

**King and Queen County  
Board of Zoning Appeals  
Minutes  
August 21, 2023**

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BOARD OF ZONING APPEALS  
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The Board of Zoning Appeals (BZA) of King and Queen County met in the King and Queen County Courts and Administration Building, in the General District Courtroom on August 21, 2023, at 6:00 P.M., with public notice having been published in the *Tidewater Review* and *Rappahannock Times* and written notice mailed to interested parties, as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended. The following Board members and staff were present:

Robert “Robbie” Coleman, Jr.  
Robert T. Bland, IV  
Bruce Taylor  
Thomas “Tommy” Adkins

Donna Sprouse, Director of Community Development  
Vivan Seay, County Attorney

**IN RE:  
CALL TO ORDER**

Chairman, Mr. Bland called the meeting to order. Mr. Bland asked Mrs. Sprouse to take roll call and determine if there is a quorum. Mrs. Sprouse determined that there was a quorum with four members present.

**IN RE:  
APPROVAL OF AGENDA**

Mr. Bland stated he would entertain a motion to approve the agenda. A motion was made by Mr. Coleman to approve the agenda as presented, seconded by Mr. Taylor.

*Voting For: Coleman, Bland, Taylor, Adkins  
Voting Against: None  
Abstain: None*

**IN RE:  
2022 CHAIR & VICE CHAIR NOMINATIONS**

Mr. Bland asked Mrs. Sprouse to take nominations for BZA Chair and Vice Chair for the 2023 calendar year.

Mrs. Sprouse asked if there were any nominations for Vice Chair for 2023. Mr. Bland nominated Mr. Taylor as Vice Chair. Hearing no further nominations, Mrs. Sprouse asked if there was a second. Mr. Coleman seconded Mr. Bland's nomination to appoint Mr. Taylor as Vice Chair for 2023.

*Voting For: Bland, Taylor, Coleman, Adkins*

*Voting Against: None*

*Abstain: None*

Mrs. Sprouse asked if there were any nominations for Chair for 2023. Mr. Taylor nominated Mr. Bland as Chair. Hearing no further nominations, Mrs. Sprouse asked if there was a second. Mr. Adkins seconded Mr. Taylor's nomination to appoint Mr. Bland as Chair for 2023.

*Voting For: Bland, Taylor, Coleman, Adkins*

*Voting Against: None*

*Abstain: None*

#### **IN RE:**

#### **APPROVAL OF MINUTES**

A motion was made by Mr. Adkins to approve the minutes as written, seconded by Mr. Taylor. The July 18, 2022 minutes were approved.

*Voting For: Adkins, Bland, Taylor*

*Voting Against: None*

*Abstain: Coleman*

#### **IN RE:**

#### **NEW BUSINESS**

Mr. Bland asked Mrs. Sprouse to please review the request.

Mrs. Sprouse noted that before they start the public hearing, she wanted to ensure that everyone stayed in compliance of 15.2-2308.1 so she asked each member of the BZA if they have had any communications with the applicant, property owner, agent, or staff about the facts of this case outside of this meeting.

Mr. Adkins stated, "*no communications*".

Mr. Taylor stated, "*no communications*".

Mr. Bland stated, "*no communications*".

Mrs. Voight stated, "*no communications*".

Mrs. Sprouse, as non-legal staff, also stated that she had no communications with any of the BZA members nor the applicant/property owner regarding the details of the application.

Mrs. Sprouse thanked the BZA and then presented the following:

## **VARIANCE VAR23-01**

Pamela Harding – *Applicant/Property Owner*  
Steve Geiser – *Agent*

*Public Hearing Notice provided in the Tidewater Review and Rappahannock Times (August 9th & August 16th). Adjoining land owner notification provided by certified return receipt on August 8th, 2023.*

## **BACKGROUND**

The Planning and Zoning Department received an application to the Board of Zoning Appeals (“BZA”) on July 6, 2023, from Casandra with Clayton Homes of Ashland on behalf of Pamela Harding, requesting a variance from Zoning Ordinance, Article 5, Table 5.1, Minimum Dimensional Regulations for Primary Zoning Districts and Article 17, Section 3-389, “Use of nonconforming lots recorded prior to regulations”. The applicant wishes to replace the current singlewide home (12’ x 58’) with a larger manufactured home (28’ x 70’).

## **GENERAL INFORMATION**

### **LOCATION**

The subject property is located at 4753 Owens Mill Road, in the Newtown Magisterial District. The property is identified as County Tax Map Parcel No. 1632-9R-862A.

### **PROPOSAL**

Ms. Harding requests a variance from Zoning Ordinance, Article 5, Table 5.1, Minimum Dimensional Regulations for Primary Zoning Districts and Article 17, Section 3-389, “Use of nonconforming lots recorded prior to regulations”. Her request is to construct a 28’ x 70’ single family dwelling, in place of an existing 12’ x 58’ manufactured home. Ms. Harding is seeking approval to allow for a 13.2’ left side setback vs. the minimum required 21’ left side yard setback.

### **ZONING ORDINANCE**

Pursuant to Zoning Ordinance, Title II, Article 5, Table 5.1 the required side yard setback for primary structures in the Agricultural Zoning District is 40 feet for a primary structure. Article 17, Section 3-389 of the King & Queen County Zoning Ordinance allows for a 20% side yard setback reduction for pre-existing non-conforming parcels.

TABLE 5.1 TABLE OF MINIMUM DIMENSIONAL REGULATIONS FOR PRIMARY ZONING DISTRICTS				
(1)	(2)	(3)	(4)	(5)
MINIMUM SETBACKS AND BUILDING BULK REQUIREMENTS				
ZONING DISTRICT	MINIMUM SETBACKS <sup>1</sup> (in feet)			MAXIMUM HEIGHT OF BUILDINGS
	FROM FRONT PROPERTY LINE	FROM SIDE PROPERTY LINES	FROM REAR PROPERTY LINE	
A Agricultural	100 feet, except that only 20 feet is required for school bus shelters,	40 feet	25 feet	None
R-R Residential Rural	75 feet	25 feet	25 feet	35 feet
R-S Residential Single-family	75 feet	25 feet	25 feet	35 feet
R-G Residential General	75 feet	25 feet, provided that side and rear setbacks adjacent to properties in any zoning district which permits residential uses shall not be less than 50 feet. See Article 6, Section 3-111(B).		35 feet
LB Limited Business	75 feet	15 feet, provided that side and rear setbacks adjacent to properties in any zoning district which permits residential uses shall not be less than 50 feet.		35 feet
GB1 General Business 1	75 feet	15 feet, provided that side and rear setbacks adjacent to properties in any zoning district which permits residential uses shall not be less than 50 feet.		35 feet
GB2 General Business 2	100 feet	15 feet, provided that side and rear setbacks adjacent to properties in any zoning district which permits residential uses shall not be less than 50 feet.		60 feet
LI Light Industrial	100 feet	50 feet, except for lots, which abut property in non-industrial districts, then 100 feet.		No more than the distance from the base or foundation of the building or structure to the nearest lot line.
I Industrial	100 feet	50 feet, except for lots, which abut property in non-industrial districts, then 100 feet.		No more than the distance from the base or foundation of the building or structure to the nearest lot line.

Notes:  
<sup>1</sup>For any lot located within the Chesapeake Bay RPA, the setback requirements shall be determined by the Chesapeake Bay Regulations, Article 12.  
<sup>2</sup>For front yard requirements for waterfront lots the front yard setback for accessory buildings is fifty (50) feet from the road frontage. A front yard buffer may be required unless waived by the Zoning Administrator as not necessary. The site drawing and accessory building architecture must be approved by the Zoning Administrator to ensure that the proposed accessory structure is compatible and consistent with other buildings in the area.  
<sup>3</sup> For Government Offices/Fire/Rescue/Police Stations, setbacks may be reduced for the expansion of or new construction of any fire & rescue building, provided that the proposed building or addition is no less than 50' from the front property line and 15' from the side and rear property lines. Otherwise, a variance must be approved by the BZA.

**Article 17, Nonconforming Uses, Section 3-389, Use of Nonconforming Lots Recorded Prior to Regulations**

A lot of record lawfully established prior to August 12, 1986, which does not conform with the minimum lot area, frontage, setbacks, and/or minimum lot width requirements applicable in the district in which such lot is situated, may nonetheless be used for any use permitted in the district in which it is located, provided that all other applicable provisions of this Ordinance and applicable health regulations shall be met. Any such lawfully established lot which is located within an “A” District and which does not conform with the minimum lot width requirements applicable in that district shall be provided with side setbacks of not less than twenty (20) percent of the width of the lot.

**ZONING**

The property is zoned Agricultural (A). The property is considered a pre-existing non-conforming lot in acreage, frontage and house placement/setbacks. The parcel size is 22,050 sq. ft., approximately a half of an acre.

**BOARD OF ZONING APPEALS SUMMARY/COUNTY CODE REFERENCE**

**Sec. 3-462. - Powers and duties.**

Pursuant to Code of Virginia, § 15.2-2309, 1950, as amended, the board of zoning appeals shall have the following powers and duties...

B. *Variances.* The BZA may authorize, upon appeal in specific cases, variances from the terms of this zoning ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this zoning ordinance shall be observed and substantial justice done according to the following:

(1) *Variance defined<sup>1</sup>:* A variance is a reasonable deviation from the provisions of this zoning ordinance regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of this zoning ordinance would result in unnecessary or unreasonable hardship to the property owner; provided, however, that:

- (a) Such need for a variance would not be shared generally by other properties;
- (b) The variance is not contrary to the intended spirit and purpose of this zoning ordinance; and

- (c) The variance would result in substantial justice being done.

A variance shall not include a change in the use of property, which shall be accomplished by rezoning the property.

(2) Grounds for variance: The BZA may grant a variance when the property owner can show that the property was acquired in good faith, and:

- (a) 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 this zoning ordinance;
- (b) Where by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of terms of this zoning ordinance would effectively prohibit or unreasonably restrict the use of the property; or
- (c) Where the BZA 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. Every variance shall be in harmony with the intended spirit and purpose of this zoning ordinance.

(3) No variance shall be authorized by the BZA unless it finds:

- (a) That the strict application of this zoning ordinance would produce undue hardship;
- (b) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- (c) 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.

(4) No such variance shall be authorized except after public notice and public hearings as required by Code of Virginia, §§ 15.2-2204 and 15.2-2205, 1950, as amended.

(5) No variance shall be authorized unless the BZA finds that the condition or situation of the property is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to this zoning ordinance.

(6) In authorizing a variance, the BZA may impose such conditions regarding the location, character, and other features of the proposed structure for 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.

**REMINDER – (Should the variance be approved)**

**3-467 Lapse of Special Exception or Variance**

*“A special exception or variance granted by the Board of Zoning Appeals shall lapse and be of no effect if, after the expiration of one (1) year from the date of such action by the BZA, no construction or change in use pursuant to such special exception or variance has taken place; provided that the BZA may, for good cause shown, specify a longer period of time in conjunction with its action to grant a special exception or variance.”*

**STAFF RECOMMENDATION**

The zoning ordinance of King & Queen County currently provides relief for pre-existing non-conforming parcels. Such parcels are those that were lawfully created prior to the adoption of local zoning ordinances (August of 1986). The relief that is currently provided, is noted in Article 17, Section 3-389. On small lots, just as this, the code currently allows for a reduced side yard setback of up to 20% the width of the parcel. Rather than having to meet the current 40’ side yard setback, per Table 5.1, in the case of this particular parcel, the side yard setback may be as little as 21’. 20% of 105’ is 21’, which would allow for a 63’ structure.

Staff does not recommend approval of the variance request.

Mrs. Sprouse noted that the applicant/property owner is present tonight to speak to the request.

Mr. Bland opened the public hearing and asked the County Attorney, Vivian Seay for her analysis of staff’s recommendation.

Ms. Seay noted that she was present tonight on behalf of the County and that she concurs with staff’s recommendation.

Mr. Bland asked if the applicant/property owner wished to speak.

Ms. Pamela Harding of 635 Wright Drive, Ruther Glen, VA approached the Board and noted that she is the owner of the property and the property next door. She noted that her son currently lives in the home to the left of this lot. She noted that she wanted to live near her son with her daughter, as she is getting up there in age. Ms. Harding noted that when her husband passed away, she gained ownership of both parcels. She asked the Board to please consider approval of her request because she has found the home that she wants to live in with her daughter and grandchildren.

Mr. Steve Geisler with Clayton Homes of Ashland approached the podium and stated that he has tried to find other homes and floor plans for Ms. Hardy to consider that would fit the lot, however this home is the one that she wishes to have. He noted that you only live once and this is what she wants for her home. He noted that he has worked with the surveyor in an attempt to turn the home on the lot to see if it would fit, however with the rear garage on the property in its current position, he was not able to make it fit.

Mr. Bland closed the public comment period.

Mr. Bland closed the public hearing.

Mr. Bland asked the Board if they had any questions or comments for staff or the applicant/property owner.

Mr. Coleman asked about the wells as shown on the site plan. He asked if they serve both lots or one. Ms. Hardy noted that the wells serve both lots unless they are told otherwise by the Health Department.

Mr. Coleman asked if the driveway was shared between the two lots. Ms. Hardy noted that it was shared between both lots that she currently owns.

Mr. Coleman asked if anyone lives in the current singlewide on the property. Ms. Hardy stated that there hasn't been anyone in the existing home for 30 plus years.

Mr. Coleman noted that he has visited the property and can certainly sympathize with the need in replacing the existing home, however he stated that he has several concerns regarding the shared driveway as well as the proposed setback of the new home to the current home. He noted that the zoning allows for the 20% reduction, currently provides options for a home of similar square footage to be placed without further reduction. Mr. Coleman further noted that he was concerned about the close proximity of the home at a little over 13 feet to the property line, the closeness to her son's current home, and the driveway which passes between them.

Ms. Harding noted that the shared driveway is on her property and if she needed to that she could have her son to use another driveway on the other side of the house if needed.

Mr. Bland noted that either way, the driveway is between the two homes and would be utilized by her to access the garage in the back.

Mr. Coleman added that another concern that he has is that when he looked in the neighborhood that he did not find other properties or homes that have a similar reduction in the setback. He feels that using this proposed flood plan and having the 13.2-foot setback is very unique to her property unlike other properties in the neighborhood. He noted that it concerns him to reduce that setback even further than what the ordinance currently allows.



Mr. Bland asked if anyone had any additional questions.

Hearing none, Mr. Bland then read the following:

*“(1) Variance defined: A variance is a reasonable deviation from the provisions of this zoning ordinance regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of this zoning ordinance would result in unnecessary or unreasonable hardship to the property owner; provided, however, that:*

*(a) Such need for a variance would not be shared generally by other properties;*

*(b) The variance is not contrary to the intended spirit and purpose of this zoning ordinance; and*

*(c) The variance would result in substantial justice being done.*

*(2) Grounds for variance: The BZA may grant a variance when the property owner can show that the property was acquired in good faith, and:*

*(a) 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 this zoning ordinance;*

*(b) Where by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property, or the use or development of property immediately adjacent thereto, the strict application of terms of this zoning ordinance would effectively prohibit or unreasonably restrict the use of the property; or*

*(c) Where the BZA 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. Every variance shall be in harmony with the intended spirit and purpose of this zoning ordinance.*

*(3) No variance shall be authorized by the BZA unless it finds:*

*(a) That the strict application of this zoning ordinance would produce undue hardship;*

*(b) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and*

*(c) 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.”*

At this time Mr. Bland asked for a motion from the Board. He reminded the Board that should they wish to approve the request, they must make all of the findings. Otherwise, if they wish to deny the request, they must identify at least one of those findings that has not been met.

Mr. Adkins noted that he would like to make a motion against variance, VAR23-01 and noted that he was not able to make the following finding(s): *“That the strict application of the Zoning Ordinance would produce an undue hardship”*.

Mr. Adkins motion was seconded by Mr. Taylor.

*Voting For: Taylor, Adkins, Bland, Coleman*

*Voting Against: None*

*Abstain: None*

**IN RE:  
BOARD MEMBER COMMENTS**

None.

**IN RE:  
STAFF COMMENTS**

None

**IN RE:  
ADJOURN**

Hearing no further comments, a motion was made by Mr. Adkins to adjourn the meeting, seconded by Mr. Coleman. The motion was ratified by all present members stating “Aye”.

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Robert T. Bland, IV, Chair