

**July 11, 2013 BOARD OF ZONING APPEALS (BZA)
MEETING MINUTES**

At a called meeting of the Powhatan County Board of Zoning Appeals, Thursday, July 11, 2013 in the Conference Room of the Powhatan County Library, Powhatan, Virginia at 9:00 AM:

Board Members Present: Carolyn White
Abel Harris
David Bradley, Chairman
Donald Rissmeyer

Board Members Absent: Monte Lewis, Vice Chariman

Staff Members Present: David Dameron, Zoning Administrator
Tiffany Stokes, Office Administrator, Secretary

1. Call to Order

Mr. Bradley called the meeting to order at 9:01 AM.

3. Minutes from the May 9, 2013 Meeting

There were no comments, questions or changes to the minutes. Mr. Harris moved to approve the minutes as presented. Mrs. White seconded.

The motion to approve the May 9, 2013 meeting minutes carried (4-0) as follows:

Mr. Harris – aye	Mr. Lewis – absent	Mr. Rissmeyer – aye
Mr. Bradley – aye	Mrs. White - aye	

Mr. Bradley turned the meeting over to Mr. Dameron for presentation of variance case 13-02-VZ. Mr. Dameron deferred to Mrs. White to clarify some additional documentation needed from the applicant. Mrs. White asked if the proper disclosure of the owners of interest to the Board as required under §15.22289. She noted the applicant and owner names differed and asked if the representative present had proof that the owner has been given notice of the application for this variance. The applicant did supply a deed and a resolution from the owner allowing the application. Mrs. White proceeded to verify that there were no conflicts of interest with the disclosure regarding the ownership and management of Emerald Builders LLC. The representative explained the distribution of ownership and Mrs. White confirmed there were no conflicts of interest from the Board with either owner. The disclosure form was updated to include both owners information for the file. Mr. Dameron proceeded to present the details of 13-02-VZ.

**VARIANCE #13-02-VZ
July 11, 2013 Board of Zoning Appeals Meeting
STAFF REPORT – Department of Planning and Community Development**

The purpose of this staff report is to provide information to the Board of Zoning Appeals to assist them in reviewing this application. It may be useful to members of the general public interested in this application.

CASE SUMMARY

Applicant: Emerald Builders, LLC

Location: On the west side of Highland Drive south of its intersection with Perry Drive.
Reference Tax Map Parcel # 29A-(7)-P-21

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District: Subletts/Manakin/Flatrock Electoral District (A. Harris)

Size of Parcel(s): 0.33 acres

Current Zoning: R-U Residential Utility District

Variance Request: Thirteen (13) feet from the required rear yard setback of forty (40) feet in the R-U Residential Utility District.

Purpose of Request:
To permit construction of a dwelling that will encroach into the required rear yard setback area.

Staff Recommendation:
Recommend approval of the variance request.

Public Hearing:
This case has been advertised for Public Hearing at the BZA's July 11, 2013 meeting (Powhatan Today, 6/26/2013 and 7/3/2013 editions).

Issue:
The Applicant requests a variance of thirteen (13) feet to the minimum rear yard setback of forty (40) feet in the R-U Residential Utility District that is required per §12.4 (3) of the Zoning Ordinance. The purpose of the variance request is to permit construction of a new dwelling that will encroach into the required rear yard setback area.

Facts:
The Applicant plans to construct a new dwelling on the lot, which is 0.33 acres in size and therefore nonconforming as it was recorded prior to adoption of the current lot size requirements. The Applicant has noted in preparing the site sketch that the proposed dwelling would encroach into the rear yard setback area by thirteen (13) feet. As a result, the Applicant has applied for a variance of thirteen (13) feet to the forty (40) foot minimum rear yard setback requirement.

The Applicants claim the following as evidence of hardship that would warrant the granting of a variance:

- Nonconforming lot size.
- Shallow lot dimension

Upon inspection, Staff observed that the lot is shallow and has an irregular shape.

Summary of Comments from State Agencies and Public Utilities:

Health:
Richard Michniak (Powhatan County Health Department) had no adverse comment on this request.

Drainage and Erosion:
Kate Anderson (Powhatan County Erosion/Sediment Control Plan Reviewer) commented that there are no environmental concerns.

Transportation:
J. T. Phillippe (Virginia Department of Transportation) had no comment on this request.

Public Safety:
Pat Schoeffel (Powhatan County Fire Department) had no comment on this request.

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Utilities:

Johnny Melis (Powhatan County Department of Utilities/General Services) had no comment on this request.

Comments from Citizens:

No formal comments in support or opposition have been provided to Staff.

Staff Comments:

The BZA has reviewed many variance requests in Lake Shawnee Estates due to the large number of nonconforming lots. The most recent case is 13-01-VZ (Clyde L. Turner) in which the BZA approved a request for a variance of fifteen (15) feet from the required forty (40) foot rear yard setback to permit construction of a proposed new dwelling with the Applicant's hardship factors a nonconforming lot size and irregular lot shape. In 09-02-VZ (Clyde L. Turner) the BZA approved a request for a variance of thirteen (13) feet from the required minimum rear yard setback of forty (40) feet to permit construction of a proposed new dwelling with the Applicant's hardship factor a nonconforming lot size. In the current case, the Applicant has a hardship due to lot size and shape as the lot is just a third of an acre and shallow. This variance request is consistent with past requests that have been approved by the BZA.

The subject property is nonconforming, as this parcel was recorded prior to the adoption of our current lot size requirements. The Applicant has a constrained building envelope due to the nonconforming lot size, the lot shape and the required setbacks in the R-U District. These facts provide sufficient evidence of hardship to support the granting of this variance request. There is also no evidence that this variance would have an adverse impact on nearby properties.

Staff Recommendation:

Staff recommends approval of the variance request for the following reasons:

- The strict application of the Zoning Ordinance would produce undue hardship.¹
- Such hardship is not shared generally by other properties in the same zoning district in the same vicinity.
- Authorization of such variance will not be of substantial detriment to adjacent property and the granting of this variance will not change the character of the district.
- The condition or situation of the property concerned is not so general or recurring a nature as to make responsibly practicable the formation of a general regulation to be adopted as an amendment to the ordinance.

DISCUSSION:

Mr. Bradley opened the public hearing. There were no speakers. Mr. Rissmeyer asked about the gravel drive on the property and what use is on the property. Mr. Dameron stated he is not aware of any use on the property at present only preparation for the construction of the dwelling. Mr. Rissmeyer asked if the land disturbing activity is legal. The applicant stated a permit has been issued but is placed on hold for the consideration of the variance. Mr. Rissmeyer stated the state requires the site should be stabilized within 21 day of stopping the land disturbance activities. Mr. Dameron stated he has spoken to Mrs. Anderson, the E & S Inspector for the County, in reference to this case and if she is to inspect a property there is a permit on it. Mr. Rissmeyer reiterated the state requirement to stabilize and that the photo showed evidence of runoff. The

¹ An undue hardship would occur when the application of the Zoning Ordinance would prohibit or restrict a property's use because of reasons related to its size or shape, its exceptional topographical features, or the use of immediate adjacent property: provided that such hardship has not been brought on by the applicant.

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applicant stated the inspector conveyed she would inspect the property today if the variance is approved. Mr. Bradley called for any other questions. Mr. Rissmeyer asked if the building envelope on the plat is the actual size of the proposed building. The applicant stated the building will be approximately 1282 sf. Mr. Rissmeyer noted there is a 1200 sf. building envelope shown. He asked if the building is single story. The applicant stated yes. Mr. Rissmeyer stated he does not know how that will fit. Mr. Rissmeyer questioned the front set back that shows an additional foot. The applicant stated they like to leave space for the brick and to ensure there is not encroachment on the front setback. Mr. Bradley asked if the house will have a stoop. The applicant stated no. Mrs. White stated the information spoken is stating there will be building outside of the building envelope that was represented on the plat. The applicant stated he misspoke and the house will be built within the footprint that is shown. Mr. Rissmeyer asked if the applicant had his building plans. The applicant provided a building sketch to the Board. A 40 x 30 building with a porch is shown on the sketch. Mrs. White asked if there is an amended floor plan that will fit the permitted setbacks and stated as long as the applicant is able to build within the envelope without violating the required front setback the Board does not need to be concerned with it. Mr. Dameron stated that is correct that the front setback may be 60 feet or more. Mr. Rissmeyer stated his concern is the 36 ft. front to back dimension shown on the plan. The applicant stated he can commit to build within whatever parameters he is approved and allowed to build within. Mrs. White restated that as long as the applicant can fit the dwelling without violating the rear variance and any other setbacks that he would be in compliance with the County. Mr. Dameron stated that is correct. There was further discussion about the provided sketch and what the applicant would be allowed to build as long as no setbacks were violated. Mr. Bradley asked if the Board had any other questions or concerns. The Board had none. Mr. Harris motioned to approve variance request 13-02-VZ. Mrs. White seconded.

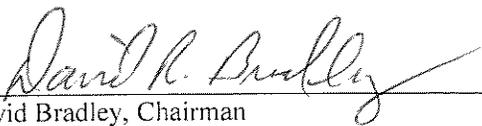
The motion to approve variance case 13-02-VZ carried (4-0) as follows:

Mr. Lewis – absent	Mr. Harris – aye	Mr. Rissmeyer – aye
Mr. Bradley – aye	Mrs. White - aye	

OTHER BUSINESS:

None.

There being no further business Mr. Bradley motioned the meeting be adjourned. Mrs. White seconded. Mr. Bradley adjourned the meeting at 9:31 AM



David Bradley, Chairman



David Dameron, Zoning Administrator