At a meeting of the Caroline County Board of Zoning Appeals held Thursday, May 9, 2019, located in the Community Services Center, Auditorium, 17202 Richmond Turnpike, Milford, Virginia.

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

Absent
Joseph Pack
Western Caroline seat vacant

Staff
Rebecca Bradford, Secretary
Craig Pennington, County Planner

1. CALL REGULAR MEETING TO ORDER

Chairman Satterwhite called the regular meeting to order at 7:00 p.m.

2. APPROVAL OF MINUTES

Chairman Satterwhite stated that the Minutes were not available in the packets provided to the Board of Zoning members and are not available now and so approval of the April minutes will be moved forward to the next regular scheduled meeting of the Board of Zoning Appeals.

3. UNFINISHED BUSINESS

3A. 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 & 1’ rear setback for an unpermitted accessory structure when a 5’ side & 5’ rear setback is required.

Chairman Satterwhite stated that at their prior meeting a Staff report was presented and the Board of Zoning entertained a Public Hearing in regard to this matter. He said at that meeting it was determined that additional information was necessary in order for the Board to proceed to consider the request. He said the County was requested to visit the site and come back and report on the question the Board was most concerned about, which was about the current addition structure and the deck and so forth, and if they were in compliance with County codes for construction. He said if they were not in compliance but at a minimum of not qualified, could they be easily corrected and brought into compliance.

He stated they will hear from County officials this evening in regard to their findings and based on those findings, the Board of Zoning will determine whether to proceed or not to proceed with the request for the variance.

Craig Pennington, Planner, stated that the Caroline County Building Official and Planning Staff made a visit to the site to perform a preliminary inspection of the structures to determine if there were any major Building Code violations with the structures in question.
He said the Building Official determined that there were no life safety issues and there were a few small items that were not constructed to Code; however, all issues could be corrected with a Building Permit and minor construction.

He stated upon visit to the site, Staff noted survey tape from a survey on the abutting property to the rear and there was approximately a 15 foot gap between the applicant’s survey and the property survey on the rear property. He said it is unclear at this time who the 15 feet of property belongs to and would need to be solved civilly between the two property owners and their surveyors or engineers.

He said should the 15 feet belong to the applicant, then the deck and addition would then meet County setback requirements; however, this is not an item that Caroline County can force to be solved as it is a civil matter. He said the County must go by the survey provided and on record, which is attached to the Staff report; however, the discrepancy regarding the rear property could change on a future survey.

He stated the Board of Zoning has been provided pictures in three packets. He explained the first set of pictures is of the garage and shows how close the garage is to the corner stake and also shows how the garage was installed with the concrete pad poured around the structure.

He said the second set of pictures is of the deck and the addition. He said the only part of the deck in question is that, that is raised with those stairs. He said the pool deck is not part of the variance application.

He stated the third set of pictures is the discrepancy between the two surveys and you can see 18 feet on a tape measure between the two surveys and you can see a line of the survey tape going adjacent to the fence with the 15 foot gap.

Chairman Satterwhite said he just wanted to clarify, it sounds from the presentation that with the proper Building Permit applied for and obtained, that the amount of corrections necessary would be minor and should not be a problem to accomplish.

Mr. Pennington said that is correct.

Chairman Satterwhite stated so they would condition anything that the Board decides tonight on those items being done and completed in that manner.

Mr. Pennington said that is correct. He stated that Staff also suggested conditions should the variance be approved.

Chairman Satterwhite asked if those suggested conditions were the same as were provided to the Board at their prior meeting on this matter.

Mr. Pennington said yes, but there may have been a few minor changes. He said the suggested conditions include: the variance only applies to the three structures that are in question and not any future structures; should these structures be demolished then they would not be able to be rebuilt; and if anything cannot pass Building Code then it should be demolished; however, the Building Official said that is not the case.

Chairman Satterwhite stated he has a copy of the suggested conditions from the prior Board packet and he shared that with Board members.

Mr. Pennington stated that it is also on page 2 of the new Staff report.
Chairman Satterwhite directed Board members to review the new Staff report, page 2. Recommendations to be incorporated into any Motion made in regard to approval of such a variance.

Mr. Rababy said he was not understanding the 15 foot variance and asked if Mr. Pennington was saying that the property behind this property is surveyed at 15 feet closer to the property or further from the property.

Mr. Pennington explained that it was 15 feet further away. He further explained that the applicant’s survey has the property line one foot behind the detached garage and runs down that fence line that is depicted in one of the pictures. He said the property behind the applicant’s property had a survey done, he is not sure at what time, but the engineer’s tape is still running down the tree line, and there is a 15 foot gap between the applicant’s survey and the engineer’s tape running down the abutting property to the rear.

He said that 15 feet in between those two surveys, the County is not sure who owns that and that would come down to a civil matter between the applicant’s surveyor and the abutting property owner’s surveyor to work that out. He said again, the County cannot force them to work it out as it is a civil matter.

Mr. Rababy said he understands that but he is confused because surveys today with GPS technology, it is down to millimeters and to have a 15 or 18 foot variance is unheard of in the last 30 years or so.

Mr. Spinner stated just to be clear, they are not supposed to be considering that 15 foot.

Mr. Pennington said the County has to go off of the survey that is provided; however, the County wanted to provide the Board of Zoning with the information that in the future, should that property line end up being at the engineer’s tape and not at the applicant’s survey, then the variance would not be needed for the deck and the addition. He said it would still be needed for the garage, but it would not be needed for the deck and the addition.

Chairman Satterwhite commented that what that basically, in his mind, says that the Board of Zoning has to consider that it is undetermined and is not going to be a part of their decision. He said in the future, if it is ever determined to be a part of this property, it will improve the situation here but they have no idea or assurances that will take place. He said he appreciates the information.

He asked if there were any other questions of Staff before the floor was opened for discussion. He said there will be no additional Public Hearing. He thanked Staff for their comments. He said the applicant is present if Board members need to ask questions of the applicant.

He stated that he would make one additional comment, the controls that are going to be involved with their motion to approve in regard to the first request for the variance, appear to be clear and appropriate. He said in regard to the second request for the variance on the supplemental building that is there within one foot, personally, he would like to see something included in any motion for that approval, that, that building footprint cannot change in any manner without it voiding any variance that would be granted, if it were so granted, and that any renovation or repairs on that building that would exceed $500 would also void it. He said his point is that building, if there is any question in the future of its feasibility, it needs to be moved. He said those were his personal thoughts on this particular part of the request.
Mr. Spinner stated that with the garage, he is still having a problem with it only being so close to the property line. He said they have setbacks for a reason and this was not done properly. He said as he said at the last meeting, his concern is that you cannot walk around that structure without going onto someone else’s property and he thinks that is an issue. He said these rules and regulations were set up for a reason and he thinks they need to maintain them especially with where the garage is concerned.

Ms. Parker asked if anything has been heard from the adjacent property owner.

Mr. Pennington said they have not received anything from the adjacent property owner for or against and they were notified of the Public Hearing but they were not notified of this meeting.

Joe Scott, adjacent property owner, stated he has talked to Ms. Futrell, who is the property owner on the left hand side of the property, the land was originally in her family, and Ms. Futrell has no problem with the variance. He said Ms. Futrell actually worked with him on an easement on the property that he had to square away.

He said he then contacted the property owner, which is 100 acres behind him, which is where the differential in the surveys come into play, the 15 – 18 foot differential, that property is in probate right now and there are 5 or 6 different individuals and they gave him the indication that even if they could work it out with everybody to sign everything, they doubt that everybody would want to sell.

Mr. Spinner said he would like to request that they vote individually on each one of these issues.

Chairman Satterwhite said that would be fine and they can vote on the Variance Request #1, which is related to the deck, additions, structures and #2 could be specific to the accessory building that is involved with the one-foot request.

Ms. Parker said if the property next door where the garage is so close to, if that ever comes up for sale – let’s say they allow the variance and that property comes up for sale and the person who is going to buy that property says, well that garage is too close, that’s between them, correct, once the variance has been given?

Chairman Satterwhite stated they are granting a variance to this property owner for this request. He said any action by the adjacent property owner would be a separate issue.

Ms. Parker said so the new owner would need to come before the BZA.

Mr. Spinner said when you look at the Code of Virginia, 15.2-2201, it clearly states when the strict application of the ordinance would unreasonably restrict the utilization of the property, he thinks if the property is made to come into the Code the way it is set up now, he does not see how that unreasonably restricts the use of the property given how much property there actually is.

Mr. Rababy moved that whereas the Variance Request V-03-2019 for Joseph and Peggy Scott appears to meet the requirements set forth in Virginia Code 15.2-2309, I move to grant approval of the Variance Request to allow a deviation from the setback requirements of the Caroline County Zoning Ordinance as presented subject to the following conditions:

1. The variance is applicable to only the existing 9’ x 10’ addition, existing rear deck and existing 24’ x 24’ accessory structure (garage)
Mr. Pennington said if the Board of Zoning is only voting on the item, then the garage needs to be stricken from the condition associated with the first item.
Chairman Satterwhite said that was correct.

Chairman Satterwhite stated that he was going to re-state what he believes to be the intended motion is:

Mr. Rababy moved and Ms. Parker seconded to grant the approval of the variance request to allow deviation from the setback requirements of Caroline County Zoning Ordinance as presented. The variance is applicable to only the existing 9 X 10 addition, existing rear deck as shown on the House Location Survey by Griffin Surveying, PLLC dated February 13, 2019.

Granting of the variance is dependent on the existing structure being in compliance with all applicable Building Codes as determined by Caroline County Building Official through the appropriate permitting and inspection process. If the existing addition deck for which the variance is granted is destroyed, removed or requires substantial alteration, renovation to comply with the Building Code, the variance will no longer be applicable and the structure shall have to be removed. Any new construction would be required to comply with the Zoning Ordinance of the County.

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.

Chairman Satterwhite asked if this was Mr. Rababy’s Motion?
Mr. Rababy said yes.

Chairman Satterwhite stated the Motion has been read and it applies only to those structures, the addition and the deck and does not apply to the 24 x 24 accessory structure, which will be dealt with in a separate motion.

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

* Motion carries *

Chairman Satterwhite stated that is approved in accordance with these stipulations and language and as it states, it will be recorded in the Clerk’s Office.

He said the second part of the request is for a variance to Article XV, Supplemental Regulations, Section 4 (Accessory Buildings & Uses), Paragraph 3(d) to allow 1’ side & 1’ rear setback for an unpermitted accessory structure (24 x 24 accessory structure) when a 5’ side & 5’ rear setback is required.

Ms. Parker asked if they were saying that if they approve the variance, that all the repairs have to be made?
Chairman Satterwhite said that is conditioned in the previous variance they granted, everything has to be brought into code, proper permits, et cetera. He said this does not include the garage, the garage is being dealt with now in this motion.
Ms. Parker said if they approve the garage that means under the conditions, the things that are wrong with the garage will be fixed first.

Chairman Satterwhite said they can entertain a motion for approval of the variance for the 24 x 24 accessory structure and condition that on any conditions they want to imply.

Mr. Rababy said the structure is not moveable, so it is either approve the variance or tear the structure down.

Chairman Satterwhite said that is correct.

Mr. Spinner asked if they approve this, they have to come into compliance with the County Codes, is there a time frame for that, could he wait three years to do that?

Mr. Pennington said no, they would issue a violation at that time. He said there is not a time frame associated with it at this point; however, we, as the County, will not let it sit there for an extended amount of time without the repairs being done.

Mr. Pennington stated that the applicant said that he is settling on the house at the end of the month and so he would have all of the repairs done by the end of the month. He said, as the County, they do not have a time frame in which it would have to be done. He said once you pull a permit, you have to have at least one inspection every 6 months or the permit is expired. He said if the applicant did not come and pull the permit within 30 days, then they would probably issue him a notice of violation.

Chairman Satterwhite said from what the applicant described, in order to go to closing, he has to get the work done in order to get the variance in place and approved because that is a condition of the variance. He said all of that would have to take place prior to the applicant being able to go to closing.

Mr. Pennington said that is correct.

Mr. Rababy moved and Ms. Washington seconded to approve the second part of the variance request allowing the 1 foot by 1 foot side rear variance and is conditioned on all appropriate Building Permits being obtained and work completed to the satisfaction of the County.

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

* Motion carries *

4. **ANY AND ALL MATTERS**

There were no additional matters.

5. **ADJOURNMENT**

Mr. Spinner moved and Mr. Rababy seconded to adjourn the Board of Zoning Appeals Meeting at 7:30 p.m.

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

* Motion carries *

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