



**County of Spotsylvania**  
**Department of Planning & Zoning**  
**Staff Report**  
**Board of Zoning Appeals**

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Project Number: V20-0002

Owner/Applicant: Albert K. Nainoa Jr. and Kathleen A. Nainoa

Applicant Representative: H. Clark Leming, Leming and Healy, P.C.

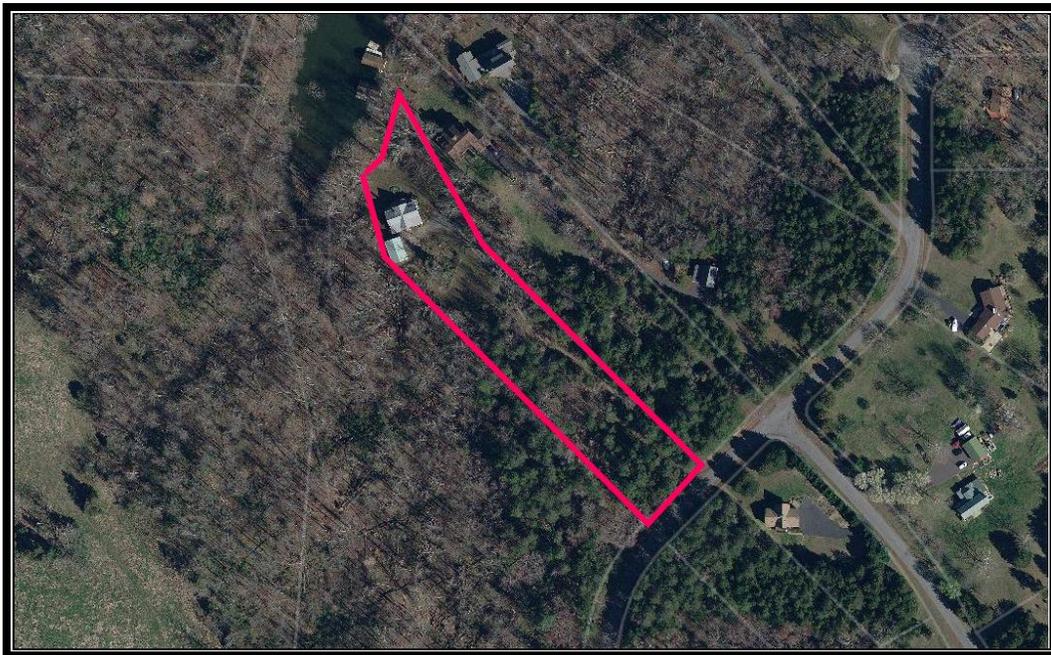
Request: The applicants request a variance to the ten foot (10') minimum side yard requirement for freestanding accessory structures identified in County Code Sec. 23-5.2.3(7)(B). The variance will reduce the side yard setback by 3'6" to remedy a construction error which placed a detached garage within the required setback.

Tax Map Parcel(s): 54C-1-2

Location: The property is located at 6328 Carter Lane Mineral, Virginia 23117.

Voting District: Livingston

Date Application Deemed Complete: September 25, 2020





## II. Analysis.

The Spotsylvania County Zoning Ordinance contemplates construction errors and grants the Zoning Administrator the authority to approve reductions in the minimum yard requirements based on errors in the building location provided the error does not exceed ten percent of the measurement. In this case, the error is over 30% with the corner of the garage encroaching into the side yard setback by just over three feet (3'). With that, the property owners are left with no alternative than to seek remedy through a variance or demolish the garage or portion thereof.

As defined in Virginia Code 15.2-2201, "Variance" means, in the application of a zoning ordinance, 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 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 provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

In this instance, given that a boundary line adjustment was unsuccessful, a strict application of the ordinance would require the demolition of the garage or a portion thereof. The variance request is consistent with the Zoning Ordinance in that Section 23-5.1.4 provides for administrative relief to construction errors within specific parameters as previously described.

The burden of proof shall be on the applicant to prove by a preponderance of the evidence that their application meets the standards for a variance as defined in VA Code 15.2-2201 and the criteria set out in this section, VA Code 15.2-2309 (2) et seq. Listed below are the standards with staff's analysis provided in italics for the Board of Zoning Appeals' consideration.

- (i) 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;

*Based on staff's research, the Nainoas purchased their property in 1994 and constructed a single family dwelling in 2000. The Nainoas secured the appropriate permits needed to construct the detached garage. The Code requires a ten-foot setback (10') for accessory structures from the side property line and the approved permit identifies the building eleven feet (11') from the side property lines. The hardship is the result of a construction error.*

- (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;

*The property most impacted by the reduced setback is the adjacent lot to the west which is owned by the Jacksons. Based on County records, this lot is approximately 6.5 acres and currently vacant. The required side yard setback for an accessory structure is ten feet (10'). The length of the garage adjacent to the side property line is 36' and approximately 30' of the building is in compliance with the setback. The remaining six-foot portion of the building is located 6' 9" from the property line which turns westward into the property. Please refer to Figure 1.*

- (iii) 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;

*The Spotsylvania County Zoning Ordinance addresses construction errors and grants the Zoning Administrator the authority to approve reductions in the minimum yard requirements based on errors in the building location provided the error does not exceed ten percent of the measurement. In this case, the error is over 30% with the corner of the garage encroaching into the side yard setback by just over three feet (3').*

- (iv) 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

*The granting of the variance does not result in a use that is not otherwise permitted on the property.*

- (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.

*There is no relief to this situation through a special use permit or rezoning. Compliance with the setback can be achieved by either a boundary line adjustment or demolition of the garage. It is staff's understanding attempts to pursue a boundary line adjustment have been unsuccessful.*

**Considerations:** The Board of Zoning Appeals must determine if the applicants' variance request meets the standards for a variance as defined in VA Code 15.2-2201 and the criteria set out in VA Code 15.2-2309 (2) et seq. Should the Board decide to grant the variance, conditions may be imposed in order to mitigate impacts to adjacent properties.