

**MINUTES OF THE  
NASH COUNTY BOARD OF ADJUSTMENT  
REGULAR MEETING  
HELD MONDAY, JANUARY 23, 2023 AT 6:00 P.M.  
COMMISSIONERS ROOM – THIRD FLOOR  
NASH COUNTY ADMINISTRATION BUILDING  
120 WEST WASHINGTON STREET  
NASHVILLE, NC 27856**

**BOARD MEMBERS PRESENT**

Brandon Moore, Regular Member, Vice-Chairman  
Rodney Hough, Regular Member  
Emanuel Shell, Alternate Member #2  
Charles Rose Jr., Alternate Member #3

**BOARD MEMBERS ABSENT**

Dennis Cobb, Regular Member, Chairman  
William Parker, Regular Member  
Kenneth Mullen, Regular Member  
Oscar Bruce, Alternate Member #1

**ATTORNEY TO THE BOARD**

Dylan Castellino

**STAFF MEMBERS PRESENT**

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

**OTHERS PRESENT**

Donald S. Hilhorst  
Brady G. Joyner  
Amanda Langley  
Michael Langley  
Michael Eugene Martin  
Kay N. Moncrief  
Stephen N. Moncrief  
Jennifer Vire

**1. Call to Order.**

Vice-Chairman Moore called the meeting to order at 6:11 p.m.

**2. Determination of a Quorum.**

Vice-Chairman Moore recognized the presence of a quorum.

**3. Recognition of the Voting Board Members for the Meeting.**

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

**4. Approval of the Minutes of the November 2, 2022 Recessed Meeting.**

Vice-Chairman Moore asked for any revisions or corrections to the draft minutes of the November 2, 2022 recessed meeting. None were offered.

**BOARD ACTION: Mr. Shell offered a motion, which was duly seconded by Mr. Hough, to approve the minutes of the November 2, 2022 recessed meeting as submitted. The motion was unanimously carried.**

**5. Quasi-Judicial Public Hearing on Variance Request V-230101 made by Brady G. Joyner, the property owner, to reduce the fifty-foot (50') front minimum building setback requirement as necessary in order to accommodate a proposed home addition to the southwest side of the existing single-family dwelling located at 6565 Bend of the River Rd, Rocky Mount, NC 27803.**

Mr. Tyson presented the staff report and supplemental materials related to Variance Request V-230101 as submitted to the Board in the January 23, 2023 Nash County Board of Adjustment agenda packet including a review of the standards for the issuance of a variance as well as the findings of fact proposed by the Zoning Administrator and the supporting conclusions proposed by the applicant for the case.

The Board had no questions on the staff report.

Mr. Tyson and Mr. Michael Langley were sworn in by Vice-Chairman Moore to provide testimony under oath during the public hearing.

Mr. Michael Langley addressed the Board in support of the request on behalf of the applicant and as the licensed contractor for the proposed home addition project. He noted that the existing 30' by 40' concrete parking pad located at the rear of the home limits the applicant's options for adding to the home outside of the standard front minimum building setback.

No members of the public addressed the Board with regard to the request.

There was no additional Board discussion of the request.

**BOARD ACTION: Mr. Hough offered a motion, which was duly seconded by Mr. Shell, to adopt the following findings of fact and conclusions to support approval of Variance Request V-230101:**

**Findings of Fact:**

- (1) The subject property is a 1.03-acre lot further identified as Nash County Tax Map PIN 372700531776 and Parcel ID # 109540 and located at 6565 Bend of the River Rd, Rocky Mount, NC 27803 within the RA-40 (Single-Family Residential) Zoning District of Nash County, North Carolina.
- (2) The dimensional standards which apply within this RA-40 Zoning District include a fifty-foot (50') front minimum building setback distance required between a principal structure and the public road right-of-way.
- (3) The existing single-family dwelling on the subject property is located within the required fifty-foot (50') front minimum building setback distance.
- (4) The existing single-family dwelling on the subject property was constructed in that location prior to the adoption and enactment of the current planning and zoning regulations, including the fifty-foot (50') front minimum building setback requirement.
- (5) The existing single-family dwelling is, therefore, considered a legal, but "nonconforming structure" (UDO Art. VI, Sec. 6-4.)
- (6) The subject property was acquired by Brady Glenn Joyner, the current owner, in 2016 per Deed Book 2853 Page 633 of the Nash County Registry.
- (7) The property owner now desires to renovate and expand the existing single-family dwelling, but a portion of the proposed home addition would also be located within the required fifty-foot (50') front minimum building setback distance.
- (8) On December 23, 2022, the property owner submitted an application for Variance Request V-230101, seeking to reduce the fifty-foot (50') front minimum building setback requirement as necessary in order to accommodate the proposed home addition to be located on the southwest side of the existing single-family dwelling, approximately 14.7 feet from the public road right-of-way.
- (9) On January 23, 2023, the Nash County Board of Adjustment conducted a quasi-judicial public hearing on Variance Request V-230101.
- (10) Notice of the public hearing was sent by first class mail on January 12, 2023 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.
- (11) 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 fifty-foot (50') front minimum building setback requirement of the RA-40 Zoning District because it would prohibit the proposed home addition to the southwest side of the existing single-family dwelling.
- (2) The applicant has demonstrated that the hardship results from conditions that are peculiar to the property, specifically the status of the existing single-family dwelling as a "nonconforming structure" located within the currently required fifty-foot (50') front minimum building setback distance, but constructed in that location prior to the adoption and enactment of that requirement.
- (3) The applicant has demonstrated that the hardship did not result from actions taken by the applicant/property owner because the existing single-family dwelling was constructed in its current location prior to the applicant/property owner's acquisition of the subject property.
- (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 proposed home addition will be located no closer to the public road right-of-way than the existing single-family dwelling itself.

**The motion was unanimously carried.**

**BOARD ACTION: Mr. Rose offered a motion, which was duly seconded by Mr. Shell, to close the public hearing and to approve Variance Request V-230101 to reduce the fifty-foot (50') front minimum building setback requirement as necessary in order to accommodate the proposed home addition to be located on the southwest side of the existing single-family dwelling.**

**The motion was unanimously carried.**

- 6. Quasi-Judicial Public Hearing on Variance Request V-230102 made by Stephen N. Moncrief, the property owner, to reduce the minimum lot area requirement for the property at 1665 Sarah Ruppert Rd, Nashville, NC 27856 from 40,000 square feet to 30,000 square feet in order to correct the encroachment of the existing driveway serving the immediately adjacent property at 1627 Sarah Ruppert Rd.**

Mr. Tyson presented the staff report and supplemental materials related to Variance Request V-230102 as submitted to the Board in the January 23, 2023 Nash County Board of Adjustment agenda packet including a review of the standards for the issuance of a variance as well as the findings of fact proposed by the Zoning Administrator and the supporting conclusions proposed by the applicant for the case.

The Board had no questions on the staff report.

**BOARD ACTION: Mr. Hough offered a motion, which was duly seconded by Mr. Shell, to open the public hearing on Variance Request V-230102. The motion was unanimously carried.**

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

At the request of Mr. Tyson, Vice-Chairman Moore acknowledged the submittal and acceptance by the Board of the staff report into the record for Variance Request V-230102.

Mr. Michael Eugene Martin was sworn in by Vice-Chairman Moore to provide testimony under oath during the public hearing.

Mr. Martin, the owner of the immediately adjacent lot to the west of the subject property at 1627 Sarah Ruppert Rd, addressed the Board on behalf of the applicant.

Mr. Donald S. Hilhorst was sworn in by Vice-Chairman Moore to provide testimony under oath during the public hearing.

Mr. Hilhorst, the land surveyor who prepared the survey of the neighboring property, addressed the Board on behalf of the applicant. He noted that the proposed property recombination would also result in the enclosed portion of the detached frame building behind the home at 1627 Sarah Ruppert Rd satisfying the side minimum building setback requirement with only a minor encroachment of the rear shelter.

Vice-Chairman Moore asked whether the variance should also address the setback encroachment of the rear shelter on the detached frame building behind the home at 1627 Sarah Ruppert Rd.

Mr. Tyson responded that would not be necessary, provided that the actual enclosed area of the building is less than 600 square feet, because it would then only be subject to a five-foot side minimum building setback requirement.

**BOARD ACTION: Mr. Rose 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-230102:**

**Findings of Fact:**

- (1) The subject property is the 0.78-acre Lot 51 of the Cedar Ridge Subdivision, Phase 3, Section 3 further identified as Nash County Tax Map PIN 381100181053 and Parcel ID # 049849 and located at 1665 Sarah Ruppert Rd, Nashville, NC 27856 within the A1 (Agricultural) Zoning District of Nash County, North Carolina.
- (2) The subject property was subdivided in 2001 and has a total lot area of 33,956 square feet.
- (3) 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 lot area requirement of the A1 Zoning District from 30,000 square feet to 43,560 square feet (or one acre.)
- (4) 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 lot area requirement of the A1 Zoning District from 43,560 square feet to 40,000 square feet (Case File #A-190901.)
- (5) The subject property did conform to and, in fact exceeded, the 30,000 square foot minimum lot area requirement in effect at the time that it was subdivided.
- (6) The subject property has insufficient lot area to conform to the currently effective 40,000 square foot minimum lot area requirement.
- (7) The subject property is, therefore, considered a legal, but "nonconforming lot" (UDO Art. VI, Sec. 6-2.)
- (8) The subject property was acquired by Stephen N. Moncrief and Kay N. Moncrief, the current owners, in 2008 per Deed Book 2374 Page 859 of the Nash County Registry.
- (9) A recent survey of the immediately adjacent lot to the west of the subject property at 1627 Sarah Ruppert Rd made by Land Surveyor Donald S. Hilhorst revealed that the existing concrete driveway serving that neighboring property actually encroaches 5.4 feet onto the subject property.
- (10) The owner of the subject property now desires to correct the encroachment of the existing concrete driveway by relocating the side property line and transferring a 1,312 square foot portion of the subject property to be recombined with the adjacent lot.
- (11) The proposed recombination would reduce the total area of the already "nonconforming" subject property from 33,956 square feet to 32,644 square feet, further below the currently effective 40,000 square foot minimum lot area requirement.
- (12) On January 18, 2023, the property owner submitted an application for Variance Request V-230102, seeking to reduce the minimum lot area requirement from 40,000 square feet to 30,000 square feet in order to allow the proposed property recombination and to correct the encroachment of the existing concrete driveway.
- (13) On January 23, 2023, the Nash County Board of Adjustment conducted a quasi-judicial public hearing on Variance Request V-230102.
- (14) Notice of the public hearing was sent by first class mail on January 12, 2023 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 currently effective 40,000 square foot minimum lot area requirement of the A1 Zoning District because:
  - (a) It would prevent the proposed property recombination intended to correct the encroachment of the existing concrete driveway; and
  - (b) It would not be feasible to combine additional area from the adjacent lot behind the driveway encroachment with the subject property without compromising access to the garage door on the northeast side of the existing detached accessory building located on the adjacent lot.
- (2) The applicant has demonstrated that the hardship results from conditions that are peculiar to the property, specifically its status as a “nonconforming lot,” because while the subject property did conform to and, in fact exceeded, the 30,000 square foot minimum lot area requirement in effect at the time that it was subdivided, it now has insufficient area to conform to the currently effective 40,000 square foot minimum lot area requirement.
- (3) The applicant has demonstrated that the hardship did not result from actions taken by the applicant/property owner because the existing concrete driveway was constructed across the side property line prior to either lot being acquired by the current property owners.
- (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 reduced area of the subject property will still conform to and exceed the 30,000 square foot minimum lot area requirement that was in effect at the time it was subdivided and that remains common throughout the adjacent lots of the Cedar Ridge Subdivision.

**The motion was unanimously carried.**

**BOARD ACTION: Mr. Shell offered a motion, which was duly seconded by Mr. Rose, to close the public hearing and to approve Variance Request V-230102 to reduce the minimum lot area requirement from 40,000 square feet to 30,000 square feet in order to allow the proposed property recombination and to correct the encroachment of the existing concrete driveway.**

**The motion was unanimously carried.**

**7. Adjournment.**

There being no further business, Vice-Chairman Moore adjourned the meeting at 6:48 p.m.