

ESSEX COUNTY BOARD OF ZONING APPEALS
MEETING OF July 27, 2023, AT 7:00 P.M.
109 CROSS STREET
TAPPAHANNOCK, VIRGINIA 22560
MINUTES

Present:

Steven Laffoon –Chairman
Stephen Walters
Gamaliel Rose
Ned Stephenson
Edward Haile

Also Present:

Kelly McKnight – Planning and Zoning Office Manager
Rob Hodges – Zoning Administrator

Absent

Call to Order

Chairman Laffoon called the July 27, 2023, meeting of the Essex County Board of Zoning Appeals to order.

Roll Call

Ms. McKnight called the roll. A quorum was met.

Approval of Minutes

Chairman Laffoon asked if there were any changes or modifications to the June 29, 2023 minutes? Mr. Rose made a motion to approve the minutes as written. Mr. Haile seconded the motion. AYES: 5 NAYES: 0 ABSENT: 0

Public Comments

None.

Public Hearings

V2300005 – William & Sara Watts

Mr. Hodges stated that there is a variance request for at 521 Rockingham where Mr. Watts would like a variance to the 100' standard lot width. This has been an interesting case working with the surveyor Mr. Haile for over half of a year to find a way to make it work to get a garage there. The challenge with this case is the flag lots that are in the neighborhood. In the staff report there are three images and a

diagram. The first image is from the county GIS system which shows the parcels. The second image is from Google Earth that shows the common driveway. The plat of the property that shows the common driveway and shows the utility easements. If you look through the zoning code and look at cul-de-sacs, the flag lots you are to look at the curve of the cul-de-sac take the chord and go back parallel to the chord until you reach the distance. When you follow the strict interpretation of the zoning ordinance you get back past where the flag is. In working with Mr. Haile with the common driveway and the flag it gave him a little flexibility in how he looked at where the front of the lot is. It was an enduring process trying to find a solution to get a garage on the property. The staff recommends that you deny the variance for three reasons. 1) In working with Mr. Haile there is a spot in the yard that the garage can go without requesting a variance. It is not the solution the applicant wants but it is another solution. 2) He does believe that in this instance that the applicant is receiving something that no one else can receive because he is able to put his garage in the flag because he is using a common driveway that was never part of what he was supposed to do. He was supposed to have his driveway in his flag and over time everyone has just used it and so he would gain something that no one else is able to get. 3) This was the most challenging piece. He does not believe that the BZA has the authority to make a call on an easement that is in the plat that the board of supervisors said this is what we want it to be. If they had adjusted the easement and there was a new plat that showed that the structure was not in the easement and that had been approved. He feels they do not have the authority to do something within an easement that is not a variance and they would be changing something the board of supervisors approved years ago. If you were to approve a variance tonight it still could not sit in that easement it would have to move toward the river a little bit because he doesn't think they have the authority to do that. He did not run this past the county lawyer that would need to be done after the fact. In looking at the code and working with the Berkley Group we both agreed it was out of the purview of the BZA with the easement. The staff recommends that you deny the request.

Chairman Laffoon asked when he went and saw the layout Mr. Watts told him he was not going to using the common driveway he is going to be putting in his own driveway in that flag lot.

Mr. Hodges stated that was not part of the application. If he did not do that it was not called out in the diagram they received that there would be a new driveway put in. The visual evidence that he sees is the driveway he is using is the driveway that supports the other three properties in the neighborhood.

Mr. Rose asked about the easement for the common driveway that pretty much extends on one of the property flags and is shared by the others as just an easement.

Mr. Hodges stated that when you look at the plat and look at 2H, 2G, and 2F they are the three lots that enjoy the common driveway. If you see the notes to the left it talks about the right of way for a common driveway. It also shows where the utilities are. It just shows that he will be receiving an advantage that the other lots will not receive if he is permitted to build inside his flag.

Mr. Rose asked if that is because 2F,G and H are all sharing the same ingress that 2E is not technically supposed to be enjoying the use of the driveway to which we have information coming from Chairman Laffoon that he would understand that there would be a different driveway. His next question is what do his neighbors say, have they been consulted about their reaction to this plan?

Mr. Hodges stated that he did not go interview the neighbors and did not receive any questions from the neighbors?

Mr. Rose asked if we had any protest in the use proposed?

Chairman Laffoon asked if there were any neighbors there?

One neighbor said he was there.

Chairman Laffoon stated they would get to him.

Mr. Rose also asked if the occupation of his flag portion of his lot by a garage were a special privilege then you would think that lots F, G and H would not be allowed to do it but he could see them applying for a similar permit if they wanted to put a garage in the back of their flag.

Mr. Hodges stated that if their flag were 100' wide and they were appropriate setback distance which they all would be. If the flag was 100' wide this would not be a question. At that point he is asking for a 53' variance out of where you need to be 100' wide to start building.

Mr. Rose stated that the lots appear to be intended as essentially as close to equivalent as possible in their enjoyment of the river frontage and their access to the cul-de-sac. The farther down the flag you go the longer and more private of a lot you have. In some sense his lot is disadvantaged because of its location in the sequence.

Mr. Hodges stated that if you went back and looked at the subdivision ordinance back then they probably put in too many flag lots in when they approved it. You are not supposed to have more than one or two in a cul-de-sac.

Mr. Rose stated that to that the chording of a cul-de-sac to which he thinks Mr. Hodges meant perpendicular ingress is then affixed.

Mr. Hodges stated that when you measure the chord you come parallel to the chord and come back.

Mr. Rose asked if you come perpendicular?

Mr. Hodges stated where you have the two points you come parallel to that.

Mr. Rose obviously it is squeezed situation.

Chairman Laffoon stated that they are non-conforming lots.

Mr. Hodges stated that the fact he believes he would receive benefits that the other lots may not be able to receive is the reason for denial. And then there is the whole easement piece that he does not believe that they can adjudicate that, he does not believe they have the authority to do that. This shows the building in the easement and make a recommendation for variance that the building would have to come out of there until there was a plat recorded that showed a change in easement. However, you guys want to deal with that.

Mr. Walters asked how wide are the flags for 2F, 2G, and 2H? He is assuming from what was said that it is less than 100'. And they are more narrow than the one for 2E which is the one in question.

Mr. Hodges stated he did not measure the width of those lots. He is going to assume that they are coming it at 20'-30' looking at the scale of them. They are not terribly wide which he believes is the reason for the common driveway to allow for a wider driveway for the three flag lots.

Mr. Walters the easement that they are talking about is the fact that entrance to 2E was not recorded on the original plat. On the original plat you have the comment that says 2F,G and H.

Mr. Hodges stated that you can see that there is the utility easement that is the center line in that one. All have the utility coming in there that is 10' or 16 feet and the property line from the center line is the easement.

Mr. Walters stated that 2E does not have an easement for ingress according to the plat.

Mr. Hodges stated that it doesn't show the driveway on the plat for the three flag lots deepest part of the subdivision. 2F,G,H shows the common driveway where the lot in question is excluded from the common driveway.

Mr. Walters asked but it uses the common driveway?

Mr. Hodges stated that from visual and physical evidence they have been using the common driveway verses using their point in the cul-de-sac that could have a driveway on it.

Mr. Haile asked about pg 185 in the ordinance there is a list of definitions. The fourth or fifth line down says 'a flag lot means any lot, except a lot fronting on a cul-de-sac. So are we talking about a flag lot here? In other words on page 190 it says a flag lot has to have a 50' frontage on a street. Obviously, none of these lots do. According to the ordinance a lot with a stem on it going to a cul-de-sac only needs to be 25' wide but that is not strictly called a right-of-way. Would the same restrictions apply that would apply on the building width requirement on an R-2 that is a flag lot?

Mr. Hodges stated that the lot width applies to all lots there is not an exception for a cul-de-sac lot or flag lot.

Mr. Haile asked so they have to be 100' wide.

Mr. Hodges said before you start building they have to be 100' wide.

Mr. Haile asked if that applied to accessory buildings to or just residences?

Mr. Hodges stated it depends on the zoning. He said it does have to be 100' feet before you start building anything. Because this is a riverfront lot you are allowed to put an accessory structure in the front yard without a variance.

Mr. Haile was wondering, despite what Mr. Hodges just said, where the front setback line would be in a cul-de-sac lot? He thought that a building setback on a cul-de-sac would be 35' from the cul-de-sac in a circumference.

Mr. Hodges stated that you still need to be 100' wide when zoned R2.

Mr. Haile stated that what we are really saying as he looks at the building on that plat it looks like the building is at the mouth of the stem not in the stem. Mr. Watts is trying to do is position this so it would satisfy the 5' setback for accessory structure anywhere else in this property. As long as he is 5' off his boundary line he can do anything he wants. What he has done here is try to design something that is going to go over the drainage easement but is not going to over the normal accessory setback which is 5'. The drainage easement is a centerline in the middle of 16'. It looks like those drainage easements exist not on paper but on the ground there is a ditch running down there between him and Jeff Hodges. There is a sump over there, he asked Mr. Watts if he had a drainpipe running down the downriver side of the property is there some kind of easement that has been built there?

Mr. Watts stated that from his house and drain stop.

Mr. Haile asked what kind of actual drain system do you have from that sink area out to the cul-de-sac?

Mr. Watts stated that there is nothing there.

Mr. Haile stated that he is invading a drainage easement that is completely undeveloped and probably never will be developed. In one sense this thing fits but the 100' width.

Mr. Rose asked since Mr. Hodges is asserting that lots F, G, and H would not be able to enjoy the same. As a fairness point one of the stipulations F, G, and H wouldn't be able to do this but unless he is misunderstanding the drawing shows that they would be able to have the ability to put dependency structure just as you enter the buildable lot from the flag or non-flag as Mr. Haile points out. You would be able to position if you wanted a similar structure at the back of the wide building area at least in the case of F and G.

Mr. Hodges stated that if it were not 100' wide he would tell them they would have to get a variance. The reason he says there would be an advantage is because he has been using that common driveway which the plat says he is not. He does not see any indication, whether he says he is going to do anything or not is irrelevant, what he sees now is that has been his driveway.

Mr. Rose stated that is why he asked about the neighbors because if he was a neighbor he would like to have more people share, whether that is how it is zoned or not, because that is less pavement, more green and maybe more buffer.

Mr. Haile asked Mr. Watts about the driveway and that he was told the driveway was going to change and run along the Hodges.

Mr. Watts said that was correct.

Mr. Haile said that Mr. Watts told him that he had enough room between the north corner about 19'. You thought the 19' would give you just enough room to miss the corner of that garage.

Mr. Watts stated yes.

Mr. Haile asked where the bays were for the garage and how would he enter the garage.

Mr. Watts stated that when you come in the new driveway the bays will be facing the house.

Mr. Haile would like some kind of ruling on this he wanted to know where the front setback was? Is it based on the cul-de-sac or are we going to try to call it a flag lot which the ordinance doesn't seem to say it is.

Mr. Hodges stated he is going to take a chord off of the two points of the cul-de-sac and draw a line then you will take a parallel back to where the lot reaches 100' in width. When you do that it is roughly that line that you see in the diagram from the inside corner to the outside corner.

Mr. Haile asked if that was a line that he drew.

Mr. Hodges stated that he did not draw that line but it is roughly where, not exactly but a little further back from the top point and go across that is where it is 100' across.

Mr. Rose asked for Mr. Hodges to indicate it on his copy or show him.

Mr. Hodges showed on the diagram where it is at 100' wide and where they had discussed multiple options. The garage would need to be behind that line and right now where that front corner sits it is roughly a 53' variance. It is about 47' wide where he scaled the schematic.

Mr. Rose asked if it was toward the cul-de-sac because of the drain field? It can't go all the way back.

Mr. Hodges stated he thinks it is there because he wanted visual benefit of it being there as opposed to further back in his lot.

Mr. Rose asked if they could push the proposed structure all the way back.

Mr. Hodges stated you could take the structure and put it back next to where you see the drain field behind that line and it would fit in there and would not require any variances.

Mr. Rose asked if he could sit on top of the drain field?

Mr. Hodges stated that he is putting it in the southeast corner closer to the house.

Mr. Haile asked if it would be square off with the drain field?

Mr. Hodges stated he would pull it up towards the house and out of the elbow of the lot. And would not require a variance to do that. The final version would be moving it down into what he is calling the flag portion of the lot and then the front of the lot becomes the part on the cul-de-sac and then he measures from there for the variance.

Mr. Haile stated that he sees the long north line that runs by his house and just sees it extended out to his southwest boundary which looks like 100' wide until it gets to the southwest boundary and his garage is entirely within that. It depends on where you say the flag begins. Lots F, G and H all have this 25' street in effect. This is much wider than a street. It doesn't look like a street it just looks like a front yard.

Mr. Rose stated that also the point that it is not technically a flag lot because it is off the cul-de-sac.

Mr. Haile wonders if a lot is on a cul-de-sac where is the front set back determined on that lot. Mr. Hodges is saying that it is determined at the 100' mark?

Mr. Rose stated that it is based on the flag.

Mr. Hodges stated that it is based on the front of the lot which is on the cul-de-sac.

Mr. Haile stated if the front of the lot is on the cul-de-sac then it is not a flag lot so the building restriction should be 35' from the chord.

Mr. Hodges stated that it has to be 100' wide.

Mr. Rose asked if it is a flag lot?

Mr. Hodges stated no it has to be 100' wide no matter what type of lot it is. It has to be 100' wide to build that is the variance request.

There was discussion involving Mr. Haile, Mr. Rose and Mr. Hodges where they discussed the drawing.

Mr. Stephenson stated that he has a different perspective as he only reads the ordinance. He wants to speak only to the front setback, not to the side or the easement. As he reads the ordinance it says that the front setback line is parallel to the street and 35' back however on page 190 it states in the case of existing flag lots and irregularly shaped lots, the setback line shall be drawn on the plat in a position acceptable to the agent. What he hears this saying is if it is a rectangular lot on a street then its parallel to the chord, 35' back and there is no wiggle room. If it is an irregularly shaped lot that rule is out the window and it is wherever Mr. Hodges judgement wants to place the line. He is sure Mr. Hodges has his reasons, which he has explained, of why he thinks where it goes on that map. He does not think that the appeal needs to be the lot width or to the 35' the appeal needs to be an appeal to where Mr. Hodges chose to place the line, regardless of what his thinking was. The appeal should be to put the line in a different place. He thinks if the board wants to try to accommodate this there are, quite frankly, an infinite number of line placement that could occur on this map. Mr. Hodges might choose to approve one of those if you selected it but if he doesn't, and that is his professional opinion, then the BZA would have the authority to override Mr. Hodges choice of that line and put the line somewhere else.

Mr. Haile asked if the board had the authority to ignore the 100' width?

Mr. Stephenson that the ordinance shall be 100' wide and we all agree with that and this lot is 100' wide. The front setback line, the placement of the line, the ordinance doesn't say anything about where that has to be it simply has to satisfy Mr. Hodges. That is the only criteria. It is not 35' from anything, it is not perpendicular to anything, it is wherever Mr. Hodges wants to put it. That's the line. He thinks that is the issue here, whether or not the board wants to affirm Mr. Hodges' placement of the line or overturn it and place the line in a different place.

Mr. Rose stated that building on that point where Mr. Hodges placed the line is impeccably argued but may be argued from the wrong premise. That is to say Mr. Hodges may not be cognizant of his own judgement authority.

Mr. Stephenson stated that he feels that he has good reasons and he has laid those out, he is a professional. He is just saying that the only requirement is that the line satisfies Mr. Hodges and that is what is being appealed here. Is to put the line somewhere else.

Mr. Hodges would make the suggestion that what is being talked about is when the subdivision is being created if there was an irregularly shaped lot that there would be a setback line being established that he would agree to at that point. The plat does not show a setback line so he has to use the ordinance that exists today to make the variance call. The setback for an R2 zoned lot has to be 100' wide coming from the circle that is the front of the lot.

Mr. Stephenson stated that he understands that and it is valid but his point is that the BZA can move the line if it wants to. That is what the appeal process is for.

Mr. Haile stated that he is not sure how much latitude they have. He suggests that is it something that you would consider where the garage is if it was moved down into the odd shape or extended the line and it struck it at any point then he would say no. But if you cut off that portion and reduced the area on the stem sticking out to the cul-de-sac then this would be on a lot that it is 100' wide.

Mr. Hodges stated that he doesn't understand that logic.

Mr. Haile showed Mr. Hodges what he was thinking using the plats. There was discussion during that portion.

Mr. Haile stated that he cannot disagree with Mr. Hodges argument. He can only say if the board has the authority but he is not sure that the board does.

Mr. Hodges stated that the board has the authority to grant a variance to the 100' width. If you want to say that by his scaling of this he would need a 53' variance to the 100' width to put the garage in that location. It is still sitting in the easement and it can't stay there he would need to move it over and he is not sure what that would do to putting a driveway in moving it that 3'. Unless he comes back have that easement changed but right now as it stands he does not feel that they have the authority to rule on something being in an easement.

Mr. Rose stated to clarify that when he says Mr. Hodges' argument is impeccable in regards to its premises, Mr. Stephenson brought up that the premises may be debatable. We may consider that the language from the acceptable position being a matter of judgement and then the discussion about the odd shape itself.

Chairman Laffoon stated that the question that he has is if they approve the variance but don't approve where it is presently located with the easement.

Mr. Stephenson stated that he would like to speak about the easement. The language in the ordinance is the same thing as for the front setback line. The setback line on the side where the easement is, is the same rule for flag or regular shaped lots, it is the line placed where the plats officer, Mr. Hodges, approves it. He thinks the board has the power to move the line but he does agree with Mr. Hodges that we cannot invade that easement.

Mr. Haile asked but we can invade the drainage easement.

Mr. Stephenson read from an early page in the ordinance 'In exercising its powers, the BZA reverse or affirm, wholly or partly, or may modify the order, requirement decision or determination appealed from.' In other words they have broad authority to reverse or change a decision made by the plat officer.

Mr. Hodges stated to his point he did not make a decision about the easement. That was made by the Board of Supervisors when they approved the plat. He does not think that their authority to change something that the Board of Supervisors, if the applicant would like to go through and have the plat re done. If right now there was powerline from REC or Dominion running through there and it is an underground line and you had to come in and wanted to do something with that easement they would have an agreement with all those neighbors about what it was and you would have to go through all of that to change the easement.

Mr. Stephenson stated that he agrees with that and they can't mess with that easement but we can push that setback line in a place other than the place that you approved.

Mr. Rose stated that they could ask him to make his garage in so doing narrower.

Mr. Stephenson stated that he would need to shrink 3' off the garage to get off the easement.

Mr. Hodges stated that in addition to width of the lot you could do a side setback variance but that was not part of the application.

Mr. Stephenson stated that he is not hung up on the side setback he is trying to focus on the front setback line. He thinks that the board has the authority to move that line. He stated that Mr. Hodges may disagree with the board's logic or its thinking or why they moved it and he has made a good argument as to why you think it should go where it is drawn. In spite of all of that he thinks that the board can move that line.

Mr. Hodges thinks that the board can approve the variance for what is asked for. If they are asking for something else then he thinks they could rule on that.

Mr. Haile asked about the drainage easements to where we have a letter here from a neighbor.

Mr. Hodges stated that it is a drainage and utility easement.

Mr. Haile stated that Jeffery Hodges, a former Zoning Director, he says that all of this is good with him. If Mr. Watts can invade that drainage easement 3' or 2' does that mean that he is moving it into Jeff Hodges or does it have to remain 16' wide? Does Jeff Hodges understand that he has the lions share of that easement now?

Mr. Hodges stated that has not been explained as to what they would do to adjust it. It could become theoretically narrower or it could move.

Mr. Haile stated that if the utility company came in and said they have a 16' easement and there is a garage here so we are going to measure 16'. Are these neighbors agreeing to move these easements over on them?

Mr. Rose stated that they do not have that authority either.

Mr. Haile stated that he doesn't believe that they have that authority either. But in effect that is what they are agreeing to since they have to remain 16' wide.

Mr. Rose asked if he could make a motion that the approve the variance in the setback provided that the garage be made 3' narrower to accommodate the easement. He stated he may be jumping the gun a bit and withdrew the motion.

Mr. John Haile stated that he is a land surveyor and has had the privilege of working on this site. As a surveyor when you are approaching a project it is always nice when the neighbors all get along. He comes tonight with such a case. It has been a pleasure to work there and the agreements to other neighbors. He has heard many things about Mr. Hodges and he has worked with him to find a solution for Mr. Watt's garage. Tonight they come with a larger drawing that could help with the struggle. This is a drawing that Mr. Hodges and himself made. The blue line is how he determined. Mr. Hodges has done his very best to get a setback line that would work. We went over the parallel line and he did not understand what they were referring to with the parallel line to the cul-de-sac. The parallel line does not in any way represent the blue line. If we follow the strict definition of a parallel line it would look something like this with the green line for the chord at the cul-de-sac. If we go parallel until we get to the 100' line it drops it all the way to the attached garage option. But let's not get too caught up in the chord line, setback line. They have touched on this before but he wanted to point out some more rules that maybe we can look at this to come to a good conclusion for everybody. The chord solution is just a hardship on Mr. Watts. He wanted to show that him and Mr. Hodges spent day to find this good solution. He comes tonight with Mr. Watts with two things to look at and discuss. One is the garage being adjacent to the neighbors line and two the garage being to Rockingham Rd. First, lets talk about the garage being adjacent to the neighbors line. The garage they proposed is 5' from the line just as the County requires. So the County is perfectly fine with the 5' because that is what the rules require. Looking at the plat there is a 16' easement centered on that line so that creates an 8' line. So you ask why you have the 8' line on there? That is hidden on the plat as many of the subdivision plats some of them have deed restrictions, lot divisions, multiple things that are hidden and the way it is described is third-party. They do not need to enforce third-party rules.

Mr. Ed Haile stated that the 16' easement is part of the ordinance.

Mr. John Haile asked it is part of the ordinance for?

Mr. Ed Haile stated that it is part of the ordinance for subdivisions in section 36.555.

Mr. John Haile asked if it was in the new ordinance requires a 16' easement on what?

Mr. Ed Haile read from pg 156 it says 'easements of not less than 16' in width shall be provided for water, sewer, power lines, and other utilities in the subdivision.

Mr. John Haile stated that the question is not if they existed. The agent may require that the easements of the drainage easement be 16' on center. That is what we have here. That was established in the late nineties and since then over the course of 24 years neighbors have determined that they don't need a 16' easement. It states it may require. It was put in place and now the landowners have said we don't need that much. They appreciate that the County will honor the 5' so the County is happy. The building

is not going to be encroaching on any rules. And the setback for the drainage, they don't need a sewer line there. There was a sewer line there but they vacated that. It is not deemed necessary so his proposal in the variance today is that they honor the 5' so the County is happy, the landowners are happy because they do not need the extra 3' so they are reducing it from 8' to 5' right here at this one spot. As a surveyor he is always moving easements, lawyers are involved and he suggests in this case that it be handled by Dillard and Katona so that they can make it legal to reduce the easement by 3' for this garage and the County is happy because the building meets the setback requirements of 5'.

Mr. Rose so we could make an approval conditional on the acceptance of the easement?

Mr. Ed Haile asked if the County has the 5' setback for accessory structure where are easements required on a boundary line. Does every boundary line and subdivision have to have a 16' easement?

Mr. Stephenson stated that the easement grants certain rights to people other than Mr. Watts and you can't take those rights away until they sign them away and give up their rights. So they would have to determine who has rights to that easement and they all have to sign off and probably produce another survey to show what they are giving up.

Mr. Ed Haile asked if Virginia Power would need to sign off?

Mr. Rose stated that he thinks that they would.

Mr. Stephenson stated that whoever has the rights to that easement you can't take them away from them without their signature. He had kind of caved in on this boundary line, the sideline because it would probably be very expensive and take a lot of time to round up the signatures on deeds, which can be done but there is a process.

Mr. John Haile stated that he is certain that the lawyers would have it and that Virginia Power has not received a legal document granting them the easement to use this 8' strip that they are concerned about. So for them to sign off he does not think that they ever received anything to sign off on. The developer reserved that such that they could then grant it to dominion power or to use it for their own drainage to make sure the lot is drained.

Mr. Ed Haile stated so it is something drawn on a plat.

Mr. John Haile stated that is correct so that Virginia power would go to the landowner that is paying taxes to request to sign off on knowing that they can get it because it is proposed in the drawing. By no means have they received anything.

Mr. Ed Haile asked in other words when you submit a subdivision plat in the County of Essex, the land surveyor or the planner has just got to routinely supply these 16' easements up and down all the boundary lines? It doesn't mean that anyone is going to develop them or that anyone has to have them. In some cases they do maybe but if they do then it is designated. Otherwise does anyone have interest in this other than something drawn on paper?

Mr. Stephenson does not think they are equipped to determine who the parties in interest are. They just have to recognize that they don't have the power to take those rights away. That would be a choice that

Mr. Watts wanted to pursue the extinguishment of a piece of that easement there is a process by which he can do that.

Mr. Rose stated that is why he would predicate any variance approval on the granting of necessary easement.

Mr. Stephenson stated that he may choose to shrink the garage 3' and stay off the easement.

Mr. John Haile stated that part of the variance they presented was that they would get Scott Katona to make sure that this is legally and properly documented for this easement to be shrunk by 3' maybe even just where the garage is. It doesn't need to be the entire length of the lot. They are only asking where the garage is. So you could continue to maintain the 16' at the road in the first 90' before you get to the garage from the road.

Mr. Rose stated that the 14' truck trying to go further back may have a problem with that.

Mr. John Haile proposes that he would like the opportunity to seek legal council to do this properly.

Mr. Ed Haile stated that he wonders if anyone else in Rappahannock Breeze aware of the fact that they have to have an 8' accessory clearance on all of their boundary lines. Or do they only look at the County ordinance and see that it is 5' off the boundary line.

Mr. John Haile stated that he how is presenting it that they would like to seek legal council and honor the County's 5' for the building. Whether it is the boundary or the easement it is always movable to the owner's request.

Mr. Walters stated that with the easement we still have the question that the recorded plat doesn't mention 2E off of the common road.

Mr. John Haile stated that Mr. Watts does share that common driveway out to the road but it just like your neighbors are so nice they let you drive across the yard. Mr. Watts cuts the grass there. So not only does he drive there but he maintains the yard there. He manicures it for the neighbors. It is that friendly of a neighborhood. To answer your question, he is driving that way, and quite frankly all the neighbors share so he might continue to drive that way. However, the intent of this drawing is for him to use his entrance and culvert that is at Rockingham Rd.

Mr. Walters stated that it is not what the drawing shows.

Mr. John Haile stated that they share with each other, they walk back and forth they are pedestrian travel, they are vehicle travel, they cut each other's grass. There is a complete sharing of properties that you see there.

Mr. Stephenson stated that they could stipulate the movement of the driveway as a condition to any variance.

Mr. Walters stated that his main point is that if you are going to talk to a lawyer about the 8' easement and you are going to go through the trouble of accessing it from an easement that you don't have then that needs to be fixed also. It is a legal thing it is not a personal thing

Mr. John Haile stated that Mr. Walters is very sharp to catch that because they had gone to Scott Katona when they were looking at the attached garage and came to a dead end on it. We should seek legal council on that. Whether he does or doesn't he has his front access to Rockingham Road that guarantees his access. He owns the land, pays the taxes and that is his to drive on.

Mr. Ed Haile asked a professional question in that this is one of the queerest plats he has every seen. This Rappahannock Breeze East End where you have 5 driveways running parallel to each other. What do you think it would cost this people to get this resurveyed to where they had one 50' right of way running down the South East End. In other words just extend Rockingham Rd. They would all end up as rectangular lots.

Mr. John Haile stated that there could be an expense to it. We saw the shaded area on the original plat where they have combined those three lots to share that common entrance. Mr. Watt's lot is not included in that. He believes that it was VDOT that required lot 2G and 2F to combine there easements. This is an old slugamor set subdivision.

Mr. Ed Haile stated that he hadn't seen that plat. He asked if they had an out of date plat?

Mr. John Haile stated that they are shaded together to show that right of way. They have a right of way agreement that they combined those. He remembers running across that in the deed research that VDOT didn't want everyone driving out separate driveways. There is a 50' road and since they are all so neighborly Mr. Watts just helped himself to using the driveway and maintains it for them.

Mr. Ed Haile asked why doesn't Mr. Watts buy something.

Mr. John Haile stated that he does have his own access.

Mr. Ed Haile asked what that would cost since a garage is a big investment he might clean up his plat before he did that.

Mr. John Haile stated that the second thing is the setback. If we look at the accessory structure requirements for the County. If we look at the rules we might be able to find a structure that fits everybody. Accessory structures to the buildings if we look at the rules, the accessory structure shall not be no larger than the principal structure, no accessory structure should not be higher than the principal building. Which is in the application that they do not want it higher than the primary building. Number 4 says meet the 5' setback so we want to check that box too. If you look at (4a) this rule came in effect while we were working on this project that Mr. Watts can now put his garage in the front yard. It reads that it can be placed in the front yard but has to meet the front setback requirements for the district. The front setback requirements which refer to principal structures not accessory structures. It says the principal structure shall be 35' back from the secondary road. The proposed garage is 90' from Rockingham Rd. The setback is to keep buildings 35' from the road. He feels that they have met the requirement for an accessory building and its odd because we are not talking about a principal structure. If we were then we would need to be concerned with the 100' line. This is an accessory structure. Does an accessory structure need to have a lot 100' wide in the back? He doesn't think so. It needs to be behind the house.

Mr. Ed Haile stated exactly but where is that?

Mr. John Haile stated he does not know of that rule so hopefully we can find a common ground to make everybody happy. So the question he presents he finds more clarity in the next line down. Line C states that for residential townhouse, although we are not a townhouse, accessory structures shall observe the same required front and corner side setbacks as the principal structure. If we were talking about a townhouse we would be talking about this 100' line. If you have a townhouse on the river then we are going to talk about that 100' line width of lot at the front setback. If an accessory structure on the Rappahannock river was to be required 100', which we are stuck on, he is hoping tonight it will give them a leg to stand on.

Mr. Stephenson stated that the ordinance makes exception to Flag and irregularly shaped lots and the only requirement is that it satisfies the plats officer. There is no 100', no 35', no parallel, there is no placement. It is simply where the plats officer will approve it and that is what he thinks is being appealed.

Mr. John Haile stated that with the rules if you look at the setback it only has to be 35' from Rockingham Rd.

Mr. Stephenson stated that is true for rectangular lots. In the case of flag lots or irregularly shaped lots that is not the rule. The rule is wherever the plats officer wants to put it. The plats doesn't have to say he put it 35' from anything it is just whatever he thinks is right. That is the rule for an irregularly shaped lot.

Mr. John Haile stated that is why they are there tonight to try and find a solution and honoring the 5' setback and the 35' setback from Rockingham Rd. We definitely need to do tonight.

Mr. Rose stated that they should reiterate the point that the only area that they can't make a judgment is the utility easement so that would have to be deferred.

Mr. Stephenson stated they would have to stipulate to qualify that they can't vacate that easement.

Mr. Walters asked if his definition of front is Rockingham Rd.

Mr. John Haile stated that yes that is correct and all the other neighbors have garages way closer than 90' from Rockingham Rd.

Chairman Laffoon stated correct him if he is wrong but he is not talking about the distance from he is talking about the lot width of 100'.

Mr. John Haile stated that he does not think that an accessory structure needs to follow the same rules as a primary structure.

Mr. Hodges disagreed.

Mr. John Haile but that is the case with a townhouse and he thinks they specifically said it for townhouses.

Mr. Ed Haile stated that what it comes down to is does it apply to accessory structures?

Mr. Hodges stated that the 100' does apply to accessory.

Mr. John Haile stated that he has not found that anywhere in the rules.

Mr. Hodges stated that nothing should be built in lots below 100' wide.

Mr. Rose stated that is all predicated on this lot being a flag lot and by definition this lot is not a flag lot. It is on a cul-de-sac. It is explicitly excluded from the definition of a flag lot.

Mr. Hodges stated that is an obtuse argument. The lot has to have a front and we have agreed on what the front is. You need to need to be 100' from the front to start building a primary or an accessory structure.

Mr. Rose stated that he doesn't think that they do agree on that. There are two different definitions on what the front of the lot is. Some are saying it is the cul-de-sac's edge

Mr. Hodges stated that off of the road where it touches the cul-de-sac is the front of the lot. We did discuss, numerous times, an alternative front based on the common driveway to advantage placement of the garage as we evolved this. When they moved it into the narrow elbow of the lot then we had to define a front which became the cul-de-sac because if it was the common driveway it would have to be 35' back from that and then it would have a rear setback so that little curve is the front of the lot based on the definitions in the zoning ordinance. So it has to be 100' wide in order to build.

Mr. Rose has a drawing that shows 100' setback from the road before.

Mr. Stephenson stated that he presents that as just one of many options that this board could consider as a relief for this homeowner.

Mr. Rose stated that as much as it is not a flag lot by explicit definition.

Mr. Stephenson stated that he thinks it is precisely an irregularly shaped lot and not a flag lot by the definition. The exception to the rule is for flag lots and irregularly shaped lots so it really doesn't matter.

Mr. Rose stated that the picture is a drawing of 100' in from the cul-de-sac's chord and that 100' demarcater is before you get to the structure.

Mr. John Haile stated that is not correct. This red line is not the 53' wide.

Mr. Rose stated that they are talking about the 100' setback from the chord at the cul-de-sac. Which would satisfy the front setback.

Mr. John Haile stated that is probably 90'.

Mr. Hodges stated that the front setback in an R2 lot is 35'. If the lot starts 100' wide you can come back 35' and start building. Until you get to 100' wide you have to have a variance to build.

Mr. John Haile really wants to find a solution that works for everybody such that they can follow a county rule that it is 35' back but to say that it applies to accessory structures. To say it applies to an

accessory structure he does not think there is a ruling on that. They do have a specific ruling on a townhouse but do not have anything about a riverfront.

Mr. Hodges respectfully disagreed. The solution set is that they can approve a variance to the lot width.

Mr. John Haile stated that maybe they would not need a variance if they can get the setback of 35'.

Mr. Hodges stated that they would need a variance for the 100' lot width. The lot is not 100' wide right there.

Mr. John Haile stated that is for a primary structure. No where does it say accessory structure.

Mr. Hodges stated that is for any structure because the accessory is subordinate to the primary it does not give it permission to do something.

Mr. John Haile stated that it applies to it when the accessory structure has to be on a non-river lot. It has to be parallel or behind the house. In this case we have done a complete 180 degree turn on this situation and now we are putting an accessory structure in the front. No longer does that rule apply.

Mr. Hodges stated that the code if you are building an accessory structure on the river it has to meet all of the district setbacks. That means that it has to be 100' wide.

Mr. John Haile stated that the setback is 35'. No where does it say 100' setback.

Mr. Hodges stated that it has to be 100' wide.

Mr. John Haile stated that it is very clear for a primary structure.

Mr. Hodges stated that his position is that it has to be 100' wide. It is up to the BZA if they want to do the variance or not.

Mr. Rose made the motion that an exception be granted to allow for the placement of the garage stipulating any easement violation resulting be separately handled by the easement authority or the interests legally identified.

Mr. Ed Haile stated that in other words you want them 5' off.

Mr. Rose stated that no they can be 3' off as long as they get that clear. But they are not the ones to do it. So pending the resolution of an easement that is not resolvable by us. He moves that they grant the drawing as is.

Mr. Ed Haile stated his is not sure what the motion is.

Mr. Rose stated that the motion is to accept the proposal leaving open the possibility that there might be an easement interest that they can not vacate.

Mr. Ed Haile asked so what would the language be.

Mr. Rose stated contingent on the acceptance of any other parties involved we accept the proposed variance.

Chairman Laffoon stated after all legal documents regarding the easements have been completed.

Mr. Walters stated that he would like to see that if we took this idea, with it being an irregularly shaped lot, if we square it off and he can put it out of this 8' easement on the line between 2F and 2E, make it compatible with the side yard setbacks. So we are extending the line between D and E straight down to a line between 2F and 2E then back the garage up so it meets the side setback and it is off this easement.

Mr. Rose stated that it would then encroach upon the drain field if he understands the drawing correctly.

Mr. Walters stated that if he could fit it in there then at the point the width of the lot.

There was discussion with all of them talking about the drain field and measurements.

Mr. Walters stated that if he could fit it in with the blue line and the drain field. He just needs to move it back 11' on this side. So you would extend the side yard setback parallel to square off the property.

Mr. Ed Haile stated that raises the issue of where does this elbow begin.

Mr. Walters stated that by definition it is an irregularly shaped lot. We start the elbow where it is parallel to lot D and take it down to lot F then the flag portion changes. That alleviates the width concern. So if we treat it like a square lot with a leg on it.

Mr. Ed Haile stated that by that he has twice as much setback as he needs.

Mr. Walters stated that from the front but he would still need to comply with side yard setback between 2D and 2E.

They discussed the direction of the drawing.

Mr. Rose asked Mr. Watts that right now he has his driveway coming in and facing the house. If he were to turn the rectangle around and have the entrance come straight off the driveway and have three bays with a nice little hedge and you wouldn't even see the house. Then you could come out of a little door and walk in to your house. You would have three entrances with your bays you could back up right up to your drain field and you would have plenty of bypass room to drive thru onto your front yard if you wanted to. It would be off this setback.

Mr. Ed Haile stated that the only thing that they would ignore is the 100' width.

There was discussion on the placement of the garage using the drawing.

Mr. Watts asked if they did that would they have access to the current garage attached to the house?

Mr. Ed Haile stated that he believed that they would.

Everyone gathered at the front and discussed different options regarding the drawing that was supplied.

Mr. John Haile asked why an accessory building need to be on a lot 100' wide and where in the rules does it say that.

Mr. Stephenson stated that it doesn't it is an irregularly shaped lot and does not conform to those rules and that is why it says the Zoning Administrator can put it where he wants it and if we disagree we can move it. Regardless of 100', 35' or whatever.

Mr. Ed Haile asked when you talk about an irregularly shaped lot you can still require 100' no matter what the shape is.

Mr. John Haile stated that they can get back to the 35' setback from the road that everyone can have that.

Mr. Hodges stated that if it is 100' wide. His position is that the variance request that came in tonight was for the lot width. That is what they are asking for. If you all are modifying it based on the way you interpret the code then that is fine. Most of the lots in Essex County are not regular. When he is looking at zoning for R2 whether it be for primary or accessory it needs to be 100' wide. That is when we can start putting buildings. If it is not then you come and ask for a variance. So here you are looking for a 53' variance which is perfectly acceptable. But putting it on this lot in this neighborhood will provide an advantage that other people are not going to be able to have just because of the uniqueness of his lot. The only thing we are talking about tonight is the lot is not 100' wide where he wants to put his building.

Mr. Rose made the motion to allow the request pursuant to satisfaction of the easement issues that may not fall within our purview.

Mr. Haile seconded the motion. AYES: 3 NAYES: 1 ABSTAIN: 1

Chairman Laffoon stated that he is not voting as he is not sure which way it should go. It carries with 3 votes.

The neighbor from two doors down asked to speak. He said he has a garage and his neighbor has a garage on the road. He worked on the developer of the subdivision the last lot was just built on and finished. The people bought the lot and put a house on it right off the bat with the riverfront lot they are crippled with 100' of the land is gone and then you have to work with the back side of it. He thinks that the biggest tax revenue is river front. Every now and then you have to bend to get the tax base going.

Mr. Watts stated that when they bought the property they did not really know that the driveway was not really theirs to use. Part of this is to establish their own driveway and have a structure they can use at the river. He wanted to say thank you for all the effort they put in to it and the decision.

**ESSEX COUNTY BOARD OF ZONING APPEALS
AGENDA ITEM**

Meeting Date: July 27, 2023

Case Number: V#2300005

SUBJECT:

Request for 521 Rockingham Road to allow for a variance to the 100' standard lot width.

BOARD OF ZONING APPEALS ACTION REQUESTED:

Staff recommend DENIAL the variance request for the following reasons:

- The applicant has adequate lot area to build the garage without the need for a variance.
- Granting an approximate 53' variance to the 100' standard lot width will confer, upon the applicant, special privileges that are denied to other similarly situated properties as the applicant is building the proposed garage in driveway portion of the flag lot while the applicant is advantaged by using the common driveway that is common access for lots 2F, 2G and 2H, lots 1, 2, and 3 respectively. The flag of lot 2E, lot 4 respectively was not intended for building, but lot access.
- The BZA is not empowered to consider an easement vacation, as recorded in Plat Book 25, Page 35, that depicts the 'one common driveway entrance serving lot 2F, 2G and 2H'. The BZA should only consider an application that includes a plat and a revised subdivision plat that reflects that current easement to a parcel.

ZONING, LOCATION & Discussion:

Within the Rappahannock Magisterial District, the subject property is zoned Low Density Residential, (R-2). The property is approximately +/- .75 acres consisting of Tax Map 47E_2_2E.



Diagram 1

The blue +, in diagram 1, depicts the approximate location of the proposed garage. Additionally, the orange lines in diagram 1 depicts the parcels for the five flag lots coming off the cul-de-sac. Diagram 2 indicates that parcels 1, 2, and 3, and 4 share a portion of a common driveway. The plat recorded in Platbook 25, page 35 (included as enclosure 1) indicates the common driveway is for lots 1, 2 and 3.



Diagram 2

SUMMARY OF PROPOSAL

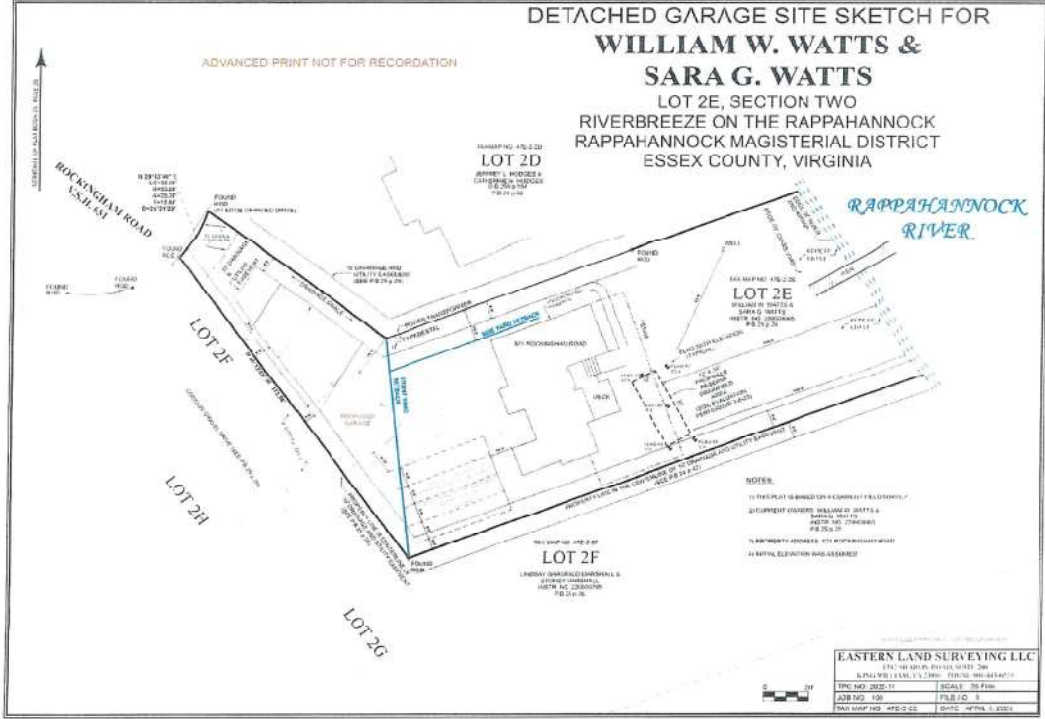
William and Sara Watts request a 53' variance to the 100' lot standard width per Essex County Zoning Ordinance Sections 36.224.A.1.b to facilitate the construction of a 34' x 28' two story garage that will not exceed the height of the primary structure. The variance would permit the construction of a garage in the flag portion of the lot that does not meet the 100' width standard.

CONCLUSION

Staff recommend DENIAL of the variance request.

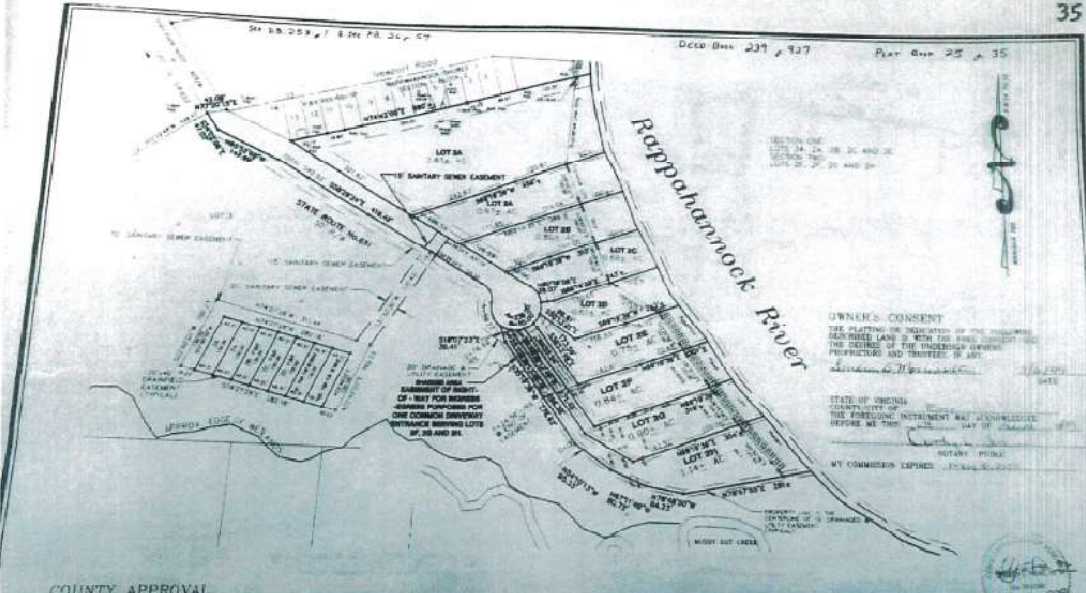
DETACHED GARAGE SITE SKETCH FOR
**WILLIAM W. WATTS &
 SARA G. WATTS**
 LOT 2E, SECTION TWO
 RIVERBREEZE ON THE RAPPAHANNOCK
 RAPPAHANNOCK MAGISTERIAL DISTRICT
 ESSEX COUNTY, VIRGINIA

ADVANCED PRINT NOT FOR RECORDATION



- NOTES:
- 1) THIS PLAN IS BASED ON A COMPARISON OF RECORDS.
 - 2) EQUIPMENT COVERED BY THIS PLAN IS SHOWN BY DASHED LINES.
 - 3) DIMENSIONS ARE GIVEN IN FEET AND INCHES.
 - 4) INITIAL ELEVATION WAS ASSUMED.

EASTERN LAND SURVEYING LLC	
1710 W. MAIN ST. SUITE 200	
Lynchburg, VA 24502	
DATE: 05/11/11	DRAWN BY: J. WATTS
PROJECT NO: 100	FILE NO: 1
DATE: 05/11/11	SCALE: 1"=40'



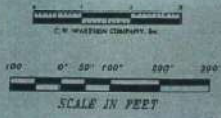
OWNER'S CONSENT
 THE PLATING OR REVISION OF THE PREVIOUS
 EDITIONS OF THIS INSTRUMENT HAS BEEN REVIEWED AND
 THE CONTENTS OF THE INSTRUMENT ARE
 ACCURATE AND CORRECT AS SHOWN.

STATE OF VIRGINIA
 COUNTY OF SPOTSYLDEN
 BEFORE ME, the undersigned authority, on this _____ day of _____, 20____,
 personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.



COUNTY APPROVAL

APPROVED TO THE ORDER OF THE BOARD OF SUPERVISORS
 3/16/07
[Signature]
 Clerk



RIVERBREEZE
 On The Rappahannock
 Subdivision
 Section One & Two
 (Under the Regulatory Jurisdiction of the Virginia Department of Transportation)
PAYNE & ASSOCIATES
 10000 RIVERBREEZE DRIVE
 FALLS CHURCH, VA 22034
 WWW.PAYNEANDASSOCIATES.COM
 FAX (703) 715-5118

T. B. ...

Jeffrey L. Hodges
863 Fountain Run Rd.
Tappahannock, Va. 22560
804-761-8076

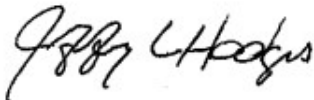
Dear Board of Zoning Appeals,

Thank you for your service to Essex County. I had the pleasure of working with the Essex County BZA for 38 years and always felt your Board served a vital role in being the voice of "common sense" for the citizens of Essex County.

My neighbor at the river is requesting a variance. William and Sara Watts are requesting a variance to build a 34' x 28' garage that does not meet the letter of the ordinance, but more than meets its intent. The structure will not devalue or detract from the neighborhood in any way.

I have no objection to the structure or variance and have spoken to many neighbors that feel the same way. Please look favorably on Mr. and Mrs. Watts' request and approve their variance.

Yours truly,



Jeffrey L. Hodges

* please enter this letter
into the minutes of the
July 27, 2023 BZA

Section 36.224. - R-2 Low Density Residential District Requirements.

Table 36.4 R-2 District Requirements	
A. Lot Standards	
1. Lot area and width	
a. Area (square feet)	21,500
b. Width (feet)	100
2. Lot coverage (maximum %)	30
B. Road Frontage for lots intended for dwelling purposes (feet)	
1. Family subdivision lot	20
2. Other lots	
a. Permanent cul-de-sac or radius of loop road	25
b. Other roads	50
C. Principal Building Setbacks (feet)	
1. Front setback	
a. Fronting US Primary Highway	100
b. All other fronts	35
2. Interior side setback	15
3. Corner side setback	
a. Side to Back with another lot	30

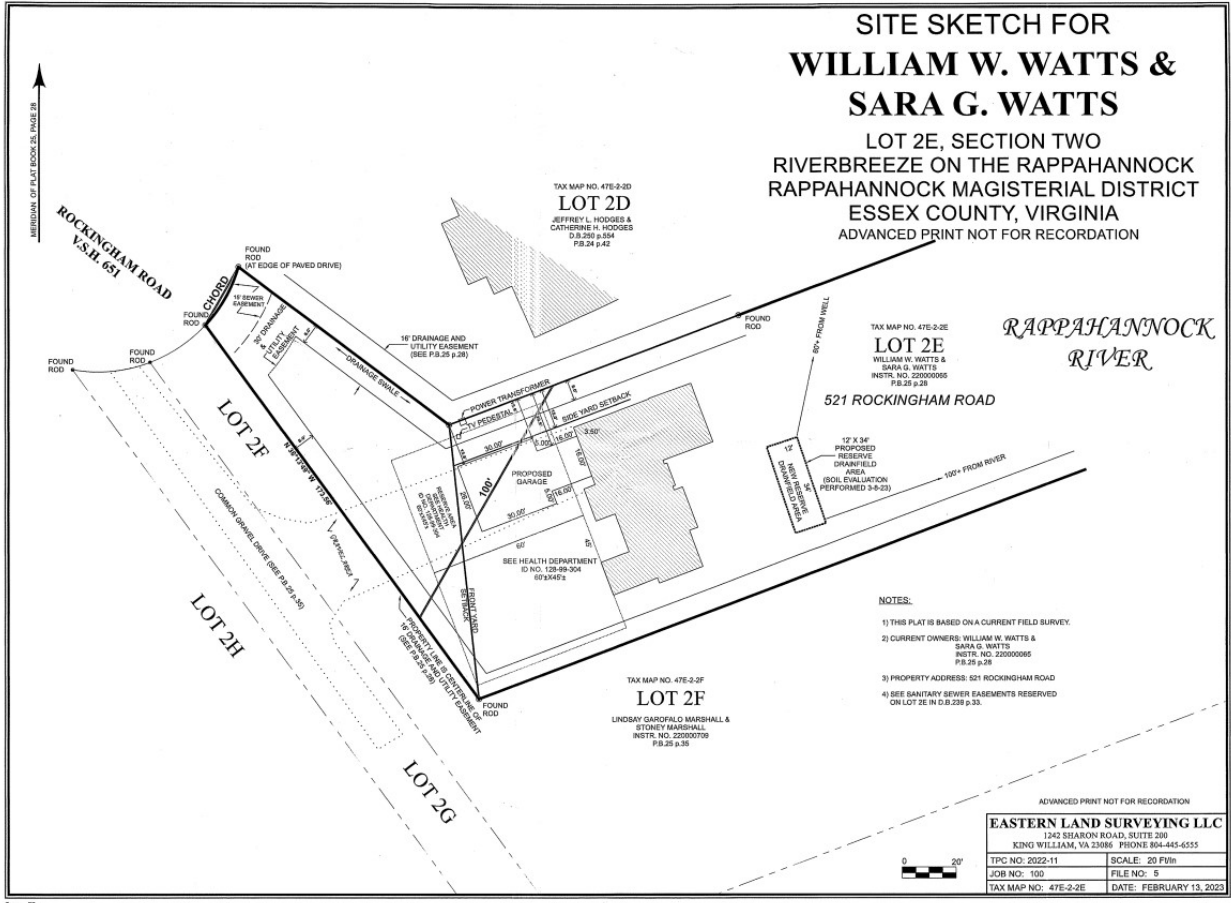
b. Back to back with another lot	30
3. Rear setback	
a. Through lot	35
b. All other lots	30
D. Principal Building Heights (maximum)	
1. Single-family dwellings	Lesser of 2.5 stories or 35 feet
2. Other permitted principal structures	Lesser of 2.5 stories or 35 feet
E. Accessory Building Requirements	Subject to Article VI, Use Performance Standards

Section 36.415. - Accessory building or structure.

- (a) Accessory buildings or structures in the A-1 or A-2 district shall meet the setbacks of the principal building for that district.
 - (1) No accessory building or structure shall have a height greater than the principal building unless exempt in Section 36.290.
- (b) Accessory buildings or structures in the B-1, B-2, I-1, or I-2 district shall be subject to the following:
 - (1) The accessory building or structure shall meet the setbacks of the principal building for that district.
 - (2) No accessory building or structure shall have a height greater than the principal building unless exempt in Section 36.290.
 - (3) The accessory building shall be constructed of materials that are not inferior to the principal building.
- (c) Accessory buildings or structures in the R-1, R-2, R-3, R-4, MH-1, or PUD district shall be subject to the following:
 - (1) The total of all accessory structures shall not have a lot coverage that is greater than the principal building square footage (e.g., a home of 1,000 square feet is allowed an accessory structure or multiple accessory structures with a cumulative footprint of 1,000 square feet when setbacks and other restrictions can be met) except that accessory structures for residential townhouse use shall cover no more than 45% of the required rear yard.
 - (2) No accessory building or structure shall have a height greater than the principal building unless exempt in Section 36.290.
 - (3) The accessory building shall be constructed of materials that are not inferior to the principal building.
 - (4) *Setback and Placement.* Accessory buildings or structures shall be placed in the side or rear yards and must meet a minimum setback of five feet from the adjacent lot line. Except for the following:
 - a. Accessory buildings or structures on a lot adjacent to the Rappahannock River may be placed in the front yard but shall meet the front setback requirement for the district.
 - b. Accessory buildings or structures on a corner lot shall meet the required corner side setback for the district.
 - c. For residential townhouse use, accessory structures shall observe the same required front and corner side setbacks as the principal structure. No side or rear setback shall be required.
 - (5)

Residential accessory structures including, but not limited to, flag poles, basketball hoops, clotheslines, arbors, swings, structures less than six square feet in area, or residential yard ornaments shall be exempt from the minimum setback, lot area, and certification requirements as specified in this Ordinance.

- (d) Portable storage containers located outside of a fully-enclosed building or structure in a district other than a residential district or planned unit development and visible from adjacent properties or highways must be buffered in compliance with Article VII, Division 4, Section 36.489.
- (e) Portable storage containers located outside of a fully-enclosed building or structure in a residential district or the planned unit development district are subject to the following:
 - (1) A zoning permit issued by the Zoning Administrator is required for any portable storage container located on a lot for more than 15 calendar days but is not allowed for more than 60 calendar days. There will be no fee for such permit and the permit shall be displayed on the exterior of the portable storage unit at all times.
 - (2) The portable storage container must be placed a minimum of five feet from the property line, or on the driveway of the lot. One portable storage container may be placed in a legal parking place on the street for a period no longer than 15 days with the approval of the Public Works Department and the Fire Department when space is not available on-site.
 - (3) Other than the required county zoning permit, no sign shall be attached to a portable storage container except to provide the contact information of the container provider.
 - (4) Portable storage containers shall not be used in conjunction with a Type A or Type B home occupation or used as a principal use or principal building or structure.
 - (5) The vertical stacking of portable storage containers and the stacking of any other materials or merchandise on top of any storage container shall be prohibited.
 - (6) The provisions of this subsection shall not apply to properties where construction is actively occurring under a valid building permit.



New Business

None

Old Business

None

Miscellaneous

None.

Adjourn

Mr. Stephenson made a motion to adjourn. Mr. Rose seconded the motion. AYES: 5 NAYES: 0 ABSENT: 0