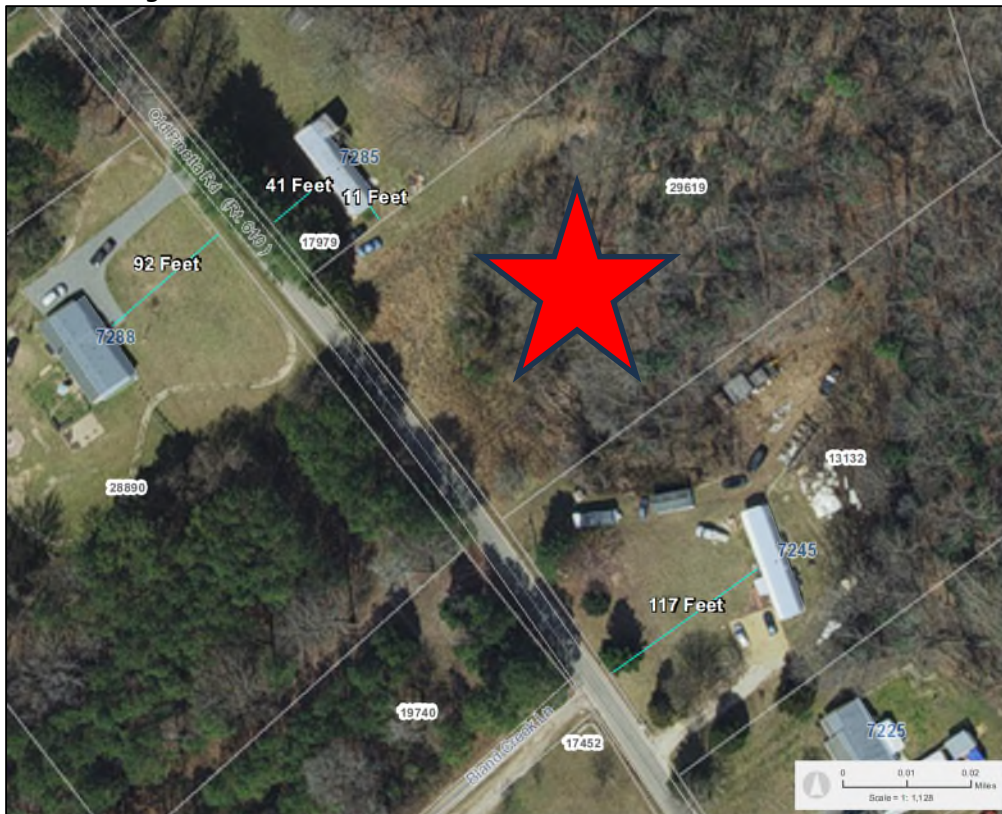
- (i) **The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;**

It appears that the property was acquired in good faith. As noted above, the property has been vacant since the lot was created in 1979 and the existing topography has been in place since that time. The house to the east (# 7245 - right facing the property) of the property was built in 1989, according to County records and the house to the west (# 7285 - left facing the property) was built in 1981. So, the features on this and the adjacent properties were in place when the Scoggins made the purchase in May of 2023 – as were the SC-1 zoning requirements.

- (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;**

As noted above, one of the adjoining residences was built prior to zoning and the other prior to the current SC-1 zoning. The residence to the west (# 7285 on the left) is only about 11 feet off the side property line and is only set back from the road about 40 feet. Both adjacent properties contain manufactured homes which are not currently permitted in the SC-1 zoning district. There are a mix of compliant and non-conforming homes in the area. Therefore, the granting of the variance would not appear to rise to the level of a *substantial* detriment to the adjacent property or nearby properties. However, it would set a precedent since the perceived hardship is not based on the physical condition of the property.

Surrounding homes and setbacks:



- (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;**

Staff does not feel this condition or situation is so general or recurring a nature as to require an amendment to the ordinance. Although limited by topography on the northeast side of the site, there is buildable area within the required setbacks on the southwest side. When an actual hardship exists due to a demonstrated, unique, physical condition of the property, the zoning administrator has the ability to grant an administrative variance. This has occurred infrequently over the past 14 years, but administrative variances have been granted when the zoning administrator was able to make the findings as required by 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**

The subject property is zoned Suburban Countryside (SC-1), which is a residential zoning district and permits one single family dwelling and one accessory dwelling per parcel as a matter of right. The granting of the variance would not change the zoning 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 A 4 of § 15.2-2286 at the time of the filing of the variance application.**

The requested relief to the required 75-foot front yard setback requirement cannot be alleviated through Special Exception; primary (and accessory) dwellings are permitted by-right in the SC-1 zoning district. A modification of the Zoning Ordinance (to amend the setback regulations) does not seem appropriate, since the applicants have the ability to construct a house within the required setbacks.

STAFF RECOMMENDATION:

Staff recommends **denial** of this variance request based on the above criteria, most specifically that the applicant has failed to demonstrate an “unreasonable hardship based on the physical conditions of the property.” The 75-foot front yard setback is neither an “unreasonable restriction” on the utilization of the property nor would it create a “hardship” as defined by state code in the absence of a variance to it. The 75-foot front yard setback is consistently applied in the SC-1 zoning district. While topographic challenges exist on a portion of the property, the applicants have the ability to construct both the proposed principal dwelling and accessory “studio” within the applicable setbacks in the absence of a variance.

FROM CODE OF VIRGINIA § 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.*

RELEVANT CODE - GLOUCESTER COUNTY CODE APPENDIX B – ZONING:

Sec. 14-12. - Variances.

Applications for variance may be made by any property owner or owner's agent. Such applications shall be made to the administrator in accordance with rules adopted by the board of zoning appeals. Upon receipt of such an application, the administrator may grant a variance from any building setback requirement if the administrator finds, in writing, that (1) strict application of the ordinance would produce undue hardship; and (2) such hardship is not shared by other properties in the same zoning district and same vicinity; and (3) the variance will not be of substantial detriment to adjacent property and will not change the character of the zoning district. Before the administrator can grant such a building setback variance, he or she shall give descriptive notice to all adjoining property owners of the intention to do so, and such notice shall inform such property owners that they have twenty-one (21) days from the date of the notice to respond to the administrator as to the proposed variance. In the event that the administrator cannot make all three (3) of the required findings of fact specified above, or, in the event he or she receives an objection from an adjoining property owner within the twenty-one-day period specified in the previously described notice, either or both, then the administrator shall promptly transmit the application and accompanying maps, plans, or other information to the secretary of the board of zoning appeals who shall place the matter on the docket. Procedures for the granting of a variance by the board shall be as set forth in sections 14-13 through 14-15, inclusive.

Sec. 14-13. - Contents of application for variance.

At a minimum, the application for variance shall contain the following information:

- (1) Name, address, and phone number of applicants;*
- (2) Legal description of property and tax map reference;*
- (3) Description of nature of variance requested;*
- (4) A narrative statement demonstrating that the requested variance conforms to the following standards:*
 - a. The property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or conditions of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.*
 - b. That special conditions and circumstances do not result from the actions of the applicant.*

Sec. 14-14. - Actions by the board of zoning appeals.

Within sixty (60) days after receipt of an application for variance, and after public notice as required by paragraph 15.1-431 (now 15.2-2204) of the Code of Virginia, the board of zoning appeals shall hold a public hearing on the requested variance.

*Within thirty (30) days after the required public hearing, the board of zoning appeals shall either approve or disapprove the variance. **No variance shall be authorized by the board of zoning appeals unless it finds:***

- (1) That the strict application of the ordinance would produce undue hardship;**
- (2) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;**
- (3) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and**
- (4) That 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.**

In authorizing a variance, the board of zoning appeals may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

Sec. 15-1. - Zoning permits required.

No building or other structure which requires a building permit shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use without a permit therefor issued by the administrator. *In the RC-1 and RC-2 districts, buildings or other structures associated with the production of agricultural or forestal products are exempt from obtaining a zoning permit.*

On and after the effective date of this ordinance, no manufactured home which does not meet the standards promulgated in the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, the Federal Manufactured Home Construction and Safety Standards, or which contains a "defect" as defined by section 36-85.3 of the Code of Virginia, 1950, as amended, shall be the subject of a permit issued pursuant to this ordinance, regardless of proposed location.

Sec. 15-10. Violation and penalty.

All departments, officials and public employees of this jurisdiction which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this ordinance. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of this ordinance. Any such permit, if issued in conflict with the provisions of this ordinance, shall be null and void.

RELEVANT DEFINITIONS FROM THE ZONING ORDINANCE – SEC. 2-2. – DEFINITIONS:

The following definitions are relevant to this variance application:

Dwelling, single-family: A building consisting of one (1) dwelling unit.

Dwelling unit: A single unit providing complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, but not including a tent, cabin, travel trailer, manufactured home, or room in a hotel or motel.

Accessory use or structure: A use or structure on the same lot or on a contiguous lot, in the same ownership, and of a nature customarily incidental and subordinate to, the principal structure and operated and maintained for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the zoning lot with the principal use.

Setback: The minimum distance by which any building or structure must be separated from the right-of-way line or property lines.

Structure: Anything constructed or erected the use of which requires location on the ground or attachment to something having a location on the ground; this includes, among other things, dwellings, buildings, signs, etc.

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 ordinance, or is designed or intended for a use that does not conform to the use regulations of this ordinance, for the district in which it is located either at the effective date of this ordinance or as a result of subsequent amendments to the ordinance.

Yard: An open space on a lot other than a court, **unoccupied and unobstructed from the ground upward**, except as otherwise provided herein.

Yard, front: An open space on the same lot as a building between the front line of the building **(excluding steps)** and the front lot or street line, and extending across the full width of the lot.

Yard, rear: An open, unoccupied space on the same lot as a building between the rear line of the building **(excluding steps)** and the rear line of the lot and extending the full width of the lot.

Yard, side: An open, unoccupied space on the same lot as a building between the side line of the building **(excluding steps)** and the side line of the lot, and extending from the front yard line to the rear yard line.

DUTIES OF THE BOARD OF ZONING APPEALS:

Sec. 13-6. - Duties of the board of zoning appeals.

In exercising its duties, the board of zoning appeals may, as long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination as ought to be made. For the purpose of this ordinance, the board of zoning appeals has the following specific responsibilities:

- (1) *To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this ordinance.*
- (2) ***To authorize upon appeal or original application in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, where, owing to the special conditions, a literal enforcement of this ordinance will result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done; following the provisions of section 14-12 et seq.*** (§14-12 is discussed above; see also §15.2-2309 of Virginia Code as referenced at the beginning of this report.)
- (3) *To hear and decide upon applications for such special exceptions as may be authorized in the official schedule of district regulations. The board may interpret the map in such way as to carry out the intent of this ordinance as it deems necessary in the public interest and may require a*

guarantee or bond to ensure that the conditions imposed are complied with. No special exception may be granted except after notice and public hearing as provided in section 15.1-431 of the Code of Virginia.

- (4) To hear and decide applications for interpretation of the district map where there is an uncertainty as to the location of a district boundary. After notice to the owners of the property affected and all property owners within five hundred (500) feet of the affected property, by such question, and after public hearing with notice as required by section 15.1-431 of the Code of Virginia, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.*
- (5) No provision of section 15.1-495 of the Code of Virginia shall be construed as granting the board the power to rezone property.*
- (6) To hear and decide appeals from the decision of the zoning administrator. However, no such appeal shall be heard except after notice and hearing as provided by section 15.1-431 of the Code of Virginia.*

N/F ROBERT C. LARSEN
W.B. "Y" @ PG. 408
S.P.B. 3 @ PG. 18

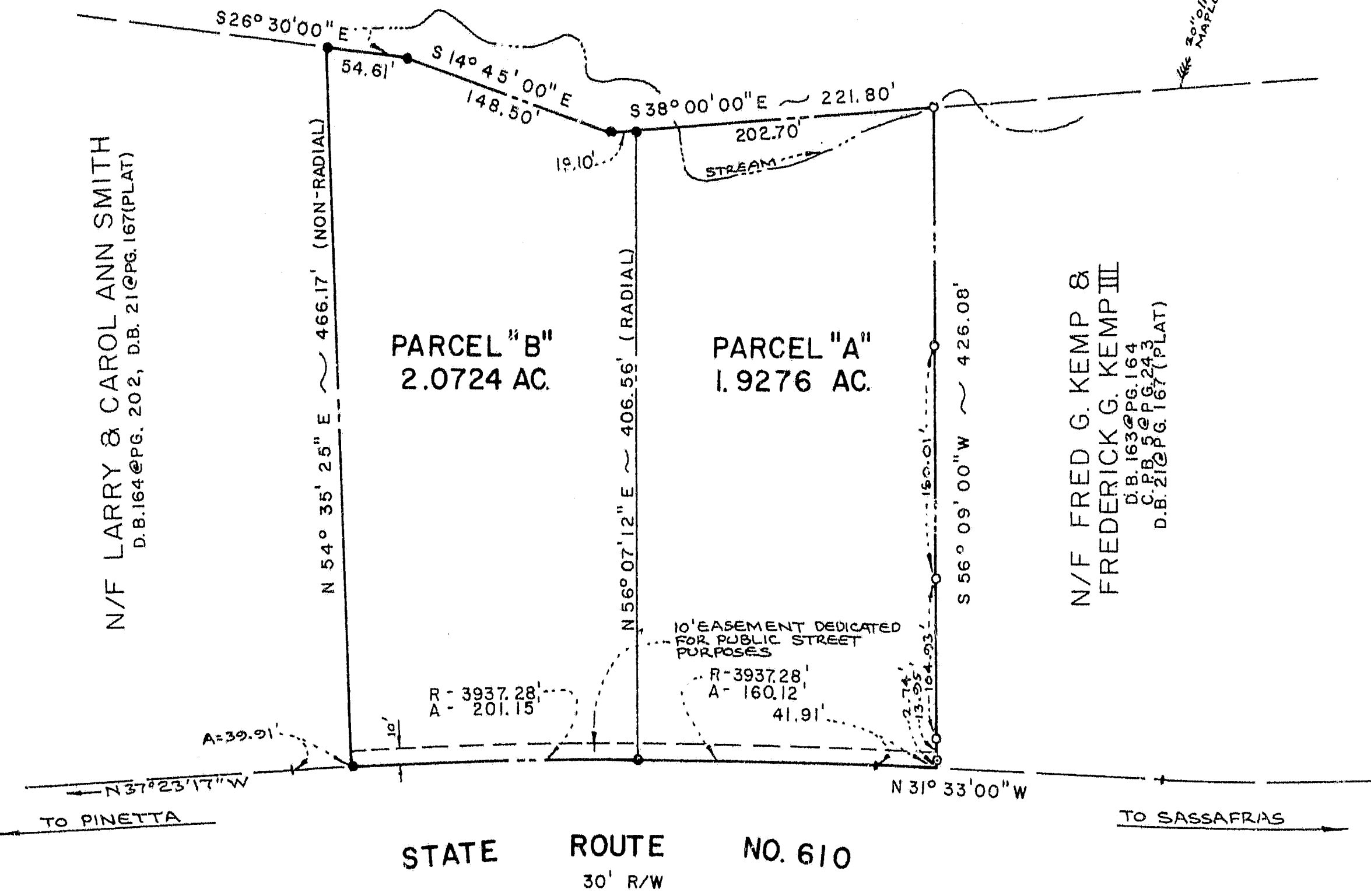
N/F LARRY & CAROL ANN SMITH
D.B. 164 @ PG. 202, D.B. 21 @ PG. 167 (PLAT)

PARCEL "B"
2.0724 AC.

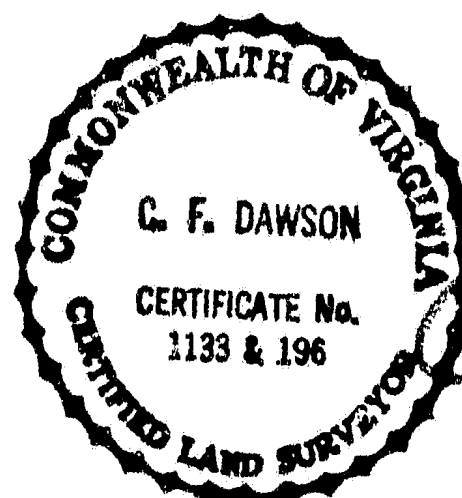
PARCEL "A"
1.9276 AC.

N/F FRED G. KEMP &
FREDERICK G. KEMP III
D.B. 163 @ PG. 164
C.P.B. 5 @ PG. 243
D.B. 21 @ PG. 167 (PLAT)

MERIDIAN PER PLAT IN
C.P.B. 5 @ PG. 243



PLAT
SHOWING SURVEY AND DIVISION OF A PORTION
OF THE LAND OF
LARRY & CAROL ANN SMITH
LOCATED IN PETSORTH DISTRICT OF
GLOUCESTER COUNTY, VIRGINIA
SCALE: 1" = 100' MARCH 19, 1979



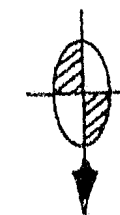
I CERTIFY THAT THIS PERIMETER
SURVEY IS CORRECT TO THE BEST OF
MY KNOWLEDGE AND BELIEF SUBJECT
TO EASEMENTS, SERVITUDES, AND
COVENANTS OF RECORD.

CHARLES F. DAWSON
CERTIFIED LAND SURVEYOR

GENERAL NOTES:

- 1- ☐ IRON ROD FOUND
☐ IRON PIPE FOUND
☐ CONCRETE MONUMENT FOUND
☒ IRON PIPE SET
☒ CONCRETE MONUMENT SET
☒ POWER POLE
T.B.-TELEPHONE JUNCTION BOX
O.U.L.-OVERHEAD UTILITY LINE
O/M-OLD MARK
N/F-NOW OR FORMERLY
- 2- THE LAND DELINEATED HEREON
IS LOCATED ON COUNTY TAX
MAP NO. 29 AS PARCEL NO. 145
(IN PART).
- 3- IF APPLICABLE, EDGE OF WATER
SHOWN HEREON IS AS OF TIME OF
SURVEY AND NO EFFORT IS MADE
BY THIS PLAT TO ESTABLISH
OWNERSHIP OR ANY OTHER RIGHTS
BEYOND THIS LINE.
- 4- PROPERTY REF: D.B. 164 @ PG.
102, D.B. 21 @ PG. 167 (PLAT).
- 5- UTILITIES AND STRUCTURES
NOT LOCATED AS PART OF THIS
SURVEY.
- 6- TOTAL AREA: 4.0000 AC..

APPROVED
GLOUCESTER COUNTY, VA.
BY: *John J. Jackson*
COUNTY ADMINISTRATOR
DATE: 4-23-79



CHARLES F. DAWSON, INC.
CERTIFIED LAND SURVEYOR
A PROFESSIONAL CORPORATION
P.O. BOX 895
GLOUCESTER, VIRGINIA 23061
TEL. (804) 693-2993

JOB NO. 1 GM-H10-14-0

THIS PLAT, was delivered to the Clerk of the Circuit Court of Gloucester County, Virginia, on the 26th day of April 1979, admitted to record at 2:00 o'clock P.M. and is recorded with Deed from Larry Smith et al to Robert L. Brown et al, which Deed is recorded in Deed Book 221, Page 380.

Teste: *Charles E. King, Jr.*, Clerk

OLD PINETTA RD

Location	OLD PINETTA RD	Tax Map #	029/ / 145/ B /
RPC	29619	Owner	SCOGGINS, DAVID J &
Assessment	\$35,950	Building Count	1
Legal Description	PINETTA PARCEL B	Magisterial Code	1
Zoning	SC-1	Total Acres	2.07

Current Value

Assessment			
Valuation Year	Improvements	Land	Total
2023	\$0	\$35,950	\$35,950

Parcel Addresses

Additional Addresses
No Additional Addresses available for this parcel

Owner of Record

Owner	SCOGGINS, DAVID J & SCOGGINS, JANET D	Sale Price	\$39,900
		Book & Page	ID/2301820
Address	PO BOX 976 GLOUCESTER POINT, VA 23062	Sale Date	05/12/2023

Ownership History

Ownership History			
Owner	Sale Price	Book & Page	Sale Date
SCOGGINS, DAVID J &	\$39,900	ID/2301820	05/12/2023
POULIN, SETH &	\$20,500	ID/2206585	12/27/2022
BOYD, KASIYA T	\$15,500	ID/1801706	04/25/2018
GOODRICK, JULIA B &	\$0	ID/068679	10/05/2006
GOODRICK, ERIC S	\$30,000	ID/066403	07/25/2006
BAKKER, REBECCA JOANNE	\$0	ID/051654	03/03/2005

Building 1 : Section 1

Year Built:
Living Area: 0
Replacement Cost
Less Depreciation: \$0

Building Attributes	
Field	Description
Style	
Model Type	
Grade	
Stories	
Units	
Exterior Wall 1	
Exterior Wall 2	
Roof Structure	
Roof Cover	
Interior Wall 1	
Interior Wall 2	
Interior Floor 1	
Interior Floor 2	
Heat Fuel	
Heat Type	
AC Percent	
Bedrooms	
Full Baths	
Half Baths	
Extra Fixtures	
Total Rooms	
Bath Style	
Kitchen Style	
Extra Kitchens	
FBM Quality	
Window Type	
Occupancy	
Basement Area	
Fin Basement Area	
Fin Basement %	
Gas FPL/Wd Stove	
Fireplaces	

Building Photo



(https://images.vgsi.com/photos/GloucesterVAPhotos/default.jpg)

Building Layout

 Building Layout (ParcelSketch.ashx?pid=16439&bid=16439)

Building Sub-Areas (sq ft)	Legend
No Data for Building Sub-Areas	

Scoggins Variance timeline:

9/26/23 Scoggins came into lobby with a variance application, Scoggins stated their surveyor said they qualified for a variance due to the topography of the property. (Scoggins never met prior with staff to discuss) Reviewed documents they had with them, explained the survey they had did not show the measurements of the slope and the explanation of the variance needed more detail as to why they felt they met the hardship.

10/3/23 Scoggins brought in application again with same survey and a GIS and a SGS National map showing the topography that still did not show the measurements of the slope.

10/11/2023: In preparing documents for meeting found that there was a previous variance in 2005 and emailed the Scoggins the staff report and minutes from the 2005 to review so they could decide whether to proceed or withdraw their application.

Ms. Scoggins emailed back and didn't feel their application was similar

10/17/23 Scoggins provided survey with topographical data



County of Gloucester
Office of Codes Compliance
Post Office Box 329
Gloucester, Virginia 23061

November 23, 2005

Ms. Rebecca Joanne Bakker
3750 Kecoughtan Road, Apartment 25
Hampton, Virginia 23669

RE: Variance 05-02 for Tax Map 29 Parcel 145B

Dear Ms. Bakker,

This letter is to inform you that, at the November 23, 2005, Board of Zoning Appeals public hearing, your variance request of 25 feet from the front yard setback requirement of 75 feet (Application No. V-05-02) was *denied*.

You may appeal the Board of Zoning Appeals decision to the Circuit Court within 30 days. If you have any additional questions please feel free to give our office a call.

Sincerely,

Ron E. Peaks
Zoning Administrator
Codes Compliance

cc: Daniel Stuck, County Attorney

***Gloucester County
Board of Zoning Appeals
November 22, 2005***

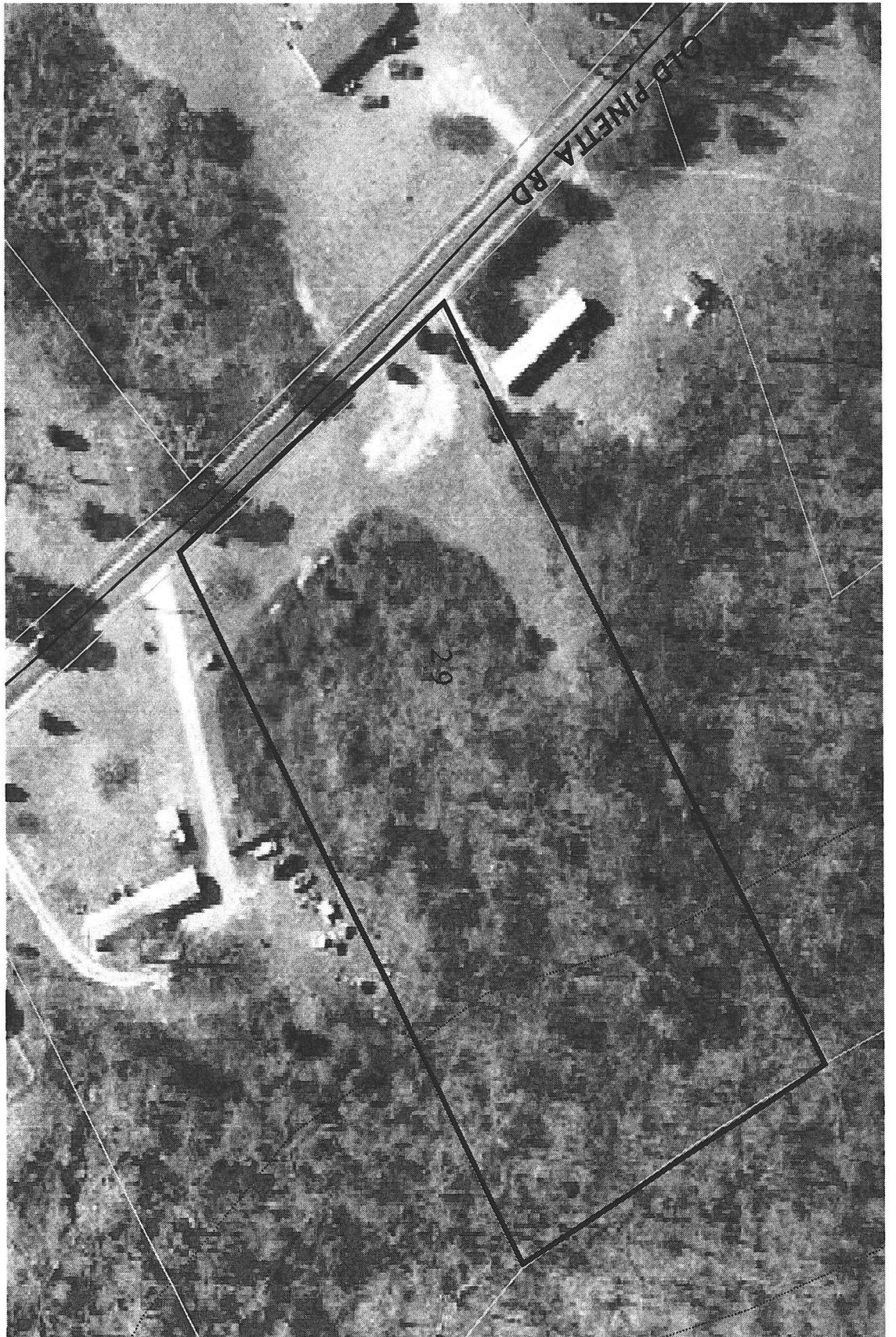
Application No. V-05-02

H. Gwen McComas, Agent

Rebecca Joanne Bakker, Property Owner

Route 610 Old Pinetta Road

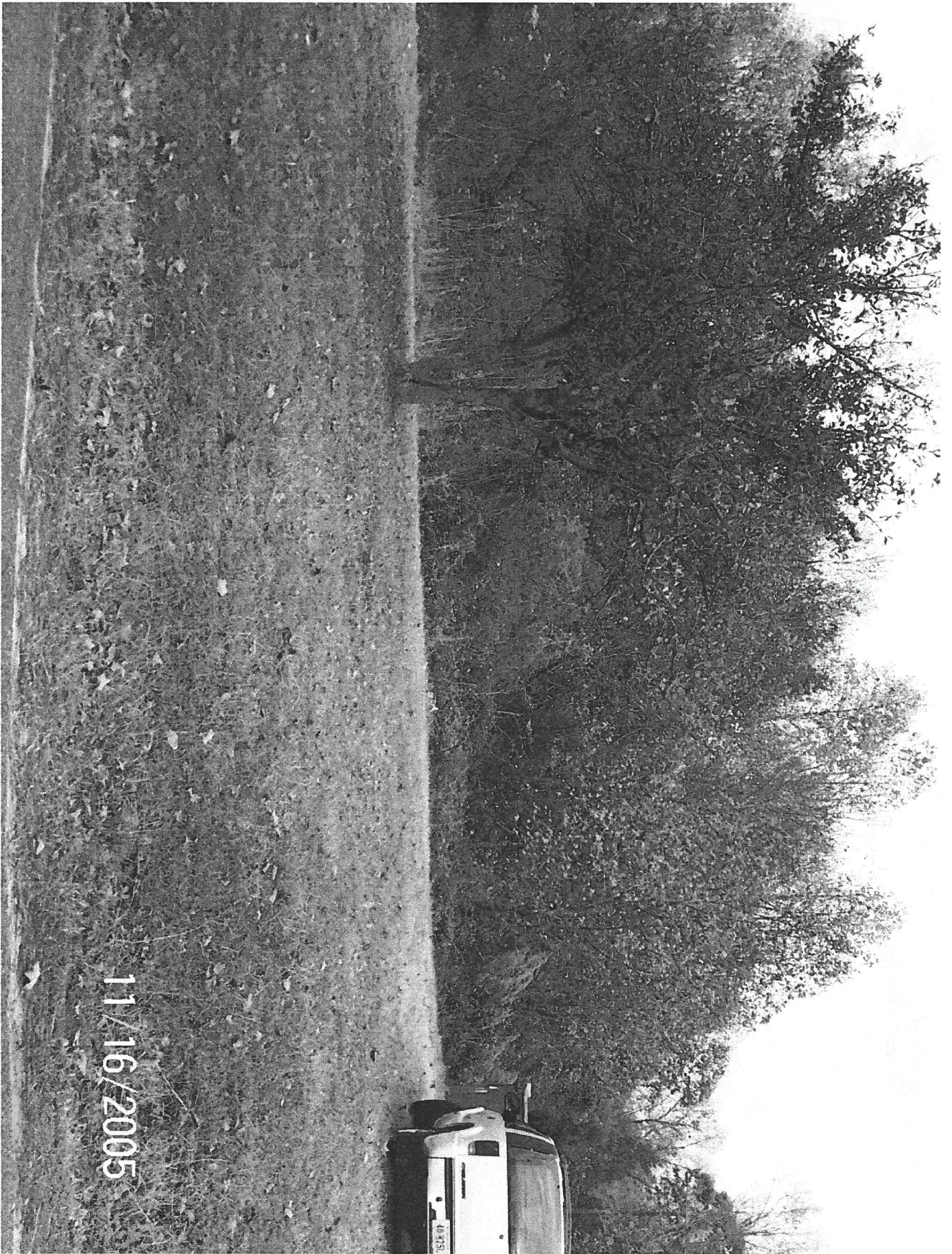
Tax Map 29 Parcel 145B



Aerial Imagery

Copyright 2002

Commonwealth of Virginia



11/16/2005

McComas site from Route 610: North East sideline

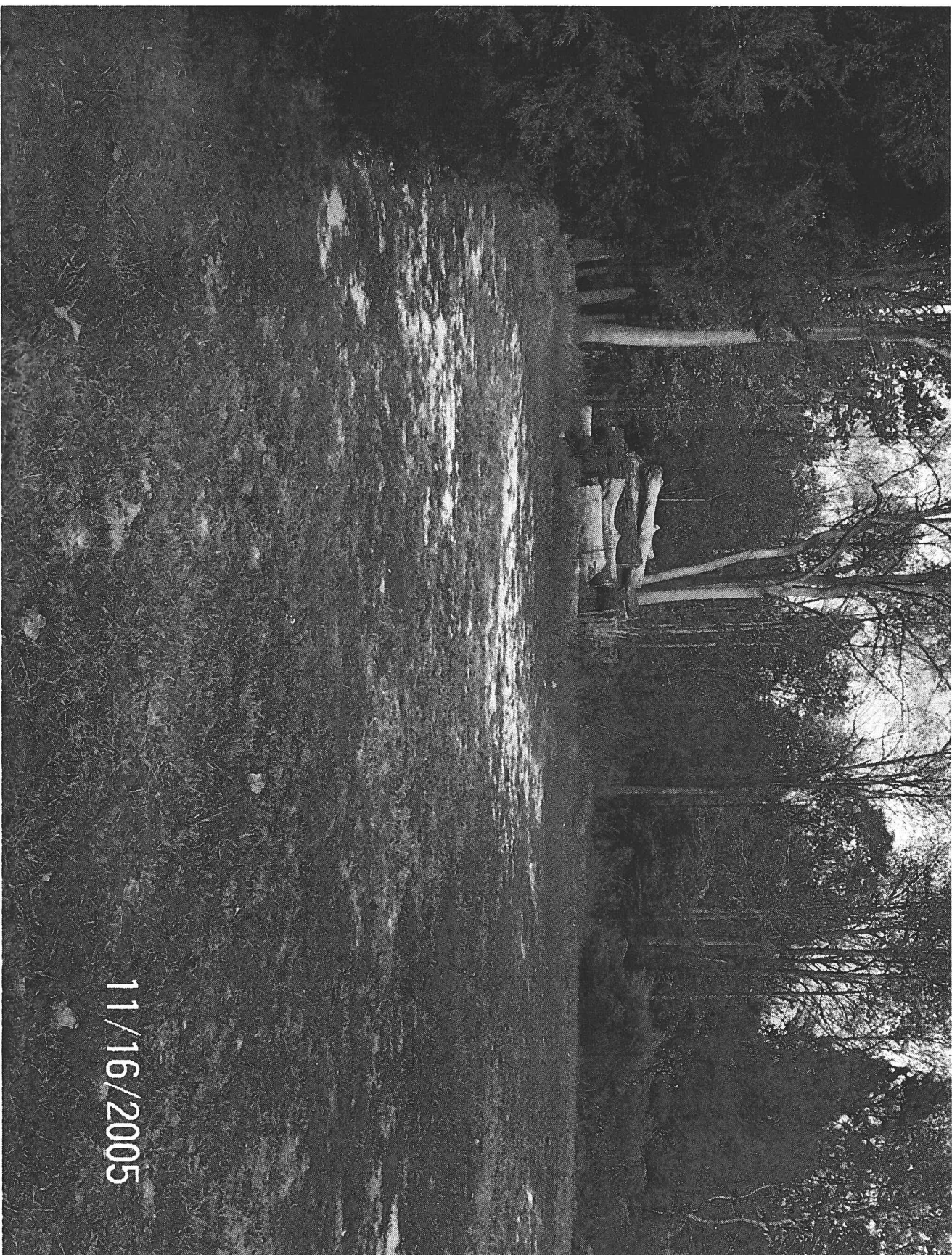


11/16/2005

McComas site: right to left from Route 610



McComas site: right to left from Route 610



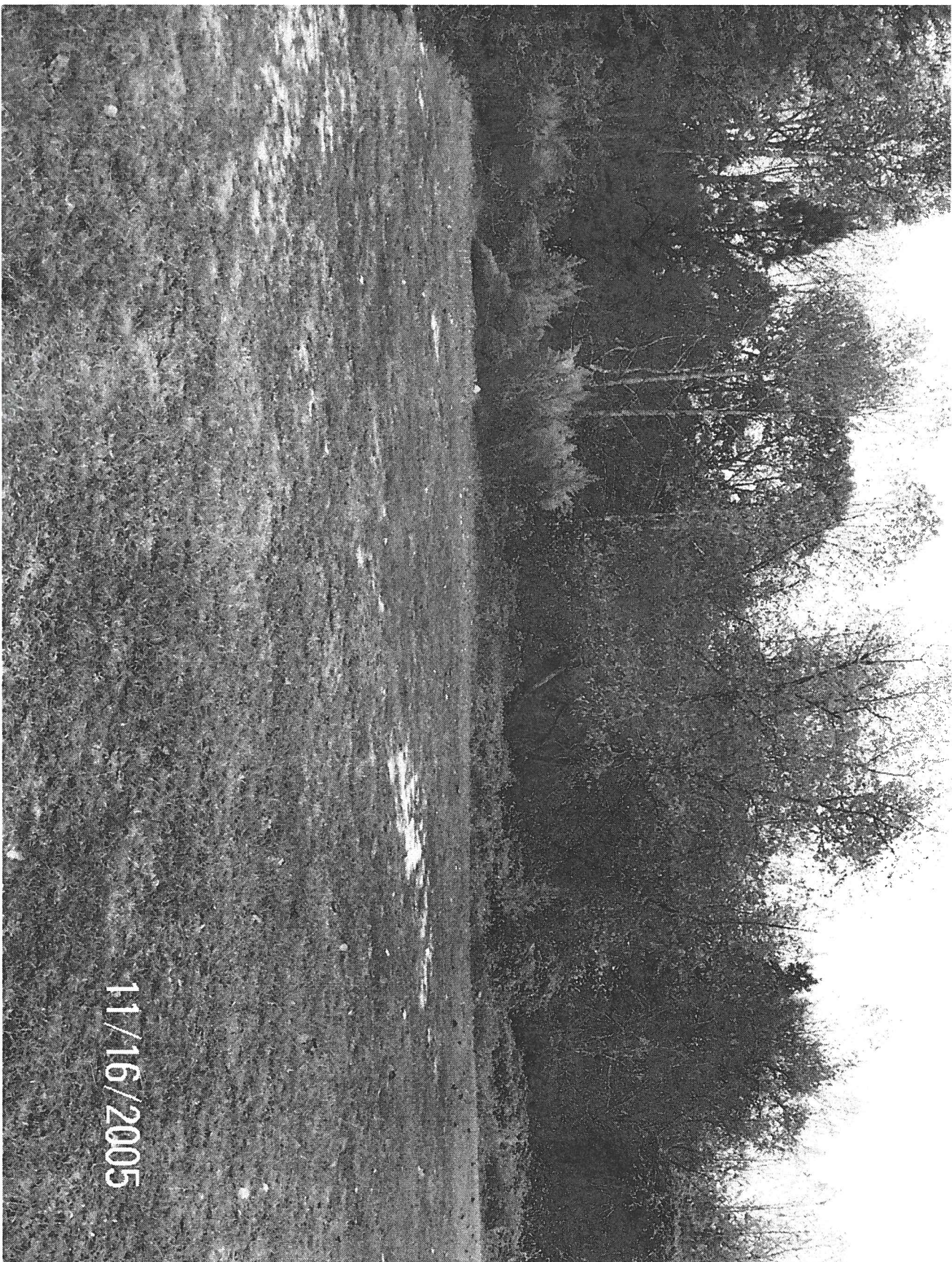
11/16/2005

McComas site: North west sideline and drainfield area



11/16/2005

McComas site: drainfield area



McComas site: drainfield area



McComas site: edge of ravine adjacent to drainfield area



McComas site: ravine



McComas site: ravine looking out

11/16/2005

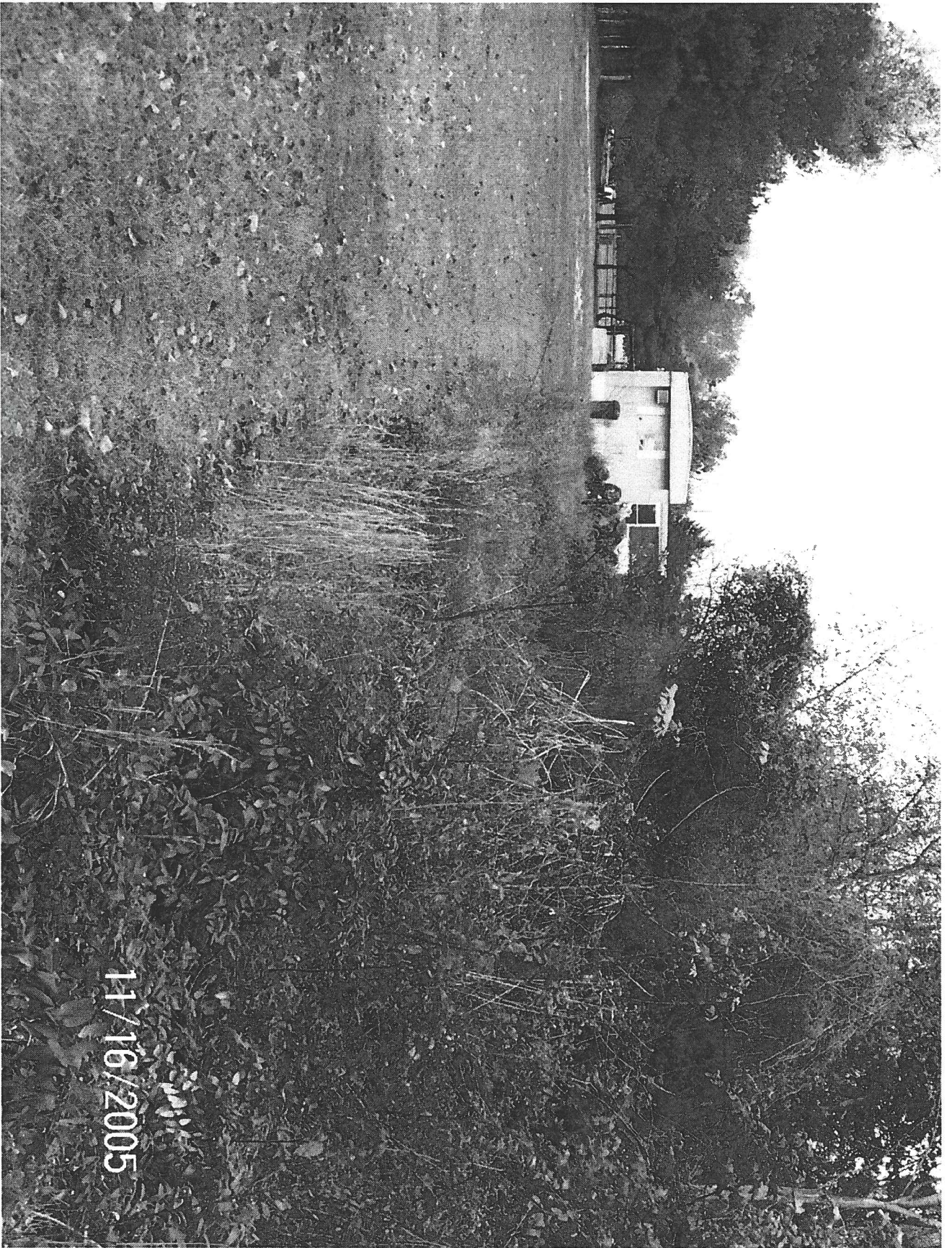
McComas site: ravine





McComas site: ravine

11/16/2005



McComas site: property north west along ravine edge

V-05-02
Staff Analysis

Background:

The applicant, Mrs. McComas, as contract purchaser, is acting as an agent for the owner. Mrs. McComas is requesting a 25 foot variance from the required 75 feet wide front yard setback for the lot identified as Tax Map 29-145B, on Old Pinetta Road, in the Suburban Countryside (SC-1) zoning district. The purpose of the request is to construct a 3 bedroom, 2 bath residence of approximately 1200 square feet of heated living space, a 22 feet by 22 feet (484 sq.ft.) attached garage, a 6 feet by 15 feet front porch, and a 14 feet by 10 feet rear deck. The floor plan for the proposed residence is included as an attachment to this report. The applicant states an existing steep ravine that consumes much of the 2.07 acre parcel requires the request for variance for construction of the proposed residence.

The staff site inspection confirms the existence of the ravine, and it's location as presented on the applicants plot plan prepared by The Sirine Group. Additionally, the location of the ravine and the approvable drainfield area limits the buildable area on the 2.07 acre site.

Analysis:

As the Board is aware, the following four points must all be in the affirmative for granting variances.

1.) Does the strict application of the ordinance produce undue hardship?

Staff notes the Zoning Code references to hardship in Section 14-13.4a) stating in part "*...where by reason of exceptional topographic conditions..., the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the utilization of the property, or where the Board is satisfied, upon evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.*" Further, Section 14-13.4b) states "*That special conditions or circumstances do not result from the actions of the applicant.*"

Staff review of the residence's proposed location indicates the ability of the applicant to shift the footprint as is, northerly to abut the sideyard setback as shown on Attachments #2,3,4 and 5 to this report. Attachment #2 would still result in the proposed front porch encroaching 6-7 feet into the front yard setback of 75 feet, but the style and arrangement of the floor plan would be considered by staff as conditions or circumstances resulting from the actions (choices) of the applicant in residence style and floor plan arrangement. Attachment #3 depicts a northerly shift with no front yard encroachment

utilizing the applicant's proposed floor plan. Staff also concludes that the attached garage represents a choice of the applicant, with a detached garage an option that would allow placement of the main structure with little or no encroachment in the front yard as indicated on Attachments #4 and #5. Of course detached garages, as accessory structures, can be as close as 5 feet to the side property line.

Therefore, staff concludes the existence of the ravine, albeit a bona fide topographic consideration, does not in this instance demonstrate an undue hardship approaching confiscation.

2.) Is such a hardship not shared by other properties in the same zoning district and vicinity?

Staff concludes the 'claimed' hardship of topography is not shared by other properties in the district and vicinity.

3.) Will the authorization of such variance be of substantial detriment to adjacent property and the character of the district?

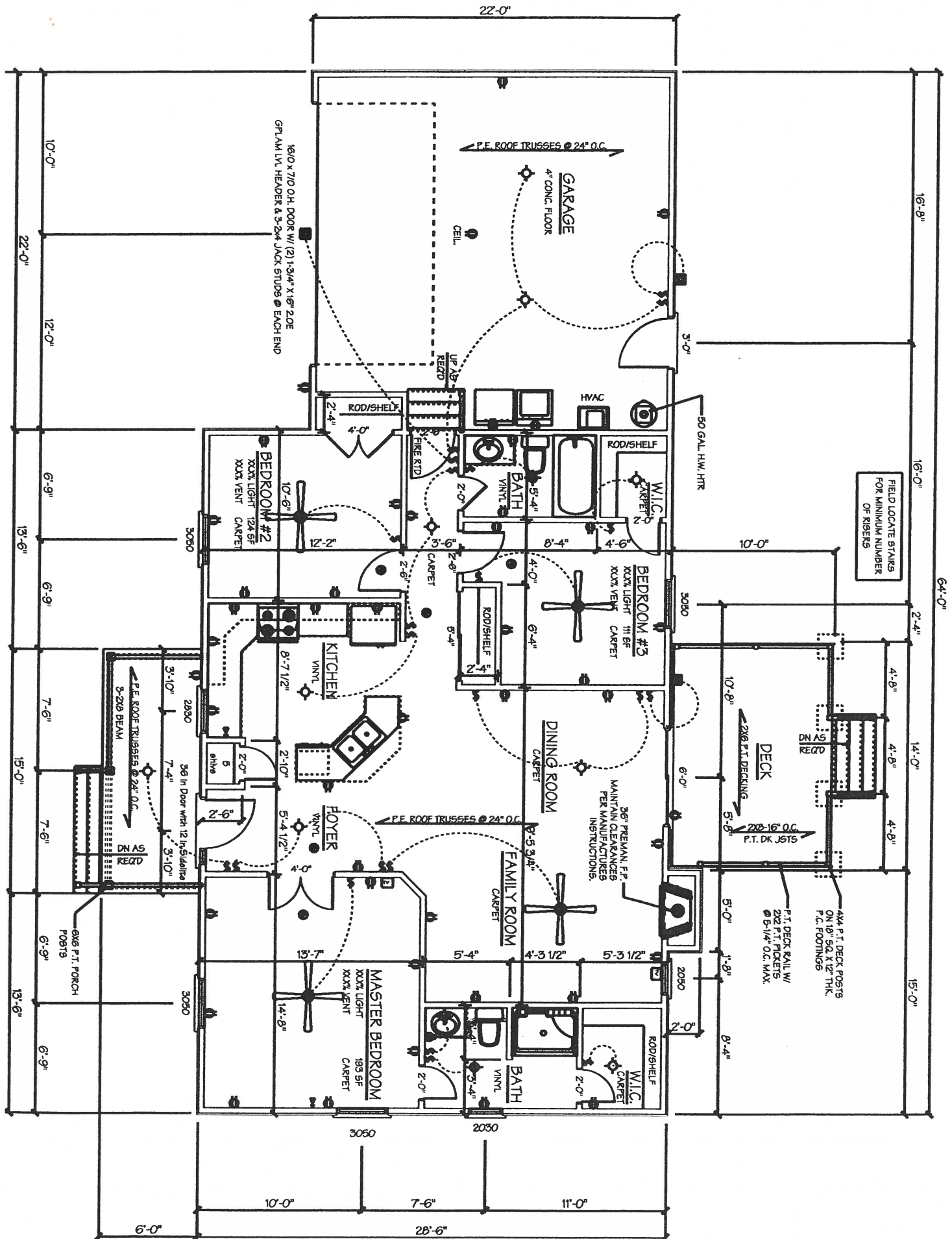
Staff notes several properties in the vicinity, including the mobile home on the northwestern property, exist as non-conforming and encroach no further into the front yard setback than the applicant proposes. Additionally, combined with a single additional non-conforming structure would not result in a substantial detriment.

4.) Is the condition or situation of the property concerned not so general or recurring in nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance?

Staff concludes the condition or situation is not so general or recurring.

Recommendation:

Staff recommends disapproval of V-05-02, as it does not appear to meet the Standard #1 concerning undue hardship.



ATTACHMENT # 1

INSET

SCALE: 1" = 30'

NOW OR FORMERLY
LARRY SMITH &
CAROL ANN SMITH



10' EASEMENT FOR
PUBLIC STREET PURPOSES

PROPERTY LIES IN ZONE X,
AS OUTSIDE 500-YEAR FLOOD) AS
ON FLOOD INSURANCE RATE MAP FOR
GLoucester County, Virginia, COMM.
#10071, 0085 B, 8/4/87.

ALL BE THE RESPONSIBILITY OF THE
T/BUILDER TO VERIFY THAT THESE SITE
DIMENSIONS ARE IN AGREEMENT WITH
BUILDING PLANS PRIOR TO ANY CON-
STRUCTION.

PARCEL "B", PLAT SHOWING SURVEY AND DIVISION OF A PORTION OF THE LAND OF

LARRY & CAROL ANN SMITH

FOR

VAN H. McCOMAS AND H. GWEN McCOMAS

PETSWORTH DISTRICT - GLOUCESTER COUNTY, VIRGINIA

ATTACHMENT # 2

SITE PLAN
FOR VARIANCE

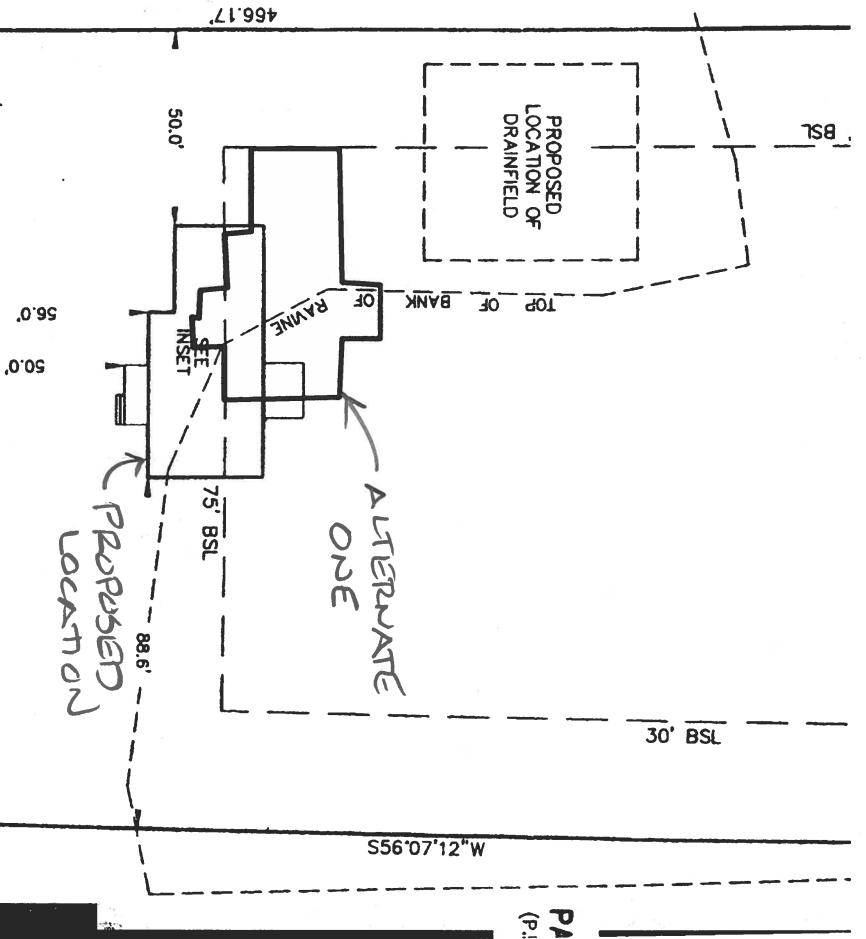
PROPERTY IS TAX MAP 29-145B.
PROPERTY IS ZONED SC-1 (SUBURBAN C

(P.B. 15, P. 21)

OLD PINETTA ROAD
STATE ROUTE NO. 610
(30' R/W)

A=201.15'
R=3937.28'

0.6 ±
ARK 1
STATE RD



INSET

SCALE: 1" = 30'

NOW OR FORMERLY
LARRY SMITH &
CAROL ANN SMITH



10' EASEMENT FOR
PUBLIC STREET PURPOSES

PROPERTY LIES IN ZONE X
AS OUTSIDE 500-YEAR FLOOD) AS
N ON FLOOD INSURANCE RATE MAP FOR
ICESTER COUNTY, VIRGINIA, COMM.
10071, 0085 B, 8/4/87.

ALL BE THE RESPONSIBILITY OF THE
T/BUILDER TO VERIFY THAT THESE SITE
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PARCEL "B", PLAT SHOWING SURVEY AND DIVISION OF A PORTION OF THE LAND OF
LARRY & CAROL ANN SMITH
FOR

SITE PLAN
FOR VARIANCE

PROPERTY IS TAX MAP 29-145B.
PROPERTY IS ZONED SC-1 (SUBURBAN C

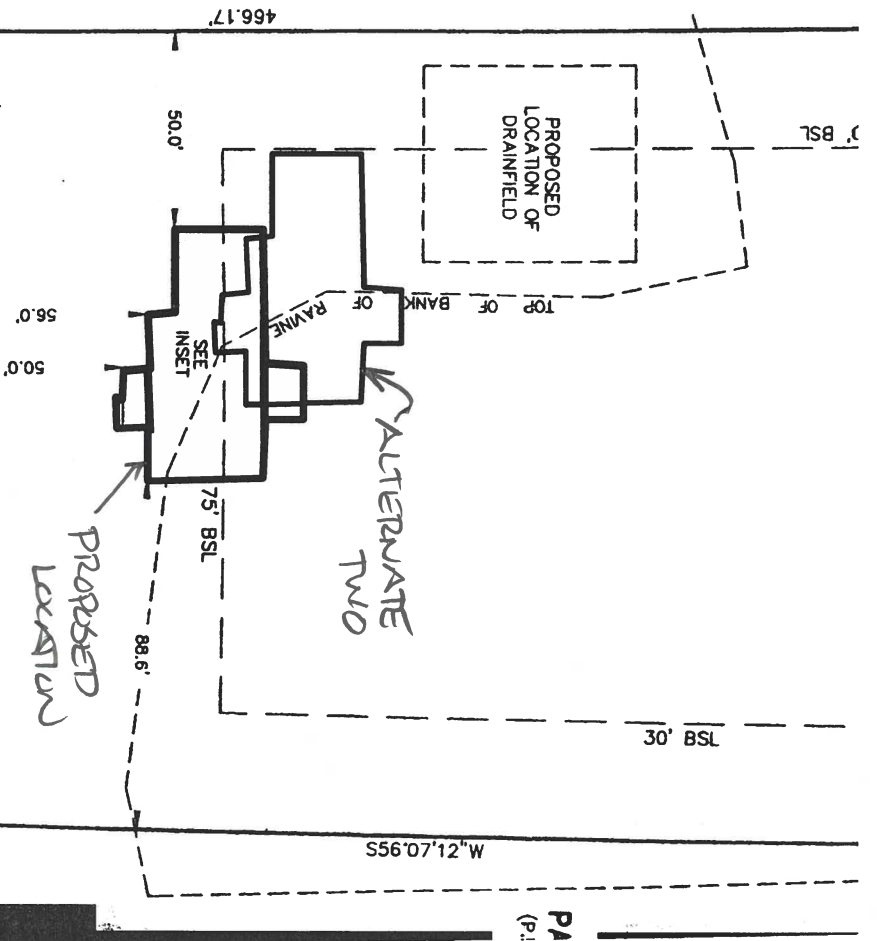
VAN H. MCCOMAS AND H. GWEN MCCOMAS
PETSWORTH DISTRICT - GLOUCESTER COUNTY VIRGINIA

ATTACHMENT #3

OLD PINETTA ROAD
STATE ROUTE NO. 610
(30' R/W)

A=201.15'
R=3937.28'

0.6 ±
ARK 1
STATE RO



INSET

SCALE: 1" = 30'

NOW OR FORMERLY
LARRY SMITH &
CAROL ANN SMITH



PROPERTY LIES IN ZONE X,
AS OUTSIDE 500-YEAR FLOOD) AS
ON FLOOD INSURANCE RATE MAP FOR
GLoucester County, Virginia, COMM.
#10071, 0085 B, 8/4/87.

ALL BE THE RESPONSIBILITY OF THE
T/BUILDER TO VERIFY THAT THESE SITE
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STRUCTION.

PARCEL "B", PLAT SHOWING SURVEY AND DIVISION OF A PORTION OF THE LAND OF

LARRY & CAROL ANN SMITH

FOR

VAN H. McCOMAS AND H. GWEN McCOMAS

PETSWORTH DISTRICT - GLOUCESTER COUNTY, VIRGINIA

ATTACHMENT 4

SITE PLAN
FOR VARIANCE

PROPERTY IS TAX MAP 29-145B.
PROPERTY IS ZONED SC-1 (SUBURBAN C

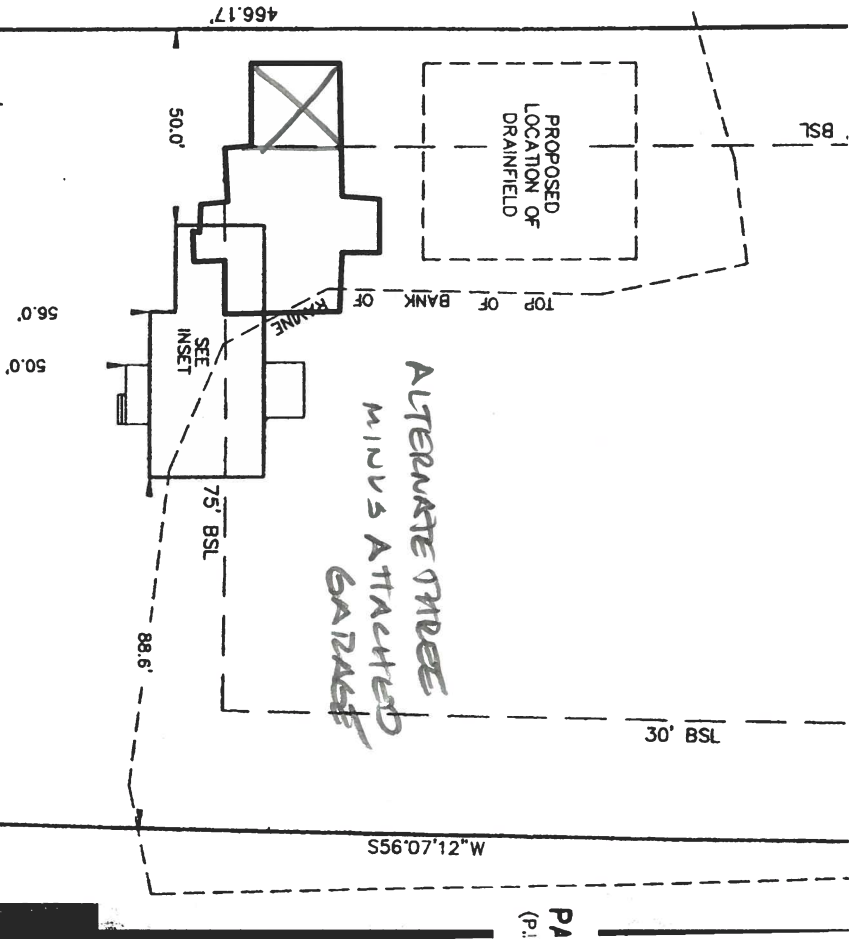
(P.B. 15, P. 21)

OLD PINETTA ROAD
STATE ROUTE NO. 610
(30' R/W)

10' EASEMENT FOR
PUBLIC STREET PURPOSES

A=201.15'
R=3937.28'

0.6 ±
ARK 1
STATE RD



INSET

SCALE: 1" = 30'

NOW OR FORMERLY
LARRY SMITH &
CAROL ANN SMITH



PROPERTY LIES IN ZONE X,
AS OUTSIDE 500-YEAR FLOOD) AS
ON FLOOD INSURANCE RATE MAP FOR
GLoucester County, Virginia, COMM.
#10071, 0085 B, 8/4/87.

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PARCEL "B", PLAT SHOWING SURVEY AND DIVISION OF A PORTION OF THE LAND OF

LARRY & CAROL ANN SMITH

FOR

VAN H. McCOMAS AND H. GWEN McCOMAS

PETSWORTH DISTRICT - GLOUCESTER COUNTY, VIRGINIA

Attachment #5

SITE PLAN
FOR VARIANCE

PROPERTY IS TAX MAP 29-145B.
PROPERTY IS ZONED SC-1 (SUBURBAN C

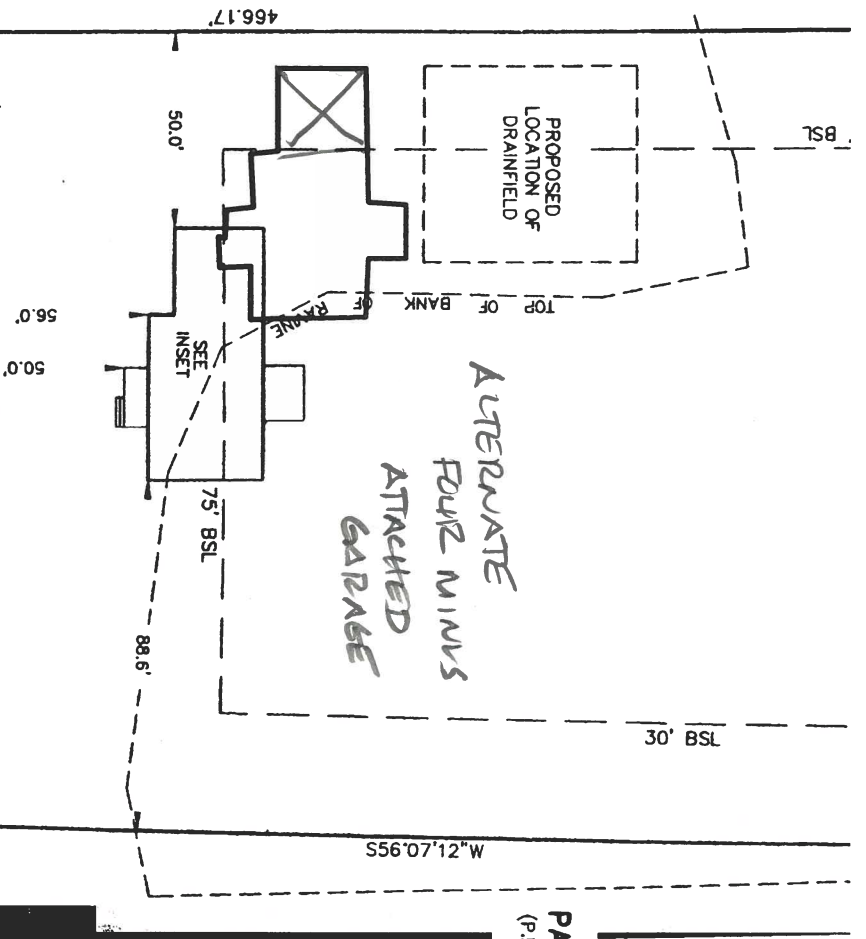
(P.B. 15, P. 21)

OLD PINETTA ROAD
STATE ROUTE NO. 610
(30' R/W)

10' EASEMENT FOR
PUBLIC STREET PURPOSES

A=201.15'
R=3937.28'

0.6 ±
ARK 1
STATE ROL



AT A MEETING OF THE GLOUCESTER BOARD OF ZONING APPEALS HELD TUESDAY,
NOVEMBER 22, 2005, AT 7:00 P.M. LOCATED IN THE COLONIAL COURT HOUSE IN THE
COURT CIRCLE, GLOUCESTER, VIRGINIA

THERE WERE PRESENT: Bonnie Emerson, Vice-Chairperson
Eric Foell
Clayton James
James S. Leigh
James Newton
R. Bruce Williams
James Wayne Horsley, Chairman

ALSO IN ATTENDANCE: Ron Peaks, Codes Compliance Director
Daniel Stuck, County Attorney

IN RE: CALL TO ORDER AND ROLL CALL

James Wayne Horsley, Chairman, called the November 22, 2005 meeting of the Gloucester County Board of Zoning Appeals to order. Roll call established a quorum was present.

Mr. Horsley asked for a motion to move the approval of the May 24, 2005 minutes and election of officers until after the public hearings that are scheduled for tonight.

Ms. Emerson: Motion so made.

Mr. Leigh: Second.

Mr. Horsley called for a voice vote and it was approved unanimously.

IN RE: PUBLIC HEARING FORMAT

Mr. Horsley welcomed those in attendance and advised the public of the two variance applications scheduled for tonight's public hearing and stated the format would be as follows: 1) Codes Compliance staff recommendation; 2) comments by the applicant or his/her representative; 3) entertain public comments-anyone wishing to speak will be given the opportunity; 4) public hearing closed; 5) decision by the Board to act on application or delay for thirty days. All speakers were requested to state their name, addresses, and the district in which they reside on a "sign-in" sheet provided at the speaker's podium.

IN RE: PUBLIC HEARING

Mr. Leigh: Mr. Chairman, could I say something first? I have a possible conflict on this. So, I will not be discussing or voting on this matter.

Mr. Horsley: Okay, Mr. Leigh. Please enter this into the record. I also have a sheet here for the file.

Mr. Peaks: Very good, Mr. Chairman. It's been a while since we've gotten together as life would have it.

In any event, I will make a couple of quick comments that really pertain to both public hearings tonight. They are both variances. As I've said in the past, it's my job to go down the checklist in our book and make judgment calls on these kinds of things, give you my opinion as a zoning administrator and present those to you and at the same time, the process is a democratic process. I am going to be acting in both cases on information that was available to me.

In the case of the first case with Mrs. McComas there was a fairly decent amount of limited time that was available before the filing date for me to discuss the situation with Mrs. McComas.

A little more time on the second case as those folks were getting paperwork together well in advance and having said that there may be factors that I don't know about or did not know about at the time of the report or even right now that could come into play and lastly it doesn't hurt my feelings if you folks a group don't agree with what I say in my recommendations. It's just a job that I try my best at.

I would like to submit my report for the record.

V-05-02

Staff Analysis

Background:

The applicant, Mrs. McComas, as contract purchaser, is acting as an agent for the owner. Mrs. McComas is requesting a 25 foot variance from the required 75 feet wide front yard setback for the lot identified as Tax Map 29-145B, on Old Pinetta Road, in the Suburban Countryside (SC-1) zoning district. The purpose of the request is to construct a 3 bedroom, 2 bath residence of approximately 1200 square feet

of heated living space, a 22 feet by 22 feet (484 sq.ft.) attached garage, a 6 feet by 15 feet front porch, and a 14 feet by 10 feet rear deck. The floor plan for the proposed residence is included as an attachment to this report. The applicant states an existing steep ravine that consumes much of the 2.07-acre parcel requires the request for variance for construction of the proposed residence.

Mr. Peaks presented his Power Point presentation at this time.

The staff site inspection confirms the existence of the ravine, and it's location as presented on the applicants plot plan prepared by The Sirine Group. Additionally, the location of the ravine and the approvable drainfield area limits the buildable area on the 2.07-acre site.

Analysis:

As the Board is aware, the following four points must all be in the affirmative for granting variances.

1.) Does the strict application of the ordinance produce undue hardship?

Staff notes the Zoning Code references to hardship in Section 14-13.4a) stating in part *"...where by reason of exceptional topographic conditions..., the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the utilization of the property, or where the Board is satisfied, upon evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant."* Further, Section 14-13.4b) states, *"That special conditions or circumstances do not result from the actions of the applicant."*

Staff review of the residence's proposed location indicates the ability of the applicant to shift the footprint as is, northerly to abut the sideyard setback as shown on Attachments #2,3,4 and 5 to this report. Attachment #2 would still result in the proposed front porch encroaching 6-7 feet into the front yard setback of 75 feet, but the style and arrangement of the floor plan would be considered by staff as conditions or circumstances resulting from the actions (choices) of the applicant in residence style and floor plan arrangement. Attachment #3 depicts a northerly shift with no front yard encroachment utilizing the applicant's proposed floor plan. Staff also concludes that the attached garage represents a choice of the applicant, with a detached garage an option that would allow placement of the main structure with little or no encroachment in the front yard as indicated on Attachments #4 and #5. Of course detached garages, as accessory structures, can be as close as 5 feet to the side property line.

Therefore, staff concludes the existence of the ravine, albeit a bona fide topographic consideration, does not in this instance demonstrate an undue hardship approaching confiscation.

2.) Is such a hardship not shared by other properties in the same zoning district and vicinity?

Staff concludes the 'claimed' hardship of topography is not shared by other properties in the district and vicinity.

3.) Will the authorization of such variance be of substantial detriment to adjacent property and the character of the district?

Staff notes several properties in the vicinity, including the mobile home on the northwestern property, exist as non-conforming and encroach no further into the front yard setback than the applicant proposes. Additionally, combined with a single additional non-conforming structure would not result in a substantial detriment.

4.) Is the condition or situation of the property concerned not so general or recurring in nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance?

Staff concludes the condition or situation is not so general or recurring.

Recommendation:

Staff recommends disapproval of V-05-02, as it does not appear to meet the Standard #1 concerning undue hardship.

Mr. Chairman, that's my report.

Mr. Horsley: Thank you, Mr. Peaks. Would the applicant care to speak at this time? Lights please, Mr. Peaks.

Ms. McComas: You'll have to forgive me. My name is Gwen McComas. The district is Petsworth and what else did you ask me for?

Mr. Chairman: Address.

Ms. McComas: Address. 4124 Hall Oaks Drive in Gloucester.

Okay. A couple of things, I had prepared before today kind of an introduction as to why we are asking for what we trying to do and when I found out this afternoon that Mr. Peaks' suggestion was that denial be made, I kind of rethought everything and I wanted to talk to you about what I felt were undue hardship and I know they are not what you are instructed to think about.

I do want to backtrack just a moment. When I first met with Mr. Peaks in his office we did discuss a couple of alternatives. We were short on time. We had to get it in by the deadline to be able to meet with you today before the holidays and not knowing if you all would be able to meet in December or not.

So rather than go back and have the site plan redrawn we really, really want the house positioned the way it is presented. My thought was let me show you what we are asking for and then if we have to compromise okay. We are willing to listen and maybe do that if that is necessary but if I didn't show you what we were actually asking for you really wouldn't know what we wanted.

I think when I took everything back; Mr. Peaks was not in the office. I did not get to tell him that and I don't think he got the word until today on exactly what the intent was. I think he expected me to come in there with a totally redrawn and the house moved over the left and I think there was a little miscommunication between us and that.

But that being said, a couple of things I would like for you to know. We have lived in the County for 22 years. My children were raised here. They went to preschool through grade school here. They graduated from Gloucester High School. Luckily one of them has been able to purchase a home. I have one more that can't.

I don't know if you know right now about real estate and what it's been doing but you can't buy a home right now for what my son qualifies for and our goal is to purchase a piece of land, build him a house on it, that he can buy back from us at cost and live there and start his life. He lives here. He works in the County. He has chosen to stay here and I would like for him to be able to live here. That's all I am trying to do.

I am not trying to make a lot of money. I won't make anything it will actually probably cost me money in the long run.

But given that, I would like to address the one item that Mr. Peaks' thinks is I guess is the flaw blocking this. I want to talk about this undue hardship and whose they actually are. I think they are everybody's. The neighbors to this property certainly.

If I was the neighbor to the left, the trailer that is closest to Old Pinetta, I don't think I would want a house pushed all the way over to the 30-foot setback looking in my back door and that is where it would be. I don't think they came to the County not to have privacy. They probably didn't buy that thinking that somebody is going to be right on top of them at the 30-foot setback. I don't think that is fair to them. I think that most people want some space. We would like it and I'm sure they would like it as well.

In the event on the examples where Mr. Peaks has asked that we remove the garage so we can move the house closer to that left 30-foot setback. We all know if you move a garage or take it off there is no place for cars that need to be worked on, boats to be stored, trash can, dog pen, all the things. If you've got a project going on it's usually happening in the garage to happen. All that is going to be outside either right next door to the neighbor or in the front yard for all the neighbors to enjoy. Which we all know, that's not going to happen.

Our hardship, there are several. I looked at all of these suggestions and not of them get this house totally out of that ravine. By pushing the house over to the left hand side of the lot, it puts it in the steepest part of that ravine. I know it doesn't matter to you all how much that costs to build a house but in the whole scenario of our desire to get this done, it matters a great deal because there is a dollar amount that we are trying to work with to accomplish this. That's actually the very steepest side of the ravine. I've talked to several people that do this and we are probably looking at a 12-foot tall foundation on that side and that is a lot more money.

Again, with the plans we have already spent money on and drawn up the washer and dryer was moved to the garage to give a little more closet space in the house. If we take of the garage, we've got to redesign the house plan. Which means, now we lose a little living space.

There will be more expenses incurred to do that and we will be left with a plan that we really don't want. We drew the plan that hopefully would be real marketable for somebody young starting out or somebody older maybe wanting to downsize. We have the master bedroom on one side and the other two bedrooms on the other side for privacy but it's small.

It's bigger than my first home. I know don't about you all; I started out in an 800 square foot house. This is actually quite a step up but today you know how kids are. They all think they need more than what we got when we were first going at it.

However, also being forced to locate the house back and to the left, I think infringes upon our privacy. We are kind of being forced to look at the other person's house. That's the back of the person's home and that's where you normally don't pull your blinds, you know your shades, and this type of thing. You're sitting in your kitchen. You're eating your dinner. We would be looking right into their back yard and I just don't think that's fair. We would always feel like we have to keep the blinds closed at our house so they are not looking in our home.

There is noise factor. I think the houses get closer together, somebody's having a party, the other is going to be affected by it. We have a little more space, it would be a little less of a problem and I guess the main thing and a very personal thing is if this doesn't get approved my son doesn't get a house. He cannot afford the new homes that the County is approving that are starting in the \$300,000.00. I don't know how many young people today can and he's one of them that just can't.

The current owner, I think, is definitely going to have some hardships over this. Now she owns a lot that is not reasonable to build on. She's going to lose part of her investment. She's still got taxes to pay on this property, well of course, unless that means since she can't build on it the County is going to lower the taxable value. I don't know how all that works but I kind of doubt that would happen.

I think she probably would be paying the current tax structure and I'm not sure that's fair to her. And the County, I think you all will lose revenue from this. If you put a house on it there's more taxes, more money for the County.

You end up with a property that possibly would just get an abandoned because nothing ever happens to it. Unsightly things being dumped on it, maybe right now the front portion is mowed neatly because it's on the market for sale, but if she can't sell it she may decide it doesn't matter if the lawn is cut. The neighbors will complain. We all know that when something is not taken care of it becomes a problem for someone else in more ways than one.

If the house was forced to be all the way back and up against the property line, I can't imagine anybody driving down that road would go what in the world were they thinking. It just doesn't look aesthetically correct. That is such a wide piece of property. It just doesn't make sense not to center it as much as possible and we are not asking for the house to be totally on the flat part. We are still going to have a back corner.

We are just asking to utilize the least steep part of the ravine and put this house on there so it looks good and it helps the neighbors. Neither one of them are going to want a house on top of them not any more than we want to be on top of the other person and I just don't see how now granting the variance would make anybody happy or anybody would profit from it.

I guess in summarization, I feel like this actually creates a hardship for everybody. I think the County has a responsibility to the community and its citizens to prevent something like this from happening to a piece of property.

Please don't be offended. I really think it's time we all start thinking outside of the box. We need to use the common sense that the good Lord gave us and make a decision that's good, that fits not within that box because it's the right thing to do and that's what I would like you all to do. Consider everything and hopefully we can come up with a compromise that would meet everybody's needs. Thank you.

Mr. Horsley: Would anyone else care to speak for this application? Anyone to speak against this application?

Mr. Horsley: Okay, questions for the staff or applicant by the Board?

Mr. James: Mr. Peaks, the trailer to the north, I assume that is to the north.

Mr. Peaks: Yes.

Mr. James: What is the setback? Give me the setback to the road, the numbers so we can have it from a relative side.

Mr. Peaks: I don't have it exactly. It's approximately 50 feet. Approximately. As I indicated, it's about the same as the applicant's but I can't be totally precise on that 50 feet but it's pretty dag gone close.

Mr. Foell: It's also closer than 30 feet on the side.

Mr. Peaks: Yes it is.

Mr. Foell: This was permitted before zoning.

Ms. Emerson: That's been there for quite a few years.

Mr. Peaks: No doubt that the development to the north is nonconforming to our current Ordinance.

Mr. Horsley: Any other questions?

Mr. Peaks: Mr. James, I can go back to that slide. I think that I have that on a slide in here.

Mr. James: Yes, it shows it.

Mr. Peaks: I tried to... you can see the mobile home in that picture. There it is. As I said, I tried to be as parallel to the road as possible when I took that.

Mr. James: So, you are basically standing on the proposed home site.

Mr. Peaks: Probably just a little bit towards the other property from that but pretty close, pretty close.

Ms. Emerson: On this alternate one, does that include the garage?

Mr. Peaks: Yes. Yes it does.

Ms. Emerson: But it would still fit.

Mr. Peaks: The front porch...porches are not exempt from the zoning regs. The front porch would still be approximately 6-7 feet based on the floor plan that was provided into the front yard.

Ms. Emerson: But that's the only part that would....

Mr. Peaks: On that....

Ms. Emerson: On the whole plan not to...

Mr. Peaks: In projection to the alternate one, that's correct.

Mr. James: And I apologize, but you said porches are exempt or not exempt?

Mr. Peaks: Not exempt. Steps are.

Mr. Foell: Steps are.

Ms. Emerson: Steps are but not porches.

Mr. Peaks: No matter if they are 2 steps or 10. They are actually exempt from the zoning setback.

Mr. Horsley: Mr. Peaks, on that alternate one, I think all of them really would put the house in the deepest part of the ravine. Is that correct when I look over that?

Mr. Peaks: It is certainly as steep in that corner as it is almost anywhere. There are a couple of places in here that appear to be south of the proposed home site that are as steep but they are not quite as wide. But yes, it certainly is about as steep there as it is anywhere. I guess I was approximating it about 2 to 1 on the slope. It could have been a little bit steeper than that.

Mr. James: Mr. Peaks, can you go back to a couple of pictures that show the ravine.

Mr. Peaks: I wish the camera...the camera just doesn't really do these things much justice. If I'm not mistaken, I'm standing...

Mr. James: There was one that I think had looked like cottonwood trees and a gradual slope.

Mr. Peaks: Okay. This is, I believe, fairly south of the or in the vicinity of the proposed home or a little bit south of it. There is kind of like a little draw there was probably a little steeper than anywhere else but smaller.

This is certainly looking out and if I'm not mistaken, I'm actually looking a little bit to the south in that shot. I believe I'm back there right off the drainfield area not very far.

There's a path that goes down to the bottom and this is the area adjacent to the drainfield. If you want to look at your plot plan, the corner that we are talking about is right in here which represents itself right here. Is that one of the trees right there? Did you say something about a cottonwood?

Mr. James: Well...

Mr. Peaks: Go ahead.

Mr. James: You see the three white trees? It looked like a cottonwood.

Mr. Peaks: Okay. This tree is pretty close to that little corner of that ravine.

Ms. Emerson: Mr. Stuck, would it appropriate for me to ask Mr. Leigh some questions?

Mr. Stuck: Well, I think Mr. Leigh has disqualified himself from discussing it.

Ms. Emerson: Okay. Mr. Peaks, have they considered putting the garage under the house?

Mr. Peaks: I haven't spoken with Ms. McComas about that. One of the...and she may want to address that. But one of the problems with it being under the house is actually getting to it. The... and it may not be insurmountable but it certainly looks like it would be a toughie.

They are proposing right here...we talked a little bit about this corner right here. It's certainly as steep right in this section as well as over here as it is in this corner. It's real steep and in order to get down there to get to a garage or anything else would be pretty tough to do as far as direct access.

Mr. Foell: (inaudible)

Mr. Peaks: Well, to cover that amount of...without a doubt there would have to be at a minimum, I would think, some retaining walls put in, in order to get from maybe here or somewhere down in there that 12, 10-12 feet that it would take to access it.

Mr. Foell: Is there topography of this particular piece of land available?

Mr. Peaks: Only potentially the USGS.

Mr. Foell: Okay. Is this an erosional feature or is there a stream at the bottom?

Mr. Peaks: No, it's not. It's, and heck, I wish that Jim could talk to some of this. There, it does not appear to be drainage.

Ms. Emerson: In that area, there are a lot of ravines.

Mr. Peaks: Yes. Once you get to the back, it flattens out and you're not far from marshland.

Ms. Emerson: Caffee Creek runs down a little further down that road and crosses.

Mr. Peaks: That's correct. But the actual start of the ravine here is a very interesting feature but it doesn't appear to be drainage related. In other words, no, I didn't see any evidence of any streams, creeks, or drainways coming down through here and it's not wet.

It's not RPA for example anywhere even remotely close to the areas that we are talking about. Of course, the Resource Protection Areas are generally going to be around perennial springs. We saw no evidence of even an intermittent stream up in here.

Mr. Horsley: Any other questions? Okay, if there are not other questions, I will close the public hearing.

Mr. Peaks: Mr. Chairman, I would like to make one last comment and this is just an informational thing. I believe the Board is of power, and I'm not suggesting this at all or recommending this, it's just a point of, not of order, but a point that should be made.

The Board can grant lesser variances than what's been advertised. You could not grant a greater variance than what you've advertised. If I'm not mistaken, Mr. Stuck, and correct me if I'm wrong, the Board can grant lesser variances and they can place conditions as well on the granting of a variance not that I know of a condition that may be germane but just as a reminder.

Mr. Horsley: Thank you, Mr. Peaks. Any other comments before I close the public hearing. Public hearing closed. Discussion?

Mr. James: I think the first thing that needs to be brought to everyone's attention is though the front porch is not exempt the front porch that we are talking about is a very small structure. So, it's really only a 19-foot variance not a 25-foot variance. The front line of the house is going to be 19 feet

Mr. Foell: In the proposed location, you're saying?

Mr. James: Correct.

Mr. Horsley: Any other discussion?

Mr. Foell: I'm not terribly moved by the idea that the neighbor in the trailer as a problem. I mean, too bad he has to look out and see somebody else's home and in this case a garage and the 22-foot wide of the garage is really not going to impact the noise factor with parties and so on.

I don't like the idea of, you know, forcing people to move a home and add additional costs to the construction. I wasn't clear and I should have asked before, Ms. McComas if she already owns this property. I don't think she does. I think it's a pending sale.

I've got property myself and some of it is unbuildable. That's just too bad. I'm paying taxes on it and it's really can't be used for anything except for nature. I don't see any of these alternatives really rectifying the situation. I think we either go with the proposal or we don't do it at all.

Mr. Williams: I agree.

Mr. James: May I ask a question of Mr. Peaks?

Mr. Stuck: The Board can always ask questions of anyone.

Mr. James: You made the comment that this was and I can't quote what you said but generally speaking this was a textbook purpose for a variance? You sort of lead to me to believe when you really starting writing the variance allowance, it was. Is it considered that?

Mr. Peaks: That's my understanding and you see it under analysis, I quoted part of the Code and certainly it's in the state code and whereby reason of exception of topographic conditions. That's ravines and the river runs through it and those kinds of things. Traditionally and certainly important points to consider and laws that are placed after a property is subdivided before it's developed.

As a remedy to codes that would render something unusable. A hardship approaching confiscation, then you have a variance process and the topographic factors are certainly first on the list and you know without a doubt, the backbone of legislation on variances.

Ms. Emerson: But there are alternatives. It doesn't mean they can't build on it. They may not be able to build that size of house but it doesn't come anywhere near confiscation.

Mr. Horsley: Any other discussions? A motion for or against? Okay, we've got to do something.

Mr. Foell: I don't like setting precedence on this kind of stuff either. I can understand they like this stuff because (inaudible) but there are other homes that can be built there that still meet the restrictions.

Ms. Emerson: Mr. Chairman, I make a motion that we deny V-05-02, adopt staff's findings and recommendations due to the lack of proven hardship.

Mr. Foell: I'll second.

Mr. Horsley: Okay, we have a motion and a second to disapprove V-05-02 or deny V-05-02.

Mr. Horsley called for a voice vote. The voice vote was as follows.

Ms. Emerson: Nay

Mr. Foell: Nay

Mr. James: Yea

Mr. Leigh: Abstained

Mr. Newton: Yea

Mr. Williams: Nay

Mr. Horsley: Nay

Mr. Horsley: V-05-02 is denied as per Section 14-12. The applicant's have 30 days to apply for an appeal to the Circuit Court.

Mr. Peaks: Okay, we have V-05-03. The applicant, Mr. Kubicki, of Evergreen Development LLC, he has an agent here tonight representing him, Amy VanFossen. Was that actually correct?

Ms. VanFossen: Good enough.

Mr. Peaks: She is here tonight. I would like to submit my report for the record.

Mr. Peaks presented a Power Point presentation at this time.

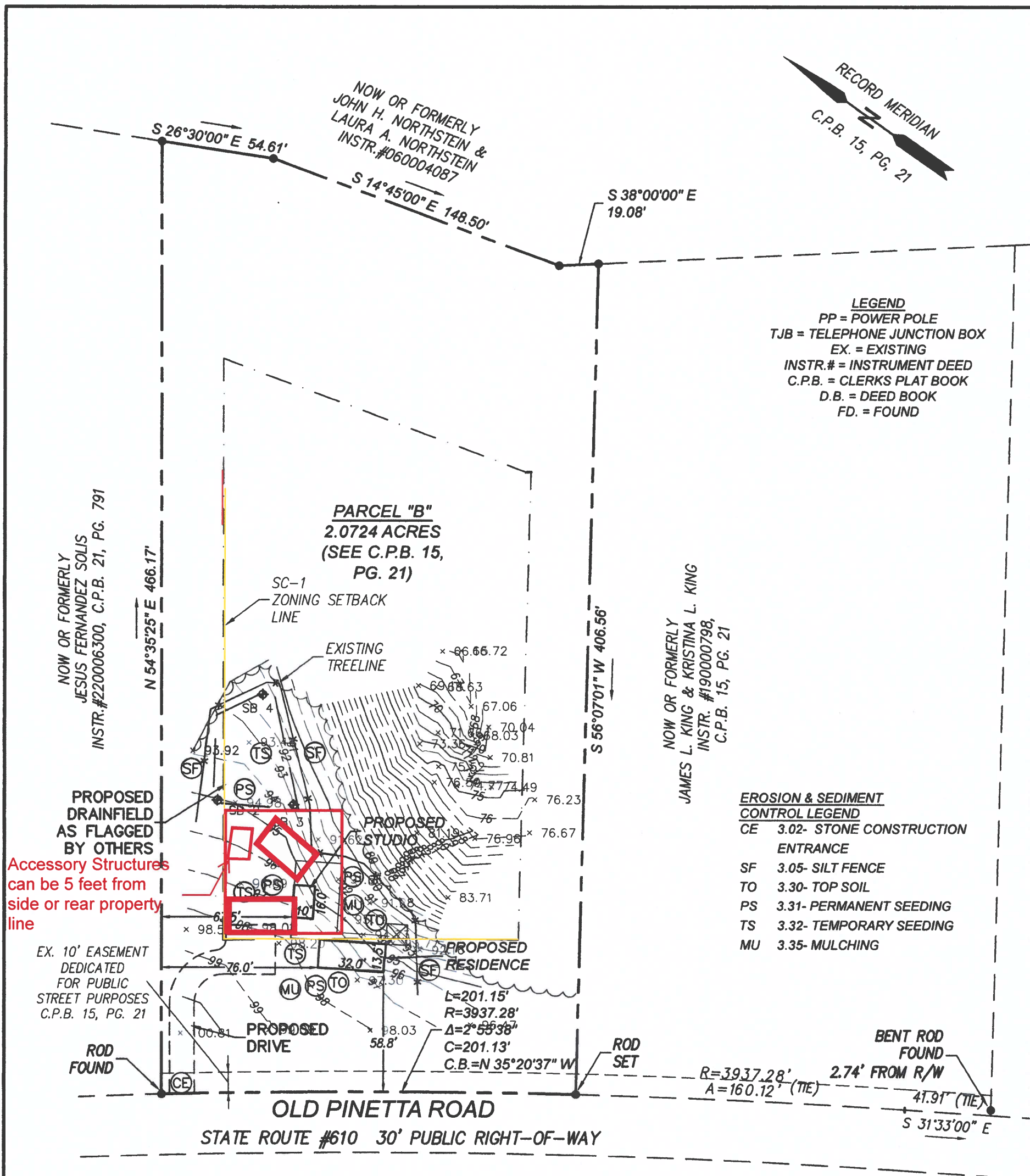
Mr. Peaks: I did want to indicate also that we did receive correspondence from the Director of Economic Development, which I would like to submit for the record. I will read that if you want me to or if you just want to look over it that would be fine.

V-05-03

Staff Analysis

Background:

The applicant's agent seeks a variance of one sign from the maximum number of three on-structure signs allowed on a single building in the General Business (B-1) zoning district, for a multi-tenant retail building located at 6822 Walton Lane, in the Fox Mill Centre shopping area. The multi-tenant retail building is located adjacent to the existing Applebee's restaurant, is approximately 5,000 square feet in



GENERAL NOTES

1. TAX MAP #29-145B
 OWNER OF RECORD: DAVID J. SCOGGINS & JANET D. SCOGGINS
 REFERENCES: INSTR. #230001820, C.P.B. 15, PG. 21
2. PHYSICAL ADDRESS: NONE ASSIGNED.
3. **FLOOD ZONE NOTE:** THE SUBJECT PARCEL LIES IN ZONE X (NO BASE FLOOD ELEVATIONS DETERMINED) PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (F.I.R.M.) #51073C0095F DATED OCTOBER 21, 2021.
4. THIS PLAN IS BASED ON A CURRENT FIELD SURVEY, FOUND GROUND EVIDENCE, RECORD, AND OTHER AVAILABLE INFORMATION. OTHER THAN SHOWN THERE MAY BE ADDITIONAL EASEMENTS, COVENANTS, AND/ OR RESTRICTIONS WHICH MAY AFFECT THIS PROPERTY. THIS PLAN WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT.

