



**NASH COUNTY BOARD OF ADJUSTMENT
REGULAR MEETING**

MONDAY, OCTOBER 24, 2022 AT 6:00 P.M.

**COMMISSIONERS ROOM – THIRD FLOOR
NASH COUNTY ADMINISTRATION BUILDING
120 WEST WASHINGTON STREET
NASHVILLE, NC 27856**

MEETING AGENDA

- 1. Call to Order.**
- 2. Determination of a Quorum.**
- 3. Recognition of the Voting Board Members for the Meeting.**
- 4. Approval of the Minutes of the September 26, 2022 Regular Meeting.**
- 5. Variance Request V-221001.**

Made by Daniel Lee Woodard, the property owner, to reduce the minimum lot area requirement of the A1 Agricultural Zoning District from 40,000 square feet to 30,000 square feet in order to permit the subdivision of the property located at 1582 & 1590 Frazier Road, Spring Hope, NC 27882 into two separate tracts.

 - a. Quasi-Judicial Public Hearing & Oath of Witnesses.**
 - b. Staff Report**

Adam Tyson, Planning Director
 - c. Testimony of Applicant.**
 - d. Testimony of Other Parties and/or Witnesses.**
 - e. Board Discussion & Vote.**
- 6. Adjournment.**

**MINUTES OF THE
NASH COUNTY BOARD OF ADJUSTMENT
REGULAR MEETING
HELD MONDAY, SEPTEMBER 26, 2022 AT 6:00 P.M.
COMMISSIONERS ROOM – THIRD FLOOR
NASH COUNTY ADMINISTRATION BUILDING
120 WEST WASHINGTON STREET
NASHVILLE, NC 27856**

BOARD MEMBERS PRESENT

Dennis Cobb, Regular Member, Chairman
Brandon Moore, Regular Member, Vice-Chairman
Rodney Hough, Regular Member
Oscar Bruce, Alternate Member #1
Emanuel Shell, Alternate Member #2
Charles Rose Jr., Alternate Member #3 (Not Yet Sworn)

BOARD MEMBERS ABSENT

Kenneth Mullen, Regular Member
William Parker, Regular Member

ATTORNEY TO THE BOARD

Dylan Castellino

STAFF MEMBERS PRESENT

Adam Tyson, Planning Director
Adam Culpepper, Senior Planner
Windy Braswell, Planning Technician

OTHERS PRESENT

Ofelia Aide Gonzales

1. Call to Order.

Vice-Chairman Cobb called the meeting to order at 6:00 p.m.

2. Determination of a Quorum.

Vice-Chairman Cobb recognized the presence of a quorum.

3. Announcement of New Alternate Board Member #3: Charles Allen Rose, Jr.

Mr. Tyson announced the appointment of Charles Allen Rose, Jr. as Alternate Board Member #3 effective July 11, 2022 and introduced Mr. Rose to the Board. He noted that Mr. Rose would be required to take an oath of office before he could participate as a member of the Board.

4. Recognition of the Voting Board Members for the Meeting.

Mr. Tyson recognized the voting Board members for the meeting to be Vice-Chairman Cobb, Mr. Moore, Mr. Hough, Mr. Bruce, and Mr. Shell.

5. Election of Board Officers (Chairman & Vice-Chairman) for 2022-2023 Year.

Mr. Castellino, Attorney to the Board, conducted the annual election of officers and asked for nominations for the position of Chairman.

BOARD ACTION: Mr. Hough offered a motion, which was duly seconded by Mr. Moore, to nominate Vice-Chairman Dennis Cobb to serve as Chairman of the Nash County Board of Adjustment. The motion was unanimously carried.

Mr. Castellino asked for nominations for the position of Vice-Chairman.

BOARD ACTION: Chairman Cobb offered a motion, which was duly seconded by Mr. Hough, to nominate Brandon Moore to serve as Vice-Chairman of the Nash County Board of Adjustment. The motion was unanimously carried.

6. Approval of the Minutes of the May 23, 2022 Regular Meeting.

Chairman Cobb asked for any revisions or corrections to the draft minutes of the May 23, 2022 regular meeting. None were offered.

BOARD ACTION: Vice-Chairman Moore offered a motion, which was duly seconded by Mr. Hough, to approve the minutes of the May 23, 2022 regular meeting as submitted. The motion was unanimously carried.

7. Quasi-Judicial Public Hearing on Variance Request V-220901 made by Jose Sotz & Ofelia Aide Gonzales, the property owners, to allow the existing front porch constructed at 13479 Eagle Ridge Drive, Zebulon, NC 27597 to continue to encroach further into the fifty-foot (50') front minimum building setback than permitted by the applicable Unified Development Ordinance requirements.

BOARD ACTION: Mr. Hough offered a motion, which was duly seconded by Mr. Bruce, to open the public hearing on Variance Request V-220901. The motion was unanimously carried.

Mr. Tyson was sworn in by Chairman Cobb to provide testimony under oath during the public hearing.

Mr. Tyson presented the staff report and supplemental materials related to Variance Request V-220901 as submitted to the Board in the September 26, 2022 Nash County Board of Adjustment agenda packet including a review of the standards for the issuance of a variance as well as the proposed findings of fact and conclusions for the case.

Mr. Hough asked if the initially proposed, smaller front porch was ever actually constructed.

Mr. Tyson answered that the County inspected the set-up of the manufactured home prior to the construction of the front porch and that the current front porch was added later.

Vice-Chairman Moore asked about the site plan verification process prior to the issuance of the permit.

Mr. Tyson answered that it is the applicant's responsibility to make the initial measurements for the proposed site plan approval and that those measurements are later verified in the field by the County inspectors.

Mr. Bruce asked for clarification as to when the discrepancy between the submitted site plan and the actual porch construction occurred.

Mr. Tyson answered that the site plan submitted prior to the porch's construction specified that it would more than satisfy the minimum front setback requirement, however, a larger porch that encroached into the minimum front setback was actually constructed after the set-up of the manufactured home without the prior approval of a permit. He noted that the County was alerted to the existence of the larger porch as well as the beginning of a room addition without the proper permits by a citizen complaint. The second site plan submitted by the property owner for the larger porch still incorrectly specified that it would more than satisfy the minimum front setback requirement.

Mr. Bruce noted that the existing porch did not appear to present a safety issue.

Mr. Tyson noted that the porch was now 42 feet from the lot's front property line at the edge of the road right-of-way, which would be more than sufficient in a different, denser residential zoning district of the County.

Mr. Hough noted that the construction of the larger porch occurred before it was actually permitted by the County.

Mr. Tyson confirmed that was correct.

Mr. Tyson recognized Ofelia Aide Gonzales, the variance applicant and owner of the subject property at 13479 Eagle Ridge Drive, Zebulon, NC 27597.

Mrs. Gonzales was sworn in by Chairman Cobb to provide testimony under oath during the public hearing.

Mrs. Gonzales addressed the Board to state the importance of the variance request for the future of her family home and offered to answer any questions that the Board may have.

Mr. Bruce asked whether the porch had a solid foundation or just a facade.

Mrs. Gonzales answered that the foundation was constructed with cinder blocks and a brick exterior. She added that there was concrete underneath to support the door and a concrete floor on top.

Vice-Chairman Moore asked whether the porch roof was connected to the home's roof.

Mrs. Gonzales answered that the porch roof was self-supported, however, the shingles were tied in to the home's roof.

Mr. Hough asked if the lots surrounding the subject property were the same size.

Mrs. Gonzales answered that the immediately adjacent lot to the left was the same size.

Mr. Hough asked if the lot conditions prevented the home from being located further back from the road than its current location.

Mrs. Gonzales answered yes, that the home's location was determined by the soils report prepared by licensed soil scientist Fred Smith, which indicated that the suitable soil for both the initial septic system and the required repair area was located in the rear of the lot.

Mr. Castellino asked Mrs. Gonzales whether she had any additions or corrections to the testimony provided by Mr. Tyson in the staff report.

Mrs. Gonzales answered that she did not have any additions or corrections.

Vice-Chairman Moore stated that he supported approval of the variance request due to the cost involved for the removal of the existing porch, the limited land available due to the smaller lot size and location of the suitable soil for the septic system, and the misunderstanding about how to measure the front minimum building setback requirement.

Mr. Bruce stated that he also supported approval of the variance request because the existing porch did not pose a safety issue for emergency responders and due to the soil conditions which caused the home to be located toward the front of the lot.

BOARD ACTION: Vice-Chairman Moore offered a motion, which was duly seconded by Mr. Hough, to adopt the following findings of fact and conclusions to support approval of Variance Request V-220901:

Findings of Fact:

- (1) The subject property is the 0.689-acre Lot No. 152 of Eagle Ridge Subdivision, Phase II, Section III, further identified as Nash County Tax Map PIN 272400642914 and Parcel ID #041782, listed in the ownership of Jose Sotz & Ofelia Aide Gonzales, and located at 13479 Eagle Ridge Drive, Zebulon, NC 27597 within the planning and zoning jurisdiction of Nash County, North Carolina.
- (2) The subject property is located in the A1 Agricultural Zoning District.
- (3) UDO Art. IX, Sec. 9-4.1 (A), Table 9-4-1 requires a fifty-foot (50') front minimum building setback distance to be measured from the road right-of-way line to a building within the A1 Agricultural Zoning District.

- (4) UDO Art. IX, Sec. 9-6.3 (B)(2) allows porches to encroach into the required front minimum building setback for a maximum distance of three feet (3') and a maximum area of thirty-five square feet (35 sq.ft.)
- (5) UDO Art. VI, Sec. 6-2 classifies the subject property as a "nonconforming lot" because although it conformed to the thirty thousand square foot (30,000 sq.ft.) minimum lot area requirement that was effective in the A1 Agricultural Zoning District when it was subdivided in 1998, it does not conform to the forty thousand square foot (40,000 sq.ft.) minimum lot area requirement that is currently effective in this zoning district.
- (6) On July 12, 2021, the Nash County Planning & Inspections Department issued Zoning Permit #PZ21-000685 to property owner Ofelia Gonzales to authorize the placement of a double-wide manufactured home on the subject property. This permit was issued on the basis of the submitted and approved site plan dated July 12, 2021, which depicted a proposed six-foot (6') by eight-foot (8') front porch to be located sixty-six feet (66') from the road right-of-way line in compliance with the required fifty-foot (50') front minimum building setback.
- (7) On August 19, 2021, the Nash County Planning & Inspections Department issued Manufactured Home Permit #P21-003225 to D & D Mobile Home Movers to authorize the set-up of a double-wide manufactured home on the subject property.
- (8) On May 4, 2022, the Nash County Planning & Inspections Department issued Zoning Permit #PZ22-000495 to property owner Ofelia Gonzales to authorize the addition of an extra room on the rear corner of the double-wide manufactured home as well as the addition of a larger, covered front porch. This permit was issued on the basis of the submitted and approved site plan dated May 4, 2022, which depicted a proposed twelve-foot (12') by sixteen-foot (16') porch, again to be located sixty-six feet (66') from the road right-of-way line in compliance with the required fifty-foot (50') front minimum building setback.
- (9) On May 26, 2022, the Nash County Planning & Inspections Department issued Building Permit #P22-001921 to property owner Ofelia Gonzales for the construction of the covered front porch.
- (10) On May 27, 2022, Nash County Chief Code Enforcement Officer Kevin Marks performed a building inspection of the porch and noted that its location did not appear to comply with the required fifty-foot (50') front minimum building setback.
- (11) A subsequent zoning inspection performed by Nash County Senior Planner Adam Culpepper determined that the constructed porch encroaches approximately eight feet (8') into the required fifty-foot (50') front minimum building setback for a total area of approximately one hundred twenty-eight square feet (128 sq.ft.), which exceeds the maximum setback encroachment of three feet (3') and thirty-five square feet (35 sq.ft.) allowed by the UDO.
- (12) On August 5, 2022, property owner Ofelia Gonzales submitted an application for Variance Request V-220901, seeking to increase the permitted encroachment of the covered front porch into the required fifty-foot (50') front minimum building setback from a maximum distance of three feet (3') to eight feet (8') and from a maximum area of thirty-five square feet (35 sq.ft.) to one hundred twenty-eight square feet (128 sq.ft.) plus the attached steps in order to allow the existing porch to remain in place as it was constructed.
- (13) On September 26, 2022, the Nash County Board of Adjustment conducted a quasi-judicial public hearing on Variance Request V-220901.
- (14) Notice of the public hearing was sent by first class mail on September 15, 2022 to the variance applicant and owner of the subject property and to the owners of record for tax purposes of all properties located within 600 feet of the subject property; and posted prominently on the subject property itself on the same date.
- (15) All persons who provided testimony during the public hearing were sworn in by the Chairman. There were no objections to the competency of such persons to testify on the matters presented, and the Board is satisfied that such persons are so competent.

Conclusions:

- (1) The applicant has demonstrated that an unnecessary hardship would result from the strict application of the maximum setback encroachment limit of UDO Art. IX, Sec. 9-6.3 (B)(2) because it would require the removal of a significant portion of the existing covered front porch.
- (2) The applicant has demonstrated that the hardship results from conditions that are peculiar to the property, specifically its condition as a "nonconforming lot" because the property includes approximately ten thousand square feet (10,000 sq.ft.) less area than a typical lot subdivided currently in the A1 Agricultural Zoning District, meaning that the property owner has less land on which to accommodate the home itself as well as the required onsite well, septic system, and designated septic repair area.
- (3) The applicant has demonstrated that the hardship did not result from actions taken by the applicant/property owner because the setback encroachment resulted from a misunderstanding of how the front minimum building setback distance was to be measured from the road on the part of the individual hired by the applicant/property owner to construct the porch.
- (4) The applicant has demonstrated that the requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved because the current location of the existing covered front porch:
 - (a) Exceeds the forty-foot (40') front minimum building setback distance required by UDO Art. IX, Sec. 9-4.1 (A), Table 9-4-1 for other zoning districts with a thirty thousand square foot (30,000 sq.ft.) minimum lot area requirement that is equivalent to the size of the subject property; and
 - (b) Is still consistent with the purpose of the building setback regulations as stated in UDO Art. I, Sec. 1-3.2 (I) to require appropriate setbacks for buildings and other structures to facilitate the safe movement of vehicular and pedestrian traffic, provide adequate fire lanes and ensure adequate distance from dust, noise and fumes created by vehicular traffic.

The motion was unanimously carried.

BOARD ACTION: Mr. Hough offered a motion, which was duly seconded by Mr. Shell, to close the public hearing and approve Variance Request V-220901 to allow the existing covered front porch and its attached steps at 13479 Eagle Ridge Drive to remain in place as constructed partially within the front minimum building setback. The motion was unanimously carried.

8. Adjournment.

There being no further business, Chairman Cobb adjourned the meeting at 6:51 p.m.

**NASH COUNTY BOARD OF ADJUSTMENT
VARIANCE REQUEST – STAFF REPORT**

File Number: V-221001 (Variance Request)
Property Owner / Applicant: Daniel Lee Woodard
Location: 1582 & 1590 Frazier Road, Spring Hope, NC 27882
Tax ID #: PIN 274800229356 / Parcel ID # 008125
Zoning District: A1 (Agricultural)
Total Lot Area: 1.43 Acres (62,257 Square Feet)
Variance Description: Reduction of Minimum Lot Area Requirement
Notice of Public Hearing: Mailed Notice: Oct. 13, 2022 (To Property Owners Within 600')
Posted Notice: Oct. 13, 2022 (On the Subject Property)
UDO Reference: Art. IX, Sec. 9-4.1 (A), Table 9-4-1

Standard for the Issuance of a Variance:

The Nash County Unified Development Ordinance (UDO) establishes the land development regulations that apply within the County's planning and zoning jurisdiction.

A "variance" is defined as "'official permission to depart from the requirements of this Ordinance" (UDO Art. II, Sec. 2-4.198.) All general variance requests are to be heard and decided by the Board of Adjustment.

The North Carolina General Statutes (N.C.G.S.), Chapter 160D, Article 7, Part 5 establishes the standard and criteria for the issuance of a variance.

When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.**

- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable**

accommodation under the Federal Fair Housing Act for a person with a disability.

- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.**
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.**

No change in permitted uses may be authorized by variance.

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

A four-fifths (4/5) majority vote of the Board is necessary to grant a variance per N.C.G.S. § 160D-406(i).

Proposed Findings of Fact for Variance Request V-220901:

- (1) The subject property is the 1.43-acre Lot 2 of the Subdivision of the Property of David Grady further identified as Nash County Tax Map PIN 274800229356 and Parcel ID # 008125 and located at 1582 and 1590 Frazier Road, Spring Hope, NC 27882 within the planning and zoning jurisdiction of Nash County, North Carolina.
- (2) The subject property was acquired by Daniel Lee Woodard, the current owner, in 1998 per Deed Book 1644 Pages 944-946 of the Nash County Registry.
- (3) The subject property is located in the A1 Agricultural Zoning District as depicted on the Official Zoning Map of Nash County.
- (4) In 1999, Nash County permitted the set-up of a double-wide manufactured home at 1582 Frazier Road and the set-up of a single-wide manufactured home at 1590 Frazier Road on the subject property.
- (5) In 2005, Nash County permitted the replacement of the single-wide manufactured home at 1590 Frazier Road with a double-wide manufactured home.
- (6) Prior to April 1, 2007, the minimum area required per lot or per dwelling in the A1 Agricultural Zoning District was 30,000 square feet.

- (7) On September 5, 2006, the Nash County Board of Commissioners amended UDO Art. IX, Sec. 9-4.1 (A), Table 9-4-1 effective April 1, 2007 to increase the minimum area required per lot or per dwelling in the A1 Agricultural Zoning District from 30,000 square feet to 43,560 square feet (or one acre.)
- (8) On September 23, 2019, the Nash County Board of Commissioners again amended UDO Art. IX, Sec. 9-4.1 (A), Table 9-4-1 to reduce the minimum area required per lot or per dwelling in the A1 Agricultural Zoning District from 43,560 square feet to 40,000 square feet (Case File #A-190901.)
- (9) UDO Art. VI, Sec. 6-2 classifies the subject property as a “nonconforming lot” because although the property included sufficient area to accommodate two separate dwellings in the A1 Agricultural Zoning District at the time that they were permitted (a minimum total of 60,000 square feet or 30,000 square feet per dwelling), it does not conform to the currently effective minimum lot area requirement to accommodate two separate dwellings in this zoning district (a minimum total of 80,000 square feet or 40,000 square feet per dwelling.)
- (10) Each of the two existing dwellings are currently under contract for purchase by separate buyers in accordance with the preliminary survey map prepared by Canoy Surveying, which proposes the subdivision of the subject property into Tract 1 at 1582 Frazier Road and Tract 2 at 1590 Frazier Road.
- (11) The preliminary survey map is not eligible for approval by Nash County at this time because the two resulting tracts each only include approximately 31,000 square feet, which is insufficient to satisfy the current minimum lot area requirement in the A1 Agricultural Zoning District of 40,000 square feet.
- (12) On September 29, 2022, property owner Daniel Lee Woodard submitted an application for Variance Request V-221001, seeking to reduce the applicable minimum lot area requirement from 40,000 square feet to 30,000 square feet in order to permit the subdivision of the subject property into two separate tracts as depicted on the submitted preliminary survey map.
- (13) On October 24, 2022, the Nash County Board of Adjustment conducted a quasi-judicial public hearing on Variance Request V-221001.
- (14) Notice of the public hearing was sent by first class mail on October 13, 2022 to the variance applicant and owner of the subject property and to the owners of record for tax purposes of all properties located within 600 feet of the subject property; and posted prominently on the subject property itself on the same date.
- (15) All persons who provided testimony during the public hearing were sworn in by the Chairman. There were no objections to the competency of such persons to testify on the matters presented, and the Board is satisfied that such persons are so competent.

Proposed Conclusions to Support APPROVAL of Variance Request V-220901:

- (1) The applicant has demonstrated that an unnecessary hardship would result from the strict application of the 40,000 square foot minimum lot area requirement of the A1 Agricultural Zoning District because it would prevent the subdivision of the property and, therefore, the separation of the two existing dwellings for sale independent from each other.
- (2) The applicant has demonstrated that the hardship results from conditions that are peculiar to the property, specifically its condition as a “nonconforming lot” because the property does not include sufficient total area to satisfy the amended and increased minimum lot area requirement of the A1 Agricultural Zoning District for a lot containing two dwellings.
- (3) The applicant has demonstrated that the hardship did not result from actions taken by the applicant/property owner because the applicant/property owner acquired the subject property in its current configuration and lawfully permitted both existing dwellings prior to and with no knowledge of the subsequent ordinance amendment that increased the minimum lot area requirement.
- (4) The applicant has demonstrated that the requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved because the subdivision of the subject property:
 - (a) Will not result in or create the opportunity for the establishment of any additional dwellings on the subject property;
 - (b) Will still be consistent with the purposes of the zoning regulations as stated in UDO Art. I, Sec. 1-3.2 (D) & (E) to “prevent the overcrowding of land” and to “avoid undue concentration of population”; and
 - (c) Will allow the two existing, lawfully permitted dwellings to be sold separately.

Suggested Motions:

NOTES: A four-fifths (4/5) majority vote of the Board is necessary to grant a variance.

All proposed findings of fact and conclusions above may be revised prior to adoption as necessary to reflect the arguments, evidence, and/or testimony presented during the public hearing held on this request.

MOTION #1 – ADOPT FINDINGS OF FACT AND CONCLUSIONS:

I move that the Nash County Board of Adjustment adopts the Findings of Fact listed in the staff report and:

(A) ALL FOUR CONCLUSIONS TO SUPPORT APPROVAL OF VARIANCE REQUEST V-221001.

OR

(B) AT LEAST ONE OF THE FOLLOWING CONCLUSIONS TO SUPPORT DENIAL OF VARIANCE REQUEST V-221001:

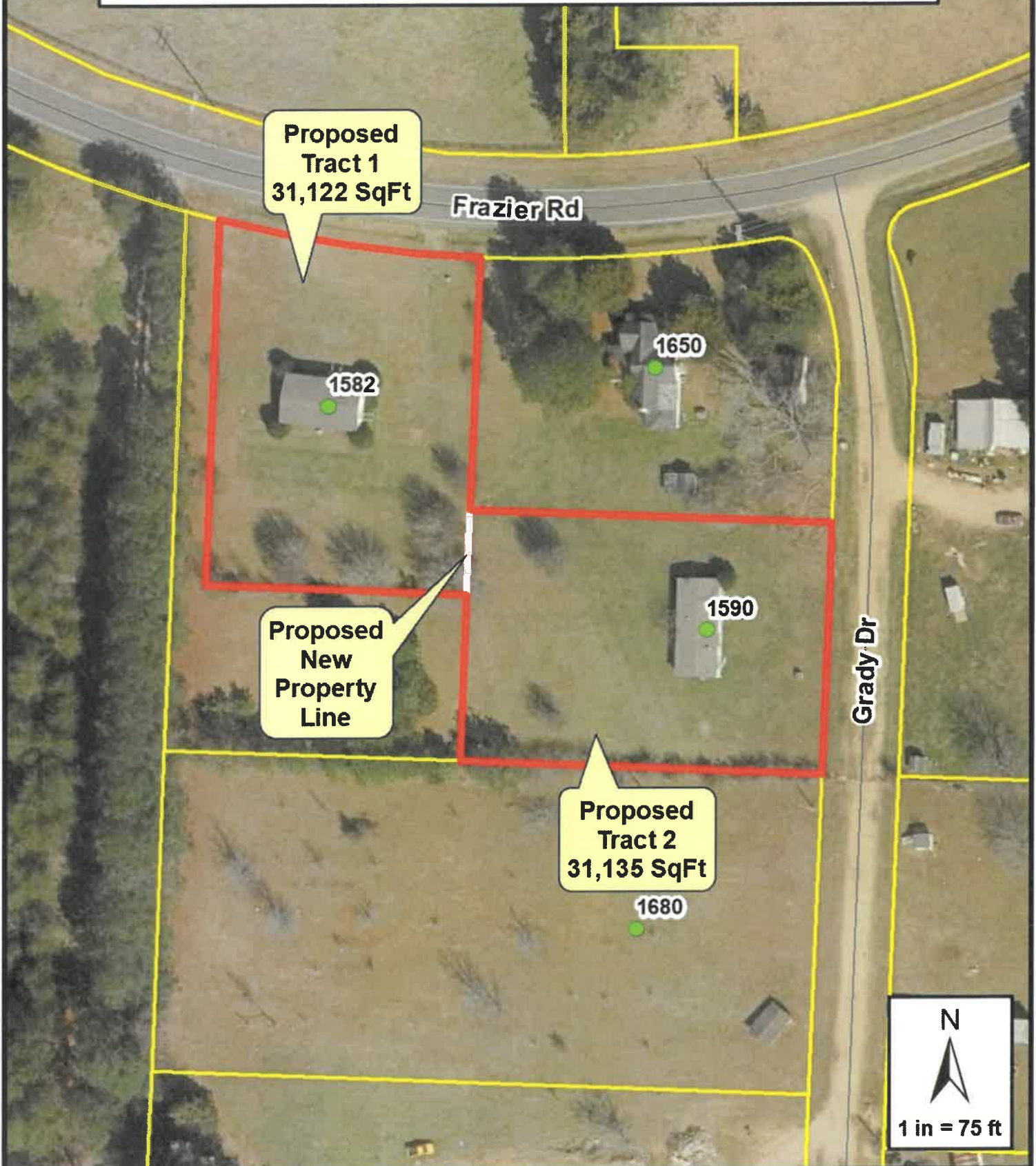
- i. The applicant has **NOT** demonstrated that an unnecessary hardship would result from the strict application of the 40,000 square foot minimum lot area requirement of the A1 Agricultural Zoning District.
- ii. The applicant has **NOT** demonstrated that the hardship results from conditions that are peculiar to the property, such as location, size, or topography.
- iii. The applicant has **NOT** demonstrated that the hardship did not result from actions taken by the applicant/property owner.
- iv. The applicant has **NOT** demonstrated that the requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

MOTION #2 – APPROVE OR DENY THE VARIANCE REQUEST:

I move that the Nash County Board of Adjustment **APPROVES OR DENIES** (choose one) Variance Request V-221001 to reduce the applicable minimum lot area requirement from 40,000 square feet to 30,000 square feet in order to permit the subdivision of the subject property into two separate tracts, **SUBJECT TO THE FOLLOWING CONDITIONS:**

- (1) The applicant/property owner shall verify and document the right of proposed Tract 2 at 1590 Frazier Road to directly access the adjacent private road, Grady Drive.**
 - (2) The existing dwelling on proposed Tract 2 at 1590 Frazier Road shall be assigned a new Grady Drive address to more accurately reflect the location of its driveway for emergency response purposes.**
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Variance Request V-221001
Property of Daniel Lee Woodard
1582 & 1590 Frazier Rd, Spring Hope, NC 27882



**Proposed
Tract 1
31,122 SqFt**

Frazier Rd

1582

1650

1590

**Proposed
New
Property
Line**

Grady Dr

**Proposed
Tract 2
31,135 SqFt**

1680

N

1 in = 75 ft

