



# TOWN OF SMYRNA BOARD OF ZONING APPEALS

## MEETING MINUTES

June 17, 2025

5:00 p.m.

Smyrna Town Hall

Chairman Jay Michaelson called the regular session of the Smyrna Board of Zoning Appeals to order on June 17, 2025 at 5:00 p.m. The invocation was given by Vanessa Haley and the Pledge of Allegiance was led by Councilman Jerome Dempsey.

The following Board of Zoning Appeals members/staff were present/absent:

Present: Jerome Dempsey, Councilman; Jay Michaelson; Scott Demonbreun; Vanessa Haley

Absent: Don Hyde

Staff Present: Ben Groce, Staff Attorney; Kevin Rigsby, Town Planner; Mitchell Wensman, Planner; Kathryn Smith, Office Coordinator; Kristi Worrell, Building Official

1. Citizens' Comments:

*"The Town's Public Comment Period shall be reserved for those citizens that have signed up to address a Board or Committee, at least twenty-four (24) hours in advance of the meeting, pursuant to the Town's Public Comment Policy. Speakers are limited to three (3) minutes. Additional comments may be submitted in writing".*

2. Approval of Minutes of the May 15, 2025 meeting

Motion by Scott Demonbreun, seconded by Vanessa Haley to approve the Minutes of the May 15, 2025 meeting.

**Vote:** 4 - 0 Passed - Unanimously

3. New Business:

a. Setback Variance:

1. Susan & Van Baggett  
210 Mill Creek Court

<b>Location:</b> 210 Mill Creek Ct	<b>Property Owner(s):</b> Van & Susan Baggett
<b>Tax Map/Group/Parcel #:</b> 49D/C/5.00	<b>Zoning/Use Classification:</b> R-3/Single-Family Residential

**Request:** A front setback variance of 13' and a side setback variance of 6.5' for a detached carport.



#### **Staff Analysis**

The applicant has requested a 13' front setback variance and a 6.5' side setback variance to allow a detached carport at 210 Mill Creek Court. Setback requirements for detached structures within the R-3 district are 35' for the front setback and 8' for the side setback. With the requested setback variances, the structure would have a 22' front setback and a 1.5' side setback.

The structure was built without a building permit. The applicant stated their contractor advised a permit was not necessary for a detached structure. Codes enforcement observed the structure in January, prompting the homeowner to submit a building permit. This permit was subsequently denied due to the structure not meeting setback requirements.

Section 7.080 D of the Zoning Ordinance details the requirements for variances not involving special flood hazard areas. These are detailed below.

#### **Zoning Variance Requirements**

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

##### *Section 7.080 Procedure for authorizing zoning variances*

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

## **B. Standards for Variances not Involving Special Flood Hazard Areas:**

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
  1. Staff finds that the property does not have unique circumstances in regards to the physical surroundings as the lot is uniformly rectangle in shape. However, there is a 20' PUDE along the rear lot line that does not affect the placement of this structure.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
  1. The property does not have a uniquely shaped lot, however the house is built up to the side lot lines which prevents a structure from being built on the side of the dwelling.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
  1. Detached accessory structures are allowed by right within the R-3 zoning district, but are to adhere to all applicable setback requirements.
4. Financial returns only shall not be considered as a basis for granting a variance.
  1. The applicant has not identified financial returns as a reason for requesting this variance, however the structure is already built.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
  1. The contractor of the applicant constructed the structure without obtaining the proper permits at which point it would have been noted on a site plan that the structure is encroaching upon setbacks.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
  1. Staff finds that the variance requested could provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the R-3 district due to a detached accessory structure encroaching upon the front and side setbacks.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
  1. Staff finds that the requested setback variance may be the minimum to make reasonable use of this structure for the proposed use due to the structure already being constructed.
8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
  1. Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
  1. Staff finds that the variance may not have any of the above effects.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
  1. Not applicable.

### **Conclusion**

Staff finds the property lacks unique physical characteristics. The structure was constructed by the applicant's contractor without proper permitting completed by the applicant or the contractor. While the variance request is the minimum to accommodate the existing structure and no available space on the side lot line for an alternative placement of the structure, several variance criteria remain unmet.

At this time, Chairman Jay Michaelson acknowledged applicant Susan Baggett to speak at the public hearing.

Motion by Vanessa Haley, seconded by Scott Demonbreun to deny the setback variance located at 210 Mill Creek Court based on lack of hardship on the property.

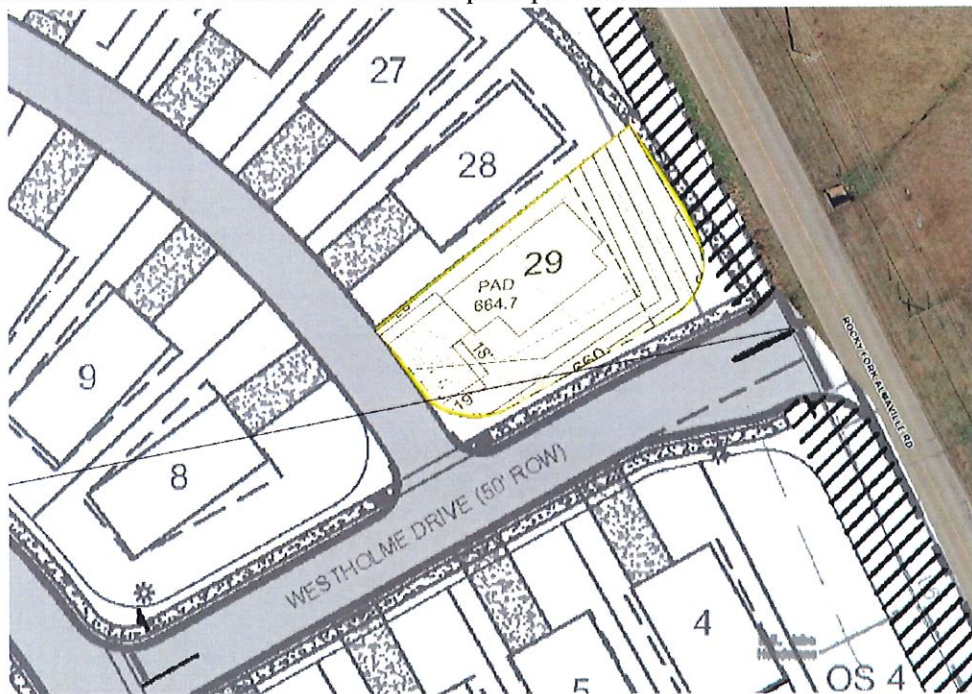
**Vote:** 4 - 0 Passed - Unanimously

At this time, Chairman Jay Michaelson acknowledged Building Official Kristi Worrell to speak regarding this request.

2. Tuckers Point Ventures Group, GP  
8675 Rocky Fork Almaville Road

<b>Location:</b> Tuckers Point Subdivision	<b>Property Owner(s):</b> Tuckers Point Ventures GP
<b>Tax Map/Part of Parcel #:</b> 54/41.00	<b>Zoning/Use Classification:</b> PRD/Single-Family Residential

**Request:** A front setback variance of 10' for the principal structure.



#### **Staff Analysis**

A 10' front setback variance is requested to allow the principal structure on Lot 29 in the Tuckers Point subdivision to have a 28' front setback on Queensbury Alley. This PRD requires alley-loaded single family dwellings to meet 38' front setbacks on the alley with 20' front setbacks on other road frontages. Lot 29 has three road frontages to meet a front setback: Rocky Fork Almaville Road, Westholme Drive and Queensbury Alley. Westholme Drive and Rocky Fork Almaville Road have a 20' front setback requirement, while Queensbury Alley requires a 38' front setback.

This property is located within Consolidated Utility District's (CUD) service area. Following approval of the PRD zoning and preliminary plat for this subdivision, CUD requested an exclusive 30' easement in addition to the right of way dedication that was already to be provided for future road widening. The easement request constricts the area in which a dwelling could be located on this

property while meeting all applicable setback requirements set by the PRD. The PRD zoning and preliminary plat have been reviewed and approved, however a final plat has not been submitted or recorded at this time to create the lot.

Section 7.080 D of the Zoning Ordinance details the requirements for variances not involving special flood hazard areas. These are detailed below.

### **Zoning Variance Requirements**

Section 7.080 of the Municipal Zoning Ordinance lists general requirements for a zoning variance request. Those requirements and staff's findings are as follows:

#### *Section 7.080 Procedure for authorizing zoning variances*

The purpose of a variance is to modify the strict application of the specific requirements of this ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his property under this ordinance.

### **B. Standards for Variances not Involving Special Flood Hazard Areas:**

The board shall not grant a variance unless it makes finding based upon evidence presented to it as follows:

1. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this ordinance were carried out must be stated.
  1. Staff finds that the property does have a unique circumstance in regards to the physical surroundings in that CUD has a water main located along one of the property lines.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
  1. The property does not have a uniquely shaped lot, however there are three setbacks that are required to be met as this is a corner lot. These three front setbacks create a constricted area for the principal structure to be placed on the property.
3. The variance will not authorize activities in a zone district other than those permitted by this ordinance.
  1. Single family dwellings are a permitted use within this PRD, but are to adhere to all applicable setback requirements of the PRD.
4. Financial returns only shall not be considered as a basis for granting a variance.
  1. The applicant has not identified financial returns as a reason for requesting this variance, however the purpose of this variance request is to construct a dwelling on this property to sell.
5. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this ordinance.
  1. The applicant is the developer of the site, however, the requirement of the larger easement width and location was not a result of the developer's actions.
6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same districts.
  1. Staff finds that the variance requested could provide the applicant with special privileges denied by the ordinance to other lands, structures, or buildings in the PRD district due to a structure encroaching upon a front setback.
7. The variance is the minimum that will make possible the reasonable use of the land, building, or structure.
  1. Staff finds that the requested setback variance may be the minimum to make reasonable use of this structure for the proposed use due to the larger than normal utility easement

width.

8. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
  1. Staff finds that the variance should not be detrimental to the public welfare or injurious to other property or improvements in the area as the structure would not be located in any easements.
9. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
  1. Staff finds that the variance may not have any of the above effects.
10. Variances may be issued for the reconstruction rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building, and provide the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historic designation.
  1. Not applicable.

**Conclusion**

Staff finds that this property is traditionally shaped, but does have three front setbacks, which constrict the location of which a principal structure could be located on the property. The result of the water line easement location was unknown at the time of platting for the subdivision and has to be remedied afterwards.

At this time, Chairman Jay Michaelson acknowledged Nathan Quinn, representing the developer, to speak at the public hearing.

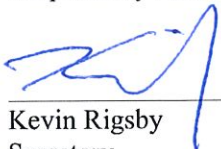
Motion by Vanessa Haley, seconded by Scott Demonbreun to approve the front setback variance of 10' for the principal structure located at 8675 Rocky Fork Almaville Road due to the location of the waterline easement being unknown at the time the original plat was approved.

**Vote:** 3 - 1 Passed

NAY: Councilman Jerome Dempsey

4. Staff comments and/or other business
5. Adjournment

Respectfully submitted:

  
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Kevin Rigsby  
Secretary

Certified by:

  
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Jay Michaelson  
Chairman