

**MINUTES OF THE  
NASH COUNTY BOARD OF ADJUSTMENT  
REGULAR MEETING  
HELD MONDAY, MAY 22, 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  
William Parker, Regular Member  
Rodney Hough, Regular Member  
Oscar Bruce, Regular Member  
Emanuel Shell, Alternate Member #1  
Charles Rose Jr., Alternate Member #2  
Benton Moss, Alternate Member #3

**BOARD MEMBERS ABSENT**

Dennis Cobb, Regular Member, Chairman

**ATTORNEY TO THE BOARD**

Dylan Castellino

**STAFF MEMBERS PRESENT**

Adam Tyson, Planning Director  
Aaron Chalker, Senior Planner  
Windy Braswell, Planning Technician

**OTHERS PRESENT**

Jamie Laura Baker  
Gene McDonald  
Beth Fisher Taylor

**1. Call to Order.**

Vice-Chairman Moore called the meeting to order at 6:00 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. Parker, Mr. Hough, Mr. Bruce, and Mr. Shell.

**4. Election of Board Officers (Chairman & Vice-Chairman) for 2023-2024.**

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

**BOARD ACTION: Mr. Parker offered a motion, which was duly seconded by Mr. Bruce, to elect Chairman Dennis Cobb and Vice-Chairman Brandon Moore to continue to serve in their respective positions for the 2023-2024 year.**

**The motion was unanimously carried.**

**5. Approval of the Minutes of the January 23, 2023 Regular Meeting.**

Vice-Chairman Moore asked for any revisions or corrections to the draft minutes of the January 23, 2023 regular meeting. None were offered.

**BOARD ACTION: Mr. Parker offered a motion, which was duly seconded by Mr. Hough, to approve the minutes of the January 23, 2023 regular meeting as submitted.**

**The motion was unanimously carried.**

**6. Quasi-Judicial Public Hearing on Variance Request V-230501 made by Jacqueline Battle Cole, the property owner, to reduce the thirty-foot (30') rear minimum building setback requirement to approximately eighteen feet (18') in order to accommodate a proposed new single-family dwelling on the lot located at 10779 NC Highway 33, Whitakers, NC 27891.**

Mr. Tyson presented the staff report and supplemental materials related to Variance Request V-230501 as submitted to the Board in the May 22, 2023 Nash County Board of Adjustment agenda packet including a review of the standard for the issuance of a variance, the findings of fact proposed by the Zoning Administrator, and the supporting conclusions proposed by the applicant.

Mr. Parker asked whether there was any response received to the public notices provided for this request.

Mr. Tyson replied that the Planning Staff had received an email message from Beth Taylor with Fisher Farms, who was present at the meeting to address the Board during the public hearing on this request.

Mr. Chalker added that he had received a telephone call from Mr. James Joyner, an owner of a property located within 600 feet of the subject property, who had asked for clarification on the nature of the request.

Mr. Hough asked whether Nash County had granted approval for the proposed new home to utilize the existing septic system.

Mr. Tyson replied that Nash County Environmental Health had issued a Certificate of Compliance, approving the use of the existing septic system for the proposed new home.

**BOARD ACTION: Mr. Shell offered a motion, which was duly seconded by Vice-Chairman Moore, to open the public hearing on Variance Request V-230501 and Variance Request V-230502.**

**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 acceptance by the Board of the staff report and the contents of the case file as evidence into the record for Variance Request V-230501.

Mr. Gene McDonald was sworn in by Vice-Chairman Moore to provide testimony under oath during the public hearing on behalf of the request applicant, Jacqueline Battle Cole.

Mr. McDonald addressed the Board and explained that the need for the variance was determined after having the lot surveyed and the existing septic system located. He further noted that all other potential locations on the lot for the home were investigated prior to applying for the variance, but the requirement to provide secondary egress on the rear of the home would inevitably create an encroachment into the required rear minimum building setback.

Ms. Beth Taylor with Fisher Farms at 11735 Watson Seed Farm Rd was sworn in by Vice-Chairman Moore to provide testimony under oath during the public hearing.

Ms. Taylor addressed the Board in opposition to the request, stating that her family owns the agricultural property at 10983 NC Highway 33 to the south and east of the subject property, which currently includes six existing Perdue poultry houses. She stated her concern about the proposed reduction of the rear minimum building setback requirement and the related proximity of the proposed location of the new home to the farm property due to the agricultural chemicals and fertilizers used on the farm as well as the recent removal of the timber from the farm property, which previously provided a more substantial buffer between the farm and the subject lot. She displayed photographs of the subject site as well as a 2013 aerial photograph depicting the location of the previously demolished home on the lot. She alleged that portions of the previously demolished home were actually buried on the property, which would further limit the potential location for the proposed new home.

Mr. Bruce asked for clarification as to whether the concerns were related to the anticipation of potential complaints from the future residents of the subject property regarding the nearby spraying of agricultural chemicals or to what might be buried on the subject property from the demolition of the previous dwelling.

Ms. Taylor replied that her primary concern was the reduction of the buffer between the proposed new home and the existing farm operation, specifically in relation to the spraying of agricultural chemicals

and fertilizers that might give the occupants of the proposed new home reason to complain of unwanted odors or affects.

Mr. Bruce noted that the potential impact of the agricultural chemicals would be dependent upon the direction of the wind.

Ms. Taylor explained that modern farming technology and equipment helps to reduce the unintended overspray of agricultural chemicals onto adjacent properties, but the use of a buffer was still considered a best practice by the farming community to mitigate the fears of and potential conflicts with nearby property owners.

Mr. Bruce and Ms. Taylor discussed that the recent removal of the timber from the farm property diminished the previous buffer provided between the farm and the subject residential lot.

Mr. Parker asked whether Ms. Taylor had communicated her concerns to the request applicant.

Ms. Taylor replied that she had only recently become aware of the variance request and she had not had contact with the request applicant.

Mr. Hough confirmed with Mr. Tyson that the applicant was requesting a twelve-foot (12') reduction in the rear minimum building setback and that the Fisher Farms property represented by Ms. Taylor was located approximately 120' from the rear lot line of the subject property.

Ms. Taylor stated that the proposed eighteen feet (18') of separation was not substantial in a rural area.

Mr. Castellino asked Ms. Taylor if the buffer being discussed was required per any contract between the farm and the poultry company.

Ms. Taylor replied no.

Vice-Chairman Moore explained that poultry farm operations are subject to waste management plan requirements and that those requirements were expected to be revised in the future, but it is currently not known specifically how they might change.

Mr. Castellino asked Ms. Taylor if the variance request were to be granted, would that cause the existing poultry farm or any other part of that operation to be in noncompliance with the terms of an existing contract for agricultural activities on that property.

Ms. Taylor replied that it would not likely directly interfere with the existing contract to raise poultry, but it could potentially interfere with the current waste management practice of recycling and spreading the poultry litter on the farm as fertilizer.

Mr. Castellino asked Ms. Taylor if she had any of the waste management permits with her.

Ms. Taylor replied that she did not.

Mr. Moore noted that the N.C. Department of Environmental Quality was considering the possible adoption of required setbacks between homes and the application of poultry litter.

Mr. Castellino clarified that we do not know whether those requirements will ever actually be adopted.

Mr. Parker asked Ms. Taylor whether she currently had any documentation to support the idea that approval of the variance request would actually impede her farming operation.

Ms. Taylor replied that she did not, other than her twenty years of previous farming experience.

Mr. Castellino asked Ms. Taylor when the timber was cut from the farm property.

Ms. Taylor replied that the timber was cut in the winter of 2022.

Mr. Bruce asked whether replanting the timber would improve the buffer situation.

Ms. Taylor replied that it might after twenty years of growth.

Mr. Bruce asked about the possibility of the variance applicant planting a vegetative screen along their rear property line.

Ms. Taylor and Mr. Bruce discussed that a future issue could depend on the attitude of the homeowner towards the agricultural operation.

Mr. Rose asked about the potential failure of the existing septic system in the future and the requirements for replacing it on a smaller, nonconforming lot such as this one.

Mr. Tyson replied that modern septic systems require the designation of an available repair area on the same lot for the installation of a replacement system, but he did not believe that the same requirements applied to older, already existing septic systems. Therefore, there may not be an available repair area on the subject property, but he noted that is the same risk taken by anyone who chooses to reuse an older, existing septic system.

Ms. Taylor stated her belief that part of the problem with the subject property is that the buried remains of the former home limit the available area where a new septic system could be installed.

Mr. Rose asked about the possibility of granting a variance for the setback distance required between the home and the drain field of the septic system.

Mr. Tyson replied that any variance to the setback required between a home and a drain field would have to be reviewed and approved by the Health Department, as it was not a zoning matter.

Mr. Bruce asked whether the existing septic tank could be relocated.

Mr. Tyson replied that he was unaware whether the applicant had explored that possibility with the Health Department.

Mr. Bruce asked whether it was a known fact that the previous, demolished home was actually buried on the subject property.

Ms. Taylor replied yes, that it was known to people in the community, but she was unable to verify specifically when or what was buried.

Mr. Tyson noted that the timing of the alleged burial of the previous home may be important, because the standard for the issuance of a variance requires that the hardship should not have resulted from actions taken by the applicant or property owner.

Mr. McDonald addressed the Board and pointed out the several hundred acres of farmland located directly across NC Highway 33 from the subject property without any existing buffer and noted that due to the proximity of the applicant's mother's existing home, they were already very familiar with the agricultural practices in the area. He also stated that he had no knowledge of a home being previously buried on the subject property.

Mr. McDonald stated that the applicant could potentially move the proposed home location further to the west on the subject property in order to increase its distance from the agricultural operation.

Mr. Moss asked about the portion of the proposed home that would encroach into the rear minimum building setback.

Mr. McDonald replied that it was a screened porch.

Mr. Tyson and Mr. McDonald discussed that the applicant would consent to the attachment of a condition to the variance approval specifying that the proposed home must be located at least 15' but no more than 20' from the western side property line of the subject lot.

Mr. Bruce asked about the potential relocation of the screened porch to a different side of the home.

Mr. McDonald replied that the building code requirement for secondary egress on the rear of the home would still require a set of steps that would encroach into the rear minimum building setback.

Vice-Chairman Moore asked Ms. Taylor if the relocation of the proposed home closer to the western side property line of the subject property as discussed would be favorable to the farming operation.

Ms. Taylor replied that she would still have a concern regarding the precedent set by the approval of the variance and the potential future impacts on agricultural operations in the area.

Vice-Chairman Moore stated that this variance request would only apply to this specific subject property.

Mr. Tyson replied that was correct, but that this particular case could potentially be cited as a precedent in the future for other, similar requests.

Ms. Taylor suggested that the applicant contact the immediately adjacent property owner to explore a relocation of the rear property line in order to accommodate the minimum building setback without the need for a variance.

Mr. McDonald replied that the applicant had already closed on the construction loan using the subject property as collateral, so any adjustments to the lot would further complicate the applicant's situation.

Mr. Rose noted that the proposed reduction of the rear minimum building setback would not improve the factors such as dust, noise, and fumes, which is part of the purpose and intent of the building setback regulations.

**BOARD ACTION: Mr. Hough offered a motion, which was duly seconded by Mr. Parker, to adopt the findings of fact and conclusions as listed in the staff report to support approval of Variance Request V-230501.**

**The motion failed with a vote of 3 to 2 due to the lack of a four-fifths (4/5) majority as required to grant variance requests, with Mr. Hough, Mr. Parker, and Mr. Shell in favor of the motion and Vice-Chairman Moore and Mr. Bruce opposed.**

Mr. Tyson and Mr. Castellino discussed a procedural matter related to the required four-fifths (4/5) majority vote.

Vice-Chairman Moore stated his opinion that approval of the variance would potentially create a future hardship for the landowner of the nearby farm property. Instead, he suggested exploring the possibilities of removing or relocating the rear porch/egress and/or adjusting the setback distance required between the home and the existing septic system.

Mr. McDonald addressed the difficulty of relocating the rear egress due to the applicable building code requirements.

Mr. Tyson explained the Board's option to table the request for further consideration at a future meeting date.

The Board discussed that the presence or absence of the rear porch would have little effect on the impact of odors or chemicals from the nearby farm property.

Mr. Hough noted that a relocation of the rear property line would not actually impact the proposed location of the home.

Mr. Moss and Ms. Taylor discussed her concern related to the establishment of a precedent for the reduction of minimum building setback requirements adjacent to agricultural land.

Vice-Chairman Moore commented on the uncertainty related to the future requirements for poultry waste management and the impacts of adjacent residential development on farm property.

Mr. Bruce asked about whether the Board could table the request until the revisions to the poultry waste management requirements were known.

Mr. Tyson advised that the timeframe for those state-level regulatory changes was currently unknown.

Ms. Taylor suggested tabling the request in order to explore other options to the variance under the requirements of the building code and the Health Department.

Mr. McDonald replied that a variance to the secondary egress requirement was unlikely to be a viable option due to the related safety concerns.

Mr. Rose asked how the building permit was issued for the new home without this rear setback encroachment being addressed first.

Mr. Tyson replied that the initial site plan submitted to the County for zoning approval depicted the home satisfying the standard rear minimum building setback, but the property owner did not discover the need for the variance until after the property was surveyed and the existing septic system was located.

Mr. Moss and Mr. McDonald discussed the proposed floorplan for the home.

Mr. Tyson noted the ordinance allowance for the encroachment of steps into the rear minimum building setback and asked about the square footage of the proposed rear porch.

Mr. McDonald replied that it was 168 square feet.

Mr. Tyson stated that an uncovered porch or deck may encroach into 50% of a rear setback with no need for a variance.

Mr. McDonald replied that the applicant preferred a covered, screened porch for livability reasons.

**BOARD ACTION: Mr. Bruce 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-230501:**

**Findings of Fact:**

- (1) The subject property is a 0.69-acre lot located at 10779 NC Highway 33, Whitakers, NC 27891 and further identified as Nash County Tax Map PIN 386600412051 and Parcel ID # 022634 per the Nash County Tax Parcel Map.
- (2) The subject property is located within the A1 (Agricultural) Zoning District per the Nash County Zoning Map.
- (3) The dimensional standards that currently apply within this A1 Zoning District include a 40,000 square foot minimum lot area requirement and a thirty-foot (30') minimum building setback distance required between a principal structure and the rear property line per the Nash County Unified Development Ordinance (UDO) Art. IX, Sec. 9-4.1 (A), Table 9-4-1.
- (4) Per the submitted site plan, the subject property has a total lot area of approximately 30,013 square feet. However, the subject property was subdivided prior to the adoption and effective date of the current 40,000 square foot minimum lot area requirement.
- (5) The subject property is, therefore, considered a legal, but "nonconforming lot" per UDO Art. VI, Sec. 6-2.
- (6) A single-family dwelling previously located on the subject property was demolished and removed, but the existing onsite wastewater/septic system that served the former dwelling remains in place.
- (7) The subject property was acquired by Jacqueline Battle Cole, the current owner, in June 2016 per the Commissioner's Deed recorded in Deed Book 2830 Pages 733-736 of the Nash County Registry.
- (8) Per the property owner, the existing onsite wastewater/septic system that served the previous dwelling was located by David Brantley and Sons, Inc. in preparation for the construction of a new single-family dwelling on the subject property, which is intended to utilize the existing system.
- (9) Per the property owner, David Brantley and Sons, Inc. advised that the new single-family dwelling should be constructed no closer than eighty feet (80') to the front property line along the NC



Highway 33 public road right-of-way in order to avoid disturbance of or damage to the existing onsite wastewater/septic system.

- (10) Per the submitted site plan, the construction of the proposed new single-family dwelling on the subject property eighty feet (80') back from the front property line would locate the rear of the dwelling only 18.1 feet from the rear property line, resulting in an 11.9-foot encroachment into the required thirty-foot (30') minimum building setback distance.
- (11) The property owner submitted an application for Variance Request V-230501, seeking to reduce the thirty-foot (30') rear minimum building setback requirement to approximately eighteen feet (18') in order to accommodate the construction of the proposed new single-family dwelling on the subject property in a location that would allow the reuse of the existing onsite wastewater/septic system without disturbing or damaging it.
- (12) On May 22, 2023, the Nash County Board of Adjustment held a quasi-judicial public hearing on Variance Request V-230501.
- (13) Notice of the public hearing was sent by first class mail on May 10, 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 May 11, 2023.
- (14) All persons who provided testimony during the public hearing were sworn in by the Board 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.

**Supporting Conclusions:**

- (1) The applicant has demonstrated that an unnecessary hardship would result from the strict application of the thirty-foot (30') rear minimum building setback requirement of the A1 Zoning District because it would prohibit the construction of the proposed new single-family dwelling on the subject property in a location that would allow the reuse of the existing onsite wastewater/septic system without disturbing or damaging it.
- (2) The applicant has demonstrated that the hardship results from conditions that are peculiar to the property, specifically the subject property's status as a legal "nonconforming lot", meaning that the lot is subject to the currently applicable minimum building setback requirements without including sufficient land area to satisfy the currently applicable minimum lot area requirement, as well as the location of the existing onsite wastewater/septic system.
- (3) The applicant has demonstrated that the hardship did not result from actions taken by the applicant/property owner because the subject property was subdivided in its current configuration and the existing onsite wastewater/septic system was installed 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 variance of the rear minimum building setback requirement remains consistent with the purpose of the building setback regulations "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" as established in UDO Art. I, Sec. 1-3.2 (I).

**The motion was carried with a vote of 4 to 1 with Vice-Chairman Moore opposed.**

**BOARD ACTION: Mr. Hough offered a motion, which was duly seconded by Mr. Shell, to approve Variance Request V-230501 to reduce the thirty-foot (30') rear minimum building setback requirement to approximately eighteen feet (18') in order to accommodate the**

**construction of the proposed new single-family dwelling on the subject property, subject to the following condition:**

**Condition:**

**The new single-family dwelling proposed for construction at 10779 NC Highway 33 shall be located at least fifteen feet (15') but no more than twenty feet (20') from the western side property line.**

Ms. Taylor addressed the Board and stated that approval of the variance would establish a precedent for property located adjacent to a poultry farm, when there are other options that could be explored prior to approval.

Mr. Castellino asked Ms. Taylor what special damage to her would result from the decision to approve the variance.

Ms. Taylor replied that if the waste management plan requirements for poultry farms are changed in the future and the variance has reduced the rear minimum building setback of the subject property below the standard county requirement, then that could prevent her from utilizing her nearby farmland.

Mr. Castellino asked Ms. Taylor if she knew whether there were any amendments currently proposed to the waste management plan requirements for poultry farms, the status of those amendments, or what requirements may be proposed for amendment.

Ms. Taylor replied that, at this point, she did not, but she did know that more regulations and restrictions are applied to agriculture every day and that they will eventually impact poultry farmers in the future.

Mr. Castellino asked Ms. Taylor, given the currently applicable regulations and her existing contracts, what impact, if any, would the approval of this variance have on the farming operation.

Ms. Taylor replied that she could not say.

**The motion was carried with a vote of 4 to 1 with Vice-Chairman Moore opposed.**

**7. Quasi-Judicial Public Hearing on Variance Request V-230502 made by Jamie Laura Baker & Jimmy Aaron Baker, the property owners, to reduce the fifteen-foot (15') side minimum building setback requirement to approximately eight feet (8') in order to accommodate a proposed new attached garage addition to the east side of the existing single-family dwelling located at 11504 W Old Spring Hope Rd, Spring Hope, NC 27882.**

Mr. Tyson presented the staff report and supplemental materials related to Variance Request V-230502 as submitted to the Board in the May 22, 2023 Nash County Board of Adjustment agenda packet including a review of the standard for the issuance of a variance, the findings of fact proposed by the Zoning Administrator, and the supporting conclusions proposed by the applicant.

Mr. Tyson and Mr. Castellino discussed a procedural matter concerning the public hearing.

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 acceptance by the Board of the staff report and the contents of the case file as evidence into the record for Variance Request V-230502.

Vice-Chairman Moore asked whether there was an existing easement along the east side property line of the subject property.

Mr. Tyson replied that the existing gravel access drive was labeled on the survey plat like a path with a width of ten feet (10'), but it was not formally identified as an access easement.

Ms. Jamie Laura Baker, the applicant, was sworn in by Vice-Chairman Moore to provide testimony under oath during the public hearing.

Ms. Baker addressed the Board and stated that the property surrounding the subject lot was family-owned land and that the previously discussed path leads to an old hog house that is no longer in operation.

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

Mr. Parker asked whether there was any response received to the public notices provided for this request.

Mr. Tyson replied that he was not aware of any responses received by the Planning Staff in relation to this 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-230502:**

**Findings of Fact:**

- (1) The subject property is a 1.77-acre lot located at 11504 W Old Spring Hope Rd, Spring Hope, NC 27882 per the survey plat recorded in Plat Book 20 Page 257 of the Nash County Registry and further identified as Nash County Tax Map PIN 275700784907 and Parcel ID # 037431 per the Nash County Tax Parcel Map.
- (2) The subject property is located within the A1 (Agricultural) Zoning District per the Nash County Zoning Map.
- (3) The dimensional standards that currently apply within this A1 Zoning District include a fifteen-foot (15') minimum building setback distance required between a principal structure and the side property line per the Nash County Unified Development Ordinance (UDO) Art. IX, Sec. 9-4.1 (A), Table 9-4-1.
- (4) The subject property includes an existing single-family dwelling constructed in its current location in 1988 per the Nash County Tax Records.
- (5) The subject property also includes an existing onsite well located in front of the dwelling and an existing onsite wastewater/septic system located behind the dwelling on the northwest portion of the lot per Nash County Well Permit #E21-001023.
- (6) There is an existing ten-foot (10') wide gravel access drive as well as an existing twenty-foot (20') wide water line easement located just across the east side property line of the subject property on the immediately adjacent lot at 3006 J Mar Rd serving the adjacent property to the north per the

survey plats recorded in Plat Book 20 Page 257 and Plat Book 33 Page 382 of the Nash County Registry.

- (7) The subject property was acquired by Jamie Laura Baker and Jimmy Aaron Baker, the current owners, in September 2021 per the General Warranty Deed recorded in Deed Book 3160 Pages 408-409 of the Nash County Registry.
- (8) Per the submitted floorplan, the property owners desire to construct a proposed 27.5 foot wide by 30 foot deep garage addition attached to the east side of the existing single-family dwelling located on the subject property.
- (9) Per the submitted site plan, the construction of the proposed attached garage on the east side of the existing single-family dwelling would locate the front right corner of the addition only approximately eight feet (8') from the side property line, resulting in an approximately seven-foot (7') encroachment into the required fifteen-foot (15') minimum building setback distance.
- (10) Per the property owners, they have contacted the owner of the immediately adjacent lot located on the east side of the subject property at 3006 J Mar Rd to discuss the potential relocation of the shared side property line, but the owner has thus far been unwilling to negotiate, at least partially due to the presence of the existing gravel access drive and water line easement along that boundary.
- (11) The property owners submitted an application for Variance Request V-230502, seeking to reduce the fifteen-foot (15') side minimum building setback requirement to approximately eight feet (8') in order to accommodate the construction of the proposed attached garage addition to the east side of the existing single-family dwelling located on the subject property.
- (12) On May 22, 2023, the Nash County Board of Adjustment held a quasi-judicial public hearing on Variance Request V-230502.
- (13) Notice of the public hearing was sent by first class mail on May 10, 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 May 11, 2023.
- (14) All persons who provided testimony during the public hearing were sworn in by the Board 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.

**Supporting Conclusions:**

- (1) The applicant has demonstrated that an unnecessary hardship would result from the strict application of the fifteen-foot (15') side minimum building setback requirement of the A1 Zoning District because it would prohibit the construction of the proposed attached garage addition to the east 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 unique locations of the already existing single-family dwelling, detached accessory building, onsite well, and onsite wastewater/septic system, which limit the applicant/property owner's ability to construct the garage elsewhere on the subject property in compliance with the standard minimum building setback requirements. Furthermore, the applicant/property owner's efforts to relocate the east side property line in order to accommodate the standard fifteen-foot (15') side minimum building setback requirement are hindered by the location of the existing gravel access drive and water line easement on the adjacent lot along that boundary of the subject property.
- (3) The applicant has demonstrated that the hardship did not result from actions taken by the applicant/property owner because the subject property was subdivided in its current configuration and the existing single-family dwelling, detached accessory building, and onsite wastewater/septic system as well as the existing gravel access drive and water line easement on

the adjacent property were all already established in their current locations 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 variance of the side minimum building setback requirement remains consistent with the purpose of the building setback regulations "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" as established in UDO Art. I, Sec. 1-3.2 (I).

**The motion was unanimously carried.**

**BOARD ACTION: Vice-Chairman Moore offered a motion, which was duly seconded by Mr. Shell, to approve Variance Request V-230502 to reduce the fifteen-foot (15') side minimum building setback requirement as necessary in order to accommodate the construction of the proposed attached garage addition to the east side of the existing single-family dwelling located on the subject property and to close the public hearing on Variance Request V-230501 and Variance Request V-230502.**

**The motion was unanimously carried.**

#### **8. Adjournment.**

There being no further business, Vice-Chairman Moore adjourned the meeting at 7:51 p.m.