



## Memorandum

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**To:** Bryan Chrisman, Assistant Town Manager  
**From:** Jason Botkins  
**Re:** Zoning Issues & Recommendations  
**Date:** May 5, 2017

### A. Setback

Issue: The Town wants to remove ambiguity within the setback requirements of its zoning and subdivision ordinances. The Town's preference is to measure the setback distance from the front lot line.

Recommendations:

1. Amend the definition of "setback" as stated in Section 202 of Appendix A:

The minimum distance by which a building or structure must be separated from the front lot line and street right-of-way.

2. Amend the setback line regulations of Sections 401.4, 402.4, 403.4, and 405.4 as follows:

*Setback regulations:* All structures shall be located at least (a) 35 feet from the front lot line; (b) 35 feet ~~or more~~ from the edge of any street right-of-way; and (c) which is 50 feet or greater in width, or 60 feet ~~or more~~ from the center of any street right-of-way less than 50 feet in width. The line which complies with all of these minimum distances This shall be known as the "setback line."

3. Amend the setback line regulations of Section 404.4 as follows:

*Setback regulations:* All Structures shall be located at least (a) 15 feet from the front lot line; (b) 15 feet from the edge of any street right-of-way; and (c) 40 feet from the center of any street right-of-way ~~ultimate street right-of-way~~. The line which complies with all of these minimum distances shall be known as the "setback line."

4. Amend the setback line regulations of Section 407.4 as follows:

*Setback regulations:* All structures Buildings shall be located at least (a) 20 feet ~~or more~~ from the front lot line; (b) 20 feet from the edge of any street right-of-way; and

~~(c) which is 50 feet or greater in width, or 45 feet or more from the center line of any street right-of-way, less than 50 feet in width except that signs advertising sale or rent of premises may be erected up to the property line. The line which complies with all of these minimum distances is~~ shall be known as the "setback line."

5. Delete the term "building (setback) line" from the definitions section of Appendix B. The term is not used elsewhere in Appendix A or B.
6. Amend the definition of "setback" in Appendix B ("See Building (setback) line") to match the amended definition provided above for Appendix A.

## **B. Adjacent**

Issue: The Town wants to clarify the use of the term "adjacent" in its zoning and subdivision ordinances.

Recommendation:

1. Add the following definitions to Section 202 of Appendix A and Section 502 of Appendix B:

*Abut*: Lots that share a common boundary.

*Adjacent*: Lots that abut one another or are separated only by a street, alley, right-of-way, or easement.

## **C. Nonconforming Lots**

Issue: The Town wants to create authority for administrative approval for grandfathered lots than cannot meet minimum width and size requirements. Currently, owners of those lots must seek relief from the Town's Board of Zoning Appeals.

Recommendation:

1. Amend Section 606 of Appendix A ("Nonconforming lots") to include appropriate authority from Virginia Code § 15.2-2286(A)(4):

606. - Nonconforming lots, structures, and improvements.

(a) The administrator may grant a modification from any physical requirement of this ordinance, including but not limited to minimum lot size and width, for any lot, structure, or improvement that predates such requirement upon making the following written findings:

(i) The strict application of the requirement would produce undue hardship; and

- (ii) The hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
  - (iii) The modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification.
- (b) Prior to granting a modification, the administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. The administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph.
- (c) The administrator's decision may be appealed to the board of zoning appeals as provided by Section 705.4, Article VII, of this Appendix. Decisions of the board of zoning appeals may be appealed to the circuit court as provided by Section 705.7, Article VII, of this Appendix.

**State Law reference**— Code of Virginia § 15.2-2286(A)(4).

**D. Recent Statutory Changes For Variances**

Issue: In 2015, the General Assembly amended the definition of “variance” set forth in Virginia Code § 15.2-2204 to remove any reference to hardship.

Recommendations:

1. Amend and replace the definition of variance in Section 202 of Appendix A as follows:

*Variance:* A reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of this ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of this ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

2. Amend Section 705.2(2) of Appendix A as follows:

To ~~grant~~authorize a variance upon appeal or original application in specific cases as defined in Code of Virginia, § 15.2-2201, ~~from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions~~

~~The Board of Zoning Appeals shall grant a variance if the evidence shows: will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:~~

- (a) A strict application of the ordinance provisions would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of this ordinance; and
- (b) The ~~When a property owner can show that his~~ property interest for which the variance is requested was acquired in good faith and any hardship was not created by the applicant; and
- (c) The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity; and
- (d) The condition of situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as amendment to this ordinance; and
- (e) 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; and
- (f) The relief or remedy sought by the variance applicant is not available through a special exception process authorized under Virginia Code § 15.2-2309(6).

~~and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.~~

~~No such variance shall be authorized by the board unless it finds:~~

- ~~a.~~  
~~That the strict application of the ordinance would produce undue hardship;~~
- ~~b.~~  
~~That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and~~
- ~~c.~~  
~~That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.~~

No variance shall be authorized except after notice and hearing as required by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

~~No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to~~

~~make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.~~

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.