

MEMORANDUM

TO: Board of Zoning Appeals
FROM: Timothy Mack, Senior Planner
RE: Next Meeting Date

Dear Board Members,

The following is case information for our upcoming Board of Zoning Appeals meeting, scheduled for **October 5, 2021, at 6:00 PM** at the Franklin County Government Center.

The Board will hear one case, an application from Jason Moore, requesting a variance to Section 25-226(c), Rear Yard Setback, on property located at 182 Beech Drive. The property is located in an R-1, Residential Suburban Subdivision zoning district.

Your information packet contains:

- Agenda
- Minutes from previous BZA hearings
- Staff Report
- Application and submitted materials

If you have any additional questions about the case, please don't hesitate to contact our office. Thank you for your commitment and service to Franklin County.

Kind regards,

Timothy Mack
Senior Planner | Current Planning Mngr.

Franklin County Board of Zoning Appeals
Agenda
October 5, 2021

- I. Call to Order
- II. Roll Call
- III. Consent Agenda
 - A) Approval of Minutes from May 4, 2021 and September 7, 2021 meeting
- IV. Public Hearing:

APPLICATION for VARIANCE – Application of Jason Moore, Applicant, and Lake Estates, LLC, Owner, requesting a variance to Section 25-226(c), Rear Yard Setback, on an approximate 0.69-acre property currently zoned R-1, Residential Suburban Subdivision, located at 182 Beech Drive in the Union Hall District of Franklin County and further identified by Franklin County Real Estate Records as Tax Map/Parcel #0520000303A. The R-1 zoning district requires a minimum rear yard setback of thirty (30) feet from the rear property line. A rear yard setback variance of fifteen (15) feet is being requested in order for the applicant to build a 30' x 30' detached garage. The applicant's request is due to the topographic constraints of the property (Case # VAR-08-21-17009).

- a. Staff Presentation (Timothy Mack)
- b. Applicant Presentation
- c. Public Comment

V. Citizen Comment

VI. Other Business

VII. Adjourn

**DEPARTMENT OF PLANNING &
COMMUNITY DEVELOPMENT**



A public meeting of the Franklin County Board of Zoning Appeals was held on May 4th, 2021 at 6:00 PM. In the Franklin County Board of Supervisors meeting room located in the Franklin County Government Center.

THOSE PRESENT:

William Lee, Chairman
Eric Ferguson, Vice-Chairman
Kevin Hunt
Wayne Worley
Billy Kingery
Pamela Washington
William Cooper

OTHERS PRESENT:

Steven Sandy, Director/Zoning Administrator
Lisa Cooper, Principal Planner
Tina Franklin, Clerk
David Furrow, Attorney for the Applicant
Chris Ambrose – citizen
Thad Montgomery - citizen

The meeting was called to order by Chairman Lee at 6:00 PM. Chairman Lee announced the first item on the agenda and asked for the staff report.

APPLICATION for VARIANCE: Steve Sandy continued to the report regarding Mr. Kenneth Hurt's application for variance for the storage of vehicles on his property. Steve discussed the packet that was provided by the landowner's attorney and the memorandum from the county attorney. The discussion included the need to have a special use permit from the Board of Supervisors to be in compliance due to expanding the automobile graveyard.

Slides of the property were presented to zoning board of appeal members.

Mr. David Furrow, attorney for the applicant stated he agrees that the property did originally have inoperable vehicles from 1999 and before. There are two parcels across the road, one to David Hurt and one to Kenneth Hurt. When zoning was enacted, the property did not become two parcels until 2012. The attorney stated the owners had always used the entire property as they wished.

Otha Hurt filed an appeal in 2005 and then withdrew the application. The attorney stated that once there is a non-conforming use, the owner could not expand it, or you would lose the non-conforming use. He stated his argument was not the number of vehicles or the are of coverage that is being used for the vehicles. He stated the county could not restrict the use in 1988, therefore how could it be restricted now. He stated the applicant's position is that the parcel is being used as a non-conforming use and sometimes there were more or less vehicles depending on how the area was being used.

to the scrap yard. He feels it is discrimination if you try to classify what someone has on their property.

Further discussion by board members:

Steve Sandy explained the grandfathered area and stated one cannot go beyond that area. He further explained that if the landowner wants a larger area, they must apply for a special permit. The outlined area is a footprint of the use and what we believe existed in 1988, and use cannot expand or change without the supervision of the Board of Supervisors. No automobile graveyard license was ever obtained from the Commissioner of Revenue. A graveyard license has been required since 1974 and the county does not have any licensure on file for this parcel. He further reported that we have several ariel photographs, but they pulled on the ones that were clearly showing what was on the property.

Mr. Furrow reported that the zoning appeal decision has to be based on what the county can pull from its records. There must be some proof that shows the entire property was used.

Mr. Montgomery expressed confusion about the zoning ordinance.

Mr. Lee stated he does not feel we have all the facts. Mr. Kingery asked Mr. Hurt to clearly define how many cars were there in 1988.

Mr. Cooper stated that the land and cars have been there since the early 1990's and he has to assume they were there in the 1980's and it appears to him that the landowner can continue the use of the land as an automobile graveyard.

Ms. Washington stated that after review of the ariel photos, she is in agreement with Mr. Sandy.

Mr. Ferguson stated that regarding the year 1988, the 2.5- and 5-acre tracts, one tract had an auto graveyard on it. The only evidence was from Mr. Hurt, who states that there were cards in the back of the property. Mr. Ferguson feels the definition should be the character of the use, not the quantity of automobiles. He believes the entire seven-acre parcel is grandfathered.

A motion was made by Mr. Eric Ferguson stating there was one tract of land in 1988 that had cars on it, and it's the character of the parcel. He motioned that a non-conforming use applies to all seven acres, as evidenced in 1988.

Mr. William Cooper – second the motion.

Vote:

Mr. Kingery – Aye

William Cooper – Aye

Kevin Hunt – Aye

Eric Ferguson – Aye

William Lee – Nay

Pamela Washington – Nay

Wayne Worley – Nay

**DEPARTMENT OF PLANNING &
COMMUNITY DEVELOPMENT**



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Kevin Hunt
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OTHERS PRESENT:

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Chris Ambrose – citizen
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Otha Hurt filed an appeal in 2005 and then withdrew the application. The attorney stated that once there is a non-conforming use, the owner could not expand it, or you would lose the non-conforming use. He stated his argument was not the number of vehicles or the are of coverage that is being used for the vehicles. He stated the county could not restrict the use in 1988, therefore how could it be restricted now. He stated the applicant's position is that the parcel is being used as a non-conforming use and sometimes there were more or less vehicles depending on how the area was being used.

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Mr. Lee stated he does not feel we have all the facts. Mr. Kingery asked Mr. Hurt to clearly define how many cars were there in 1988.

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Mr. Ferguson stated that regarding the year 1988, the 2.5 and 5 acre tracts, one tract had an auto graveyard on it. The only evidence was from Mr. Hurt, who states that there were cards in the back of the property. Mr. Ferguson feels the definition should be the character of the use, not the quantity of automobiles. He believes the entire seven acre parcel is grandfathered.

A motion was made by Mr. Eric Ferguson stating there was one tract of land in 1988 that had cars on it, and it's the character of the parcel. He motioned that a non-conforming use applies to all seven acres, as evidenced in 1988.

Mr. William Cooper – second the motion.

Vote:

Mr. Kingery – Aye

William Cooper – Aye

Kevin Hunt – Aye

Eric Ferguson – Aye

William Lee – Nay

Pamela Washington – Nay

Wayne Worley – Nay

**DEPARTMENT OF PLANNING &
COMMUNITY DEVELOPMENT**



A public meeting of the Franklin County Board of Zoning Appeals was held on September 7, 2021 at 6:00 PM. In the Franklin County Board of Supervisors meeting room located in the Franklin County Government Center.

THOSE PRESENT:

William Lee, Chairman
Kevin Hunt
Wayne Worley

ABSENT:

Pamela Washington
Eric Ferguson, Vice-Chairman
Billy Kingery
William Cooper

OTHERS PRESENT:

Carrie Spencer, Director of Planning and Development
Mindy Goldsmith, Clerk

The meeting was called to order by Chairman Lee at 6:12 PM. Chairman Lee asked that the Board of Zoning Appeals postpone the meeting due to the inability to reach a quorum of Board of Zoning Appeals members. Mr. Lee stated the board would meet again at another time. The meeting was adjourned at 6:15 PM.

MEMORANDUM
Case # VAR-08-21-17009



To: Franklin County Board of Zoning Appeals
From: Timothy Mack, Senior Planner
Date: August 9, 2021
Tax #: 0520000303
District: Union Hall District
Applicant: Jason Moore
Owner: Lake Estates, LLC

REQUEST:

APPLICATION for VARIANCE – Application of Jason Moore, Applicant, and Lake Estates, LLC, Owner, requesting a variance to Section 25-226(c), Rear Yard Setback, on an approximate 0.69-acre property currently zoned R-1, Residential Suburban Subdivision, located at 182 Beech Drive in the Union Hall District of Franklin County and further identified by Franklin County Real Estate Records as Tax Map/Parcel #0520000303A. The R-1 zoning district requires a minimum rear yard setback of thirty (30) feet from the rear property line. A rear yard setback variance of fifteen (15) feet is being requested in order for the applicant to build a 30' x 30' detached garage. The applicant's request is due to the topographic constraints of the property (Case # VAR-08-21-17009).

RECOMMENDATION:

Staff recommends that the Board of Zoning Appeals make the following motion:

Variance to rear yard setback in an R-1 district:

Based upon the fact that the applicant has demonstrated that strict application of the ordinance would 1) be unreasonable, 2) restrict the utilization of the property, 3) alleviate the hardship of the physical condition of the property as shown, and 4) that the granting of the variance meets all criteria identified in Section 15.2-2309 of the Code of Virginia, I move to approve the variance requested to Section 25-226(c) of the Franklin County Code, for a variance of fifteen (15) feet to the R-1 district's existing rear yard setback of thirty (30) feet, in order for the applicant to build a 30' x 30' detached garage on the property located at 182 Beech Drive in the Union Hall district of Franklin County.



SUMMARY OF REQUEST:

This is a petition of Jason Moore, Applicant, and Lake Estates, LLC, Owner, requesting a variance to Section 25-226(c), Rear Yard Setback, on an approximate 0.69-acre property currently zoned R-1, Residential Suburban Subdivision, located at 182 Beech Drive in the Union Hall District of Franklin County and further identified by Franklin County Real Estate Records as Tax Map/Parcel #0520000303A. The R-1 zoning district requires a minimum rear yard setback of thirty (30) feet from the rear property line. A rear yard setback variance of fifteen (15) feet is being requested in order for the applicant to build a 30 x 30 detached garage. The applicant’s request is due to the topographic constraints of the property (Case # VAR-08-21-17009).

The house on the property is a new build, currently in the final phases of completion. There is limited space to the right and rear of where the home is located, and the area to the left, where the applicant initially would have placed the garage, is where the drainfield is located, making the only reasonable place to build the garage directly in front of the house as you enter the property from the driveway. To complicate matters even more, the area where the driveway is located is sloped, and would require the applicant to build the garage into the hillside, potentially causing some sediment erosion and stormwater issues.

The property is located in an R-1, Residential Suburban Subdivision zoning district, which has a very deep rear yard setback of 30 feet, making the 0.69-acre parcel even smaller for any additional accessory structures. Based on these existing conditions, the applicant would like to have a variance granted in order to build the garage further up the driveway, near the rear of the property line, as shown on the concept plan prepared by Lake Estates, LLC (Jason Moore), dated August 2, 2021.

The property is located in a developing neighborhood, comprising mostly of single-family homes and vacant lots. The parcel directly behind the property at 182 Beech Drive is an unbuildable drainfield, with no potential for the placement of a future home.

VARIANCES: DEFINITION AND CRITERIA FOR GRANTING:

Section 15.2-2201 of the Code of Virginia defines a variance as follows:

“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.



Per the Code of Virginia, compliance with one of the two following criteria is required to grant a variance:

1. Strict application of the ordinance would unreasonably restrict the utilization of the property, or;
2. The granting of the variance would alleviate a hardship due to the physical condition of the property or improvements thereon.

In addition, the following five criteria shall be met to grant a variance:

1. The hardship imposed by the ordinance was not created by the applicant (property owner) for the variance; and
2. The granting of the variance will not be of substantial detriment to adjacent and nearby properties; and
3. The variance does not correct a problem or condition that is so general and recurring a nature that a general ordinance amendment is reasonably practical; and
4. The granting of the variance will not result in the establishment of a land use that is not otherwise permitted in the R-1 zoning district; and
5. The relief sought by the variance cannot be achieved thru a rezoning or special use permit process currently authorized by the ordinance.

STAFF ANALYSIS OF VARIANCE CRITERIA/IDENTIFICATION OF IMPACTS:

Staff's opinion is that by granting the variance, it would alleviate the hardship to the applicant caused by the limiting physical constraints of the property's layout and dimensions. The shape and topography of the lot, coupled with the R-1 district's deep rear yard setback requirement, does impose some challenges for the construction of the garage.

Due to the location and topography of the property, and characteristics of surrounding parcels, i.e., vacant lots and a drainfield, the granting of the variance would not be a substantial detriment to adjacent properties.

The variance will not result in the establishment of a land use that is not otherwise permitted in the R-1 zoning district.



The variance cannot be achieved thru a rezoning or special use permit process currently allowed in the ordinance.

If the Board of Zoning Appeals disagrees with Staff's opinion, the Board of Zoning Appeals could reduce the size the requested variance.

SUGGESTED MOTIONS:

The following suggested motions are sample motions that may be used.

THE MOTION FOR THE EXISTING SINGLE-FAMILY DWELLING:

(Approve) Based upon the fact that the applicant has demonstrated that the ordinance would be unreasonable, restrict the utilization of the property, would alleviate the hardship of the physical condition of the property as shown, and that the granting of the variance meets all criteria identified in Section 15.2-2309 of the Code of Virginia, I move to approve the variance requested to Section 25-226(c) of the Franklin County Code, for a variance of fifteen (15) feet to the R-1 district's existing rear yard setback of thirty (30) feet, in order for the applicant to build a 30' x 30' detached garage on the property located at 182 Beech Drive in the Union Hall district of Franklin County.

OR

(Deny) Based upon the fact that the applicant has not demonstrated that the ordinance would be unreasonable, restrict the utilization of the property, would alleviate the hardship of the physical condition of the property as shown, and that the granting of the variance meets all criteria identified in Section 15.2-2309 of the Code of Virginia, I move to deny the variance requested to Section 25-226(c) of the Franklin County Code, for a variance of fifteen (15) feet to the R-1 district's existing rear yard setback of thirty (30) feet, in order for the applicant to build a 30' x 30' detached garage on the property located at 182 Beech Drive in the Union Hall district of Franklin County.

OR

(Table) I move that this item be tabled until the Board of Zoning Appeal's receives all the information it needs to make a final determination on this variance request.

FRANKLIN COUNTY
APPLICATION
FOR VARIANCE
(Type or Print)

I/We, Lake Estates LLC, as Owner(s), Contract Purchasers, or
Owner's Authorized Agent of the property described below, hereby apply to the
Franklin County Board of Zoning Appeals for a variance from requirements of the
Zoning Ordinance as hereinafter described:

Applicant's Name: Jason Moore Lake Estates LLC

Property Owner's Name: Lake Estates LLC

Address of Property: 182 Beech Drive Union Hall VA

Phone Number: 540-379-9177

Exact Directions to Property from Rocky Mount: Rt 40 East - Left Kemp Ford Rd
- Left on Staniford Rd - Right on Rock Cliff Rd - Left on Ivy Ln
Left on Beech Dr.

1. Tax Map and Parcel Number: 0520000303A

2. Magisterial District: Union Hall

3. Property Information:

A. Size of Property: .69 Acre

B. Existing Land Use: Residential

C. Existing Zoning: R1

D. Is property located within any of the following overlay zoning districts:

Corridor District Westlake Overlay District Smith Mountain
Lake Surface

District

E. Is any land submerged under water or part of a lake? Yes No

F. Describe how the strict application of the ordinance would unreasonably restrict the use of the property or how the granting of the variance would alleviate a hardship due to a physical condition of the property:

Due to topographical restraints we are unable
to build a ~~30'x30'~~ Garage on the property
30'x30'

4. Proposed Development Information:

A. Proposed _____ Land _____ Use: _____

B. Proposed _____ Zoning: _____

C. Size _____ of _____ Proposed _____ Use: _____

- Section of the Zoning Ordinance for which a variance is being requested: _____
(Zoning Code section must be correct and all applicable code sections included in request.)

Checklist for completed items:

- Application Form
- Letter of Application
- Concept Plan
- Application Fee

****I certify that this application for a variance and the information submitted herein is correct and accurate. I authorize County staff to access this property for purposes related to the review and processing of this application.**

Applicant's Name (Print): Jason Moore

Signature of Applicant:

Jason B Moore

Date: 8/2/2021

Mailing Address:

209 Rocky Run Rd

Fredericksburg VA 22406

Telephone:

540-379-9177

Email Address (optional):

Jason.Moore(AT)MWAA.COM

Owner's consent, if applicant is not property owner:

Owner's Name (Print):

Signature of Owner:

Date:

Lakes Estates LLC
Variance Application
182 Beech Drive Union Hall VA

August 2, 2021

To Whom It May Concern,

We are submitting a variance application for a rear setback of the property to allow the construction of a detached garage. My wife Maria and I are retiring to the lake and just finished our home on Beech Drive. We wish to build a 30' x 30' detached garage; however the setback and slope of the property will not permit it. If we are able to reduce our rear setback from 30' to 15' this would be just enough space for it to fit.

The adjacent property to the rear of the site is a large drain field that cannot be developed. This request, if approved, will have no impact on the adjacent land owners.

If this request is denied we will not be able to add the garage and we would need to reevaluate our options.

Thank you for your consideration,

Jason B Moore

Lake Estates LLC

[Zoom to](#)

Parcels: 0520000303A

Primary Details

Parcel ID	0520000303A
Map Number	052.00
Parcel Number	003.03A
Owner	LAKE ESTATES LLC
Owner Address	209 ROCKY RUN RD
City	FREDERICKSBURG
State	VA
Zip Code	22406
Physical Address	182 BEECH DR 24176
Legal Description 1	RT 1441-BEECH DR
Legal Description 2	PARCEL 3-B2
Zoning	R1
District	UNION HALL
Acreage	0.69
Land Value	\$28,000.00
Building Value	\$0.00
Assessed Total	\$28,000.00
Land Use Value	\$0.00
Grantor	ROTUNDA LAND HOLDING CORPORATION
Consideration	\$110,000.00
Consideration Date	7/28/2019 8:00 PM
Instrument Yr	2019
Instrument No	4530
Subdivision	
Deed Book	1125
Deed Page	181
Plat Book	1137
Plat Page	193
Property Card	View Card



**PLAN DETAILED REPORT VAR-08-2021-17009
FOR FRANKLIN COUNTY**

Plan Type: Variance Request	Project: LAKE ESTATES, LLC	App Date: 08/03/2021
Work Class: None	District: Union Hall	Exp Date: 08/02/2026
Status: Under Review	Square Feet: 0 00	Completed: NOT COMPLETED
Valuation: \$0.00	Assigned To:	Approval Expire Date:
Description:		

Parcel: 0520000303A	Main	Address: 182 Beech Dr	Main	Zone: R1(R1 - IMPORTED FOR ENERGOV)
		Union Hall, VA 24176		

Applicant	Owner
JASON MOORE	LAKE ESTATES LLC
209 ROCKY RUN ROAD	209 ROCKY RUN ROAD
FREDERICKSBURG, VA 22406	FREDERICKSBURG, VA 22406
Mobile: 5403799177	

Invoice No.	Fee	<i>pd</i>	Fee Amount	Amount Paid
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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FRANKLIN

IN RE)
)
 RE-APPOINTMENT OF ERIC H. FERGUSON)
 TO THE BOARD OF ZONING APPEALS OF)
 THE FRANKLIN COUNTY, VIRGINIA)

ORDER

Came this day the Petitioner, Franklin County, by counsel, and recommended that this Court re-appoint Eric H. Ferguson for a three-year term to the Franklin County Board of Zoning Appeals.

It appearing proper to do so, it is hereby adjudged, ordered and decreed that Eric H. Ferguson is hereby re-appointed to the Franklin County Board of Zoning Appeals for a term which shall expire on June 30, 2024.

The Clerk is directed to send a certified copy of this Order to counsel of record for the Petitioner and to Eric H. Ferguson and to remove this matter from the docket.

Enter this 8th day of July, 2021.

T. W. AN
 Judge

I ask for this:

JHG
 Jim H. Guynn, Jr., Esq. (VSB #22299)
 Guynn, Waddell, Cartell & Lockaby, P.C.
 415 S. College Avenue
 Salem, Virginia 24153
 Phone: 540-387-2320
 Fax: 540-389-2350
jimg@guynnwaddell.com
 Franklin County Attorney

A Copy Teste:
 Teresa J. Brown, Clerk
Linda Roberts
 Deputy Clerk

8-21
 JHG
 EHF