



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

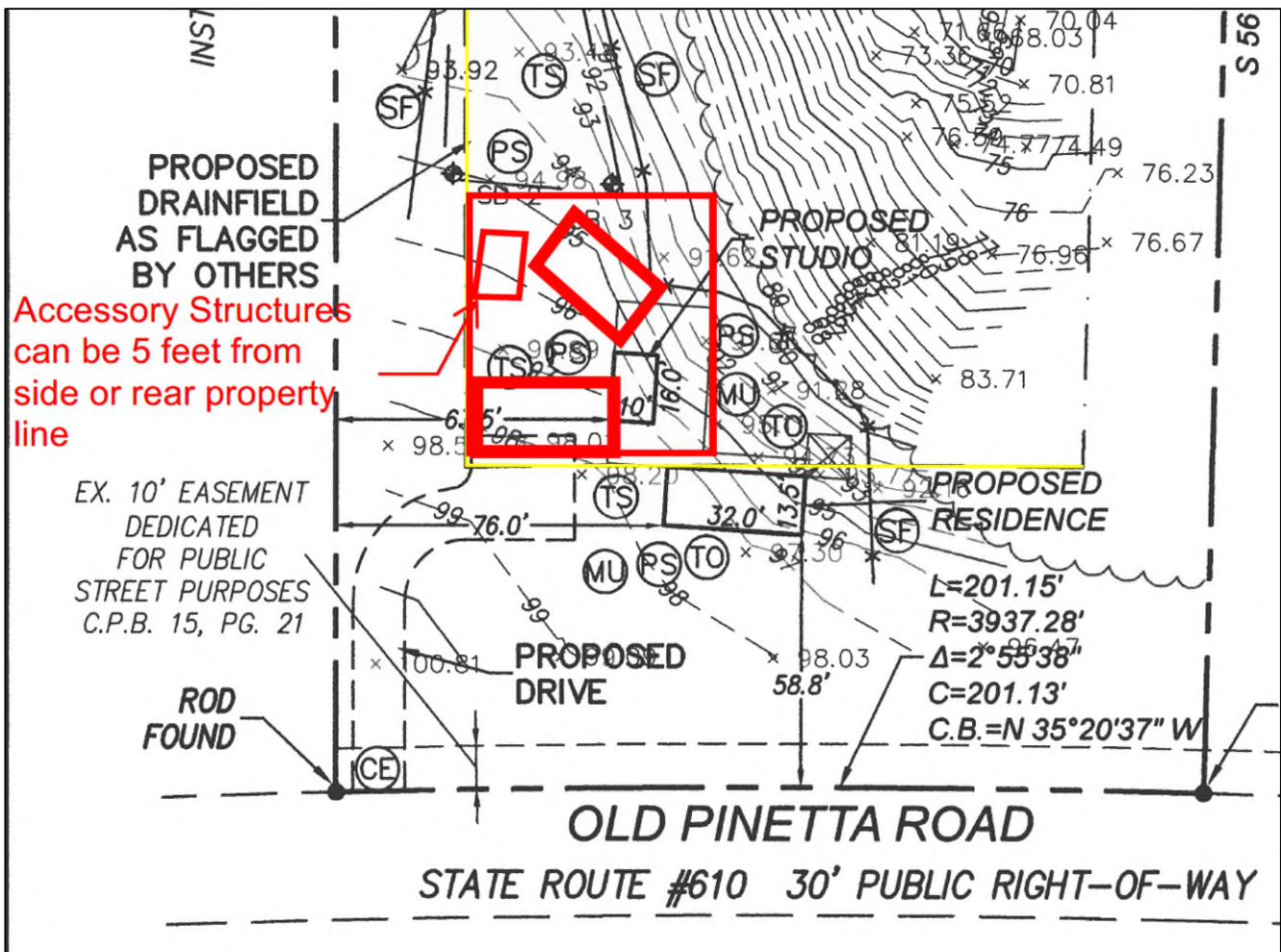
³ See staff timeline.

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):

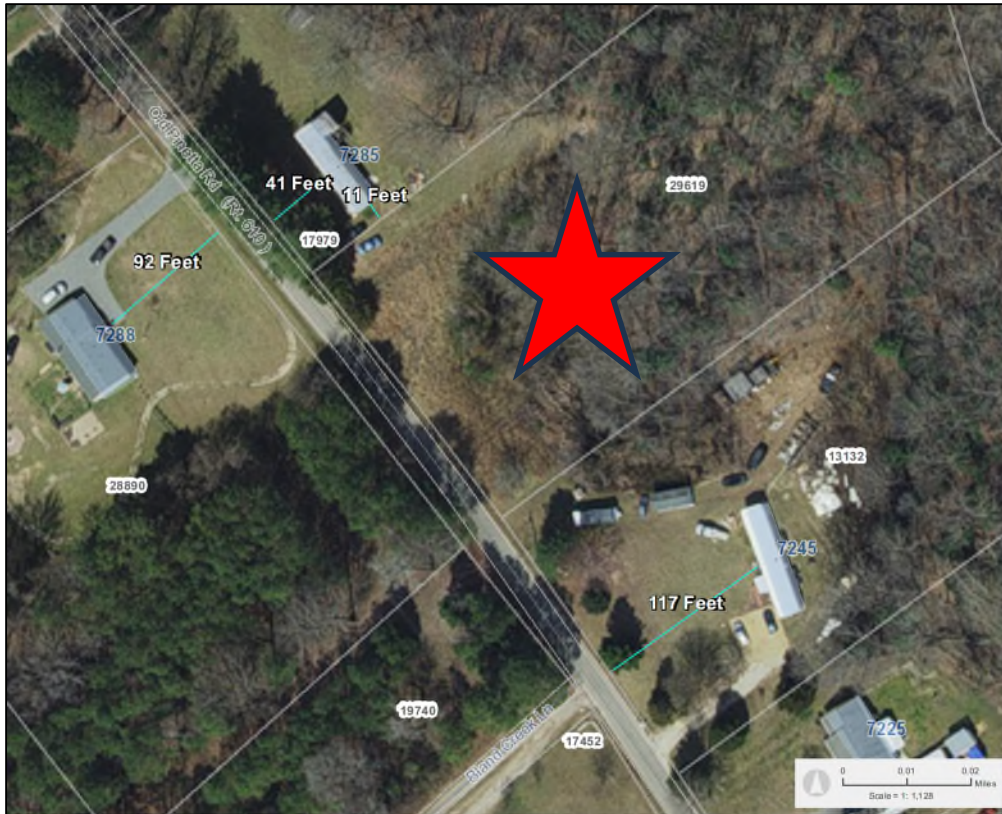
- (i) **The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;**

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.*