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Franklin County Board of Zoning Appeals  
Agenda  
March 2, 2021

I. Call to Order

II. Roll Call

III. Consent Agenda

- A) Approval of Minutes from November 5, 2020 meeting
- B) Election of Officers

IV. Public Hearing:

- 1) **APPLICATION for VARIANCE-** Application of John T. Boitnott, attorney for Paul D. Burke and Lori A. O’Connell, Applicants and Owners, requesting variances to Section 25-298(c), Rear Yard Setback, of the Franklin County Code, on an approximate 0.58 acre property currently zoned RPD, Residential Planned Unit Development District, and located at 499 Back Nine Drive in the Gills Creek District of Franklin County and further identified by Franklin County Real Estate Records as Tax Map/Parcel # 0300603500. The RPD zoning district requires a minimum rear yard setback of thirty (30) feet from the rear property line. A rear yard setback variance of 23.2 feet is being requested to bring the existing structure (home) built in 2019 into conformance with the existing setback of 6.10 feet and a rear yard variance of 28.6 feet at the northwest corner to allow a setback of 1.6 feet and 17.1 at the northeast corner of a proposed 12’ x 25’ deck addition to the rear of the home to allow a setback of 12.11 feet (Case # VAR-01-21-16824).

- a. Staff Presentation (Lisa Cooper)
- b. Applicant Presentation
- c. Public Comment

V. Citizen Comment

VI. Adjourn

# Department of Planning & Community Development



A public meeting of the Franklin County Board of Zoning Appeals was held November 5, 2020 at 6:00 p.m. in the Franklin County Board of Supervisors meeting room located in the Franklin County Government Center.

## **THOSE PRESENT:**

William Lee, Chairman  
Eric Ferguson, Vice-Chairman  
William Cooper  
Kevin Hunt  
Wayne Worley  
Billy Kingery  
Pamela Washington

## **OTHERS PRESENT:**

Steven Sandy, Director/Zoning Administrator  
Lisa Cooper, Principal Planner  
Hannah Powell, Clerk

The meeting was called to order by Chairman Lee at 6:00 p.m. The first order of business was the roll call. The next item on the agenda was the approval of the minutes from the October 6, 2020 meeting. The October 6, 2020 minutes were approved by unanimous consent.

Chairman Lee announced the first item on the agenda as old business and asked the staff for an update.

**APPLICATION for VARIANCE** – Application of Doug Bowman, Applicant, and Thomas J. Gesuale, Owner, requesting a ten (10) foot variance to Section 25-226(a), Front Setback, of the Franklin County Code. The property is currently zoned R-1, Residential Suburban Subdivision District, and located on Lot 14 of Point Drive in the Gills Creek District of Franklin County, and further identified as Tax Map/Parcel # 0040301400. Section 25-226(a) states that the minimum distance from the nearest point of the house be equal to fifty-five (55) feet or thirty (30) feet from the edge of the right of way, whichever is greater. A variance of ten (10) feet is being requested to allow for the construction of a new home with a front setback of twenty (20) feet instead of thirty (30) feet (Case # VAR- 09-20-16693).

Mrs. Cooper began by explaining On October 6, the Board of Zoning Appeals held a public hearing on an application for Doug Bowman, requesting a ten (10) foot front setback variance. On October 22nd, Mr. Bowman submitted a revised plat requesting a variance of five (5) foot instead of ten (10) feet. Mr. Bowman informed staff that four (4) feet has been reduced off the front of the garage, three (3) feet has been reduced off the length and one (1) foot off the width of the house. This revised request to construct a single-family dwelling would have a front yard setback of twenty-five (25) feet instead of thirty (30) feet.

Mrs. Cooper concluded that staff recommends that the Board of Zoning Appeals DENY the request for a variance.

She stated that variance criteria in Section 15.2-2309 has not been met and the Board of Zoning Appeals would be setting a precedent for other lots in the subdivision if approved.

With no questions for Mrs. Cooper, Chairman Lee asked to hear from the applicant.

Mr. Bowman stated that they had modified the plans as much as they could. He reiterated that the lot was difficult to build on without the granting of a variance.

There were no questions for Mr. Bowman and the public hearing had been held the month prior, therefore the members had discussion among themselves.

Mr. Cooper made a motion to approve, stating that he found that the applicant had demonstrated the ordinance would unreasonably restrict the utilization of the property and granting of the variance would alleviate the hardship of the physical condition of the property, the location shown on the concept (survey) plat is the only place to locate the proposed single-family dwelling. The applicant has demonstrated granting the variance meets all criteria identified in Section 15.2-2309 of the Code of Virginia have been met, therefore, I move to approve the variance requested to Section 25-226(a) for a proposed ten (10) foot reduction (or other distance as discussed) in the required front yard setback for the construction of a single-family dwelling as shown on the concept (survey) plat for Lot 14 comprised of .728 acres and located on Point Drive in the Gills Creek district of Franklin County.

Mr. Kingery seconded the motion.

The motion to approve was approved. Voting on the motion was as follows:

AYES: Hunt, Washington, Cooper, Worley, Kingery, Ferguson, Lee  
NAYES: None  
ABSENT: None  
ABSTAIN: None

With no other business, the meeting was adjourned at 6:21.

*Hannah L. Powell*, Clerk  
Franklin County Board of Zoning Appeals

November 10, 2020  
Date

## MEMORANDUM

Case # VAR-01-21-16824



**To:** Franklin County Board of Zoning Appeals  
**From:** Lisa Cooper, Principal Planner  
**Date:** February 22, 2021  
**Tax #:** 0300603500  
**District:** Gills Creek District  
**Applicant:** Paul D. Burke and Lori R. O'Connell by John T. Boitnott, Attorney  
**Owner:** Paul D. Burke and Lori R. O'Connell

### REQUEST:

**APPLICATION for VARIANCE** – Application of John T. Boitnott, attorney for Paul D. Burke and Lori A. O'Connell, Applicants and Owners, requesting variances to Section 25-298(c), Rear Yard Setback, of the Franklin County Code, on an approximate 0.58 acre property currently zoned RPD, Residential Planned Unit Development District, and located at 499 Back Nine Drive in the Gills Creek District of Franklin County and further identified by Franklin County Real Estate Records as Tax Map/Parcel # 0300603500. The RPD zoning district requires a minimum rear yard setback of thirty (30) feet from the rear property line. A rear yard setback variance of 23.2 feet is being requested to bring the existing structure (home) built in 2019 into conformance with the existing setback of 6.10 feet and a rear yard variance of 28.6 feet at the northwest corner to allow a setback of 1.6 feet and 17.1 at the northeast corner of a proposed 12' x 25' deck addition to the rear of the home to allow a setback of 12.11 feet (Case # VAR-01-21-16824).

### RECOMMENDATION:

Staff recommends that the Board of Zoning Appeals make the following motion:

#### **Variance on single-family dwelling:**

Based upon the fact the applicant has demonstrated the ordinance would unreasonable restrict the utilization of the property and that the granting of the variance would alleviate the hardship of the physical condition of the property as shown on the concept plan (survey) and the applicant has demonstrated granting the variance meets all criteria identified in Section 15.2-2309 of the Code of Virginia, therefore, I move to approve the variance requested to Section 25-298(c) of the Franklin County Code for a variance of 23.2 feet with existing setback of 6.10 feet in the required rear yard setback for existing single-family dwelling as shown on the concept plan (survey) for Lot 35 comprised of .58 acres and located at 499 Back Nine Drive in the Gills Creek district of Franklin County.



**RECOMMENDATION CONTINUE:**

**Variations on proposed 12' x 25' deck addition:**

Based on the fact the applicant has failed demonstrate that the required variance criteria identified in Section 15.2-2309 of the Code of Virginia have been met, and the ordinance would not reasonably restrict the utilization of the property and because approval of the proposed 12' x 25' deck addition to the existing single-family dwelling would be setting a precedent for other lots in the subdivision to request variances for additions, I move to deny a variance to Section 25-298(c) of the Franklin County Code, for variances of 28.6 feet at the northwest corner to allow a setback of 1.6 feet and a variance of 17.1 feet at the northwest corner to allow a rear yard setback of 12.11 feet for the construction of a proposed 12' x 25' deck to the existing single-family dwelling as shown on the concept plan (survey) for Lot 35 comprised of .58 acres and located at 499 Back Nine Drive in the Gills Creek district of Franklin County.



**SUMMARY OF REQUEST**

This is a petition of John T. Boitnott, attorney for Paul D. Burke and Lori A. O’Connell, applicants, who has applied for variances to Section 25-298(c) (Rear Setback) of the Franklin County Zoning Ordinance to allow the existing single-family three bedroom two bath dwelling built in 2019 to be in conformance with the existing rear yard setback of the RPD zoning district. A rear yard setback variance of 23.2 feet is being requested with the existing setback of 6.10 feet at the northeast corner of the dwelling. In addition, variances are requested for the rear yard setback for the construction of a proposed 12 feet by 25 feet deck addition. The rear yard variance of 28.6 feet at the northwest corner to allow a setback of 1.6 feet and 17.1 feet at the northwest corner of the proposed deck to allow a setback of 12.11 feet.

In 2019 the house location was originally approved by the Planning Department staff with a rear yard setback of 33 feet. Based on the survey that was provided Mr. Burke the home was constructed only 23.2 feet from the rear property line. The RPD district requires a rear yard setback of 30 feet. The single-family dwelling was approved by the Waterfront Architectural Review Board and the homeowner’s association rear yard setback is 10 feet, which does not supersede the requirements of the Franklin County Zoning Ordinance.

Mr. Burke and Ms. O’Connell purchase the residence in August of 2020. In December of 2020, the Planning Department received a land use application for a proposed 12’x 25’ deck to the rear of the property since the existing home is encroaching into the setback already the deck addition was denied by planning staff. The Waterfront Architectural Review Board has approved the proposed deck. It was suggested the applicant could apply for a variance to bring the existing dwelling into conformance and request variances for the deck addition.

Mr. Burke and Ms. O’Connell decided to apply for a variance in order to have the existing home brought into conformance with the rear yard setback and to apply for the variances needed to construct the proposed deck addition to the rear of the property.

The survey (concept plan) prepared by Larry T. Ogle, Jr. dated January 18, 2019 shows the request of a variance to the rear yard setback of 23.2 feet to allow the existing setback for the single-family dwelling to be 6.10 feet. The proposed deck addition requesting a variance on the northeast corner of the proposed deck to be 28.6 feet to allow a setback of 1.6 feet and a variance on the northwest corner of the proposed deck to be 17.1 feet to allow a setback of 12.11 feet.

In 1992 a variance was approved for a rear yard setback for a patio located in “The Waterfront” section 11, lot 50A for a variance to the rear yard setback of 14 feet. The brick patio was constructed on grade.



**DESCRIPTION OF PROPERTY**

The property is located in the Section 11, lot 35 of “The Waterfront” subdivision in the Gills Creek District of Franklin County. The property is a .58-acre parcel located on a 50’ right of way. The parcel is zoned RPD, Residential Planned Unit Development.

As stated above “The Waterfront” Architectural Review Board has approved both the existing single-family and proposed deck addition and the location of both are within the building line established in The Waterfront’s restrictive covenants of the subdivision and meets the building guidelines of the architectural review board.

The parcel is irregular in shape narrowing towards the west portion of the property. The acreage is similar to other lots in the subdivision. The property has the existing single-family dwelling with septic system. The septic drainfield according to the plat provided is located on the east side of the home. The rear of the property backs up to the golf course at The Waterfront.

**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 to grant a variance:

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 RPD 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/IDENTIFICATION OF IMPACTS:**

The staff's opinion by granting the **variance for the existing single-family dwelling** would enable the dwelling to come into conformance with the Franklin County Zoning Ordinance. The dwelling has a finished area of 2139 square feet with an unfinished basement of 1863 square feet. The shape of the lot does impose some challenges for the construction of this home, but at the time the contractor decided to shift the home not paying attention to the front yard setback of 30 feet and the rear yard setback of 30 feet.

The hardship imposed by the ordinance was not created by the applicants. The existing single-family dwelling was constructed before their purchase of the home.

The granting of the variance would not be a substantial detriment to adjacent properties or properties nearby. The HOA has approved

The variance does not correct a problem or condition that is general and recurring that a general ordinance amendment is practical.

The variance will not result in the establishment of a land use that is not otherwise permitted in the RPD district.

The variance cannot be achieved thru a rezoning or special use permit process currently allowed in the ordinance.

The staff's opinion is that by granting the **variances for the 12' x 25' proposed deck** the Board of Zoning Appeals would be setting a precedent to other homeowners of "The Waterfront" the ability to have a variance granted for an addition to the existing single-family dwellings in the community that are unable to meet the required setback for the RPD district. The strict application of the terms of the ordinance would not unreasonably





restrict the utilization of the property because the property has an existing single-family dwelling.

The hardship imposed by the ordinance was not created by the applicants. The existing single-family dwelling was constructed before their purchase of the home.

The granting of the variance would not be a substantial detriment to adjacent properties or properties nearby. However, by granting the variances for the proposed deck addition would set a precedent for other properties to request variances to their existing single-family homes that cannot meet the setback.

The variance does not correct a problem or condition that is general and recurring that a general ordinance amendment is practical.

The variance will not result in the establishment of a land use that is not otherwise permitted in the RPD district.

The variance cannot be achieved thru a rezoning or special use permit process currently allowed in the ordinance.

If the Board of Zoning Appeals disagrees with staff's opinion, perhaps the Board of Zoning Appeals could suggest to reduce the size of the deck to 10' x 25' to eliminated one of the variances needed at the northwest corner of the proposed deck. The variance on the northeast side of the deck would still be needed; however, it would be on the side the variance was granted for the single-family dwelling.

**SUGGESTED MOTIONS:**

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

**THE MOTION FOR THE EXISTING SINGLE-FAMILY DWELLING:**

**(Approve)** Based upon the fact the applicant has demonstrated the ordinance would unreasonable restrict the utilization of the property and that the granting of the variance would alleviate the hardship of the physical condition of the property as shown on the concept plan (survey) and the applicant has demonstrated granting the variance meets all criteria identified in Section 15.2-2309 of the Code of Virginia, therefore, I move to approve the variance requested to Section 25-298(c) of the Franklin County Code for a variance of 23.2 feet with existing setback of 6.10 feet in the required rear yard setback for existing single-family dwelling as shown on the concept plan (survey) for Lot 35 comprised of .58 acres and located at 499 Back Nine Drive in the Gills Creek district of Franklin County.

**OR**



**(Deny)** Based on the fact the applicant has not demonstrated the required variance criteria identified in Section 15.2-2309 of the Code of Virginia has not been met, and the ordinance would not reasonably restrict the utilization of the property. The existing single-family dwelling could have been constructed without a variance and the Board of Zoning Appeals would be setting a precedent for other lots in the subdivision, I move to deny a variance to Section 25-298(c) of the Franklin County Code, for a variance of 23.2 feet with existing setback of 6.10 feet in the required rear yard setback for existing single-family dwelling as shown on the concept plan (survey) for Lot 35 comprised of .58 acres and located at 499 Back Nine Drive in the Gills Creek district of Franklin County.

**OR**

**(Table)** I move that this item be tabled until the Board of Zoning Appeal's receives all the information it needs to make a final determination on this variance request.

**THE MOTION FOR PROPOSED 12' X 25' PROPOSED DECK:**

**(Deny)** Based on the fact the applicant has failed demonstrate that the required variance criteria identified in Section 15.2-2309 of the Code of Virginia have been met, and the ordinance would not reasonably restrict the utilization of the property and because approval of the proposed 12' x 25' deck addition to the existing single-family dwelling would be setting a precedent for other lots in the subdivision to request variances for additions, I move to deny a variance to Section 25-298(c) of the Franklin County Code, for variances of 28.6 feet at the northwest corner to allow a setback of 1.6 feet and a variance of 17.1 feet at the northwest corner to allow a rear yard setback of 12.11 feet for the construction of a proposed 12' x 25' deck to the existing single-family dwelling as shown on the concept plan (survey) for Lot 35 comprised of .58 acres and located at 499 Back Nine Drive in the Gills Creek district of Franklin County.

**OR**

**(Approve)** Based upon the fact the applicant has demonstrated the ordinance would unreasonable restrict the utilization of the property, that the granting of the variance would alleviate the hardship of the physical condition of the property the location shown on the concept (survey) plat and that the applicant has demonstrated granting the variance meets all criteria identified in Section 15.2-2309 of the Code of Virginia, I move to approve the variance requested to Section 25-298(c) of the Franklin County Code for variances of 28.6 feet at the northwest corner to allow a setback of 1.6 feet and a variance of 17.1 feet at the northwest corner to allow a rear yard setback of 12.11 feet for the construction of a proposed 12' x 25' deck to the existing single-family dwelling as shown on the concept plan (survey) for Lot 35 comprised of .58 acres and located at 499 Back Nine Drive in the Gills Creek district of Franklin County.

**OR**



**(Table)** I move that this item be tabled until the Board of Zoning Appeal's receives all the information it needs to make a final determination on this variance request.

JOHN T. BOITNOTT PC  
ATTORNEY  
5 EAST COURT STREET # 301  
ROCKY MOUNT, VIRGINIA 24151

(540) 483-8822  
FAX (540) 483-9717  
e-mail: jboitnott@embarqmail.com

January 29, 2021

Board of Zoning Appeals  
c/o Lisa Cooper, Principal Planner  
Hannah Powell, Clerk  
Development Services  
Planning and Community Development  
1255 Franklin Street, Suite 103  
Rocky Mount, VA 24151

Re: Franklin County Application for Variance  
Tax Map Number 030.06.035.00  
Owner: Paul D. Burke and Lori A. O'Connell

Dear Ms. Cooper and Ms. Powell:

The applicants and owners, Paul D. Burke and Lori A. O'Connell, are applying for a variance from the terms of the Franklin County Zoning and Development Ordinance for the property known as Tax Map Number 030.06-035.00 zoned Residential Planned Unit Development District (RPD) for the purpose of waiving the rear yard regulations (Sec. 25-298) to approve the existing location of the house and to permit construction of an attached deck.

Enclosed are the following:

Application for Variance  
Concept Plan  
Check for Application Fee  
Abutting Property Owners List

Please schedule the matter for hearing with the Board of Zoning Appeals at the next available date.

Should there be any questions, please advise.

Thank you for your prompt attention to this matter.

Sincerely yours,

  
John T. Boitnott

cc: Paul D. Burke and Lori A. O'Connell

FRANKLIN COUNTY  
APPLICATION  
FOR VARIANCE  
(Type or Print)

I/We, PAUL D. QUANE & LOUI A. O'CONNELL Owner(s), Contract Purchasers, or Owner's Authorized Agent of the property described below, hereby apply to the Franklin County Board of Zoning Appeals for a variance from requirements of the Zoning Ordinance as hereinafter described:

Applicant's Name: PAUL D. QUANE AND LOUI A. O'CONNELL

Property Owner's Name: PAUL D. QUANE AND LOUI A. O'CONNELL

Address of Property: 499 BARK NINE DRIVE, MONETA, VA 24121

Phone Number: (540) 483-8822

Exact Directions to Property from Rocky Mount: AT 122 13.7 MI; TURN RIGHT ONTO SCRUGGS RD 4.08 MI; TURN LEFT ONTO WINDYASS RD 0.41 MI; TURN SLIGHT LEFT ONTO BARK NINE DR 0.43 MI; HOUSE IS ON THE LEFT

1. Tax Map and Parcel Number: 030.06 - 035.00

2. Magisterial District: GILLS CREEK

3. Property Information:

A. Size of Property: 0.58 ACAL

B. Existing Land Use: RESIDENTIAL SINGLE FAMILY HOME

C. Existing Zoning: RPA

D. Is property located within any of the following overlay zoning districts:

Corridor District  Westlake Overlay District  Smith Mountain  
Lake Surface

District

E. Is any land submerged under water or part of a lake? Yes  No

F. Describe how the strict application of the ordinance would unreasonably restrict the use of the property or how the granting of the variance would alleviate a hardship due to a physical condition of the property:

SEE ATTACHED

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4. Proposed Development Information:

A. Proposed Land Use:

RESIDENTIAL SINGLE FAMILY HOME

B. Proposed Zoning:

RAD

C. Size of Proposed Use:

SEE ATTACHED

- Section of the Zoning Ordinance for which a variance is being requested: 23-298(c)  
(Zoning Code section must be correct and all applicable code sections included in request.)

**Checklist for completed items:**

- Application Form
- Letter of Application
- Concept Plan
- Application Fee

**\*\*I certify that this application for a variance and the information submitted herein is correct and accurate. I authorize County staff to access this property for purposes related to the review and processing of this application.**

Applicant's Name (Print): PAUL D. BLAKE

Signature of Applicant: LOUI A. O'CONNELL  
BY: JOHN T. BOITNOTT

John T. Boitnott ATTORNEY

Date: JANUARY 28, 2021

Mailing Address:

5 EAST COURT STREET #301

ROCKY MOUNT, VA 24151

Telephone:

(540) 483-8822

Email Address (optional):

jboitnott@embargo.com

Owner's consent, if applicant is not property owner:

Owner's Name (Print):

\_\_\_\_\_

Signature of Owner:

\_\_\_\_\_

Date:

\_\_\_\_\_

\*\*I certify that this application for a variance and the information submitted herein is correct and accurate. I authorize County staff to access this property for purposes related to the review and processing of this application.

Applicant's Name (Print): PAUL D. BURKE

Signature of Applicant: LOUI A. O'CONNELL

John V. Stewart Attorney

Date: THURSDAY 28, 2021

Mailing Address:

6 EAST QUART STREET #301

ROCKY MOUNT, VA 24151

Telephone: (210) 482-8822

Email Address (optional): jaocnelt@outlookmail.com

Owner's consent, if applicant is not property owner:

Owner's Name (Print): PAUL D. BURKE LOUI A. O'CONNELL

Signature of Owner: Paul D Burke Lou A O'Connell

Date: 1/29/21 1/29/21



Re: Franklin County Application for Variance  
Tax Map Number 030.06.035.00  
Owner: Paul D. Burke and Lori A. O'Connell

The applicants and owners, Paul D. Burke and Lori A. O'Connell, are applying for a variance from the terms of the Franklin County Zoning and Development Ordinance for the property known as Tax Map Number 030.06-035.00 zoned Residential Planned Unit Development District (RPD) for the purpose of waiving the rear yard regulations (Sec. 25-298) to approve the existing location of the house and to permit construction of an attached deck.

This property, known as Lot 35 Section 11 "The Waterfront", is located in the Waterfront Subdivision Section 11 and utilized as a residential single family home. The county approved the development of the Waterfront Subdivision Section 11 on December 28, 1990. According to the subdivision restrictions, the front setback line is 30 feet from the street and the rear yard setback line is 10 feet from the rear lot line. According to the zoning ordinance, the front setback line is 35 feet from the street and the rear yard setback line is 30 feet from the rear lot line.

The house was built in 2019 by the previous owner. The house location was originally staked for 33 feet from the rear lot line. Due to the unique and irregular shape of the lot and taking into consideration the street setback line, the septic drainfield location, and the rear yard setback line according to the subdivision restrictions, the builder decided to shift the house location to the right (towards the wooded area) and back (towards the rear) which resulted in the northwest corner of the house being located approximately 23.2 feet from the rear lot line. The builder was unaware that the rear yard setback line of the zoning ordinance was different and more restrictive than the rear yard setback line of the subdivision restrictions.

The house construction was approved by the Waterfront Architectural Review Board.

The owners want to construct a new deck approximately 12 feet in length as an addition to the rear of the house which would extend the closest corner of the deck to approximately 15 feet from the rear lot line.

The deck construction has been approved by the Waterfront Architectural Review Board.

The Waterfront Golf Course adjoins the lot to the rear. The adjoining property is open space utilized for golfing.

The Board of Zoning Appeals should grant the variance because the evidence will show that:

1. The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or

2. The granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon; and

(i) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;

(ii) The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;

(iii) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;

(iv) The granting of the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property; and

(v) The relief or remedy sought by the variance application is not available through a special exception process.

PAUL D. BURKE  
LORI A. O'CONNELL

BY: John J. Boitnott  
Counsel

John T. Boitnott (VSB #21910)  
5 East Court Street #301  
Rocky Mount, VA 24151  
Telephone No. (540)483-8822  
Facsimile No. (540)483-9717  
Counsel for Paul D. Burke and Lori A. O'Connell

**JOHN T. BOITNOTT PC**  
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5 EAST COURT STREET # 301  
ROCKY MOUNT, VIRGINIA 24151

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February 5, 2021

Board of Zoning Appeals  
c/o Lisa Cooper, Principal Planner  
Hannah Powell, Clerk  
Development Services  
Planning and Community Development  
1255 Franklin Street, Suite 103  
Rocky Mount, VA 24151

Re: Franklin County Application for Variance  
Tax Map Number 030.06.035.00  
Owner: Paul D. Burke and Lori A. O'Connell

Dear Ms. Cooper and Ms. Powell:

This letter supplements the application of Paul D. Burke and Lori A. O'Connell for a variance from the terms of the Franklin County Zoning and Development Ordinance for the property known as Tax Map Number 030.06-035.00 zoned Residential Planned Unit Development District (RPD) for the purpose of waiving the rear yard regulations (Sec. 25-298) to approve the existing location of the house and to permit construction of an attached deck.

The owners want to construct a new deck (12' X 25') as an addition to the rear of the house which would extend the northeast corner of the deck to 17'1" from the rear lot line and the northwest corner of the deck to 28'6" from the rear lot line.

Enclosed is an Updated Concept Plan.

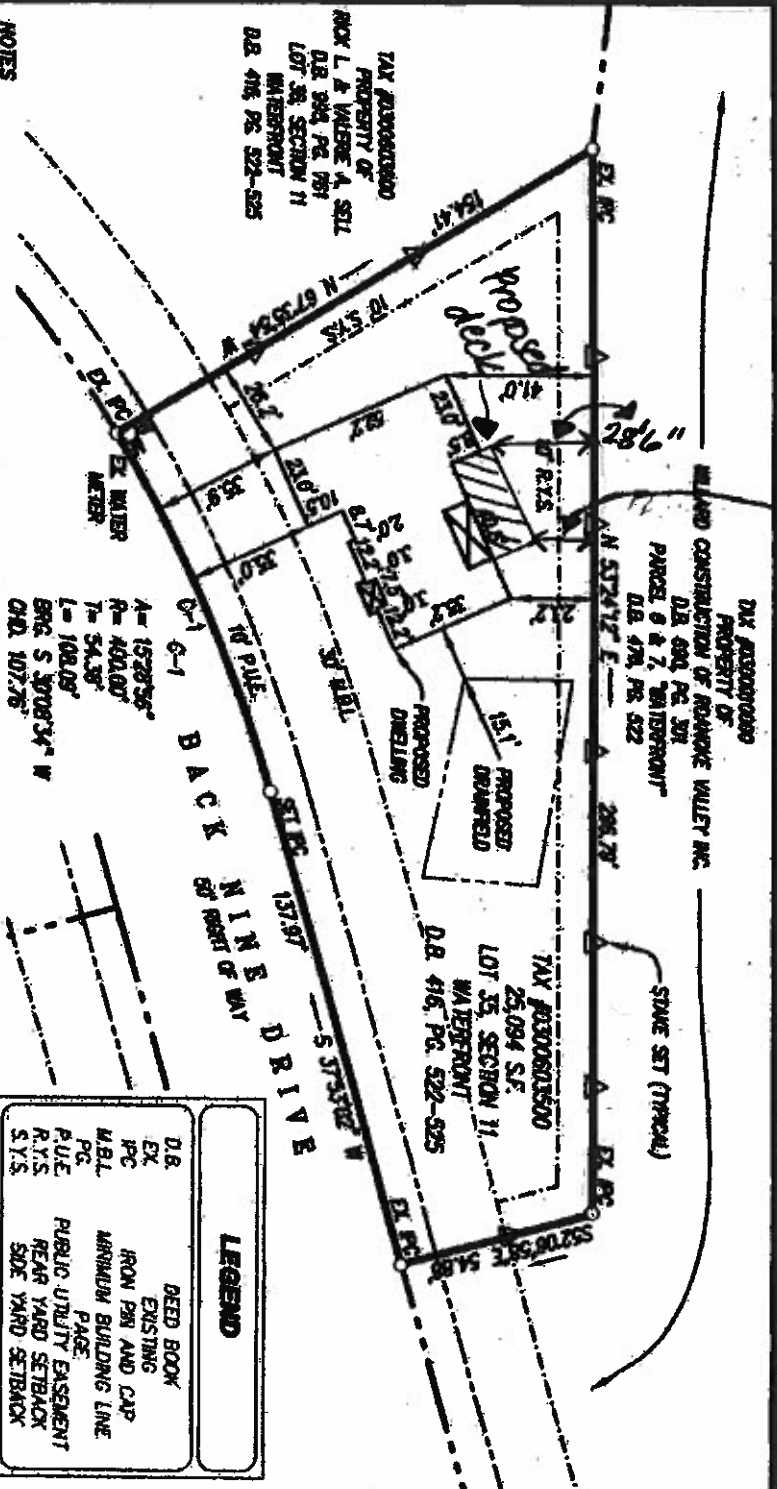
Should there be any questions, please advise.

Sincerely yours,

  
John T. Boitnott

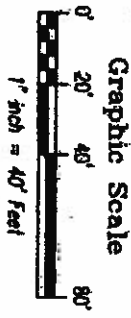
cc: Paul D. Burke and Lori A. O'Connell

1711" FROM NE CORNER OF NEW DEER TO REAR LOT LINE  
 28'6" FROM NW CORNER OF NEW DEER TO REAR LOT LINE



- NOTES**
1. THE PROPERTY AS SHOWN HEREON IS NOT LOCATED WITHIN THE LIMITS OF A SPECIAL FLOOD HAZARD AREA AS DESIGNATED BY FEMA. THIS OPINION IS BASED ON AN INSPECTION OF THE FLOOD INSURANCE RATE MAP AND HAS NOT BEEN VERIFIED IN THE FIELD. SEE MAP NUMBER SHOROSSESS, DATED JANUARY 9, 2010, DISABLED ZONE 'X'.
  2. THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND ENCUMBRANCES MAY EXIST WHICH AFFECT THE PROPERTY THAT ARE NOT SHOWN HEREON.
  3. LEGAL REFERENCE: CURRENT OWNERS, THOMAS R. & KAREN R. JONES (TRUSTEES) D.B. 992, PG. 154; D.B. 416, PG. 522-525 (PLAT).
  4. THIS PLAT IS BASED ON A CURRENT FIELD SURVEY.

LEGEND	
D.B.	DEED BOOK
EX	EXISTING
IPC	IRON PIN AND CAP
MBL	MINIMUM BUILDING LINE
PG	PAGE
P.U.E.	PUBLIC UTILITY EASEMENT
R.Y.S.	REAR YARD SETBACK
S.Y.S.	SIDE YARD SETBACK



PLAT SHOWING  
 PREPARED FOR  
**DARRELL W. &  
 TERRY F. LILLY**  
 BEING

**LOT 35**  
 SECTION 11, "THE WATERFRONT"  
 (D.B. 416, PG. 522-525 PLAT)  
 SITUATED ALONG BACK NINE DRIVE  
 GILLS CREEK MAGISTERIAL DISTRICT  
 FRANKLIN COUNTY, VIRGINIA



**Lumsden Associates, P.C.**  
 ENGINEERS | SURVEYORS | PLANNERS

4664 BRANBLETON AVENUE  
 P.O. BOX 20689  
 ROANOKE, VIRGINIA 24018

PHONE: (540) 774-4411  
 FAX: (540) 772-9495  
 WWW.LUMSDENPC.COM

DATE: January 8, 2019  
 COMM. NO.: 18-312  
 SCALE: 1" = 40'

*PAUL D. BUANE  
 LORI A. O'CONNOR  
 UPDATED CONCEPT PLAN FOR NEW DEER (181825')*



# The Waterfront Architectural Review Application

Complete and return this form along with the house plans, site plan, landscape plan and dock plan if applicable. (Checks are to be made payable to *Willard Construction of Roanoke Valley, Inc.*) Please circle applicable fee: New Construction \$500, Renovations \$250, Boat Dock \$150

Check to be submitted  
ALL of these items **MUST** be submitted before approval of plans can be given.  
Construction should not begin until final approval is given in written form.

Date: 12/21/20

Name of Property Owner PAUL BURKE / LORI O'CONNELL

Property Location: Section 11 Lot 35

Mailing Address 3639 Infinity Run

City The Villages State FL Zip 32163

Contact Phone #'s: Cell: 703 626 0260 Bus.: \_\_\_\_\_ Home: \_\_\_\_\_

Name of Architect DAE CONSTRUCTION

Name of Building Contractor SAME

Address: 205 Scotch Pine Dr Moneta, VA 24104  
Phone: 540 355 1633

Expected Cost of Home/Renovation: 20,000 Square Footage 300

Anticipated Date Construction/Renovation to Begin January 2021 Finish Date May 2021

Materials and Colors Chosen: (name brands where applicable, write in style & color)

Brick \_\_\_\_\_ Stone \_\_\_\_\_ Stucco \_\_\_\_\_

Siding \_\_\_\_\_ Siding \_\_\_\_\_ Windows/Doors \_\_\_\_\_

Trim \_\_\_\_\_ Roof \_\_\_\_\_ (30-yr.; 50-yr.) Decking/Floors TT Decking

Shutters (If Applicable) \_\_\_\_\_ Other \_\_\_\_\_

Miscellaneous Information: Pressure treated deck to match existing and deck rails. RLV.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS NO MODIFICATION, ALTERATION OR IMPROVEMENT OF ANY NATURE WHATSOEVER, EXCEPT FOR INTERIOR ALTERATIONS NOT AFFECTING THE EXTERNAL STRUCTURE OR APPEARANCE OF ANY LOT, SHALL BE UNDERTAKEN ON ANY LOT, LIMITED COMMON EASEMENT OR BOAT SLIP, UNLESS A PLAN OF SUCH CONSTRUCTION OR ALTERATION SHALL HAVE BEEN APPROVED IN WRITING BY THE ARCHITECTURAL BOARD.

**THE FOLLOWING MUST BE PROVIDED FOR PLANS TO BE APPROVED:**

1. **Site Plan to scale:** Must include location of structure, drain field, set-backs, rough location of specimen trees, walk, drives, utility connections, property lines and docks.

2. **Architectural Drawings -** Building plans and elevations at 1/4" = 1' scale

3. **Driveway & Walkway:** Material and detail

4. **Landscape Plan w/Air Conditioning and Trash Can Screening Required:** Show details, materials, and colors, trees and plants, shrubs. Scale plan must be provided.

5. **Stakeout the Lot:** Each corner of the house must be staked and connected to others with cord or ribbon. All trees outside the house to remain, must be marked also. No trees over 4" in diameter and 2 feet above ground level may be removed.

6. **Grading plan:** plan (optional) if changes in grade or other conditions affecting drainage are anticipated. (Generally approval will be denied if adjoining properties are adversely affected by changes in drainage).

7. **Boat dock:** Must meet all standard requirements by Franklin County and AEP Shoreline Management program. Location to shoreline must be documented and approved prior to driving piles. Dock Materials must match house

8. **PLEASE NOTE THAT NO VINYL OR ALUMINUM PRODUCTS ARE APPROVED FOR USE IN THIS SECTION. All Stone must be NATURAL**

**Final Approval** will be based on information supplied in or with application. This approval is limited to design criteria established by The Water's Edge Architectural Review Board and should not be interpreted as approval of any variation from restrictions or conditions imposed on the property owner by contract, other provisions of recorded covenants, or any regulations and requirements of Franklin County.

**The Waterfront's Architectural Board will begin review when all complete information is submitted.**

To be completed by the Architectural Review Board:

Board Signature Approval:  Date 12-28-2020 ;

Notes: Rules to match existing ;

63'-6"

11'-4"

17'-0"

12'-2"

*Handwritten note:*  
601  
Hwy 210 to Hwy 212  
Hwy 212 to Hwy 210  
Hwy 210 to Hwy 212  
Hwy 212 to Hwy 210  
Hwy 210 to Hwy 212  
Hwy 212 to Hwy 210

5'-6"

2860

5'-10"

2860

8'-6"

6'-1"

2860

6'-1"

2860

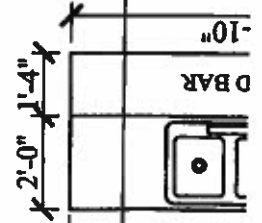
**DINING**  
9' CLG. HT.

CLG. JSTS.  
RE: SPAN CHART

12'-10"

11'-8"

CE W/  
10 ABOVE



D BAR

1'-10"

1080

**REAR PORCH**

BM. AS  
REQ'D

CLG. JSTS.  
RE: SPAN CHART

7'-4"

10'-6"

2870

6'-6"

2870

2'-6"

2870

7'-4"

5'-2"

2'-2"

3068



611

16'-8"

CLG. JSTS.  
RE: SPAN CHART

**BEDROOM 2**  
9' CLG. HT.

CLG. JSTS.  
RE: SPAN CHART

3'-10"

2'-2"

6'-2"

2868

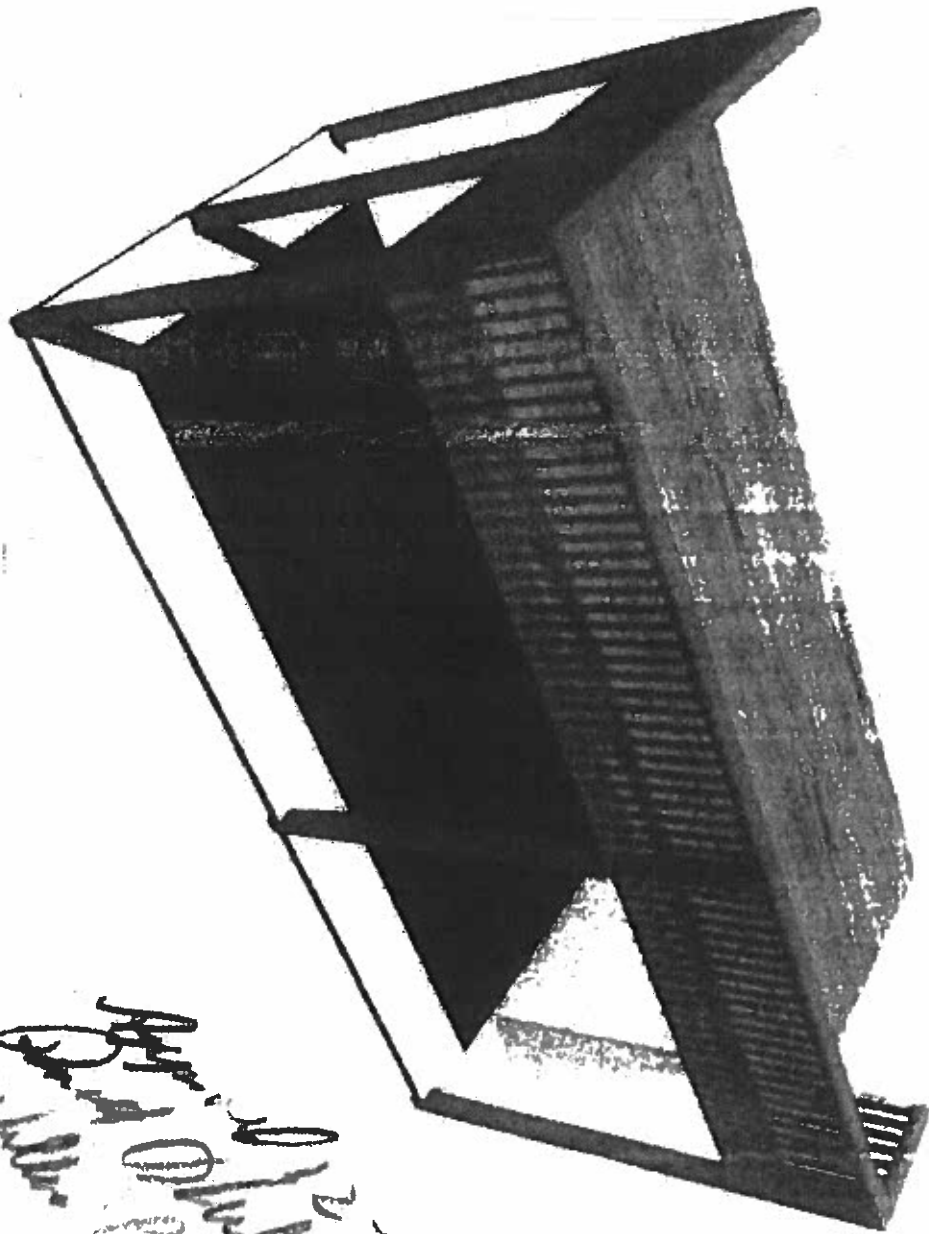
**CLINET**

2068

ATTIC  
ACCESS  
22'x54'

6" WALL

3080



*Handwritten notes:*  
Per D. Burke  
4/21/78  
489 Back Nine Dr.  
Moneta, VA

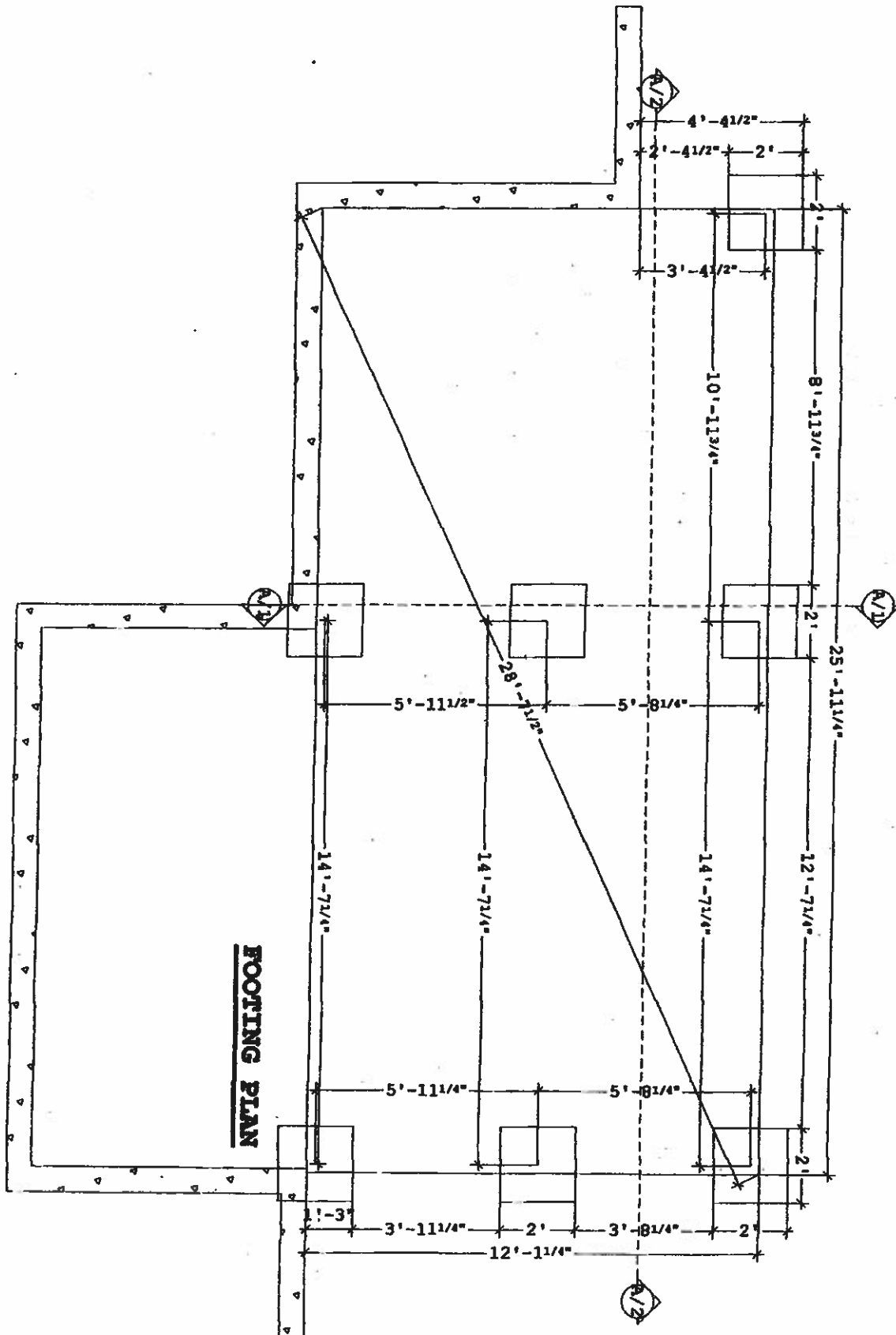
**DAC**  
DALLAS A. COLLINS  
DESIGN & CONSTRUCTION CONSULTANTS  
PHONE 540-355-1833

DRAWN FOR: *Burke*  
MR. & MRS. BURKE  
489 BACK NINE DR.  
MONETA, VA

SCALE: 1/4" = 1'-0"	
DATE DRAWN	
BY: <i>[Signature]</i>	

*C*





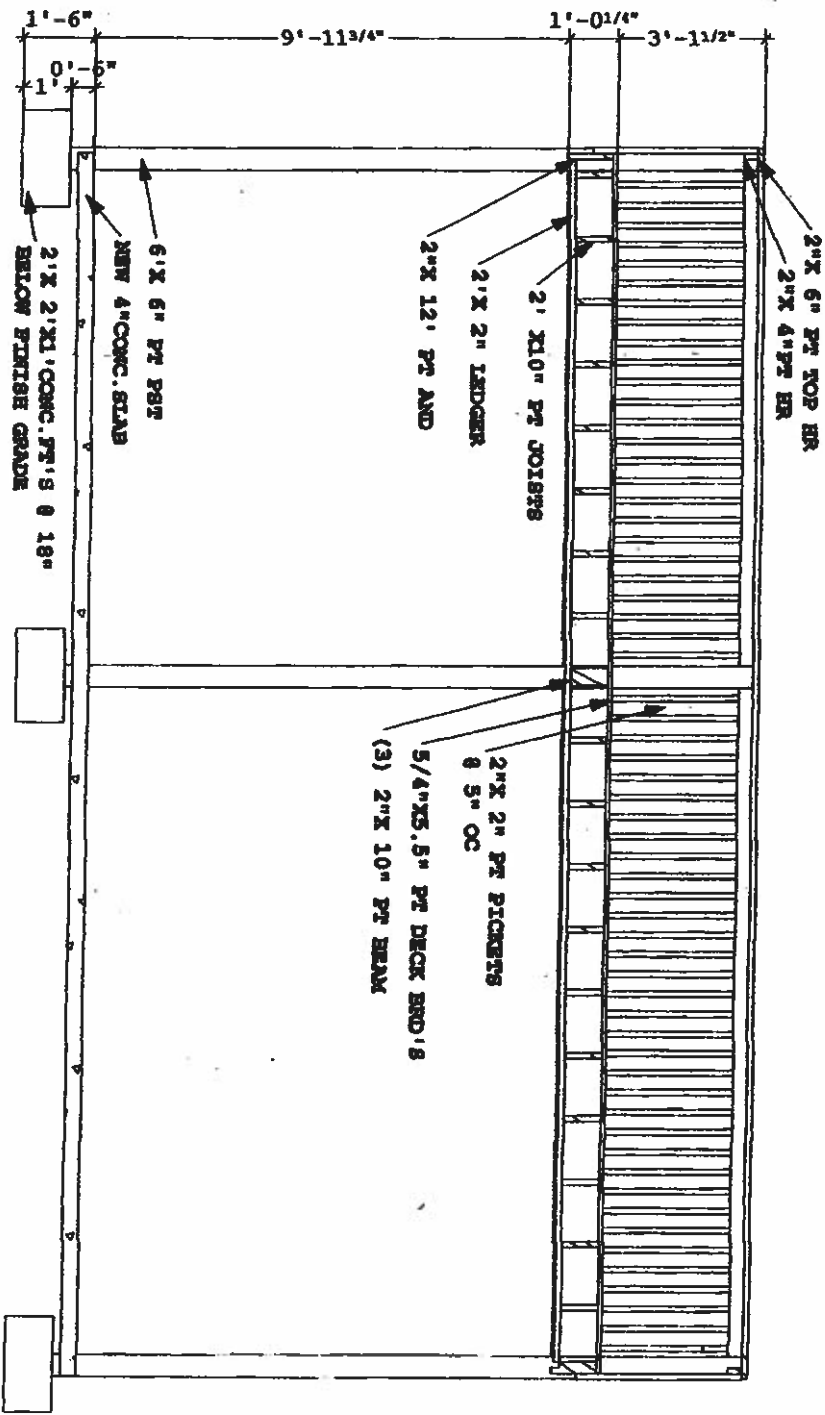
**FOOTING PLAN**

**DAC** DALLAS A. COLLINS  
 DESIGN & CONSTRUCTION CONSULTANTS  
 PHONE: 540-355-1833

DRAWN FOR: *Burke*  
 MR. & MRS. BURKE  
 490 BACK NINE DR.  
 MONETA, VA

SCALE: 1/8" = 1'-0"  
 DATE 12/20/00  
 DRAWN BY: *[Signature]*

A-1



**SECTION A/1**

**DAC** DALLAS A. COLLINS  
 DESIGN & CONSTRUCTION CONSULTANTS  
 PHONE: 540-355-1833

DRAWN FOR: **BURKE**  
 MR. & MRS. BURKE  
 499 BACK NINE DR.  
 MONETA, VA

SCALE: 1/4" = 1'-0"  
 DATE: 12/20/20

A4

## Franklin, Tina

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**From:** Sandy, Steve  
**Sent:** Wednesday, December 23, 2020 10:46 AM  
**To:** Franklin, Tina; Paul Burke  
**Cc:** Powell, Hannah  
**Subject:** RE: PERMIT REVIEW # 59332

Mr. Burke,

I have reviewed the information and it appears that the house location was originally approved with a rear setback of 33 feet. Based on the survey provided, the home ended up being built only 23.2 feet from the rear property line. This is in violation of the approved permit and zoning ordinance setback requirements. I am unable to find anything in our files or records indicating that any waiver or approval of a rear setback of less than 30 feet had been granted by the county for the house or this proposed deck. We did find a similar situation on lot 50 (#321 Back Nine). This lot was granted a variance from the Board of Zoning Appeals to allow a reduced setback back in 1992.

Since the house is within the required setback and the proposed deck will further encroach on the setback, it is my recommendation that you file for a variance to the rear yard setback requirement of 30 feet for the home and proposed deck. Applications for a variance are due by COB on January 4<sup>th</sup> for a scheduled hearing date on February 2<sup>nd</sup>. If approved by the Board of Zoning Appeals, we can approve the requested permit for the deck.

<https://www.franklincountyva.gov/DocumentCenter/View/292/Variance-Application-Package-PDF>

Steven M. Sandy, AICP, CZA, CTM  
Assistant County Administrator  
Zoning Administrator  
Franklin County, VA  
1255 Franklin Street, Suite 112  
Rocky Mount, VA 24151  
(540) 483-3027  
Steve.sandy@franklincountyva.gov

**From:** Franklin, Tina <Tina.Franklin@franklincountyva.gov>  
**Sent:** Wednesday, December 23, 2020 8:51 AM  
**To:** Paul Burke <pdburke123@gmail.com>  
**Cc:** Sandy, Steve <Steve.Sandy@franklincountyva.gov>  
**Subject:** RE: PERMIT REVIEW # 59332

Mr. Burke,

I looked back in our records for the house permit and there were no variances or deviations approved for this property. I am copying Steve Sandy on this email for his advise on how to proceed.

Thank you,

Steve,

Please see email thread below starting with mine at the bottom.

VIRGINIA:

BEFORE THE BOARD OF ZONING APPEALS OF FRANKLIN COUNTY

A +/- 1/2 acre parcel of land, )  
generally located 40E L122 R616 L654 )  
L Back Nine Drive prop on left )  
within the Gills Creek Magisterial )  
District, and recorded as parcel # )  
30.6-50 in the Franklin )  
County tax records. )

FINAL ORDER

TO THE BOARD OF ZONING APPEALS OF FRANKLIN COUNTY:

WHEREAS, your Petitioner Dr. John W. Wilks did petition the Franklin County Board of Zoning Appeals to obtain a Variance of 14' to the rear property line in RPD to Section 25-298 of the Franklin County Zoning Ordinance for the above-referenced parcel of land in order to build a brick patio to an existing single family dwelling.

WHEREAS, after full consideration at the public hearing held on August 4, 1992, the Franklin County Board of Zoning Appeals determined that the Variance be granted.

NOW, THEREFORE BE IT ORDERED that the aforementioned parcel of land, which is contained in the Franklin County tax maps as Parcel # 30.6-50 and recorded in Deed Book Page be issued a Variance of 14' to the 30' rear setback in a Residential Planned Unit Development.

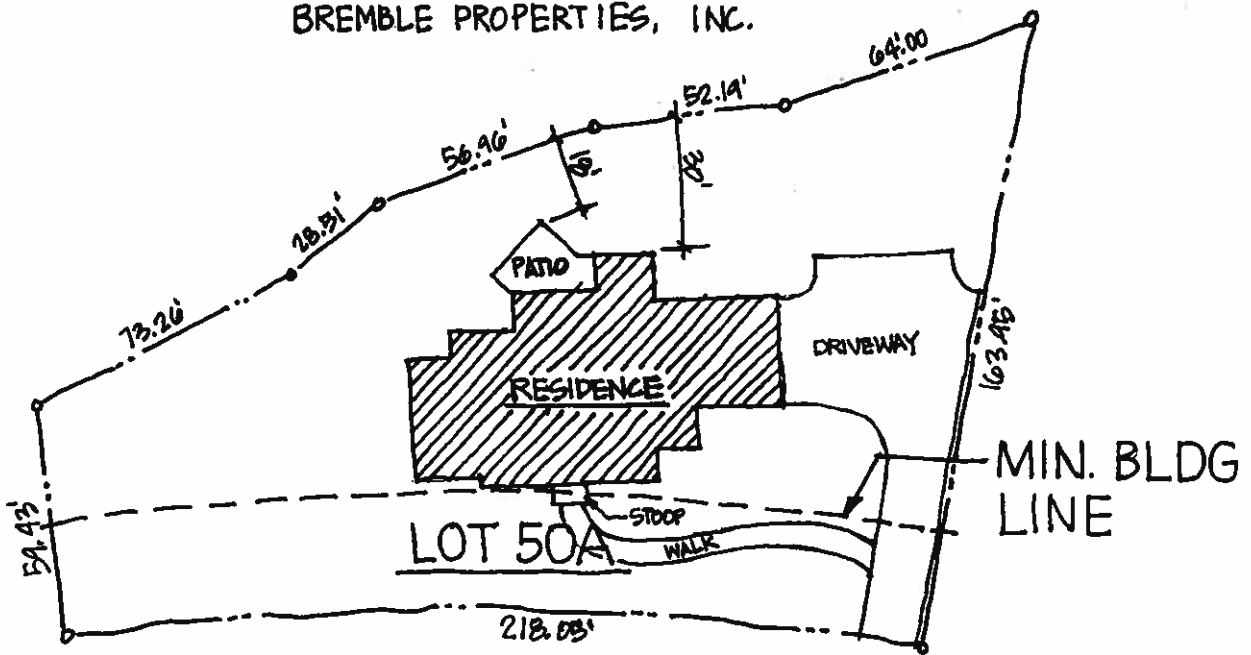
BE IT FURTHER ORDERED that a copy of this order be transmitted to the Secretary of the Board of Zoning Appeals and that he be directed to reflect that changed in the records of Franklin County.

ADOPTED on motion of Bill Chase and upon the following recorded vote:

- AYES: Law, Burnette, MacNeil, Chase, Dudley
- NAYS: Schulte
- ABSENT: Seymour Kaplan
- ABSTAIN:

Jo Ann Woody, Clerk  
Franklin County Board of Zoning Appeals

GOLF COURSE  
BREMBLE PROPERTIES, INC.



BACK NINE DRIVE

SITE PLAN

1" = 50'-0"

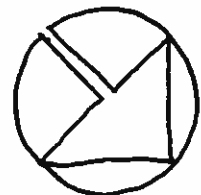
LOT 50, SECTION #11  
PROPERTY OF

JOHN W. WILKS

&

MARGARET W. WILKS

GILLS CREEK MAGISTERIAL DISTRICT  
FRANKLIN COUNTY, VIRGINIA



NORTH