At a meeting of the Caroline County Board of Zoning Appeals held Thursday, April 11, 2019, located in the Community Services Center Auditorium, 17202 Richmond Turnpike, Milford, Virginia.

Present
Joseph Pack
Patricia Parker
David Rababy
W. Leo Satterwhite
George Spinner
Janette Washington

Absent
Michael Crist

Staff
Craig Pennington, County Planner
Lisa Zech, Administrative Assistant/Planning Tech

1. CALL REGULAR MEETING TO ORDER
Chairman Satterwhite called the regular meeting to order at 7:00 p.m.

2. APPROVAL OF MINUTES (MARCH 14, 2019)
Mr. Spinner moved and Mr. Rababy seconded to approve the Minutes of March 14, 2019 as presented.

Voting yea: Parker, Pack, Rababy, Satterwhite, Spinner, Washington

* Motion carries *

3. PUBLIC HEARINGS
Mr. Satterwhite outlined the general procedure for Public Hearings.

3A. V-02-2019 – Fournier, Laura & James, Owner/Applicant: Request a variance to Article XV, Supplemental Regulations, Section 4 (Accessory Building & Uses), Paragraph 3, on Tax Map #67A5-1-1849, consisting of 0.5 acres, more or less, zoned R-1, Low-Density Residential. This property is located at 134 Lake Caroline Drive, Lot 1849 Lake Caroline Development, Ruther Glen, Madison Voting District. Proposed Variance: To allow an accessory structure (storage shed) to be constructed in the front yard of a single-family dwelling lot where it is prohibited.

Mr. Rababy read the following statement into the record:

"I, Dave Rababy, hereby publicly declare and disclose that I own a residence in Lake Caroline and I am employed as the Executive Manager of the community's Property Owner’s Association. As such, I am employed by a business that may be directly or indirectly affected by the application for a variance that will be discussed at this meeting and voted on by the BZA. I further declare that I am able to participate in this discussion and vote, fairly, objectively, and in the public interest."

Craig Pennington, Planner, provided the following Staff report and added suggested conditions for approval:
Request:

The applicant is requesting a variance to allow a shed to be built in the front yard of the parcel on which a single-family dwelling is located. Accessory structures are required by Section 4, Article XV of the Caroline County Zoning Ordinance to be located in the rear or side yard.

Discussion

The applicant is requesting a variance to allow a shed to be built in the front yard of the parcel on which a single-family dwelling is located in the Lake Caroline subdivision.

The applicant would like to construct a shed for the storage of their personal items. According to the survey provided by the applicant, there is RPA (Resource Protection Area) to the rear of the single-family dwelling. Resource protection areas have a buffer of 100’ that should not be encroached upon. The applicant’s drainfield is also located directly behind the dwelling inside the RPA further limiting the encroachment possibilities in the RPA. The applicant’s dwelling is also located too close to both side property lines to allow for construction of the shed on the side of the dwelling and being able to meet building code setback requirements. The shed would still need to meet the 40-foot front setback.

§ 15.2-2201 OF THE CODE OF VIRGINIA STATES THAT A “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.

Mr. Satterwhite asked Staff if any comments were received from either counsel for the County or the Board.

Lisa Zech stated no, Staff has not received comments from any adjacent property owners nor from either counsel.

Mr. Pennington stated that Staff has the following suggested conditions of approval for V-02-2019, Fournier:

1. In order for the variance to be the minimum necessary to afford relief the shed should be moved as close as physically possible to the dwelling and still meet the Virginia Uniform Statewide Building Code.

2. The To-Wit (approval letter) for this variance shall be recorded in the Office of the Circuit Court of Caroline County within 30-days of receipt from the Department of Planning and Community Development.

He said a motion to approve with the suggested conditions should include the phrase “and with the conditions as suggested by Staff.”

Mr. Satterwhite opened the Public Hearing on V-02-2019, Fournier, at 7:10 p.m.
Steve Miller, 130 Lake Caroline Drive, stated he was directly next door to the Fourniers. He said he was not yet favoring and he is not objecting to it. He said he was just looking to see if they can get a little bit more detail on how close it is to the house, where it is in location of the house, materials, and is there any type of a front view of how it is going to appear from the street level.

Mr. Satterwhite said he would see if that could be provided as part of the meeting. He said so Mr. Miller is not really speaking in favor.

Mr. Miller said he is just looking for more information.

There were no further speakers for or in opposition to the request and Mr. Satterwhite declared the Public Hearing period closed. He said the floor was now open for the applicant or Staff to be questioned.

Linda Fournier, Applicant, stated the structure is an Amish built shed that would be on the left side of the property, the driveway is on the right side, and the double barn doors would face the turn-around of the driveway, and the color will match the house with the trim and everything.

Mr. Satterwhite asked if it was a wood frame construction and if the siding and color would be the same as the house.

Ms. Fournier said yes.

Mr. Satterwhite asked if the shed would face sideways to the road.

Ms. Fournier said yes.

Mr. Rababy asked if it was a single story structure and not a barn style building.

Ms. Fournier said yes.

Mr. Rababy asked what the distance was from the house to the shed.

Ms. Fournier said the distance from the house to the shed was probably 30 to 40 feet from the house and 70 feet from the road, 12 feet from the side.

Mr. Spinner asked if her or her husband ever owned a home on 17307 Jacosta Avenue.

Ms. Fournier said no.

Mr. Spinner asked if this shed would be hidden by trees from the street view or would it be visible from Lake Caroline Drive.

Ms. Fournier said it will be mostly visible.

Mr. Pack stated he wanted to clarify, it will be 41 feet from the front of the building to the house.

Mr. Rababy stated this was very similar to the last two cases that the BZA reviewed from Lake Caroline on Lake Caroline Drive. He explained the last meeting and the meeting before, the BZA was approached for a variance simply because Lake Caroline Drive circles the lake itself and a lot of the properties, as he mentioned last time, they slope down very quickly and very steeply. He said the majority of the drainfields, especially on the older homes, are between the house itself and the lake itself. He said so in order for someone to put a garage or a shed, they really only have one location. He said you cannot build on top of your drainfield, you cannot build within 110 feet by LCPOA rules and 100 feet by Caroline County rules within the water lines. He stated that really does not leave the homeowner any other space to put a structure, whether it is a shed or a garage, than in the front.
He stated he would just remind the BZA that they approved the variance the last two times in Lake Caroline.

Mr. Satterwhite stated that is good reminders of points that have been referenced for site limitations and restrictions of the property as a result of unique characteristics which is the RPA, the drainfield, size of lot and so forth and are things that can be considered in the approval of the motion should it be forwarded.

Mr. Rababy moved and Ms. Washington seconded to approve the request for V-02-2019, the variance is justified based on site restrictions, topography and unique site conditions that are unique to this particular lot and to include the suggested conditions of Staff.

Mr. Pack asked for clarification and said when the BZA says stipulating according to the recommendations of Staff, this specifies that for relief, the shed should be moved as close as physically possible. He asked what is as close as physically possible.

Mr. Pennington responded and said that it is to be at least 10 feet from the existing structure in order to meet the Building Code. He said so as close as possible would be 10 feet away from the main house.

Mr. Rababy asked if the homeowners are okay with moving the shed closer to the home than was originally petitioned.

Mr. Pack asked to modify that question and asked if there was anything that would prohibit the shed from being that close to the home.

Ms. Fournier stated that the slope of the land, and the land is more level in that turnaround section and then it gradually goes down and it would need to be built up more.

Mr. Pack said so Ms. Fournier is saying that it would just need to be built up because it would put the shed on the grade.

Ms. Fournier said there is also a big tree in the front.

Mr. Pennington stated that if the topography and trees are limiting to where it can be moved, Staff is just suggesting that it be moved as close as possible to the home. He said Staff is not necessarily asking that the applicant spend a lot more money to remove a tree to bring grade up. He stated he was not sure exactly what the topography is, if it is bringing it up one foot or bringing it up 10 feet and that is why the condition is stating “as close as possible”.

Mr. Pack stated that this seems to be an ambiguous requirement.

Mr. Satterwhite stated it is a little open as relates to a specific distance. He said his thought is that the location would have to be approved by Staff.

Mr. Spinner asked the applicant if the Amish built shed would be trucked in and placed on concrete blocks.

Ms. Fournier said that is correct.

Mr. Pennington stated that the application would be reviewed by Zoning to make sure it is as close as possible to the home and that will be taken care of at the Plan Review stage.

Voting yea: Parker, Pack, Rababy, Satterwhite, Spinner, Washington

* Motion carries *
38. V-03-2019 – Scott, Joseph & Peggy, Owner/Applicant: Request a variance on Tax Map #61-7-4, consisting of 3.81 acres, more or less, zoned RP, Rural Preservation. This property is located at 18460 Passing Road, Milford, Virginia, Bowling Green Voting District. Proposed Variances:

1) Variance to Article XII, Lot Area & Other Dimensional Requirements, to allow a 10’ rear setback for an unpermitted addition & deck on a principal structure when a 40’ rear setback is required.

2) Variance to Article XV, Supplemental Regulations, Section 4 (Accessory Buildings & Uses), Paragraph 3(d) to allow 1’ side and 1’ rear setback for an unpermitted accessory structure when a 5’ side and 5’ rear setback is required.

Mr. Pennington provided the following Staff report:

Request:

The applicant is requesting a variance to allow a detached garage, a deck, and an addition that was built without a permit, and built within the setbacks to stay on the property.

Discussion:

The applicant is requesting a variance to allow a detached garage, a deck, and an addition that was built without a permit, and built within the setbacks to stay on the property.

The applicant purchased this property with the addition and deck that do not meet zoning setbacks approximately 3 years ago. According to aerial photographs it appears that the deck and addition were in place prior to 2013. There are no permits on file with Caroline County for the construction of this addition and deck. The required rear setback for this property is 40 feet. The addition currently sits at 35 +/- feet away from the rear property line and the deck sits approximately 10 feet from the rear property line.

The detached garage that currently sits on the property also does not meet zoning setbacks. The required setback for accessory structures in the Caroline County Zoning Ordinance is 5 feet from the rear and side property lines. The current detached garage sits 1.8 feet from the rear property line and 1.9 feet from the side property line. According to aerial photographs the detached garage was constructed sometime prior to 2007. There are no permits on file for this structure.

As it appears the addition, deck, and detached garage were all constructed prior to the purchase of this property without proper permits in place. Should the variance be granted the structures would then need to be inspected by the Building Department to ensure that everything is up to code. Should the variance be denied all three of the structures would need to be demolished.

§ 15.2-2201 of the Code of Virginia states that a “Variances” 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.
Ms. Zech stated there were no comments from adjacent property owners; however, Staff has received some comments that were a result of conversation with counsel. She stated what was handed out to the members of the BZA primarily deals with a motion to approve but just for the Board’s information, just because this is one variance number does not mean it has to be approved or denied wholly. She explained the Board could approve and deny in part. She said if the Board is okay with the addition but not okay with the rest, the Board can state that in their motion and they can piece those things out.

She stated the other thing that Staff discussed, the applicant’s request is very specific of what needs to be granted a variance. She said in looking at it and talking to the County Attorney, if the Board decides to approve it in whole or in part, Staff believes that some conditions would be in order to keep that variance narrow to just the items that are being requested. She said so what they have there are what Staff believes the conditions would need to be as follows:

1. The variance is applicable to only the existing 9’ x 10’ addition, existing rear deck and existing 24’ x 24’ accessory structure (garage) as shown on the House Location Survey by Griffin Surveying, PLLC dated February 13, 2019.

Ms. Zech stated that should the Board decided to approve or deny in part, obviously, the Board could amend this condition to whatever it applied to.

2. Granting of the variance is dependent on the existing structures being in compliance with all applicable building codes as determined by the Caroline County Building Official through the appropriate permitting/inspection process.

Ms. Zech said as Mr. Pennington stated in his Staff report, prior to the applicant purchasing this property, all of these structures were constructed without the benefit of a permit or any inspections and Staff does not know the condition of the structures.

3. If the existing addition, deck or accessory structure for which the variance is granted is destroyed, removed or requires substantial alteration/renovation to comply with building codes, the variance will no longer be applicable and the structures shall be removed. Any new construction would be required to comply with the Zoning Ordinance.

Ms. Zech stated that “substantial”, she realizes, can be somewhat ambiguous and vague; however, under the current ordinance, if you are looking at a preexisting non-conforming structure, it is 50% of the assessed value. She said if electrical needs to be corrected, that is life safety, that’s fine; however, if it comes in and this whole addition is structurally unsound to the point where it has to be essentially rebuilt, Staff is suggesting that would not be permitted. She said it shouldn’t have been there in the first place and so there is no reason to allow the variance to rebuild the entire thing.

4. The To-Wit (approval letter) for this variance shall be recorded in the Office of the Circuit Court of Caroline County within 30-days of receipt from the Department of Planning and Community Development.
Ms. Zech stated these are just things that Staff is suggesting, the Board can agree, disagree or change as it sees fit, but Staff wanted the Board to have this if it is something that the Board decided to approve.

Mr. Satterwhite opened the Public Hearing on V-03-2019, Scott. There were no speakers and Mr. Satterwhite declared the Public Hearing closed. He opened the floor for Board members to question Staff and to the applicant.

Ms. Zech added that Staff just got these together this afternoon and so the applicant has not seen these conditions.

Joseph Scott, Applicant, stated that he bought the house about three years ago as a foreclosure. He said as stated, all structures were there when he purchased it. He said he had no idea that the existing structures did not comply.

He stated the reason why he applied for a Building Permit was to get the back structure, additions to the home and the carport inspected. He said going through the inspection process, he was advised that he had these issues to deal with, i.e., the problem with the location of the structures and that is why he is here. He said the house has already been inspected as well as the additions and the decking and everything has been inspected by a home inspector. He said the house itself and the addition to the house has been inspected by a structural engineer as required for the financing for the new purchasers who are purchasing the house.

He said he has already been through the process for the house itself and the decking and the structure at the back of the house and the garage have all been inspected as per the Home Inspector and as per the requirement and Alexcom in Fredericksburg was the structural inspector who did the inspection on the property for the financing.

Mr. Satterwhite asked if that information had been provided to County Staff.

Mr. Scott said that information has not been provided to County Staff.

Mr. Pennington said that information was not provided; however, should this be approved, the Building Department would still need to do their inspections.

Mr. Satterwhite stated these inspections, although important, the inspections of the County are of most importance and would be from the County’s point of view.

Mr. Scott said he understands that but he just wanted to let the Board know that they have already been looked at to give the Board piece of mind that the structures are not falling down. He said the home inspector and the structural engineer who inspected it for the loan – it is going at FHA/VHDA type financing and one requirement of the financing is that any time you have a manufactured home on a foundation that all structures tied to that foundation or house must be inspected by structural engineer, et cetera.

Mr. Satterwhite asked if this was a manufactured home unit as opposed to a stick built unit.

Mr. Scott said yes, it was a manufactured home.
Mr. Satterwhite asked when he bought the property, did Mr. Scott obtain title insurance.

Mr. Scott said yes, he did.

Mr. Satterwhite asked if there was an exception in the policy for matters of survey, how was that missed.

Mr. Scott stated when he bought the house at foreclosure, there was no survey required and it was a cash deal.

Mr. Satterwhite stated so Mr. Scott received, rather than a general warranty, he received a special warranty deed from the Trustee selling the property, so he makes no reference other than the fact that he is selling what he had before him and represents no more and no less.

Mr. Scott said that was correct. He said all the Trustee is representing is that he has done nothing to encumber the title of the property. He said his Title Company did do a title search to insure that it is good title but no survey was done when it was purchased.

Mr. Satterwhite said the garage is referred to as a metal building and asked what type of a metal building, foundation and so forth is there.

Mr. Scott stated it is a carport type structure and it is enclosed and attached on a permanent concrete foundation with three doors, one in the front.

Mr. Satterwhite said he just wanted to know the extent of the structure and asked if there was a structure on the adjacent lot or if this property actually have things on the other lot.

Mr. Pennington said no, in looking at the GIS Map, the property lines are not exact due to the aerial photo and the curvature of the earth. He said sometimes property lines on the GIS Map can look a little off. He said if you look at the actual survey of the property, all structures are on this property.

Mr. Satterwhite said where he was going with that is when you have something of this nature that certainly needs to be considered because you are looking for all possibilities, is would it be possible for a piece of the property on the adjacent property owner to be purchased in order to alleviate this.

Mr. Scott stated he contacted on the backside of the property, it’s owned by Mr. Rollins and he sent him a registered letter. He said Mr. Rollins is deceased and his Executor contacted him in reference to the registered letter and advised there are many relatives and there is no way to purchase anything from him. He said the Executor advised that the relatives would not be interested in selling it. He said he then contacted his next door neighbor on the left hand side looking at his house, Peggy Futtrell, and it was all part of her family type thing, she got 3 plus acres, she built her house and the rest was sold off that he owns now, and Ms. Futtrell is not willing to sell but said she was willing to work with him on the easement because the well easement is on her property.

He added that there are 100 acres plus in back of his property that is all woods. He said the house on the adjacent property is to the front and so there are no site issues.
Mr. Spinner stated one of his concerns with the garage is that there wouldn’t be any room behind it, to walk behind it, be able to do repairs if you needed to make repairs. He said you would have to go on someone else’s property in order to do that. He said if there was some type of structural failure, it could fall on someone else’s property.

Mr. Satterwhite asked if the metal building was bolted to the concrete foundation.

Mr. Scott said there are tie downs that have been placed when the concrete foundation was poured and you can’t get them out. He said there is rebar through the metal hole into the concrete.

Mr. Satterwhite and Mr. Scott continued to discuss how the metal building is secured to the concrete foundation.

He asked Staff if it would be possible for the County to inspect this to determine whether or not it would be in compliance and the Board would have that information available before they move to look at a variance. He said they are looking at a variance that would be subject to the County doing these approvals and he would wonder why they could not get the approvals determined first because the approvals could cause the entire structure to have to come down. He said he believes the approval from the County needs to be ahead of the variance request.

Mr. Pennington stated they could ask the Building Department to go out and take a look and reconvene at the next meeting of the BZA.

Ms. Zech stated it would be up to the Building Official. She said originally the Building Official had preferred this come first; however, they can explain that the BZA is looking for additional information.

Mr. Scott stated that the property is sold and settlement is scheduled for May 8th and has been postponed once before in order to try to take care of this process.

Mr. Satterwhite stated he was sympathetic to the applicant and his settlement schedule; however, this is a highly unusual situation and he has been on the Board for a long time.

Mr. Pack stated that it seems clear there is something associated with either the driveway or the garage that is sitting on the adjacent property. He asked what was on the adjacent property.

Mr. Scott said gravel is the only thing on the adjacent property that was used for a turnaround in the past by the previous owner.

Mr. Pack asked if there were any temporary structures on the adjacent property.

Mr. Scott said no, not at all.

Mr. Spinner asked if the metal building was bolted to the concrete foundation.

Mr. Scott said the concrete is holding the metal frame.

Mr. Spinner asked what was on top of the rod that is holding it to the concrete.
Mr. Scott said they just put a cap on it, like a big nail made out of rebar.

Mr. Spinner said so there is not a bolt that you can unscrew and take off.

Mr. Scott said no.

Mr. Spinner said you would have to cut it off at the point somewhere between the concrete and the top of the structure.

Mr. Satterwhite asked if there was power coming to this building.

Mr. Scott said yes, there is a breaker box on the inside.

Mr. Spinner asked if that was permitted.

Mr. Scott said nothing was permitted and that is why he is here.

Mr. Satterwhite asked if Mr. Scott inspected this property before purchasing it.

Mr. Scott said yes. He explained that when he looked at the property, you are looking at 3.8 acres and you walk around the property and there is nothing behind you, the property on the right side is 25 acres going that way and property on the other side is 3 plus some acres. He said when he looks at the property, there was an existing survey done for the 100 acres that is in the backside of his property. He said he actually tracked down the pins on the backside where they were flagged. He said when his surveyor went out to survey it, there is anywhere from a 10 to 15 foot differential between those two surveys. He further continues to explain to the BZA how it was surveyed originally.

Mr. Satterwhite stated what concerns him is that there is, right now, a transfer of this property in progress. He said he thinks all of these issues need to be resolved before this property passes to another owner.

Mr. Scott said it cannot pass and he cannot sell this property until all of these issues are resolved.

Mr. Satterwhite stated he would want to have every piece of information possible before he considered this variance. He said one of the pieces of information, in his mind, would be the County’s inspection as to what is going to be the next step and he thinks the County ought to commit to what it believes to be the case there before the BZA commits to a variance. He said this is his perception of what needs to be done.

Ms. Parker said when looking at the aerial map, it looks like there is a pool. She asked if there was a permit for the pool.

Mr. Pennington said no, the pool does not need a variance and the pool only needs to be 5 feet off of the property line and the pool would be a Building Code issue and not a zoning issue.

Ms. Parker asked if there was a deck around the pool.

Mr. Pennington stated the deck is separate from the deck that is connected to the addition and that deck also meets zoning requirements and if it was not permitted, again, that would be a Building Code issue. He said the only structures that need a variance for zoning are the addition itself, the deck that’s attached to the addition, and the garage.
Mr. Pack said he would like to point out that it seems like they have two separate problems here, the geometry problem associated with the offsets and then there is what exactly this structure is, the condition of it, and whether that actually meets requirements. He said because it was already communicated to them that they can split apart the individual things that they approve, it may be beneficial to maybe pick the items on here. He said if there are two items, between the deck and the home addition, which there has not been a lot of questions about or qualms about, it may make sense to go ahead and approve the variance for those items and then simply hold the garage off for next month. He said he only reason why he says that is because they can make some progress on this; obviously there is a lot of different things going on in this particular variance, et cetera.

Mr. Spinner stated his main concern about the garage is still the fact that in order to walk around the garage, you have to walk on someone else's property and he does not think that necessarily is a good thing for it to be set on the property that way. He said the reason why they have a 5-foot off set is to keep it away from the property line. He said he also likes Mr. Pack's idea of approving just part of this tonight and putting the garage over to another meeting.

Mr. Satterwhite asked what the addition itself was.

Mr. Scott said the addition was a three season’s room.

Mr. Pack stated for clarification, when he was mentioning that, he would still mention that in accordance with whatever these stipulations are. He said so he is not necessarily suggesting that they approve it without it being inspected.

Mr. Satterwhite said his personal feelings, again not reflecting the Board’s feelings, is that the matter should be continued and the schedule is certainly an issue and not something they can control. He said he believes they need all the information possible on this request for variance before moving on a variance.

Ms. Parker asked why the Building Official wanted a variance first.

Mr. Satterwhite stated if you send somebody ahead of you, you are not the first one to be in line.

**Mr. Satterwhite moved and Ms. Parker seconded to request that V-03-2019, Joseph and Peggy Scott, be continued until the next regular meeting of the Board of Zoning Appeals to allow the County to provide additional information before action is taken on this request.**

**Voting yea: Parker, Pack, Rababy, Satterwhite, Spinner, Washington**

* Motion carries *

Mr. Satterwhite asked Staff to contact the Building Department and advise them that it is the Board of Zoning Appeals preference that they inspect the property, incorporate the information to them that was provided by the applicant’s inspectors, gather all the information and get that to the members of the BZA for additional consideration.
ADJOURNMENT

Mr. Pack moved and Mr. Rababy seconded to adjourn the Board of Zoning Appeals Meeting at 7:55 p.m.

Voting yea: Parker, Pack, Rababy, Satterwhite, Spinner, Washington

* Motion carries *

Respectfully Submitted,
Michael A. Finchum
Director of Planning & Community Development