

ESSEX COUNTY BOARD OF ZONING APPEALS  
MEETING OF JANUARY 25, 2024, AT 7:00 P.M.  
109 CROSS STREET  
TAPPAHANNOCK, VIRGINIA 22560  
MINUTES

**Present:**

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

**Also Present:**

Kelly McKnight – Planning and Zoning Office Manager  
Brian Barnes – Zoning Administrator

**Call to Order**

Chairman Laffoon called the January 25, 2024, 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 August 24, 2023, minutes? Mr. Haile made a motion to accept the minutes as presented. Mr. Walters seconded the motion. AYES: 5 NAYES: 0 ABSENT: 0

**Public Comments**

None.

**Public Hearings**

V2300008 – Danny Ray Akers, Jr.

Mr. Barnes said that this case is a request for a variance. Mr. Barnes said that as you can see from the memo that things have changed and that is what I wanted to explain to you. Something is new and we have been doing it since August, but the way we are doing these memos now was not how your memo read for your August case and that change is that we have pivoted from having a from having a strong recommendation for an approval or denial as staff to more of a neutral fact base recommendation. That is based on several factors, one being the litigious nature of the world we live in, and another fact is

when citizens come in it is not fair to begin to get into an adversarial relationship with county staff. County staff are paid by the taxpayers to be as neutral as possible. Our job is to get people back into compliance and to fulfill the role that the ordinance asks us to. When you look at this memo it says discussion and staff analysis, it does not say staff recommend approval or staff recommend denial. With that being said we do the best that we can to dig into an issue and find all the reasons why it could be approved or could be denied and all the legal things that you need to maneuver. The BZA is a very powerful body because its decisions are binding and final and only appealable to circuit court whereas others the Board of Supervisors can overturn and other things. With you all you all are acting on behalf of the Circuit Court in these matters, so the Circuit Court does not have to hear them on their docket. It is a very important job. Mr. Barnes also said in a county where you have had a zoning ordinance since 1976 you really need to have a body like you all like you all who can look at this case where they are not administratively approvable where you can case by case use your best judgement. Some people will not like how the memos are now. Several other Boards and Commissions I work with have said that they like it better because it frees us up to not have to feel bound to come down from one side or another. I can personally tell you when I did stuff for Wetlands Board in another county for many years, the only time they wanted a recommendation from me for or against on a case was a case of enforcement and I had to list what I thought the fines should be and we went on a trend about five meetings in a row where the fines that were actually levied were about a fifth of what I recommended. If you want to know the facts, the facts are here. If you want to talk to me offline, come in the office, a phone call, an email that would be great. I like it because it frees me up when the citizen knows that I at no point is going to come against them they can then trust us to be their neutral arbitrator. I have to work with you all, and with the citizens. My job is to make sure that you all have the facts, and they have the best shot they can have the best hearing.

On this first case with this new way of doing it, you have a request for a variance of a parcel. Within the body of the memo, I tried to attach some arial shots to give you what's on the ground. Several of you have been to this site and that is great. If any of you don't want to go by yourself and want me to go with you, it is not a public hearing if they go one at a time. In some cases, I can arrange for the property owner to be there to talk to us and tell us about what we should know. On this particular property it was divided in 2008 so at that time it was a by right division. A trailer was already established on the property at that time but has since been removed. A power line is right behind the trailer. That power line creates a right of way issue. The new home that they want to build is a stick built home going to be a little bit shorter but wider it can't go back because it will be directly under the power lines. The old zoning ordinance which just went out, which was good until 2022 allowed for a 50-foot setback in the A-2 district that if it is prior non-conforming lot and that is why it automatically goes to you. If it is a self-inflicted hardship or not prior non-conforming, there is nothing that you can do with it either and you probably learned that in your training that if you do that it is an illegal action by the BZA. Even though it is a lot that was created in 2008 under that zoning ordinance they still had more room you can see that they still had more room. They had 90 feet from the edge of the trailer to the center of the road. On this one you don't have a site plat of where they exactly want to put the new house. When you make a motion for approval you want to be exact with the setbacks. When you make the motion make sure you make it clear so Kelly or I can have it right on the permit.

Mr. Rose said the map has the mobile home location and the apparent best move for buildable square footage would be in front of that but would presumably require abandonment of well or pump house. So that will be an issue.

Mr. Barnes said that the property owner can address the well. The mobile home is gone. We looked for the well also, not sure if that is being used or not. The property owner can answer that question as well. He can also answer that the new home footprint will be partially over top where that mobile home footprint was because it is wider it is going to stick out farther into that 100-foot setback.

Mr. Walters on the yellow section on the plat is that some .....

Mr. Barnes said that the yellow section is the buildable area now under the existing ordinance. That is what you are restricted to.

Mr. Rose said it is all under the power lines so it's a problem.

Mr. Barnes said or on top of a drain field.

Mr. Haile said it's not a buildable area?

Mr. Barnes said "correct." In full disclosure I drew the yellow area in when they first applied for the building permit because I was trying to figure out what was going on. That's when I started having conversations with the property owners that you don't have a buildable area without going to the BZA, that is our next step.

Mr. Walters said this is an idea to define the problem that they would have in complying with the ordinance as written.

Mr. Rose said given the apparent expiration of a two-year grace period on the mobile footprint the pathway that I see that makes sense is whether this is self-inflicted hardship, no. Whether the BZA serve authority to understand the spirit of the requirements on this lot that would not affect zoning to other lots. It would seem to me that the fact it has been more than two years since the original structure was abandoned and would technically violate the process where they could renew it without question. But in spirit there would not be any effect with other situations in the same zoning or setbacks if we were to say will they weren't clearly or cognitive the two-year limitation when they moved the mobile home and they would like to use the same lot for the same purpose in the same exact way. In the spirit of zoning, it would seem to make sense for us this would be a case where the BZA could decide fine.

Mr. Barnes liked how Mr. Rose alluded to the questions and I took this right from the ordinance and being cognizance of you guys taking the recent training. It is important that you ask the three questions and I put them in here. 1. The strict interpretation of the Ordinance restricts the utilization of the property, 2. The need for a variance would not be shared generally by other properties and 3. Literal enforcement of this Ordinance will result in unnecessary hardship, provided that the spirit of the ordinance is observed and substantial justice done. Those are great three questions to ask on a variance case. Of course, I put standards and procedures on there and they mirror the questions. If it is a very unique situation and the lot has become completely unbuildable due to actions beyond the control of the property owner due to changes in ordinance, etc. That is good, strong variance material.

Mr. Walters said this was subdivided in 2008.

Mr. Barnes said yes.

Mr. Walters said so that was under the old ordinance?

Mr. Barnes said "yes". So, when you look at the lot was a little over 2 acres and they divided it in half. So even in 2008 the county had the threshold of really looking for 1 dwelling per 5-acre density and that is still there. There is a caveat in there and it is still in there and you all know 5 acres or less you are allowed to divide that lot in half. As long as it still complies with the acreage sizes which it did.

Mr. Walters said there is an exception in the old ordinance for the family subdivision anyway, so the rule doesn't necessarily apply.

Mr. Barnes said that is correct. Even then both lots that were created still had under the setbacks at that time because they had more room, and they would be will away from the power lines. Mr. Barnes said off the record we have a saying in the office, a job forever because this stuff is just complicated enough where there is always going to be something to do.

Mr. Stephenson said in the interest of disclosure that he and Mr. Haile visited the site and spoke briefly with the homeowner a few days ago.

Mr. Rose said that he and Mr. Stephenson had that conversation on the telephone. Just to make sure we are familiar with the facts of the case.

Mr. Laffoon asked Mr. Akers to come forward and show them where he plans on putting the house. Mr. Akers said that the mobile home has been gone for eight or nine months.

Mr. Stephenson said not two years.

Mr. Rose said then there was an error in the presentation of the facts which now we don't have to make an exception.

Mr. Akers said now it has a garage there. Where the mobile home was, the house is going in the same spot across the back where the mobile home was. From the house to the road, it is more than 50 feet; it is like 70 feet. To the edge of the road to the corner of the house it is like 70 feet.

Mr. Laffoon asked Mr. Barnes if these dimensions don't go from the center of the road, they go from the property line. Am I correct in that?

Mr. Barnes said no that it goes from the edge of the property line or from the edge of the public road.

Mr. Rose said this lot seems to have the front of the property in the center of the roadway.

Mr. Haile said that the other aspect when I visited the property where he wants to put the house was very suitable. If we make him move backward anymore to avoid that powerline, he will be going down a slope. So, he has a brand-new house with two 100-year-old trees flagging it on either side and a slight rise in a distance from here to where the cars are parked outside, I don't have any objection to this.

Mr. Rose said neither do I.

Mr. Walters asked in your site plan are you going to be lining up with the garage that already exists?



Mr. Akers said that it is going to be a little head of the garage.

Mr. Stephenson made a motion that the board grant a variance on the front setback from 100 feet to 50 feet. Mr. Rose seconded. AYES: 5 NAYES: 0 ABSENT: 0

Chairman Laffoon said that he would like to add one thing to that. When he gets the dimensions, and everything make sure that it comes in and that we have the actual setbacks, so we have record of that.

Mr. Walters also added for him to have compliance with the other setbacks for the accessory buildings and the side yards. I don't think there is a problem there.



# Land DEVELOPMENT & ZONING APPLICATION

DEPARTMENT OF BUILDING & ZONING

202 S Church Lane

P O Box 1079

Tappahannock, VA 22560

(804) 443-4951

(804) 445-8023 fax

CASE NUMBER: V2300008 PERMIT NUMBER: \_\_\_\_\_

### 1. TYPE OF REQUEST – Check all/any that apply.

- Rezoning: From \_\_\_\_\_ To: \_\_\_\_\_
- Site Construction Plan  Major - Name of Development: \_\_\_\_\_  
 Minor - Name of Development: \_\_\_\_\_
- Conditional Use Permit (ordinance section): \_\_\_\_\_
- Subdivision
  - Types:  Minor  Family  Major
  - Boundary line adjustment/Lot Consolidation
  - Preliminary Name & Phase/Section: \_\_\_\_\_
  - Final/Record Name & Phase/Section: \_\_\_\_\_
  - Final/Record Name: \_\_\_\_\_
- Land Disturbance  Chesapeake Bay Exception
- Right-of-way Vacation  Major WQIA  Minor WQIA
- Administrative Appeal (zoning/building): \_\_\_\_\_
- Zoning Variance/Special Exception: Specify ordinance section: 36, 222 (E) FRONT SETBACK
- Subdivision Variance: Specify ordinance section: \_\_\_\_\_

### Zoning Permit - GENERAL INFORMATION FOR ALL ZONING PERMITS:

Tax Map Number: \_\_\_\_\_ Site Address: \_\_\_\_\_

Water/Sewer Supply:  Well/Septic  Central  Public

Existing Land Use: \_\_\_\_\_ Proposed Land Use: \_\_\_\_\_

Proposed Building Use: \_\_\_\_\_  
 New Building  Addition  Change-in-Use/Modification  Accessory Structure

Residential – Zoning District: \_\_\_\_\_ Magisterial District: \_\_\_\_\_

Subdivision Name: \_\_\_\_\_

Single-Family Dwelling Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_ No. of Stories: \_\_\_\_\_

Mobile Home Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_

Setbacks for Principal Building – Required: Front \_\_\_\_\_ Rear \_\_\_\_\_ Side \_\_\_\_\_

Proposed: Front \_\_\_\_\_ Rear \_\_\_\_\_ Side \_\_\_\_\_

Accessory Building Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_ No. of Stories: \_\_\_\_\_

Setbacks for Accessory Building - Required: Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_

Proposed: Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_

Existing Impervious Percentage: \_\_\_\_\_ Post Impervious Percentage: \_\_\_\_\_

Commercial – Zoning District: \_\_\_\_\_

Type of Structure: \_\_\_\_\_

Size Length \_\_\_\_\_ Width \_\_\_\_\_ Height \_\_\_\_\_

Accessory Building Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_ (ft.)

Setbacks – Required: Front \_\_\_\_\_ Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_

Proposed: Front \_\_\_\_\_ Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_

\*NOTE: All measurements in Feet (round to nearest whole foot). Impervious % is the sum of the square feet of all areas that is covered by roofs, sidewalks, driveways, decks, or accessory structures divided by the total square footage of the lot. Example: a 1 acre lot =43560 sq.

**2. APPLICANT INFORMATION**

**OWNER(s) OF RECORD** (use additional sheets if more than one-party)

Danny Ray Akers Jr 804 445 4349  
 Owner DAYTIME PHONE NUMBER

2419 Latanes mill rd Tappahannock VA 22560  
 MAILING ADDRESS, CITY, STATE, ZIP CODE

dannyakers1@hotmail.com  
 Fax Number E-mail Address

**Applicant (if different from owner)**

Applicant DAYTIME PHONE NUMBER

MAILING ADDRESS, CITY, STATE, ZIP CODE

Fax Number E-mail Address

**Agent/Contractor (if different from owner/applicant)**

Applicant DAYTIME PHONE NUMBER

MAILING ADDRESS, CITY, STATE, ZIP CODE

Fax Number E-mail Address

**3. PROPERTY INFORMATION (FOR REZONINGS, SITE PLANS, SUBDIVISIONS, CONDITIONAL USE, SPECIAL EXCEPTIONS & VARIANCES)**

Tax Map Number			Total Acreage			
Subdivision Name	Section		Block	Lot		
Physical Address						
Current Zoning			Existing Structures			
Proposed Utilities			Acreage of Request			

Rezoning		_____
Conditional Use Permit		_____
Site Construction Plan		_____
Subdivision		
Major	_____	
Minor	_____	
Family	_____	
Preliminary/Tentative	_____	
Final/Record	_____	
Right-of-way Abandonment	_____	
Bay Act Exception		
Major/Minor WQIA		
Zoning/Subdivision Variance		_____
Zoning - Administrative Appeal		_____
Building - Appeal		_____
Land Disturbance		_____
Major/Minor WQIA		_____
Zoning Permit		_____
<b>Total Fees Collected</b>		_____

**\*NOTE: AN APPLICATION SHALL NOT BE DEEMED OFFICIALLY FILED UNTIL ALL REQUIRED PLANS, PLATS, FEES AND SUPPORTING DOCUMENTATION ARE SUBMITTED TO THIS DEPARTMENT. INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED.**

2022 there was a mobile home on this property at 2419 Latane Mill Rd. Tappahannock Virginia it was removed to build a house it's somewhat needs to be where it is marked the powerlines can't be moved and the drainfield can't be moved and that's why it needs to be where it is marked Thanks

*Danny Ray Allen JR*

## **BOARD OF ZONING APPEALS STAFF MEMORANDUM:**

**DOCKET:** January 25, 2024, 7pm, Essex County School Board Meeting Room

### **CASE NUMBER/NAME:**

Request for Variance # V2300008  
Tax Map # 42-4A, 1.02 acres, **zoned A-2**  
Danny Ray Akers, Jr.  
2419 Latanes Mill Road  
Tappahannock, VA 22560

### **DISCUSSION:**

On October 19, 2023, the applicant made application to construct a single-family residence on the approximate location of an old mobile home that was previously removed from the site. During staff review for the issuance of a zoning permit, county staff visited the site and took measurements on the site and seemed reasonably sure that the proposed new dwelling would lie within the right of way setback of 100' required for structures within the A-2 zoning district. Communication was made with the applicant regarding this possible difficulty and a request was made to have further discussion about the ordinance requirement. More than two years had elapsed since the previous trailer was removed and thus any prior non-conforming use status was now null and void.

On November 17, 2023, the applicant applied for a Variance from the Board of Zoning Appeals for relief from the front setback. The Building Permit Submittal, the Narrative and the Current Survey become a part of the file for this case for review by BZA members in rendering a decision.

### **STAFF ANALYSIS:**

The current request for variance is pursuant to Essex County Zoning Ordinance Section 36.222, table 36.2.E. This section requires a 100' setback from a public road for a principal structure and 30' side and 30' rear setbacks for this parcel. This applicant will require a variance from the requirement of a 100' right of way setback in order to pursue the construction of a single-family dwelling on this parcel.

Any variance request to the Board of Zoning Appeals shall be conducted in conformance with Section 36.41 of the Essex County Zoning Ordinance, (2) *Variance*, which reads:

*(2)Variance.*

*a To authorize upon appeal or original application a variance, as defined in the Code of Virginia, &*

*unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and if the applicant proves through a preponderance of evidence that a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided that the spirit of this Ordinance shall be observed and substantial justice done.*

*b. No such variance shall be heard except after notice and hearing as provided by the Code of Virginia, § 15.2-2204.*

The current setback requirements would place the principal structure partly or completely underneath the existing overhead electrical lines and likely within the side setbacks unless the structure was very narrow. In order to satisfy the ordinance requirement of section 36.41(2), an applicant or application/case must show that:

1. The strict interpretation of the Ordinance restricts the utilization of the property.
2. The need for a variance would not be shared generally by other properties.
3. Literal enforcement of this Ordinance will result in unnecessary hardship; provided that the spirit of the ordinance is observed and substantial justice done.

The Board must ensure that the above three questions are tested and answered in the affirmative for an approval decision to be rendered in this case. The Board may utilize all available information and documentation as well as questions of the applicant in order to answer the ordinance requirements. A motion for approval or denial is advised to include the reasons based on the above requirements found in the ordinance.

This applicant will not require relief from the 30' side setback requirement for the A-2 district.

The Essex County Zoning Ordinance, section 36.156, **Standards and Procedures**, outlines Standards for Review under heading (d). These five standards detail the requirements that should be followed in granting any variance:

1. 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.
2. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
3. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to the Ordinance.
4. 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.



RE: Danny Ray Akers, Jr.  
January 19, 2024  
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5. The relief or remedy sought by the variance application is not available through the process for modification of a Zoning and Subdivision Ordinance pursuant to Code of Virginia, § 15.2-2286(A)(4) at the time of the filing of the variance application.

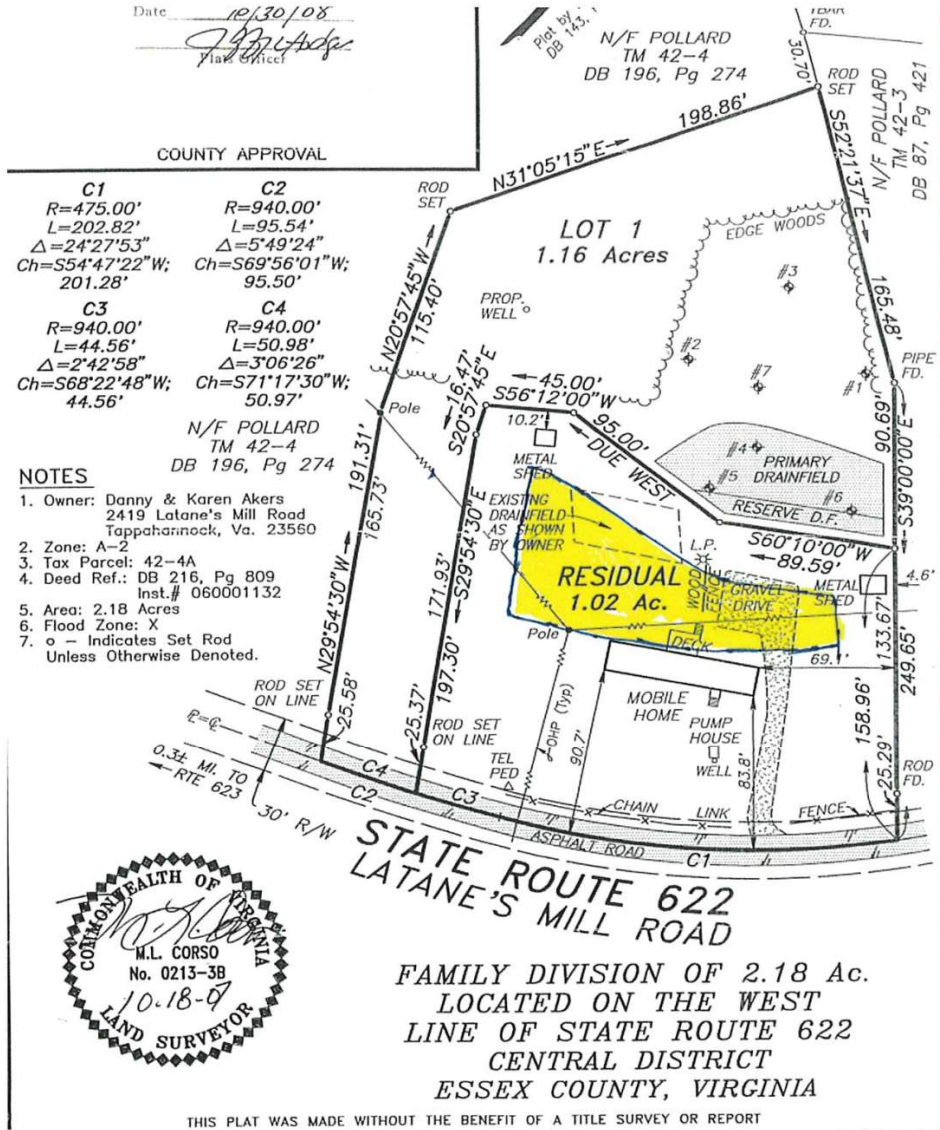
**SITE PHOTOS/MAPS, ETC.:**

Aerial photo of property



RE: Danny Ray Akers, Jr.  
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Most current survey plat with hand drawn current setback and existing buildable area



V2400001 – Mark Smith and Percell Smith, Jr.



Mr. Barnes said that this public hearing is for Mark Anthony Smith and Percell Smith, Jr. This is the property they own. It is next door to 4428 Sunnyside Rd. This is a similar situation with one slight exception except this is property that has not been built on yet. I gave you all copies of the original plat that didn't make it in time to be in your original memo last week. The original plat is dated June 26, 1973. The Essex County Zoning Ordinance was first enacted in 1976 so this was 3 years prior to the zoning ordinance. If you look at Mr. Smith's and Mr. Smith's property now it is but .55 and .58 when Mike Wind surveyed it recently. It is the same exact parcel; it hasn't been changed. There is no self-inflicted hardship. Going back to our three questions in our other standards and procedures, looking at variances. We want to look at if there is any way to build outside of any of the setbacks. Refer to the staff analysis. This is an extreme case of the setbacks gobbling up a lot that was created before the zoning ordinance was created. Are you creating a hardship on the neighbors? Are you doing something that could not be done somewhere else? Or could this be accomplished by rezoning? In this case this is not likely doable because the zoning is A-2. It would be a spot zoning. We come back to the variance model. Mr. Barnes did get some questions from the neighbors when the adjacent property owners letters went out. Once explained to the adjacent property owners, they were less concerned. Mr. Barnes does not have any written protest. If that occurs to me, make sure that if there are any protests, I puts them in the memo or gets them to the Board Members.

Mr. Walters asked the question, how wide is the lot? When you drew your little yellow box, it is 50 feet back.

Mr. Stephenson said 98 feet from the road.

Mr. Barnes said the lot is 421 feet deep, but it tapers down to 15 to 20 feet wide in the back.

Mr. Barnes said that the property owner did bring his bring his septic permit with him and some drawings related to that. He does not have a final on a house plan as of yet. In the memo Mr. Barnes set a hypothetical 50-foot setback just because the previous ordinance had that as a setback.

Mr. Haile went out with Mr. Stephenson to look at the property. It seems to him that he is looking for a variance on the front, a variance on the side, a variance on the building lot and that is three right there. How many more Ned did we count up?

Mr. Stephenson said that he agrees with Mr. Haile, but it seems to him that he needs a density variance and a lot width variance in addition to the front and side setbacks, he needs 4 variances to comply.

Mr. Haile said that are a lot of variances and asked how free can we be with a decision? That's quite a lot.

Mr. Laffoon said that it a nonconforming lot to begin with. It was granted to being a lot in 1973 so he would think we are technically bound to the 73 rules and regulations. It was purchased under those parameters.

Mr. Haile said that he would add that going out there with a 50-foot setback would conform with every house up and down that strip development.

Mr. Barnes said that is why he did that study on that strip of road that would be comparable. Mr. Barnes said you don't want to get in the habit of issuing multiple variances for every lot or every time

you have a case. I think in this this case that burden is not equally shared by many other lots in the county. There are some that will be like that but when you run into a lot that is unbuildable without taking those steps then you are probably justified as long as you look at the wider county and say we don't have to do that.

Mr. Haile said that the one that is formally called Corbin is vacant. If he purchased that lot, he wouldn't need to be here tonight except for a front setback.

Mr. Barnes said there is currently a house on that lot now, and it is saying formally Corbin is in the 1973 survey.

Mr. Haile said there is a house but about 100 to 150 feet down the road from this boundary line. The Mike Wind plat looks like to me shows an empty lot.

Mr. Barnes said you can see the house on the edge of the lot of the adjacent property owner. There is also a mistake with the tax card and Carlos is here, running the board. The Newman house is back here. This house is far enough back that you might not have seen it.

Mr. Barnes said he spends a lot of time in the office counseling people rather than doing the variance route, do the boundary line abandonment. Because it is a better product when they go to sell later.

Mr. Stephenson said it's probably a technicality on the matter of the 4 variances to keep the record clean he would need those variances approved otherwise he would be in violation of a density ordinance and a lot width ordinance.

Mr. Barnes said yes, that maybe is true.

Mr. Stephenson said if he is reading the Board a little bit, they are trying to make it work for Mr. Smith and I think he would need all 4 variances.

Mr. Barnes said you meant the density being the lot is smaller than 1 acre.

Mr. Stephenson said yes, that is right.

Mr. Walters said to him that comes when you want to subdivide. You don't make lots like this under the current ordinance.

Mr. Barnes said that if we were coming forward with a subdivision request that was coming to you, and you had to issue a variance prior to a subdivision being allowed then I would say yes, we are allowing the variance to make this lot more dense than what is required.

Mr. Walters said, or you go back when tax map 33-21 was one piece and you come into the building department and you want to chop this up into parcels and sell them off, you would say no that is not going to pass because you are not meeting the density requirements. I think we could probably grant all four. My only question is the density and lot width requirements are something that happens at the subdivision level. Maybe at this point they might be grandfathered in. I am also open to being complete.

Mr. Barnes said it should be discussed by you guys because caution is a better form of valor. I think if you wanted to make a motion to include that I don't think there is any harm in that. If it makes you business better to say motion to also issue variance...also knowing, I am not your attorney. Any decision that you make if somebody doesn't like it, they will have to appeal it to Circuit Court where by the Judge will then consider those matters.

Mr. Rose said that he would agree with Ned that it is safer to articulate every single dimension of variance.

Mr. Percell Smith, Jr. said that he was there to assist or answer any questions that the Board may have.

Mr. Barnes said I applaud you guys for catching that it is less than the minimum of 1 acre and that is what the BZA needs to look at.

Mr. Stephenson said that a motion of that kind removes all doubt.

Mr. Percell Smith, Jr came forward. I am here to ask or answer any questions that you may have.

Mr. Laffoon asked, "do you have the dimensions of your house?"

Mr. Smith said that he went to Clayton Homes and looked at a 28 x 48 3 bedrooms, 2 bathrooms and when they got the right of way from the electric company, they proposed a plot for the house on our parcel.

Mr. Rose asked him to come forward and show them. Mr. Percell showed them the proposal from the electric company, they granted the easement from the survey and where the location of the power lines was.

Mr. Rose said it is close to the road but said it seems to make a lot of sense.

Mr. Haile asked how close it is to the road?

Mr. Barnes came forward and took a picture of the plat that Mr. Smith had since we didn't have a copy.

Mr. Smith said we can scale it out where it is going to be by using the dimensions of the 28 x 48 house dimensions.

Mr. Rose said that it looks like the front corner is about 30 feet from the road.

Mr. Walters asked Mr. Barnes if he knew how wide the lot is?

Mr. Laffoon said you have the house squared.... unable to see what Mr. Laffoon is showing Mr. Smith on the drawing as to what he is saying.

Everyone talking at once and can't make out what they are talking about.

Mr. Rose said he would be comfortable squeezing the side setbacks and turning and widening if you are minimal. He thinks it is room to push it back 15 feet and still stay out of the power right of way.

Mr. Stephenson said that he would like some clarification on whether we are measuring from the property line or from the edge of the pavement. His understanding is the setback is from the property line because that is the only line where you know where it is. The pavement goes all over the place.

Mr. Rose said you do know where the center of the right of way is because that is from the center line of the road.

Mr. Stephenson said on a lot of these country roads there is not a right of way because it was never deeded. So, if you always go by the property line.

Mr. Laffoon said that he has the property marked.

Mr. Haile said that the property line is the center of the road.

Mr. Stephenson said he just wants to clarify where is the base line which we are going to measure the setback.

Mr. Haile said as a former land surveyor you are going to measure it from the edge of the road and the edge of the road is 15 feet from the center line wherever you want to say the center line is.

Mr. Stephenson said he is still not clear on whether we are measuring from the property line or some other line.

Mr. Barnes said if it helps on your front setback, it is from the road.

At this time there were two conversations going ... one with Mr. Rose, Mr. Haile, Mr. Laffoon and Mr. Smith. This was inaudible and unable to hear.

Another conversation with Mr. Barnes, Mr. Stephenson, and Mr. Walters.

Mr. Stephenson asked Mr. Barnes to show him that in the ordinance where it says you measure from the property line or from the pavement. He is not convinced unless someone can show him that it says that.

Mr. Barnes said front setback 100 feet and he believes it says that because you can have two lots side by side and your property may not go by the road.

Mr. Stephenson said it is not clear and he is not convinced.

Mr. Haile said some of the county roads have been surveyed and platted and some are not 30-foot width some are 50 feet or 40 feet so the property line would begin on the edge of that survey but here there has not been a survey on Sunnyside Road. Therefore, Mr. Smith and everyone else on that road owns that road. You are paying taxes on it.

Mr. Stephenson said the property line. He is now convinced.

Mr. Haile asked where is the definition in the ordinance?

Mr. Barnes read the definition on setback from the ordinance.

Mr. Laffoon opened the public hearing. No one responded.

Public hearing closed.

Mr. Rose made a motion to vary the front setback to 50 feet from the lot front line which is the center of the road. We are varying the side setback such that any built structure does not encroach closer than 5 feet from any sideline and varying the site density limitation of one residential structure per acre because the lot is only .58 acres and allow only one structure on that lot and finally varying the lot with limitation on the zoning to allow for this narrow lot to be built with these three other variances.

Seconded by Mr. Haile. AYES: 5 NAYES: 0 ABSENT: 0



# Land DEVELOPMENT & ZONING APPLICATION

DEPARTMENT OF BUILDING & ZONING

202 S Church Lane

P O Box 1079

Tappahannock, VA 22560

(804) 443-4951

(804) 445-8023 fax

CASE NUMBER: \_\_\_\_\_ PERMIT NUMBER: \_\_\_\_\_

## 1. TYPE OF REQUEST - Check all/any that apply.

- Rezoning: From \_\_\_\_\_ To: \_\_\_\_\_
- Site Construction Plan  Major - Name of Development: \_\_\_\_\_  
 Minor - Name of Development: \_\_\_\_\_
- Conditional Use Permit (ordinance section): \_\_\_\_\_
- Subdivision  
Types:  Minor  Family  Major  
 Boundary line adjustment/Lot Consolidation  
 Preliminary Name & Phase/Section: \_\_\_\_\_  
 Final/Record Name & Phase/Section: \_\_\_\_\_  
 Final/Record Name: \_\_\_\_\_
- Land Disturbance  Chesapeake Bay Exception
- Right-of-way Vacation  Major WQIA  Minor WQIA
- Administrative Appeal (zoning/building): \_\_\_\_\_
- Zoning Variance/Special Exception: Specify ordinance section: \_\_\_\_\_
- Subdivision Variance: Specify ordinance section: \_\_\_\_\_

### Zoning Permit - GENERAL INFORMATION FOR ALL ZONING PERMITS:

Tax Map Number: \_\_\_\_\_ Site Address: \_\_\_\_\_  
 Water/Sewer Supply:  Well/Septic  Central  Public  
 Existing Land Use: \_\_\_\_\_ Proposed Land Use: \_\_\_\_\_  
 Proposed Building Use: \_\_\_\_\_  
 New Building  Addition  Change-in-Use/Modification  Accessory Structure

Residential - Zoning District: \_\_\_\_\_ Magisterial District: \_\_\_\_\_

Subdivision Name: \_\_\_\_\_

Single-Family Dwelling Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_ No. of Stories: \_\_\_\_\_

Mobile Home Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_

Setbacks for Principal Building - Required: Front \_\_\_\_\_ Rear \_\_\_\_\_ Side \_\_\_\_\_

Proposed: Front \_\_\_\_\_ Rear \_\_\_\_\_ Side \_\_\_\_\_

Accessory Building Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_ No. of Stories: \_\_\_\_\_

Setbacks for Accessory Building - Required: Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_

Proposed: Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_

Existing Impervious Percentage: \_\_\_\_\_ Post Impervious Percentage: \_\_\_\_\_

Commercial - Zoning District: \_\_\_\_\_

Type of Structure: \_\_\_\_\_

Size Length \_\_\_\_\_ Width \_\_\_\_\_ Height \_\_\_\_\_

Accessory Building Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_ (ft.)

Setbacks - Required: Front \_\_\_\_\_ Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_

Proposed: Front \_\_\_\_\_ Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_

\*NOTE: All measurements in Feet (round to nearest whole foot). Impervious % is the sum of the square feet of all areas that is covered by

## 2. APPLICANT INFORMATION

### OWNER(S) OF RECORD (use additional sheets if more than one-party)

Percell Smith Jr. 804-363-0284  
 Owner DAYTIME PHONE NUMBER

4428 Sunnyside Rd, Indian Neck, VA 23148  
 MAILING ADDRESS, CITY, STATE, ZIP CODE

PSmith071476@gmail.com  
 Fax Number E-mail Address

### Applicant (if different from owner)

Applicant DAYTIME PHONE NUMBER

MAILING ADDRESS, CITY, STATE, ZIP CODE

Fax Number E-mail Address

### Agent/Contractor (if different from owner/applicant)

Applicant DAYTIME PHONE NUMBER

MAILING ADDRESS, CITY, STATE, ZIP CODE

Fax Number E-mail Address

## 3. PROPERTY INFORMATION (FOR REZONINGS, SITE PLANS, SUBDIVISIONS, CONDITIONAL USE, S EXCEPTIONS & VARIANCES)

Tax Map Number	33-21D		Total Acreage				
Subdivision Name		Section		Block		Lot	
Physical Address	4289 Sunnyside Rd St. Stephens Ch, VA 23148						
Current Zoning			Existing Structures				
Proposed Utilities			Acreage of Request				

**2. APPLICANT INFORMATION**

**OWNER(s) OF RECORD** (use additional sheets if more than one-party)

Mark Smith 312-618-9149  
 Owner DAYTIME PHONE NUMBER

1030 W. 108th PL Chicago, IL 60643  
 MAILING ADDRESS, CITY, STATE, ZIP CODE

Smith.MarkAnthony@yahoo.com  
 Fax Number E-mail Address

**Applicant (if different from owner)**

Applicant DAYTIME PHONE NUMBER

MAILING ADDRESS, CITY, STATE, ZIP CODE

Fax Number E-mail Address

**Agent/Contractor (if different from owner/applicant)**

Applicant DAYTIME PHONE NUMBER

MAILING ADDRESS, CITY, STATE, ZIP CODE

Fax Number E-mail Address

**3. PROPERTY INFORMATION (FOR REZONINGS, SITE PLANS, SUBDIVISIONS, CONDITIONAL USE, SPECIAL EXCEPTIONS & VARIANCES)**

Tax Map Number			Total Acreage				
Subdivision Name		Section		Block		Lot	
Physical Address							
Current Zoning			Existing Structures				
Proposed Utilities			Acreage of Request				



4. NARRATIVE – REQUIRED FOR ALL REZONINGS, CONDITIONAL USE, VARIANCES, SPECIAL EXCEPTIONS AND APPEALS. THE NARRATIVE SHALL DESCRIBE THE NEED AND/OR REASONS FOR THE APPLICATION AND HOW THE REQUEST IS CONSISTENT WITH THE GOALS AND OBJECTIVES OF THE COMPREHENSIVE PLAN.
5. SIGNATURE(S)

I/WE HAVE READ THIS COMPLETED APPLICATION, UNDERSTAND ITS INTENT AND FREELY CONSENT TO ITS FILING. THE INFORMATION PROVIDED IS ACCURATE TO THE BEST OF MY/OUR KNOWLEDGE. I UNDERSTAND THAT THE COUNTY MAY APPROVE, CONDITIONALLY APPROVE, APPROVED WITH MODIFICATIONS OR DENY THE REQUEST FOR WHICH I AM APPLYING. FURTHERMORE, I GRANT PERMISSION TO THE DEPARTMENT OF BUILDING AND ZONING AND ANY OTHER AUTHORIZED GOVERNMENT AGENTS TO ENTER THE PROPERTY AND MAKE SUCH INVESTIGATIONS AS THEY DEEM NECESSARY TO EVALUATE THE REQUEST AND ENSURE THAT CONDITIONS PLACED ON THE REQUEST HAVE BEEN IMPLEMENTED AND/OR MAINTAINED AS PROSCRIBED BY THE APPROVING AUTHORITY. ADDITIONALLY, IF OUTSIDE REVIEW IS NEEDED BY THE COUNTY TO EVALUATE THIS REQUEST I ACKNOWLEDGE AND AGREE TO REIMBURSE THE COUNTY OF ESSEX FOR THESE OUTSIDE REVIEW AGENCY COSTS.

  
 \_\_\_\_\_  
 Owner/Applicant/Agent Signature

12-04-2023  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Owner /Applicant/Agent Signature

12-04-2023  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Owner /Applicant/Agent Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Owner /Applicant/Agent Signature

\_\_\_\_\_  
 Date

**6. APPROVAL/DISAPPROVAL**

APPROVED AUTHORIZED SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

DISAPPROVED AUTHORIZED SIGNATURE: \_\_\_\_\_ Date: \_\_\_\_\_

REASONS FOR DISAPPROVAL: \_\_\_\_\_

**IF DISAPPROVED/DENIED:** Any person aggrieved by the disapproval of this application may appeal to the Board of Zoning Appeals\* in accordance with provisions of the Essex County Zoning Ordinance. Such an Appeal must be filed with the Zoning Administrator on approved application forms within thirty (30) days from the date of this denial. Application shall be accompanied by a filing fee of \$250.00, made payable to the County of Essex for the Administrative Appeal. This decision in written order shall be final and unappeasable if not appealed within thirty (30) calendar days from the date of this letter.

\*NOTE: DENIAL OF BOARD OF ZONING APPEALS, BOARD OF SUPERVISORS, AND PLANNING COMMISSION DECISION(S) MUST BE FILED WITH THE ESSEX COUNTY CIRCUIT COURT WITHIN 30-DAYS OF THE DENIAL AS PROVIDED BY THE CODE OF VIRGINIA, 1950, AS AMENDED.

The property at 33-21D is currently owned by Percell Smith, Jr. and Mark Smith. It was inherited from our deceased Uncle John B. Smith along with the adjacent property at 33-21C. 33-21C is where the original dwelling is located; we have renovated that space as a tenant occupied dwelling. At this time we have plans to add a double wide mobile home to 33-21D to provide another viable living space. The parcel has been surveyed and perked, with drawings of possible well, septic and drain field. It is our understanding that since this is a historical/existing parcel that we inherited we should be able to receive an exemption from any updated zoning codes if seeking to add a private dwelling to this property.

In September we had a conversation with Mr. Brian Barnes to gain insight related to zoning codes and how to obtain a zoning permit to move forward with our project. We have since learned of the updated zoning guidelines for this area (A-2) create a barrier to placing a dwelling within code. Our desired placement of the home would be in line with the existing dwellings that are along the same stretch of Sunnyside Road.

We are 2<sup>nd</sup> generation landowners of this parcel in a highly residential area and we are seeking to add a dwelling (double side mobile trailer on a permanent fixture) within the property lines. We appreciate your affirmative consideration for this request to further develop our property by adding a permanent dwelling.

Sincerely,

Percell Smith, Jr

Mark Smith

**Building & Zoning**

Brian D. Barnes  
Zoning Administrator  
bbarnes@essex-virginia.org  
202 South Church Lane  
P.O. Box 1079  
Tappahannock, Virginia 22560  
(804) 443-3244  
www.essex-virginia.org



Established 1692

**BOARD OF ZONING APPEALS STAFF MEMORANDUM:**

**DOCKET: January 25, 2024, 7pm, Essex County School Board Meeting Room**

**CASE NUMBER/NAME:**

Request for Variance # V2400001  
Tax Map #33-21D, .58 acres, **zoned A-2**  
Percell Smith, Jr. and Mark Anthony Smith  
4428 Sunnyside Road  
St. Stephens Church, VA 23148

**DISCUSSION:**

On September 22, 2023, the applicants met with county staff following the recordation of a new boundary survey on the subject parcel. The applicants expressed the desire to establish a single family dwelling on this parcel but were aware that due to the shape and size of the parcel there would be some difficulties meeting the setbacks as required by Essex County Zoning Ordinance. Staff advised that the property owners think about what they wish to do and that authorization for almost any size dwelling would come only from the Board of Zoning Appeals.

On December 4, 2023, the applicants made application to request a variance from the Board of Zoning Appeals in order to pursue the aforesaid single-family residence. The subject parcel is somewhat pie shaped and has its widest point along the right of way (ROW), Sunnyside Road. Going away from the ROW the lot tapers down to a narrow extent. A 100' road setback is required in this district. This setback, when measured on this parcel places any permitted structure either immediately adjacent to or underneath the overhead power lines serving this parcel and the adjacent properties.

**STAFF ANALYSIS:**

The current request for variance is pursuant to Essex County Zoning Ordinance Section 36.222, table 36.2.E. This section requires a 100' setback from a public road for a principal structure and 30' side and 30' rear setbacks for this parcel. Any variance request to the Board of Zoning Appeals shall be conducted in conformance with Section 36.41 of the Essex County Zoning Ordinance, (*Variance*, which reads:

*(2) Variance.*

*a. To authorize upon appeal or original application a variance, as defined in the Code of Virginia, 15.2-2201, from the terms of this Ordinance 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 if the applicant proves through a preponderance of evidence that a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided that the spirit of this Ordinance shall be observed and substantial justice done.*

*b. No such variance shall be heard except after notice and hearing as provided by the Code of Virginia, § 15.2-2204.*

The current setback requirements would place the principal structure partly or completely underneath the existing overhead electrical lines and likely within the side setbacks unless the structure was very narrow. In order to satisfy the ordinance requirement of section 36.41(2), an applicant or application/case must show that:

1. The strict interpretation of the Ordinance restricts the utilization of the property.
2. The need for a variance would not be shared generally by other properties.
3. Literal enforcement of this Ordinance will result in unnecessary hardship; provided that spirit of the ordinance is observed and substantial justice done.

The Board must ensure that the above three questions are tested and answered in the affirmative for an approval decision to be rendered in this case. The Board may utilize all available information and documentation as well as questions of the applicant in order to answer the ordinance requirements. A motion for approval or denial is advised to include the reasons based on the requirements found in the ordinance.

County staff advised the applicants to come up with a desired house arrangement sketch or plan so that the BZA would have hard numbers to cite in a variance approval. Lacking this, the BZA needs to come up with variance numbers that accommodate the reasonable utilization of the property (if that is found to be required in this particular case). Without a defined limit, or setback reduction, someone granted a variance may build too close to a right of way. One possible solution to this challenge is utilizing a front setback that is a mean of neighboring existing setbacks. The following is a list of several adjacent properties and the approximate distance from the right of way to the point of closest encroachment:

Box #4429 is 37 feet from the ROW  
Box # 4399 is 54 feet from the ROW  
Box # 4289 is 51 feet from the ROW  
Box # 4227 is 61 feet from the ROW  
Tax Map # 33-5F is 78 feet from the ROW

**The average current dwelling setback is 56.20 feet from the ROW**

The Board of Zoning Appeals may consider a 50' setback or a 75' setback or whatever setback meets the criteria outlined in section 36.41(2) to provide relief.

The other point of variance relief that would be required involves the side setback. The side setback required currently in the A-2 District is 30 feet for interior side setbacks. On the subject

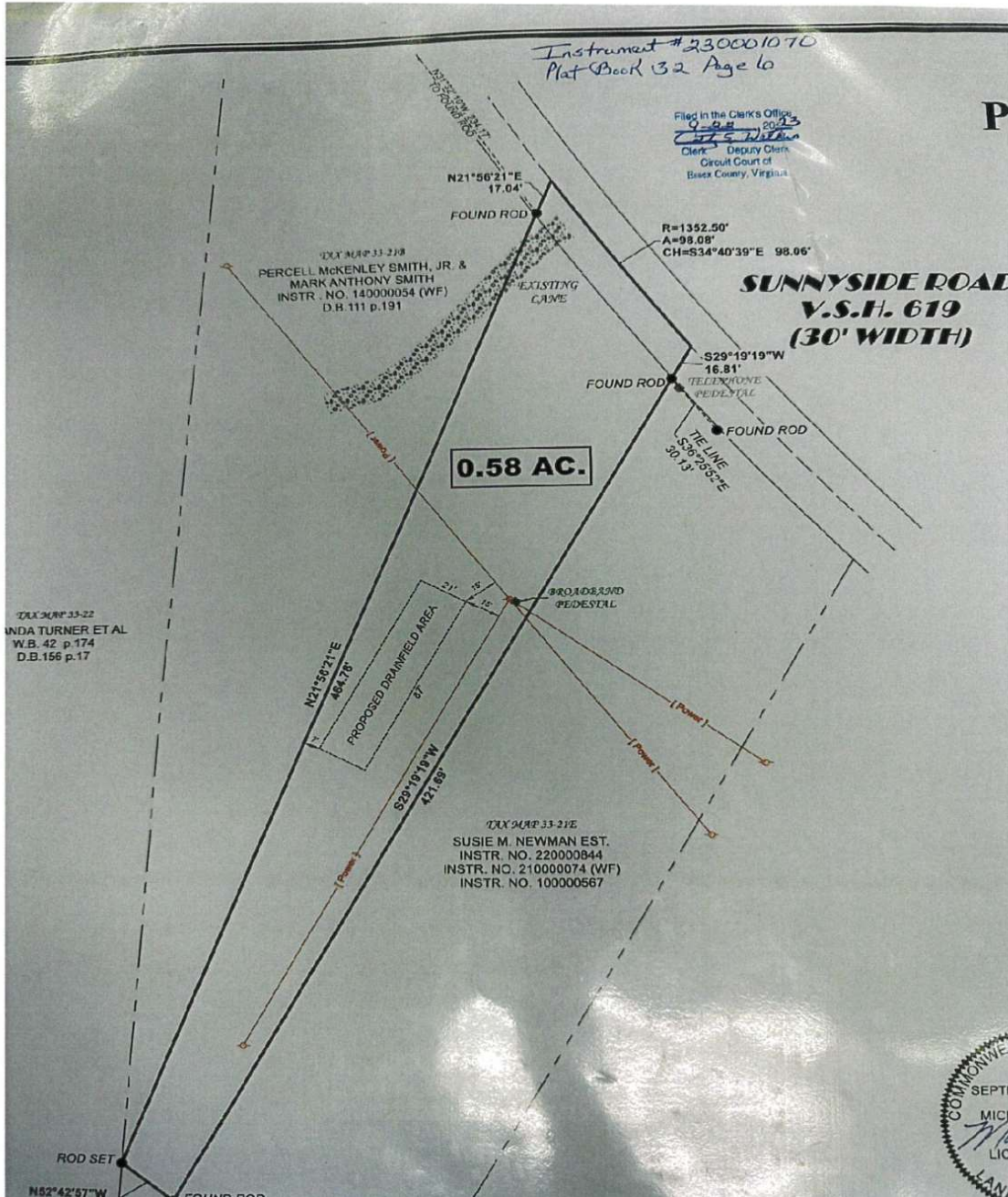


parcel, such a setback imposed, leaves around five feet of buildable area in front of the power line right of way and around ten feet of buildable area closer to the road if using a 50' ROW setback. The minimum setback for any structure in Essex County is five feet from the adjacent property. If a five-foot side setback is granted in a variance decision, such a setback facilitates 40 to 50 feet of dwelling length footprint available for construction. The Board of Zoning appeals should consider the minimum needed to afford the relief being asked for in this variance.

The Essex County Zoning Ordinance, section 36.156, **Standards and Procedures**, outlines Standards for Review under heading (d). These five standards detail the requirements in granting any variance:

1. 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.
2. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
3. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to the Ordinance.
4. 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.
5. The relief or remedy sought by the variance application is not available through the process for modification of a Zoning and Subdivision Ordinance pursuant to Code of Virginia, § 15.2-2286(A)(4) at the time of the filing of the variance application.

Most recent survey of subject property



THIS DEED, made this 26th day of June, 1973,  
between CHARLES HENRY CORBIN and THIELMA CORBIN, his wife,  
of the first part, GRANTORS, and JOHN BEVERLY SMITH, of  
the second part, GRANTEE:

---W - I - T - N - E - S - E - T - H---

That for and in consideration of the sum of TEN  
DOLLARS (\$10.00), and of other good and valuable considera-  
tions, receipt whereof is hereby acknowledged, the GRANTORS  
do grant and convey unto the GRANTEE, with GENERAL WARRANTY OF  
TITLE, the real estate hereinafter described as follows:

All that certain lot or parcel of land lying in  
Central Magisterial District of Essex County, Vir-  
ginia, fronting 96.16 feet on the south side of  
the public road leading from Dunbrooke to Indian  
Neck (State Route 619), consisting of 55/100 of an  
acre, adjoining the land conveyed by said Corbins  
to Moses Darby on the east and other land of the  
said John Beverly Smith on the west, as shown on  
the plat of a survey made thereof by F. T. Seargent,  
C.L.S., dated June 15, 1973, which is hereto attached  
and made a part of this deed; being a part of the  
land conveyed unto the said Charles Henry Corbin by  
deed from A. Fleet Dillard, Special Commissioner,  
bearing date on the 8th day of December, 1943, of  
record in Deed Book 85, page 136, in the Clerk's  
Office of the Circuit Court of said County.

The GRANTORS covenant that they have the right to  
convey said land to the GRANTEE; that they have done no act to  
encumber the same; that the GRANTEE shall have quiet possession  
thereof, free from all encumbrances; and that they will execute  
such further assurances of title as may be requisite.

WITNESS the following signatures and seals:

*Charles Henry Corbin* (SEAL)  
CHARLES HENRY CORBIN  
*Thelma Corbin* (SEAL)  
Thelma Corbin



## Building & Zoning

Brian D. Barnes  
Zoning Administrator  
bbarnes@essex-virginia.org  
202 South Church Lane  
P.O. Box 1079  
Tappahannock, Virginia 22560  
(804) 443-3244  
www.essex-virginia.org



Established 1692

## **BOARD OF ZONING APPEALS STAFF MEMORANDUM:**

**DOCKET: January 25, 2024, 7pm, Essex County School Board Meeting Room**

### **CASE NUMBER/NAME:**

Request for Variance # V2400001  
Tax Map #33-21D, .58 acres, **zoned A-2**  
Percell Smith, Jr. and Mark Anthony Smith  
4428 Sunnyside Road  
St. Stephens Church, VA 23148

### **DISCUSSION:**

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On December 4, 2023, the applicants made application to request a variance from the Board of Zoning Appeals in order to pursue the aforesaid single-family residence. The subject parcel is somewhat pie shaped and has its widest point along the right of way (ROW), Sunnyside Road. Going away from the ROW the lot tapers down to a narrow extent. A 100' road setback is required in this district. This setback, when measured on this parcel places any permitted structure immediately adjacent to or underneath the overhead power lines serving this parcel and adjacent properties.

### **STAFF ANALYSIS:**

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*a. To authorize upon appeal or original application a variance, as defined in the Code of Ordinances, 15.2-2201, from the terms of this Ordinance when the strict application of the Ordinance unreasonably restricts the utilization of the property, and such need for a variance would be shown.*



*shared generally by other properties, and if the applicant proves through a preponderance of evidence that a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship; provided that the spirit of this Ordinance shall be observed and substantial justice done.*

*b. No such variance shall be heard except after notice and hearing as provided by the Code of Virginia, § 15.2-2204.*

The current setback requirements would place the principal structure partly or completely underneath the existing overhead electrical lines and likely within the side setbacks unless the structure was very narrow. In order to satisfy the ordinance requirement of section 36.41(2), an applicant or application/case must show that:

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The Board must ensure that the above three questions are tested and answered in the affirmative for an approval decision to be rendered in this case. The Board may utilize all available information and documentation as well as questions of the applicant in order to answer the ordinance requirements. A motion for approval or denial is advised to include the reasons based on the above requirements found in the ordinance.

County staff advised the applicants to come up with a desired house arrangement sketch or plan so that the BZA would have hard numbers to cite in a variance approval. Lacking this, the BZA will need to come up with variance numbers that accommodate the reasonable utilization of the property (if that is found to be required in this particular case). Without a defined limit, or setback reduction, someone granted a variance may build too close to a right of way. One possible solution to this challenge is utilizing a front setback that is a mean of neighboring existing setbacks. The following is a list of several adjacent properties and the approximate distance from the right of way to the point of closest encroachment:

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**The average current dwelling setback is 56.20 feet from the ROW**

The Board of Zoning Appeals may consider a 50' setback or a 75' setback or whatever setback meets the criteria outlined in section 36.41(2) to provide relief.

The other point of variance relief that would be required involves the side setback. The side setback required currently in the A-2 District is 30 feet for interior side setbacks. On the subject

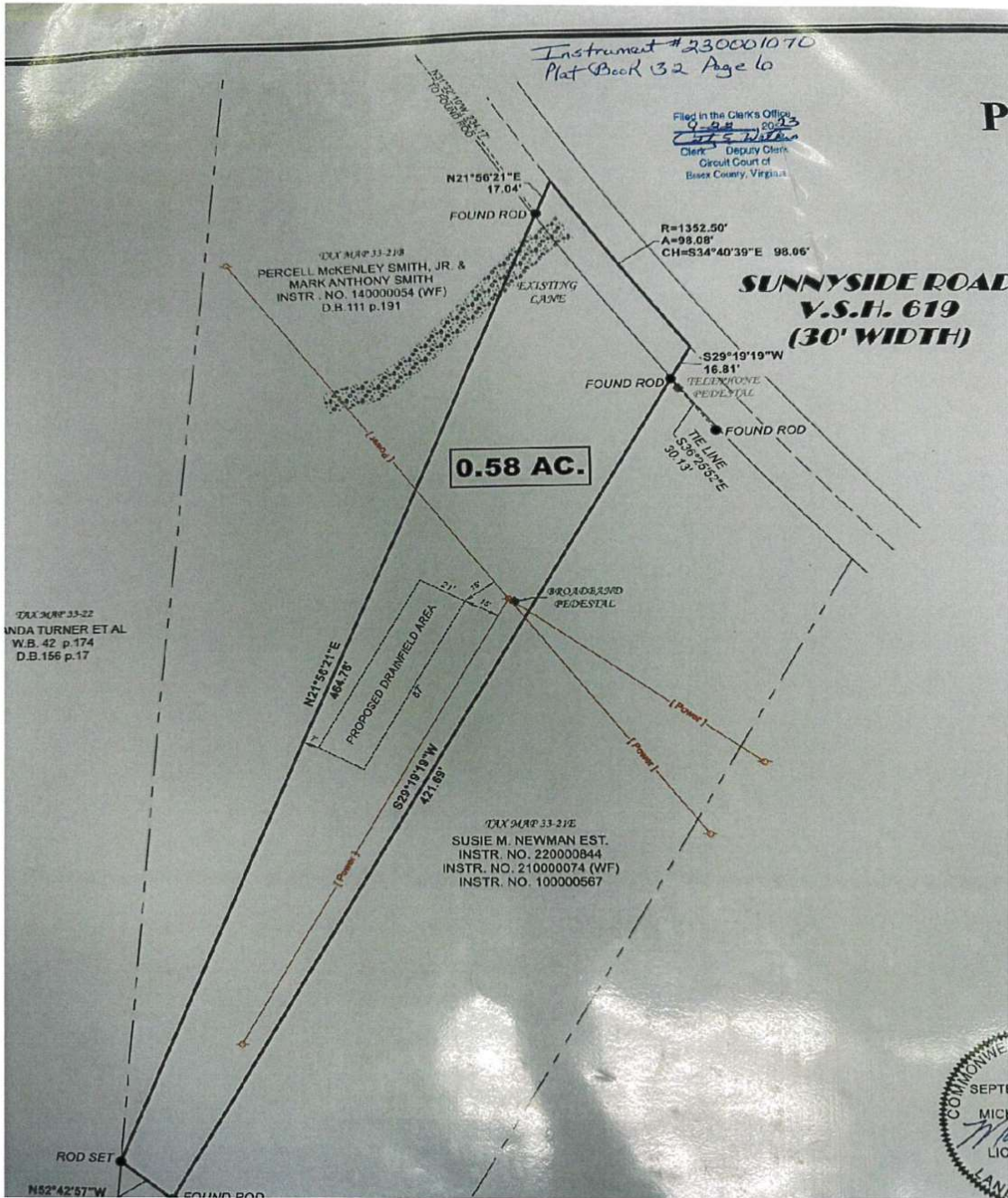
parcel, such a setback imposed, leaves around five feet of buildable area in front of the power line right of way and around ten feet of buildable area closer to the road if using a 50' ROW setback. The minimum setback for any structure in Essex County is five feet from the adjacent property. If a five-foot side setback is granted in a variance decision, such a setback facilitates 40 to 50 feet of dwelling length footprint available for construction. The Board of Zoning appeals should consider the minimum needed to afford the relief being asked for in this variance.

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3. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to the Ordinance.
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RE: Percell Smith and Mark Smith  
January 19, 2024  
Page 5 of 6

Most recent survey of subject property





THIS DEED, made this 26th day of June, 1973,  
between CHARLES HENRY CORBIN and THELMA CORBIN, his wife,  
of the first part, GRANTORS, and JOHN BEVERLY SMITH, of  
the second part, GRANTEE:

---W - I - T - N - E - S - E - T - H---

That for and in consideration of the sum of TEN  
DOLLARS (\$10.00), and of other good and valuable considera-  
tions, receipt whereof is hereby acknowledged, the GRANTORS  
do grant and convey unto the GRANTEE, with GENERAL WARRANTY OF  
TITLE, the real estate hereinafter described as follows:

All that certain lot or parcel of land lying in  
Central Magisterial District of Essex County, Vir-  
ginia, fronting 96.16 feet on the south side of  
the public road leading from Dunbrooke to Indian  
Neck (State Route 619), consisting of 55/100 of an  
acre, adjoining the land conveyed by said Corbins  
to Moses Darby on the east and other land of the  
said John Beverly Smith on the west, as shown on  
the plat of a survey made thereof by F. T. Seargent,  
C.L.S., dated June 15, 1973, which is hereto attached  
and made a part of this deed; being a part of the  
land conveyed unto the said Charles Henry Corbin by  
deed from A. Fleet Dillard, Special Commissioner, of  
bearing date on the 8th day of December, 1943, of  
record in Deed Book 85, page 136, in the Clerk's  
Office of the Circuit Court of said County.

The GRANTORS covenant that they have the right to  
convey said land to the GRANTEE; that they have done no act to  
encumber the same; that the GRANTEE shall have quiet possession  
thereof, free from all encumbrances; and that they will execute  
such further assurances of title as may be requisite.

WITNESS the following signatures and seals:

*Charles Henry Corbin* (SEAL)  
CHARLES HENRY CORBIN  
*TheLma Corbin* (SEAL)  
THELMA CORBIN



STATE OF VIRGINIA,  
COUNTY OF ESSEX, to-wit:

I, Alexander F. Williams, Jr. a Notary Public <sup>at large</sup>  
in and for the County aforesaid, in the State of Virginia,  
do hereby certify that CHARLES HENRY CORBIN and THELMA CORBIN,  
his wife, whose names are signed to the foregoing deed, bearing  
date on the 26th day of June, 1973, have acknowledged the same  
before me in my County aforesaid.

Given under my hand this 24 day of July  
1973.

My commission expires: 5-13-74

Alexander F. Williams, Jr.  
NOTARY PUBLIC.

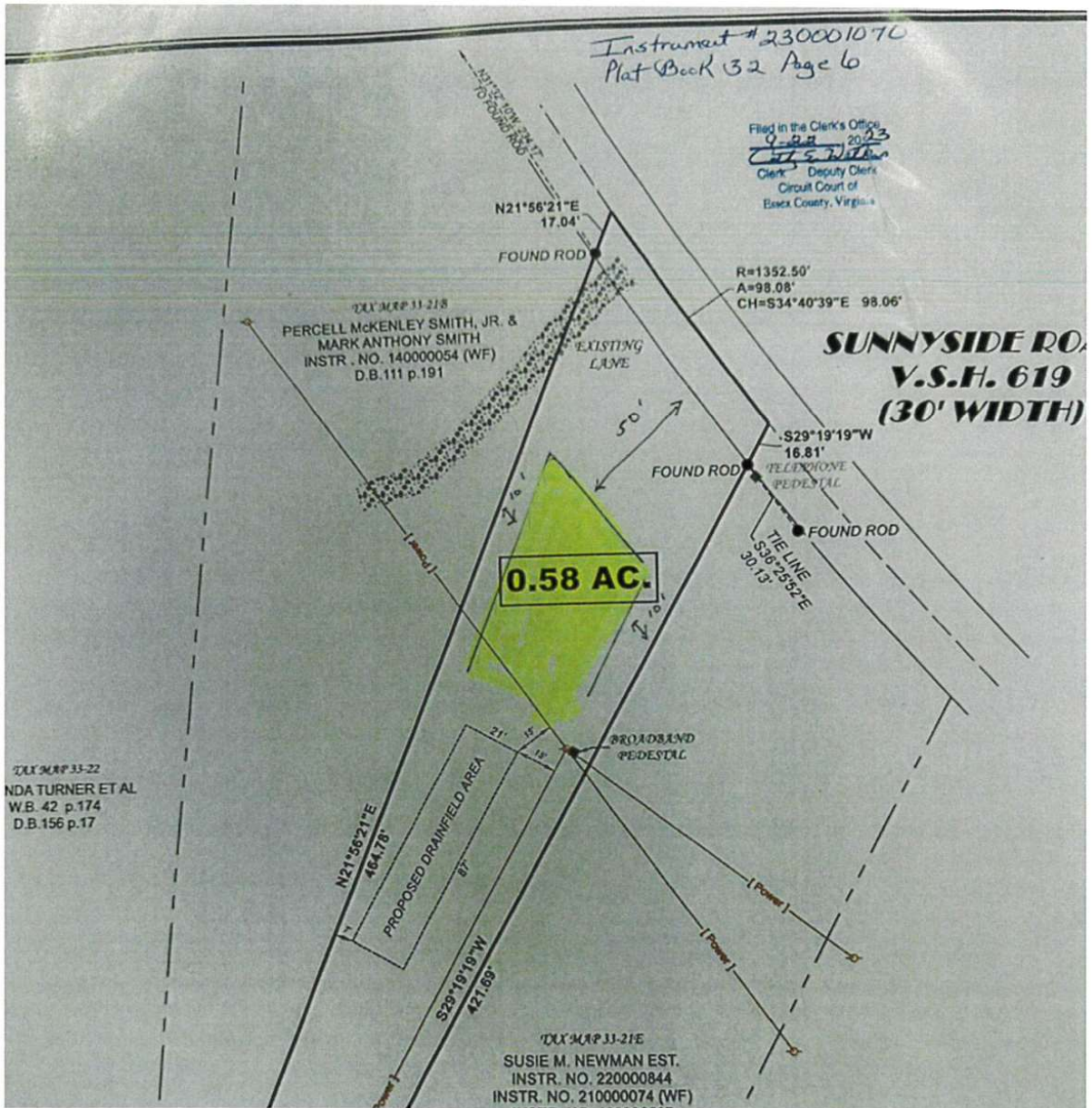
THIS DEED was presented in the Office of the Clerk  
of the Circuit Court of Essex County, Virginia, on  
the 27th day of July, 1973, and, with the certifi-  
cate and plat annexed, admitted to record at 4:50  
o'clock p. m. Recordation taxes paid: State \$1.20  
and County \$0.40.

Tests: Ann D. Derry Clerk



RE: Percell Smith and Mark Smith  
January 19, 2024  
Page 6 of 6

Recent survey plat with hand drawn 50-foot setback and ten foot side setbacks



New Business

### Election of Officers

Mr. Haile made a motion to nominate Mr. Laffoon as President. Mr. Rose seconded. AYES: 4 NAYES: 0 ABSENT: 0

Mr. Rose made a motion to nominate Stephen Walters as Vice Chairman. Mr. Haile seconded. AYES: 4 NAYES: 0 ABSENT: 0

Mr. Rose made a motion to elect Ms. McKnight to be Secretary. Mr. Haile seconded it. AYES: 5 NAYES: 0 ABSENT: 0

### Old Business

None

### Miscellaneous

#### Code of Performance Code

Mr. Barnes spoke about the newspaper article that was in the paper entitled Essex Adopts Performance Code. He said it is good to be respectful and attentive. Mr. Barnes explained why the system works so well. He said this has been done before, just not publicized. Everyone will have to sign it.

Mr. Haile said that when he read this in the paper, he thought someone had provoked this.

Mr. Rose said when a public authority starts to take about obvious goods you wonder what they are not doing and why they want to be congratulated in public. He said that is coming from a Board of Supervisors that has recently overlooked some fairly large camels that have a material effect on taxpayers. This to me as a taxpayer is eyewash with all due respect. Mr. Haile said he seconded that motion.

Mr. Barnes said he is an optimist. He will look at it as a way that everyone holds to this level and there is a written way to deal with it.

Mr. Rose said have something in there about physical accountability for decisions that should result in unnecessary cost to the county and taxpayer.

# Essex Adopts Performance Code

BY G.C. ROSE

During its reorganizational meeting for 2024, the Essex County Board of Supervisors adopted a Code Performance resolution that covers county-related Boards, Committees, and Commissions.

During discussion about the document, Central District Supervisor John Magruder emphasized that supervisors, committee and commission members should not share closed session matters with the

public.

"We also should respect our county administrator, attorney, and staff and their limited time," he said. "I appreciate that's included in there as well. Heed that and we should have a wonderful 2024."

The Code of Performance reads as follows:

Recognizing that persons holding a position of public trust are under constant observation and recognizing that maintaining the

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# Essex Code Of Performance

Continued From Page 1  
integrity and dignity of the public office is essential for securing a high level of public confidence in our institutions of government. The witnessed behavior of the Boards, Committees, and Commissions in honoring this Code of Performance will be evaluated on an annual basis and each member of the Essex County Boards, Commissions, and Authorities pledges to adhere to the following performance standards:

- 1) Attend all regularly scheduled meetings and special called meetings as well as committee meetings relevant to your service on a Board, Committee, Commission, and/or Authority.
- 2) Make a conscientious effort to be prepared for each meeting relevant to your service on a Board, Committee, Commission, and/or Authority.
- 3) Maintain an attitude of courtesy toward colleagues, county staff, and citizens at all times, including during meetings, discussions, and deliberations.
- 4) Be tolerant. Allow colleagues, county staff, as well as citizens, sufficient opportunity to present their views and perspectives.
- 5) Be respectful and attentive. Avoid comments, body language or distracting behavior that conveys a message of disrespect or lack of interest.
- 6) Avoid the use of abusive, intimidating, or threatening language, or gestures directed at your colleagues, county staff, or citizens.
- 7) Create a positive atmosphere during public

meetings wherein citizens and county staff feel welcome and comfortable as participants and/or observers.

8) Respect, honor and adhere to all local, state, and federal laws during your term.

9) Respect the principles inherent with closed sessions by not discussing or sharing what was discussed in such sessions with anyone.

10) Members should respect the position and authority of the County Administrator, County Attorney (and members of legal team) county administration staff, and limit requests for information to department heads directly responsible for such information.

11) Discharge the duties and responsibilities of your term of service in an impartial manner without fear or prejudice toward any person or group.

12) The witnessed behavior of the Board of Supervisors in honoring this Code of Performance will be evaluated on an annual basis.

Meanwhile, the primary discussion regarding the Board of Supervisors' by-law centered around the vote of the chairman. North District Supervisor Sidney Johnson broached the subject.

He said he felt that during 2023 the Greater Tappahannock Election District — represented by Board Chairman Rob Akers — did not have a legitimate vote on matters.

"Why was I hearing that (Akers) was not voting?" Johnson asked Akers.

"Because that's Parliamentary Procedure according to Robert's

Rules of Order," Akers responded. "It's also part of our by-laws...that says the vote of the chairman should be recorded on the prevailing side unless the chairman clearly votes otherwise. That's also included in Robert's Rules of Order."

"I still don't understand that because each member is a voting member," Johnson said. "A member votes, abstains, or if there's a conflict of interests excuses himself. I did not understand it for 2023 and I still do not understand it."

Johnson suggested the by-laws be changed to reflect a vote by each member.

"Each member is a voting member," he said. "Each member should represent their district in a vote. Anything otherwise, that means a district does not have representation and that's a concern."

"That is not being disputed," Akers responded. "According to our by-laws, the chairman only votes in the form of a tie, but the vote is carried with the prevailing side of the vote."

## Rappahannock Times Deadlines

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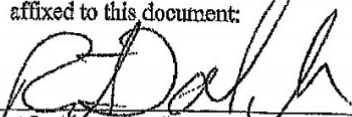


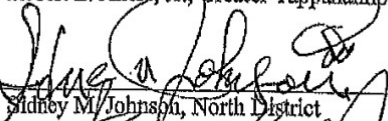
## Essex County Boards, Committees, Commissions and Authorities Code of Performance for 2024

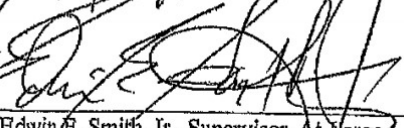
Recognizing that persons holding a position of public trust are under constant observation and recognizing that maintaining the integrity and dignity of the public office is essential for securing a high level of public confidence in our institutions of government. The witnessed behavior of the Boards, Committees, and Commissions in honoring this Code of Performance will be evaluated on an annual basis and each member of the Essex County Boards, Commissions, and Authorities pledges to adhere to the following performance standards:

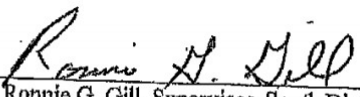
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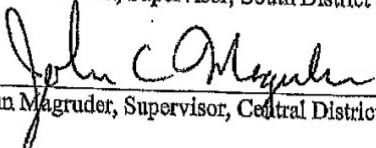
The commitment of the Essex County Board of Supervisors to honor the principles witnessed in the Code of Performance is affirmed by the Board's adoption of the Code on January 9, 2024, in public session, and the signatures affixed to this document:

  
Robert L. Akers, Jr., Greater Tappahannock

  
Sidney M. Johnson, North District

  
Edwin E. Smith, Jr., Supervisor, At-Large

  
Ronnie G. Gill, Supervisor, South District

  
John Magruder, Supervisor, Central District

Witnessed by:   
At-Large

Mr. Laffoon asked do we have a meeting next month?

Mr. Barnes said not as right now.



Mr. Laffoon said if we do, he will not be here.

Mr. Walters said with your staff approach, the only concern he has as an adjudicated board we need to make judgements on decisions. If you make a decision someone can appeal Brian's decision to them or authorize upon original application of variance. Out of these two things these two cases would be the latter that people are coming here to authorize the original application of a variance. With this new approach if somebody is coming to implicit in that would be if we did not exist that person cannot be automatically denied if they do not comply with the ordinance if they didn't get a permit.

Mr. Barnes said I think I know where you are going with that and can get you an answer quite quickly. You may see that, and I did a couple of the actions that you are alluding to recently that may come to you where somebody will try to appeal my decision. What I am talking about in these staff memos does not include if you come to me and say Brian, I am applying to build a pool right here and I looked in the ordinance, and it just can't be approved so I say no. You can't because it is not legal, so I do a Zoning Administrator determination letter. You try to justify your no answer. You will still get people like what I don't tell them. You will then get an appeal. You will get a good firm administrator determination from me. You are not required by law to give a board yes you can do that or no you can't. Sometimes staff are wrong and when you agree with staff then it makes for an attorney...Noone wants to tie your hands. You will still get the zoning administrator decisions.

Mr. Rose said, "so what did we do tonight?" Basically, you presented this is not permissible, but you are not going to say we should make a variance. You were basically saying it is not permitted now you have (inaudible).

Mr. Barnes said I feel comfortable saying that both of these are in fair play variance territory. Whether you choose to approve them is up to you.

### **Adjourn**

Chairman Laffoon adjourned the meeting.

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Steven Laffoon - Chairman