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Mr. Steven L. Kidd, Chairman, called the November 9, 2021 meeting of the Botetourt County Board of Zoning Appeals to order at 9:02 AM in the Auditorium of the Botetourt County Administration Building in Daleville, Virginia.

PRESENT: Mr. Steven L. Kidd, Chairman
Mr. Hunter Young, Member
Mr. S. E. Cash, Member
Mr. Darrin Hill, Member
Mr. Chris Dadak, County Attorney
Mr. Drew Pearson, Zoning Administrator
Mrs. Laura Goad, Secretary to Board of Zoning Appeals
Mr. Nick Baker, Code Enforcement Officer
Mr. Jon McCoy, Long-Range Planner

ABSENT: Mrs. Nicole Pendleton, Director of Community Development
Mr. J. Scott Caldwell, Member

After Mr. Kidd introduced Staff and the Board of Zoning Appeals, he explained the public hearing process and asked that comments be directed to the Board, not to others in the audience.

Public hearing

Amsterdam District: Roger L. Flinchum, Jr. requests a 5.0-foot variance from the 20-foot side yard setback required by Section 25-115.- Building requirements.(a) Minimum yards. (2) Side yards, Rural Residential (RR) of the Botetourt County Zoning Ordinance to request relief from an encroachment made by a previous owner/builder. This 1.51-acre lot is located within the Rural Residential (RR) Use District, located at 20 Sowder Farm Road, Troutville, and is identified on the Real Property Identification Maps of Botetourt County as Section 73E(1), Parcel 1.

Mr. Pearson read the request aloud. He stated this request occurred when the current owner tried to sell the house, and an updated survey showed only 15 feet between the home and the property line, instead of the required 20-foot side yard setback. Mr. Pearson further stated the property was rezoned in 2003 and the house was constructed between 2006 and 2009, and that Mr. Flinchum, also a contractor, finished the home and resided here until the point of trying to sell this property. He noted that potential purchasers of this house reached out to confirm required setbacks and the ability to construct an addition on the home. The individual was then notified that not only would there be no ability to extend the current structure into the side yard, but the house was encroaching into the side yard setback. Staff attempted but was unable to locate any permits, site plans, or other permitting information in an effort to rule out any error that might have occurred as part of the zoning site plan review. The applicant was also unable to produce the original building permit. The applicant provided staff with the Sowder Farm covenants and restrictions specifying a 15-foot side yard setback, instead of the zoning ordinance setbacks, however, Mr. Pearson stated that the county does not have the ability to enforce covenants and restrictions. He further stated the applicant requested relief, the exact reason this happened would probably never be known, and that the adjoining property owner on the variance side was in favor of this request. Mr. Pearson then suggested the following condition should the Board of Zoning Appeals chose to approve the variance. He stated, "Any future additions must meet current setback regulations for lots in the Rural Residential Use District." noting the variance would be specific to the home constructed on the property at this time.

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Mr. Hill asked if there was any evidence that the house was never permitted.

Mr. Pearson explained that the county now has electronic permitting, while in years past, records were paper. He further explained there was evidence of a few records, although attachments, such as a site plan, were not available. Mr. Pearson stated that Staff looked for those records, pointing out that if there had been an error in approving the permit application, the error would have been considered a “thing decided” and subsequently viewed as a legal nonconformity. Mr. Pearson further stated that Staff was able to confirm that permits had been issued for the construction of the house, but without locating a site plan, the County had to assume that the encroachment was a setback violation.

Mr. Flinchum of Troutville, was present and spoke on his own behalf. He stated that he thought Residential Contractors pulled the first permit, and that he had called Mr. McKnight who said he was covered, and that he wouldn't put that in the covenants and restrictions if he knew it was wrong. Mr. Flinchum said he didn't know how the 15-foot side yard setback got into the covenants and restrictions, and that it was probably an oversight.

Mr. Kidd stated that it seemed like if they squared it up with the house, it would be ok.

Mr. Flinchum stated that he measured 40 feet between the houses.

Mr. Kidd opened the public hearing.

There being no one else to speak, Mr. Kidd closed the public hearing.

Mr. Young motioned to grant the variance request allowing a 5-foot encroachment into the required 20-foot side yard setback as submitted by the applicant with the condition included in staff's background report for Roger L. Flinchum, Jr. as the granting of this request will not be contrary to the public interest, and a literal enforcement of the Botetourt County Zoning Ordinance would result in unnecessary hardship, and that the standards for a variance as listed in Section 25-551 have been met, with the following condition:

1. Any future additions must meet current setback regulations for lots in the Rural Residential Use District.

Mr. Kidd seconded the motion, which was approved 4:0:0:1 with the following recorded vote:

YES:	Mr. Young, Mr. Kidd, Mr. Cash, Mr. Hill
NO:	None
ABSTAIN:	None
ABSENT:	Mr. Caldwell

Consideration was given to the October 12, 2021 minutes.

Mr. Young motioned to approve the October 12, 2021 minutes. Mr. Cash seconded the motion, which was approved 4:0:0:1 with the following recorded vote:

YES:	Mr. Young, Mr. Kidd, Mr. Cash, Mr. Hill
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NO: None
ABSTAIN: None
ABSENT: Mr. Caldwell

There being no other business, at 9:16 AM, Mr. Young motioned to adjourn, seconded by Mr. Hill, which was approved 4:0:0:1 with the following recorded vote:

YES: Mr. Young, Mr. Kidd, Mr. Cash, Mr. Hill
NO: None
ABSTAIN: None
ABSENT: Mr. Caldwell