

Department of Planning & Community Development



To: Franklin County Board of Zoning Appeals

From: Terrance L. Harrington, AICP
Senior Planner

Date: November 21, 2016

Tax #: 0150104500

District: Gills Creek District

Applicant/
Owner: Daniel Morris and Belinda Morris

SUMMARY OF REQUEST

Petition of Daniel and Belinda Morris to apply for a variance to Section 25-226 (c) (REAR YARD) and Section 25-164 (a) (EXPANSION OR ENLARGEMENT OF A NONCONFORMING STRUCTURE) of the Franklin County Zoning Ordinance. The Morris property is located at 24 Overlook Road, in the Gills Creek District, and is identified on Franklin County Real Estate records as Tax Map/Parcel # 0150104500. The two variances have been requested to allow the construction of an addition to a non-conforming single family residence.

The Morris property is zoned R-1 Residential Suburban Subdivision District. The property owners wish to construct an addition consisting of a great room and a master bedroom and master bath. The proposed addition will conform to all required zoning ordinance requirements. (See submitted plans.)

The existing lakefront home is currently classified as a legal nonconforming structure as a result of a deficient rear yard setback. The Morris home is, at its closest point, 7.7 feet from the 795 foot (full pond) contour elevation. Section 25-226 (c) of the zoning ordinance requires a minimum of a 20 foot rear yard setback. As a legal nonconforming structure, the home cannot be expanded per Section 25-164 (a) of the zoning ordinance. A variance to Section 25-226 (c) will eliminate the nonconforming status of the structure and allow the expansion of the home as shown on the submitted concept plan.

BACKGROUND:

The Morris property is a .651 acre lot zoned R-1 Residential Suburban Subdivision District. The principal structure on the lot is a single family home constructed in 1970 prior to the adoption of County zoning in 1988. The Morris family did not build the home, purchasing the lot and home circa 2003.

R-1 zoning district regulations (Sec. 25-226 (c)) specify a minimum rear yard setback for lakefront principal structures of 20 feet from the 795 full pond contour elevation. The existing deck on the Morris home is 7.7 feet from the 795 foot contour resulting in the Morris home being classified as a nonconforming structure that cannot be expanded per Section 25-164(a) of the zoning ordinance.

No portion of the proposed new construction will violate any of the required setbacks in the R-1 zoning district. If the variance to the rear yard setback requirement is granted by the Board of Zoning Appeals, the house would become a conforming structure. As a conforming structure, the proposed house addition could be constructed in conformance with R-1 zoning district standards.

VARIANCES; DEFINITION AND CRITERIA FOR GRANTING

Section 15.2-2201 of the Code of Virginia defines a variance as follows:

"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.

Per the Code of Virginia, compliance with one of the two following criteria is required to grant a variance:

1. Strict application of the ordinance would unreasonably restrict the utilization of the property, or;
2. The granting of the variance would alleviate a hardship due to the physical condition of the property or improvements thereon.

In addition, the following five criteria shall be met:

1. The hardship imposed by the ordinance was not created by the applicant (property owner) for the variance; and
2. The granting of the variance will not be of substantial detriment to adjacent and nearby properties; and
3. The variance does not correct a problem or condition that is so general and recurring a nature that a general ordinance amendment is reasonably practical; and
4. The granting of the variance will not result in the establishment of a land use that is not otherwise permitted in the A-1 zoning district; and
5. The relief sought by the variance cannot be achieved thru a rezoning or special use permit process currently authorized by the ordinance.

STAFF ANALYSIS OF VARIANCE CRITERIA

The staff's opinion is that the strict application of the ordinance will unreasonably restrict the use of the property. The existing house is less than 1000 square feet in size and sits on a lot that exceeds 6 tenths (.6) of an acre. The 960 square foot house is the smallest house in this section of the Pagan Isle Subdivision. Due to the deficient rear setback, the house is deemed a legal nonconforming structure and cannot be expanded in any way unless the variance is granted.

The hardship imposed by the ordinance was not created by the property owner. The house was built by a previous owner, and was constructed prior to the adoption of zoning and thus prior to rear yard setback requirements. The proposed addition at the street side of the property will not in any way be a substantial detriment to adjacent or nearby properties. Side yard setbacks for the new addition will exceed current code requirements. Home sites on this portion of the Pagan Isle Subdivision are generally well landscaped and mature trees provide some screening from neighbor/adjoining views.

Finally, a rezoning or special use permit process is not a reasonable strategy to remove the nonconforming status of the home, allowing it to expand.

STAFF RECOMMENDATION:

Staff believes the application generally meets the criteria for variances set forth in Sec. 15.2-2309 of the Code of Virginia and recommends that the Board of Zoning Appeals approve this request with the following condition:

1. Any future addition to the home or accessory structures on the property be in conformance with all setback requirements. No future addition be allowed to extend closer than twenty (20 feet) to the 795 foot contour elevation

SUGGESTED MOTIONS:

The following suggested motions are sample motions that may be used.

- A. Based on the fact the applicant has demonstrated the variance criteria identified in Section 15.2-2309 of the Code of Virginia have been met, *I move to grant a variance to Section 25-164 (a) and Section 25-226 (c) establishing a new minimum rear yard setback of 7.7 feet on tax parcel #0150104500 with the following condition:*

1. Any future addition to the home or accessory structures on the property be in conformance with all setback requirements. No future addition be allowed to extend closer than twenty (20 feet) to the 795 foot contour elevation

OR

2. Based upon the fact the applicant has not demonstrated the variance criteria identified in Section 15.2-2309 of the Code of Virginia have been met, *I move to deny the variance requested for the proposed addition. (State any supporting findings)*

OR

3. Based upon the following findings [state], *I am entering an alternate motion [state].*