

ORANGE COUNTY
BOARD OF ZONING APPEALS

ANDY HUTCHISON, DISTRICT 1
JERRY BLEDSOE, DISTRICT 2
BOB WILBANKS, DISTRICT 3
ROBERT M. ROSS, DISTRICT 4
SERGE OGRANOVITCH, DISTRICT 5

SANDRA THORNTON
PLANNING SERVICES MANAGER



MAILING ADDRESS:
128 WEST MAIN STREET
ORANGE, VIRGINIA 22960

PLANNING & ZONING:
OFFICE: (540) 672-4347
FAX: (540) 672-0164
ORANGECOUNTYVA.GOV

Regular Meeting
Gordon Building Meeting Room
112 W. Main St, Orange, VA, 22960
Wednesday, October 16, 2019
AGENDA
7:00 pm

1. Call to order and determination of quorum
2. Election of chair and vice chair; appointment of secretary
3. Approval of minutes
 - A. Meeting 7/18/2018
4. Code of Virginia 15.2-2309. Overview of Powers and duties of boards of zoning appeals
– Eric Lansing, Assistant County Attorney
5. Public hearings:
 - A. **V 19-01:** An application by Valerie and Robert Wright, Jr., for a variance from Sec.70-244 of the Orange County Zoning Ordinance as it applies to 17385 Constitution Highway (County tax parcel 45-1). This structure is nonconforming with respect to the required setback from Constitution Highway (Sec. 70-646), and Sec. 70-244 provides that an existing nonconforming structure may be expanded or enlarged up to 50% of its original footprint. This variance request is to permit relief from these regulations to allow the construction of an addition that exceeds the allowable square footage to the existing dwelling. The property contains 7.748 acres and is zoned Agriculture.
6. New Business
7. Adjourn



Orange County Board of Zoning Appeals

Regular Meeting

October 16, 2019

Agenda Item 3A

Orange County Board of Zoning Appeals
Regular Meeting
Gordon Building Meeting Room
112 West Main Street, Orange, VA, 22960
July 18, 2018
7:00 p.m.

Present: Andy Hutchison; Jerry Bledsoe; Bob Wilbanks; Serge Ogranovitch

Absent: Robert M. Ross

Staff Present: Josh Frederick, Planning & Zoning Director; Susan Crosby, Senior Administrative Assistant and BZA Secretary

All discussion and comment made during this meeting was captured via digital audio recording. The minutes as written below are intended to be a summary of this discussion and comment. Anyone desiring detailed information about comment or discussion made during the meeting is referred to the recording.

1. Call to order and determination of quorum:

The BZA Secretary, Susan Crosby, called the meeting to order at 7:07 p.m. then asked for nominations for Chairman.

2. Election of chair and vice chair; appointment of secretary:

Mr. Hutchison nominated Mr. Ogranovitch as Chair; seconded by Mr. Wilbanks. Motion carried 3-0; newly elected Chairman Ogranovitch abstained.

Mr. Hutchison nominated Mr. Bledsoe for Vice Chair; seconded by Mr. Wilbanks. Motion carried 3-0; Mr. Bledsoe abstained.

Mr. Hutchison nominated Ms. Crosby as Secretary; seconded by Mr. Wilbanks. Motion carried 4-0.

3. Approval of minutes:

A. January 21st, 2015 regular meeting:

Mr. Hutchison made a motion to approve the minutes as presented; motion seconded by Mr. Wilbanks. Motion carried 4-0.

4. Public hearings:

A. V 18-01: An application by Scott Bartel for a variance from Sec.70-399 of the Orange County Zoning Ordinance as it applies to 115 Pleasant Grove Rd in Lake of the Woods (County tax parcel 12A-(3)-130). Sec. 70-399 requires all buildings to be set back at least 35 feet from the road right-of-way serving the property. This variance request is for a reduction of this requirement by 3 feet.

Chairman Ogranovitch called Mr. Frederick forward to present. Mr. Frederick explained the application and why the County recommends denial as it does not meet several of the requirements established in state code.

Chairman Ogranovitch opened the public hearing.

BZA members asked Mr. Frederick questions concerning the application.

Chairman Ogranovitch called the applicant forward. Mr. & Mrs. Bartel came forward to explain the reasons for the request for variance as well as provide a letter to the members. BZA members asked questions of the applicant.

Chairman Ogranovitch opened public comment. David Florence stated he was a neighbor to the Bartels and that he nor other neighbors have any objection to the variance. No one else came forward. Chairman Ogranovitch closed public comment.

Chairman Ogranovitch closed the public hearing. Discussion ensued.

Mr. Hutchison made a motion to deny the variance; motion was seconded by Mr. Bledsoe.

Vote:

Ayes: Hutchison; Bledsoe

Nays: Wilbanks; Ogranovitch

Without a majority affirmative vote to approve, V 18-01 was denied. There were no further motions.

5. New Business:

No new business.

6. Adjourn:

Mr. Bledsoe made a motion to adjourn; seconded by Mr. Hutchison. Meeting adjourned at 7:58 pm.

Serge Ogranovitch, Chair

Susan Crosby, Secretary



Orange County Board of Zoning Appeals

Regular Meeting

October 16, 2019

Agenda Item 5A

WHEN SHOULD A BOARD OF ZONING APPEALS GRANT A VARIANCE?

Under state law, a Board of Zoning Appeals does not act with the same discretion as a legislative body. Instead, it “acts only in an administrative capacity,” and it is “empowered to act only in accordance with standards prescribed by the legislative branch of government.” *Cochran v. Fairfax Cty. Bd. of Zoning Appeals*, 267 Va. 756, 765 (2004). Because the BZA acts in an administrative capacity, it is essential for a BZA to consider carefully the purposes and criteria for variances under state law.

Variances may be granted for either of two reasons under state law.

1. to avoid a land use decision that conflicts with the Takings Clause of the Fifth Amendment. Originally, this was the only purpose of a variance. *Cochran v. Fairfax Cty. Bd. of Zoning Appeals*, 267 Va. 756, 764 (2004) (holding that “the BZA has authority to grant variances only to avoid an unconstitutional result”). But in 2018, another purpose for variances was added:
2. to avoid a land use that conflicts with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq.

At all times, the applicant bears the burden to prove (by a preponderance of the evidence) that the application qualifies for a variance under state law.

Avoiding a violation of the Fourth Amendment

As described in the enabling legislation, this requires a finding that “the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance.” Va. Code § 15.2-2309 ¶ 2.

The Supreme Court has interpreted this provision to mean that “the effect of the zoning ordinance, as applied to the piece of property under consideration, would, in the absence of a variance, ‘interfere with all reasonable beneficial uses of the property, taken as a whole.’” *Cochran v. Fairfax County Bd. of Supervisors*, 267 Va. 756, 766 (2004) (quoting *Commonwealth v. County Utilities Corp.*, 223 Va. 534, 542). In the *Cochran* case, the Supreme Court of Virginia considered three variance decisions on appeal:

- In Fairfax County: The applicant, Mr. Michael, owned an R-2 lot subject to a 15 foot setback. He applied for a two-foot variance to expand his home. The Supreme Court of Virginia rejected his claim, holding: “The proposed house in Fairfax could have been reconfigured or moved two feet to the south, avoiding the need for a variance. Indeed, the project could simply have been abandoned and the existing use continued in effect.” *Cochran* at 766.
- In the Town of Pulaski: The applicants, the Nunley’s, applied for a variance from a 15’ setback to 0’. The Supreme Court rejected their claim as well, holding: “The proposed

garage in Pulaski could have been moved to another location on the lot, or the project abandoned.” *Cochran*, 267 Va. at 577.

- In Virginia Beach: The Pennington family applied for a variance from a zoning ordinance that required that “accessory structures” in R-10 lots could not exceed 500 sq. ft. or more than 20% of the floor area of the principal structure, whichever is greater. Their 528 sq. ft. garage violated this requirement. They also wanted a variance to allow a storage shed. The Supreme Court reached the same conclusion for the Pennington family: “The shed in Virginia Beach could have been built as an addition to the existing house, or the project abandoned.”

Avoiding a violation of the Americans with Disabilities Act (ADA)

In 2018, the General Assembly amended the variance legislation to allow a BZA to grant a variance for the additional purpose of “alleviat[ing] a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability.” Va. Code § 15.2-2309, as amended by H. 796 (2018), Virginia Acts of Assembly, Chapter 757 (2018 Session). State law further provides that, if a variance is granted as an ADA accommodation, then the variance does not have to run with the land, but “may expire when the person benefited by it is no longer in need of the modification . . . , subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable.”

Additional Considerations

If either of these conditions are met for a variance, then the variance still cannot be granted unless all five of the following conditions are met:

- (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 such 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 that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.

Va. Code § 15.2-2309(2).

ORANGE COUNTY

Planning Services

COMMUNITY DEVELOPMENT
128 WEST MAIN STREET
ORANGE, VIRGINIA 22960



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STAFF REPORT

| | |
|--|---|
| <u>Application Number:</u> V 19-01 | <u>Application Type:</u> Variance |
| <u>Owner(s):</u> Valerie & Robert Wright, Jr. | <u>Applicant(s):</u> Valerie & Robert Wright, Jr. |
| <u>Tax Parcel Number(s):</u> 45-1 | <u>Location:</u> 17385 Constitution Highway |
| <u>BZA Public Hearing Date:</u> October 16, 2019 | <u>Zoning District(s):</u> Agriculture |
| <u>Affected Zoning Ordinance Section/Text: Sec. 70-244 (a)</u> (pertinent part): A nonconforming structure or use may be expanded or enlarged only in conformance with the requirements of this chapter. If a structure is nonconforming due to encroaching on a setback area or required yard, it may be expanded or enlarged provided the new portion of the structure is no closer to the affected property line than the nonconforming portion. Such an expansion or enlargement of a residential structure may be up to 50% of the original footprint of the nonconforming structure. | |
| <u>Sec. 70-646. (5):</u> The minimum distance by which any structure, except signs, gasoline pump islands, and their canopies, shall be separated from the right-of-way of a primary highway, irrespective of property lines, shall be as follows: (5) Constitution Highway (VA Route 20) north of the Town of Orange or south of Spotswood Trail (US Route 33) in Barboursville: 100 feet. | |
| <u>Staff Report Date:</u> October 9, 2019 | <u>Staff Report Prepared By:</u> Sandra B. Thornton |

APPLICATION SUMMARY

The applicants seek relief from the zoning ordinance sections referenced above to allow the construction of an 813-square-foot addition to a 1,428 square-foot dwelling which is nonconforming with respect to the required 100-foot setback from Constitution Highway. As measured on the Orange County Geographic Information System (GIS), the existing unit is set back 80 feet from the Constitution Highway right-of-way. Sec. 70-244 would allow a maximum of 714 square feet for an addition, based on the square footage of the house as indicated in the GIS, provided such addition would not be closer to the front property line than the existing nonconforming structure. A portion of the proposed addition would encroach into the required front setback by an additional 4 feet. It should be noted that there is currently a new 12" x 12" foot back porch under construction that was not part of the original footprint at the time the variance application was filed, and Mr. Wright has indicated that the renovation of the front porch that is also underway at this time includes adding some additional area.

APPLICATION REVIEW CRITERIA

A variance may only be granted in strict accordance with the specific standards set forth in the Code of Virginia (§ 15.2-2309), and pursuant to case law, as applicable. These review standards, as well as analysis as to how they relate to this application, are provided below.

Standard: *The code section from which the variance is sought unreasonably restricts the utilization of the property or the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon.*

Analysis:

The code sections from which the variance is sought do not restrict the continued use of the property for residential purposes. Further, the extant regulations would not prohibit the construction of an addition smaller than the one proposed and that does not encroach into the front setback any further than the existing dwelling.

Standard: *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.*

Analysis:

According to the parcel information available on the GIS, the home was built in 1942, pre-dating current zoning. The owners acquired the property in 2000. It does not appear that the applicant has created any hardship.

Standard: *The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.*

Analysis:

The granting of the variance would not be a substantial detriment to adjacent or nearby properties, given that the subject parcel is over 7 acres in area. If Route 20 were to be widened in the future, the structure will potentially be closer to Constitution Highway than it is currently.

Standard: *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.*

Analysis:

It is a standard practice for a locality to adopt larger setbacks from heavily-traveled primary highways than from secondary streets, for safety reasons. Unless the county wished to reduce the setback from Constitution Highway, a general regulation amendment to that requirement would not be reasonably practicable.

The county's regulations with respect to continuation and enlargement of lawful nonconforming uses and structures are consistent with provisions in the Code of Virginia. The applicants' situation is not singular, but it has not been demonstrated that it is of such recurring a nature as to suggest that a local regulatory change is in order.

Standard: *The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property;*

Analysis:

The granting of the variance would not result in a use not otherwise permitted on the property.

Standard: *The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of VA Code § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of VA Code § 15.2-2286 at the time of the filing of the variance application.*

Analysis:

The relief sought relates to dimensional requirements rather than use; therefore, the special exception process would not be available. Orange County does not provide for an administrative modification of provisions that pertain to physical requirements on a lot or parcel of land.

Standard: *The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in VA Code § 15.2-2201 and the criteria set out in VA Code § 15.2-2309.*

Analysis:

As defined in VA Code § 15.2-2201, "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.

The criteria set forth in VA Code § 15.2-2309 are analyzed above. The applicants' submittal does not demonstrate a hardship with respect to unusual conditions of the parcel itself that restricts their use of the property.



View from Rt. 20. Proposed addition would be on right side of dwelling to expand kitchen and bedroom and add additional living space.

V



View of proposed addition site from northeast



Southeast view of proposed addition site

ORANGE COUNTY
DEPARTMENT OF PLANNING AND ZONING

COMMUNITY DEVELOPMENT BLDG.
128 WEST MAIN STREET
ORANGE, VA 22960



30635

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APPLICATION FOR VARIANCE

Applicant Name: Valerie and Robert Wright Jr Phone: 540-748-5115

Mailing Address: 17385 Constitution Hwy, Orange, VA 22960

Application must be made by the landowner or with his/her permission. If Applicant is not the landowner, complete the following and attach: ¹ A letter of permission from the landowner OR ² A copy of the contract to purchase the property, if applicable.

Landowner Name: Valerie and Robert Wright Jr Phone: 540-748-5115

Mailing Address: same.

Location and description of the proposed site:

Tax Map #: 45-1 Acreage: 7.748 Zoning: agriculture.

Street Address or Description of the Property: same as above

Unusual conditions of the size, shape or topography of the land:

Zoning requirement that is unfair as applied to this land:

section-70-306 - Setback and yards, sec 70-646 - Primary Highways,
section- 70-244 - Expansion or enlargement

Undue hardship caused by applying this requirement:

At this time it has become necessary for us to expand the layout of our home in order to better accomodate our needs as well as increase the value of our property. We feel the ordinance has brought us undue hardship

You must submit a plat of the property, showing the locations of structures and their setbacks (if applicable), and the requested variance and the conditions that justify it.

Application Fee: \$300
Mailing and advertising fees are billed to you separately (nonrefundable)

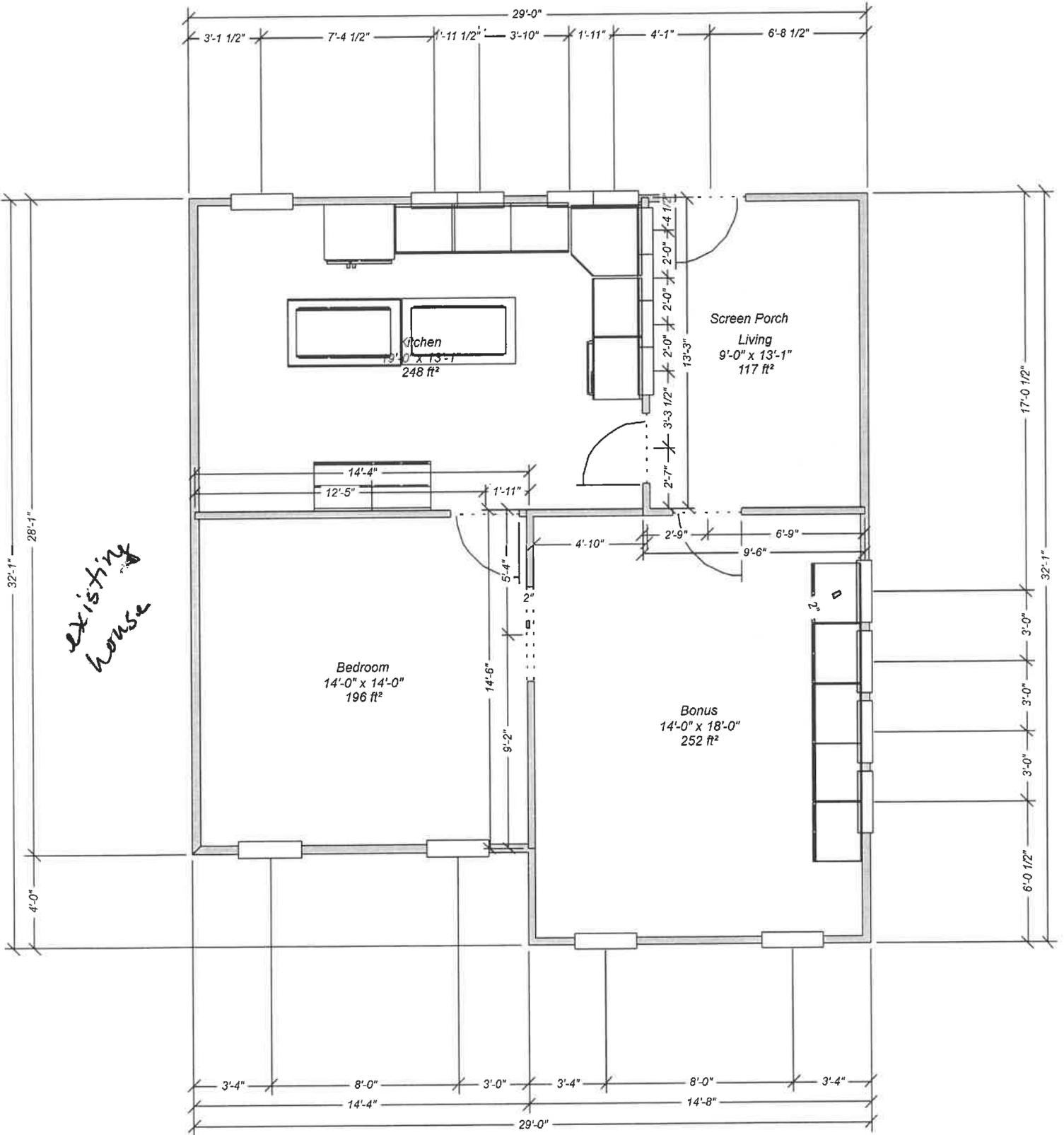
Name: Valerie Wright & Robert Wright

Signature: Valerie Wright Robert Wright

Date: 8/19/19

Incomplete applications will not be accepted. Failure to appear at the hearing for your application may result in its denial.

In that we have placed our project on hold for several weeks/months and been faced with hundreds of dollars in application fees.



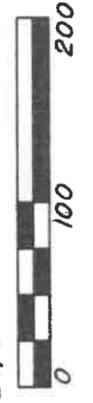
Front
 ↓
 Constitution Highway

A PHYSICAL SURVEY ON LAND OF

BARBARA R. GRASTY, ETAL,
TRUSTEES
TAYLOR DISTRICT
ORANGE COUNTY, VIRGINIA
STEARNS L. COLEMAN, L.S.P.C.

114 BYRD STREET ORANGE, VIRGINIA
540-672-1524
APRIL 20, 2000

REVISED: APRIL 26, 2000



3.000 AC. LOT
(PREVIOUSLY PLATTED) OF
**BARBARA R. GRASTY,
ETAL, TRUSTEES**
WB-56-122
TM # 45-1, 1A

S17°25'45"W
301.46'

ROD
FD.

S69°14'23"E
608.36'

WIRE
FENCE



CEMETERY
ENCLOSED BY
WIRE FENCE

BRANCH

ROUTE
VA.

577°35'24"E
893.05'

POLE

7.748 AC.

WB-56-122
TM # 45-1-1A (IN PART)

C.M.U. BARN
DOES NOT
ENCROACH BY 3.5'

ROD
FD.

N70°09'24"E
516.41'

POLE

POLE

POLE

POLE

R/W
MON.

TRAILOR

POLE

FRAME
SHED

POLE BARN
DOES NOT ENCROACH
BY 1.2'

0.20 ± MILES
TO RT. 629

VA.

551.74'
WIRE FENCE S20°33'52"W

SHIRLEY P. NEWMAN
WB-59-762
TM # 45-2,2A

ROD
SET

ROD
SET

APPROVAL CERTIFICATE

THE SUBDIVISION SHOWN HEREON HAS BEEN REVIEWED AND APPROVED BY THE UNDERSIGNED IN ACCORDANCE WITH EXISTING REGULATIONS, AND MAY BE COMMITTED TO RECORD.

Deborah S. Kendall 4/26/00
AGENT

NOTES:
1. THIS PLAT REPRESENTS A CURRENT FIELD SURVEY.

2. NO TITLE REPORT FURNISHED THIS SURVEYOR.

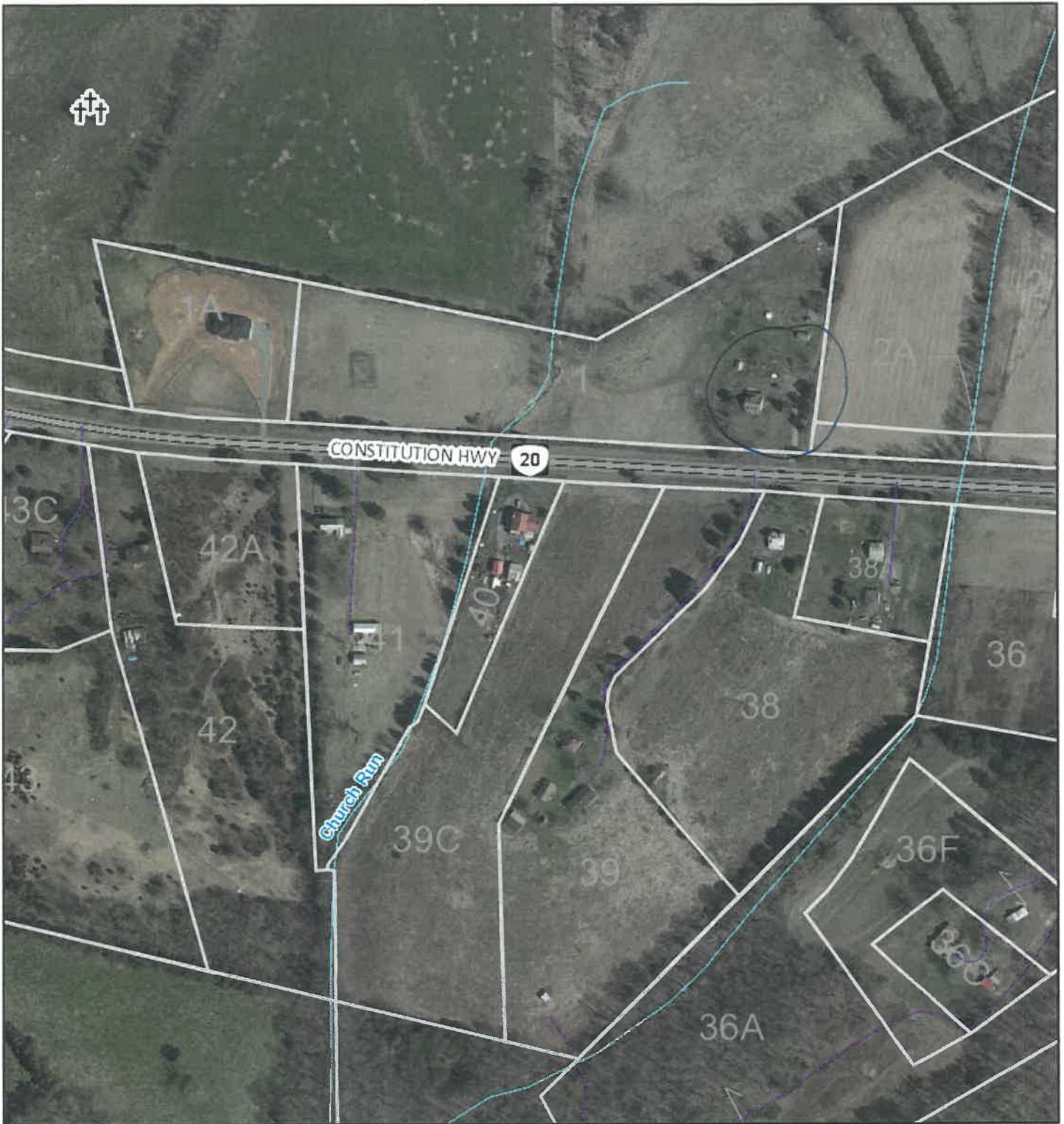
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2867D



HELEN MARIE TAYLOR
DB-351-429
TM # 30-31

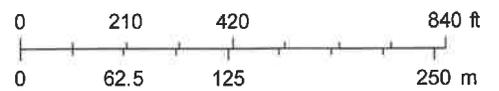
Wright



August 19, 2019

1:4,514

- | | |
|--------------------------|----------------------|
| Tax Parcel | Private |
| Driveway | Cemeteries |
| USGS Waterbodies | Annotation Polygon |
| USGS Flowlines (Streams) | Annotation Polyline |
| Roads | Subdivision Boundary |
| Primary | |
| Secondary | |



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

