



## FLUVANNA COUNTY BOARD OF ZONING APPEALS

Fluvanna County Library Meeting Room  
214 Commons Boulevard Palmyra, VA 22963

May 18, 2021 at 7:00 pm

TAB	AGENDA ITEMS	(VIRTUAL) AGENDA
		REGULAR MEETING

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### 1. CALL TO ORDER: Douglas Miles, Zoning Administrator

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### 2. 2021 Organizational Meeting

Election of the 2021 BZA Officers

Adoption of 2021 Meeting Schedule

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### 3. REVIEW AND APPROVAL OF MINUTES

Draft Minutes of March 17, 2020

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### 4. PUBLIC HEARING

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**BZA 21:01 – Edward Theodore & Mary A. Whalen** A Variance request to Section 22-7-11 (B) setback lines to allow for the reduction of the rear yard setback from thirty (30) feet to twenty-five (25) feet to construct a rear addition on Tax Map 9 Section 13 Parcel 1. The subject property is zoned R-3, Residential Planned Community District within Village Oaks residential subdivision and is known as 8 Virginia Avenue. The property is located in the Palmyra Election District and is in the Rivanna Community Planning Area.

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### 5. UNFINISHED BUSINESS

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None

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### 6. NEW BUSINESS – Communications:

2020 General Assembly changes to the Board of Zoning Appeals – Fred Payne, County Attorney

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### 7—ADJOURN

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*Douglas Miles*

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Zoning Administrator Review

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*For the Hearing-Impaired – Listening device available in the Board of Supervisors Room upon request. TTY access number is 711 to make arrangements.  
For Persons with Disabilities – If you have special needs, please contact the County Administrator's Office at 591-1910.*

## **PLEDGE OF ALLEGIANCE**

I pledge allegiance to the flag  
of the United States of America  
and to the Republic for which it stands,  
one nation, under God, indivisible,  
with liberty and justice for all.

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### **ORDER**

1. It shall be the duty of the Chairman to maintain order and decorum at meetings. The Chairman shall speak to points of order in preference to all other members.
2. In maintaining decorum and propriety of conduct, the Chairman shall not be challenged and no debate shall be allowed until after the Chairman declares that order has been restored. In the event the Commission wishes to debate the matter of the disorder or the bringing of order; the regular business may be suspended by vote of the Commission to discuss the matter.
3. No member or citizen shall be allowed to use abusive language, excessive noise, or in any way incite persons to use such tactics. The Chairman shall be the judge of such breaches, however, the Commission may vote to overrule both.
4. When a person engages in such breaches, the Chairman shall order the person's removal from the building, or may order the person to stand silent, or may, if necessary, order the person removed from the County property.

### **PUBLIC HEARING RULES OF PROCEDURE**

1. PURPOSE
  - The purpose of a public hearing is to receive testimony from the public on certain resolutions, ordinances or amendments prior to taking action.
  - A hearing is not a dialogue or debate. Its express purpose is to receive additional facts, comments and opinion on subject items.
2. SPEAKERS
  - Speakers should approach the lectern so they may be visible and audible to the Commission.
  - Each speaker should clearly state his/her name and address.
  - All comments should be directed to the Commission.
  - All questions should be directed to the Chairman. Members of the Commission are not expected to respond to questions, and response to questions shall be made at the Chairman's discretion.
  - Speakers are encouraged to contact staff regarding unresolved concerns or to receive additional information.
  - Speakers with questions are encouraged to call County staff prior to the public hearing.
  - Speakers should be brief and avoid repetition of previously presented comments.
3. ACTION
  - At the conclusion of the public hearing on each item, the Chairman will close the public hearing.
  - The Commission will proceed with its deliberation and will act on or formally postpone action on such item prior to proceeding to other agenda items.
  - Further public comment after the public hearing has been closed generally will not be permitted.

*Fluvanna County...The heart of central Virginia and your gateway to the future!*

*For the Hearing-Impaired – Listening device available in the Board of Supervisors Room upon request. TTY access number is 711 to make arrangements.  
For Persons with Disabilities – If you have special needs, please contact the County Administrator's Office at 591-1910.*

**MOTION:** I move to elect \_\_\_\_\_ as Chairman of the Fluvanna County Board of Zoning Appeals for the calendar year of 2021.

**MOTION:** I move to elect \_\_\_\_\_ as Vice Chairman of the Fluvanna County Board of Zoning Appeals for the calendar year of 2021.

**AGENDA                      Board of Zoning Appeals                      May 18, 2021**

**SUBJECT:** Election of Officers

**DISCUSSION:** As has been your practice in the past, the Community Development Director opens the meeting and calls for the nomination and election of the Chairman.

Upon the election of the Chairman, the elected chairman will then call for the nomination and election of the Vice Chairman.

The Annual or Organizational meeting of the Board of Zoning Appeals will be conducted first and then move to the Regular meeting in order to review all the BZA agenda items.

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Douglas Miles, AICP, CZA, Community Development Director



# 2021

## Board of Zoning Appeals Meeting Dates

January 19, 2021

February 16, 2021

March 16, 2021

April 20, 2021

May 18, 2021

June 15, 2021

July 20, 2021

August 17, 2021

September 21, 2021

October 19, 2021

November 16, 2021

December 21, 2021

Located In the Morris Room of the County Administration Building.

Meetings start at 7pm

### JANUARY

SU	MO	TU	W	TH	FRI	SA
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31						

### FEBRUARY

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### MARCH

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### APRIL

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### JULY

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### SEPTEMBER

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### NOVEMBER

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### DECEMBER

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FLUVANNA COUNTY  
OF ZONING APPEALS  
PLANNING FOR THE FUTURE

BOARD

132 Main Street  
P.O. Box 540  
Palmyra, VA 22963  
Phone: 434-591-1910  
Fax: 434-591-1911  
E-mail: vporter@fluvannacounty.org

**FLUVANNA COUNTY BOARD OF ZONING APPEALS**

Fluvanna County Administration Building

**March 17, 2020  
7:00 PM (Morris Room)**

**Members Present:** Harold Morris  
Peter Von Keyserling  
Easton Loving  
Ed Zimmer

**Staff Present:** Brad Robinson, Senior Planner  
Frederick Payne, County Attorney  
Valencia Porter, Senior Program Support Assistant

**Members Absent:** Carol Walker

**1. CALL TO ORDER:**

Senior Planner Brad Robinson called the Board of Zoning Appeals meeting of March 17, 2020 to order at 7:00 pm.

**2. 2020 Organizational Meeting**

<b>MOTION:</b>	<b>I move to elect Mr. Morris as Chairman of the Fluvanna County Board of Zoning Appeals for the calendar year of 2020</b>				
<b>MEMBER:</b>	Morris	Keyserling	Loving	Zimmer	Walker
<b>ACTION:</b>			<b>Motion</b>	<b>Seconded</b>	
<b>VOTE:</b>	Yes	Yes	Yes	Yes	Absent
<b>RESULT:</b>	<b>4-0 Approved</b>				

<b>MOTION:</b>	<b>I move to elect Mr. Von Keyserling as Vice Chairman of the Fluvanna County Board of Zoning Appeals for the calendar year of 2020</b>				
<b>MEMBER:</b>	Morris (Chair)	Keyserling	Loving	Zimmer	Walker
<b>ACTION:</b>			<b>Motion</b>	<b>Seconded</b>	
<b>VOTE:</b>	Yes	Yes	Yes	Yes	Absent
<b>RESULT:</b>	<b>4-0 Approved</b>				

<b>MOTION:</b>	<b>Adoption of the Board of Zoning Appeals By-Laws and Rules of Procedures</b>				
<b>MEMBER:</b>	Morris (Chair)	Keyserling (Vice Chair)	Loving	Zimmer	Walker
<b>ACTION:</b>		<b>Motion</b>		<b>Seconded</b>	
<b>VOTE:</b>	Yes	Yes	Yes	Yes	Absent
<b>RESULT:</b>	<b>4-0 Approved</b>				

<b>MOTION:</b>	<b>Board of Zoning Appeals Meeting Calendar 2020</b>				
<b>MEMBER:</b>	Morris (Chair)	Keyserling (Vice Chair)	Loving	Zimmer	Walker
<b>ACTION:</b>		<b>Motion</b>		<b>Seconded</b>	
<b>VOTE:</b>	Yes	Yes	Yes	Yes	Absent
<b>RESULT:</b>	<b>4-0 Approved</b>				

**3. Minutes:**

<b>MOTION:</b>	<b>Board of Zoning Appeals Minutes of November 19, 2019</b>				
<b>MEMBER:</b>	Morris (Chair)	Keyserling (Vice Chair)	Loving	Zimmer	Walker
<b>ACTION:</b>		<b>Motion</b>		<b>Seconded</b>	
<b>VOTE:</b>	Yes	Yes	Yes	Abstain	Absent
<b>RESULT:</b>	<b>3-0-1</b>				

**4. PUBLIC HEARING:**

**BZA 20:01 Ja-Zan LLC—Brad Robinson, Senior Planner**

A request for a variance to Fluvanna County Code Sec.22-11-5 of the Zoning Ordinance to allow for the reduction of the minimum parking setback from 50 feet to 25 feet, and reduction of the minimum building setback from 100 feet to 50 feet, for the purpose of constructing a light manufacturing facility with respect to 1.952 acres of Tax Map 5, Section 24, Parcel 4.

The affected property is located in the Columbia Election District within the Zion Station industrial subdivision at the end of Zion Station Road (Route 1021)

The proposed use of the property is permitted by right in the I-1 zoning district and does not necessitate a change in the property’s zoning classification.

Chairman Morris opened the Public Hearing at 7:10 pm.

**Scott Collins, Applicant’s representative:** 200 Garrett Street, Charlottesville, VA: I am here to answer any questions that you may have on this request.

**Mr. Keyserling:** Is Lot 2 approved for this Variance?

**Scott Collins:** Yes, sir.

**Mr. Keyserling:** So Lot 3 is pseudo approved, as it will need to be cleaned up at some point.

**Mr. Zimmer:** What does pseudo mean?

**Mr. Keyserling:** he stated it means they built it as if they had the variance approved. The site plan was approved. Someone missed out on it. Yes, you will have to clean that up at some point, but if we approve Lot 4 and Lot 3 gets cleaned up then you will have a uniform line down the buildings in terms of the setbacks along Route 250. Is that correct?

**Scott Collins:** Yes, sir that correct. One of the things that we are doing as well is that we are creating a twenty-five (25) foot landscaping buffer and earthen berm located along Route 250.

**Mr. Keyserling:** So we only need to be concerned about Lot 4 at this point because Lot 3 is a separate variance case request.

**Mr. Zimmer:** he stated what you are saying is that there is an approved site development plan that is in violation of the zoning setbacks?

**Scott Collins:** he stated that we were under the assumption that it got approved for all four of these lots, and it was a miscommunication on our part. It has to been very specific towards each lot. So, it was misconstrued that they thought that they were getting it on all four lots.

**Mr. Morris:** he stated I remember correctly, that we intentionally only approved that one lot and we said that if you wanted the other lots approved, that you had to come back for them.

**Scott Collins:** Yes, sir I do think that is what happened.

**Mr. Keyserling:** Fred I have a question for you. We cannot grant multiple variances – can we?

**Fred Payne:** In my opinion you cannot do that now since that it was done improperly for Lot 3. Whether or not it is done right, the site plan should have never been approved. The problem is that there is not an element of uniqueness which is required for a variance. I have not heard of anything that distinguishes this parcel from any other industrial properties on Route 250. If you recall that the internal lot that Board of Zoning Appeals had denied back then, and then the Board of Supervisors amended the Zoning Ordinance to reduce the I-1 setback amount.

**Mr. Zimmer:** stated so that applied to all I-1 Zoning in the County?

**Mr. Payne:** he stated correct so there is no uniqueness for this request so in my opinion you cannot grant a variance for this request.

**Scott Collins:** he stated to my knowledge, I was not present at that time when they were applying for the variance that to my knowledge it was for the approval only for that lot. He stated further with the understanding that they would still have to come in and get approval for all four of these lots. That would be my understanding.

**Mr. Payne:** he stated the problem with that is that the argument would be incorrect. Because with the law being whatever the needs of the statute as for the need for this variance will not be shared generally by other properties. Therefore, I am questioning Mr. Collins’ memory that if that were a fact it would be improper for the Board to grant this variance request tonight.

**Mr. Zimmer:** state that they could ask for a Zoning Text Amendment through the Planning Commission and then onto the Board of Supervisors for review and a potential approval.

**Mr. Payne:** he stated correct they could always amend the Zoning Ordinance Countywide.

**Mr. Von Keyserling:** he stated so the proper remedy is for the applicant to go to the Planning Commission and Board of Supervisors and ask for a remedy for this specific development?

**Mr. Payne:** he stated I am not saying that will solve their problems, but that would potentially solve the applicant's desires for this specific development.

Chairman Morris closed the Public Hearing at 7:35 pm and he called for a Motion.

<b>MOTION:</b>	I move to <b>Deny</b> BZA 20:01, a request for a variance to the Fluvanna County Code Sec. 22-11-5 of the Zoning Ordinance to allow for the reduction of the minimum parking setback from 50 feet to 25 feet, and reduction of the minimum building setback from 100 feet to 50 feet, for the purpose of constructing a light manufacturing facility with respect to 1.952 acres of Tax Map 5 Section 24 Parcel 4.				
<b>MEMBER:</b>	Morris <b>(Chair)</b>	Keyserling <b>(Vice Chair)</b>	Loving	Zimmer	Walker
<b>ACTION:</b>		<b>Motion</b>	<b>Seconded</b>		
<b>VOTE:</b>	Yes	Yes	Yes	Yes	Absent
<b>RESULT:</b>	<b>4-0 Denied</b>				

5. **Unfinished Business:**

None

6. **New Business:**

None

7. **ADJOURNMENT:**

There being no further business, Chairman Morris adjourned the Board of Zoning Appeals meeting of March 17, 2020 at 7:36 pm.

Minutes recorded by Valencia Porter, Senior Program Support Assistant.

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**Chairman Harold Morris  
Fluvanna County Board of  
Zoning Appeals**



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# COUNTY OF FLUVANNA

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*"Responsive & Responsible Government"*

132 Main Street  
P.O. Box 540  
Palmyra, VA 22963  
(434) 591-1910  
Fax (434) 591-1911  
www.fluvannacounty.org

## BOARD OF ZONING APPEALS STAFF REPORT

**To:** Board of Zoning Appeals Members  
**Case Number:** BZA 21:01 Whalen  
**Tax Map:** 9 Section 13 Parcel 1

**Staff:** Jason Overstreet, Senior Planner  
**District:** Palmyra Election District  
**Date:** May 18, 2021

**General Info:**

The Board of Zoning Appeals is scheduled to hear this Variance request on Tuesday, May 18, 2021 at 7:00 pm in the meeting room of the Fluvanna County Public Library.

**Applicants:**

Edward Theodore & Mary A. Whalen

**Property Owners:**

Edward Theodore & Mary A. Whalen

**Variance Request:**

**BZA 21:01 – Edward Theodore & Mary A. Whalen:** A Variance request to Section 22-7-11 (B) setback lines to allow for the reduction of the rear yard setback from thirty (30) feet to twenty-five (25) feet to construct a rear addition on Tax Map 9 Section 13 Parcel 1. The subject property is zoned R-3, Residential Planned Community District within Village Oaks residential subdivision and is known as 8 Virginia Avenue. The property is located in the Palmyra Election District and is in the Rivanna Community Planning Area.

**Existing Zoning:**

R-3, Residential, Planned Community District

**Existing Land Use:**

Single-family, detached dwelling use

**Adjacent Land Use:**

Adjacent properties are zoned A-1, Agricultural, General and R-3, Residential, Planned Community Districts and they either contain single-family, detached dwelling uses or are open space parcels.

**Comprehensive Plan:**

Rivanna Community Planning Area

The 2015 Comprehensive Plan shows the property in the Rivanna Community Planning Area which makes up approximately 40 percent of the county's overall population and mainly in the Lake Monticello community. The Rivanna Community Planning Area is the most developed area in the county and it contains a mixture of



residential and commercial uses. Medium and small commercial uses, along with office, civic and residential uses all combine to form a series of mixed use and neo-traditional developments that are interconnected with the surrounding developments at the Lake Monticello main gate. This request is located within the Village Oaks Residential Planned Community that has a wide variety of residents, from first time homebuyers to senior retirees, in the same master planned development. The applicants are retirees and they are seeking to construct a rear sunroom addition on their new home.

**Analysis:**

The applicant is requesting a Variance to reduce the minimum rear yard setback from thirty (30) feet to twenty-five (25) feet. The Variance would permit the applicant to add a 12' x 25' addition to the existing single-family, detached dwelling. The property fronts Virginia Avenue and the adjacent properties to the south and east are both designated as open space areas for River Oaks and Village Oaks. The other single-family dwellings located along this portion of Virginia Avenue all contain either rear screened-in porches or sunrooms.

The applicant's property consists of 0.148 acres and is subject to the setbacks as established by the Village Oaks, R-3 Planned Residential Community Master Plan. Due to the relatively small size of their lot, the maximum depth of an addition would be limited to 7.4 feet in order to comply with the required 30 foot rear yard setback. Therefore the applicant is requesting a Variance to reduce the minimum rear yard setback from 30' to 25' which would provide an additional 5' of buildable space for a sunroom addition onto their home.

Section 22-7-11 (B) of the Fluvanna County Zoning Ordinance states:

Open spaces between structures shall be protected, where necessary, by adequate covenants, conveyances, or dedications running with the land. The lot size, setback lines, lot coverage, width and frontage on the public street will be determined by the approved Master Plan. *(The required Village Oaks setback lines are: Front yard – eighteen (18) feet; Side yards – each eight (8) feet and Rear yard – thirty (30) feet)*

As stated within Section 22-18-2 (B) of the Fluvanna County Zoning Ordinance, the Board of Zoning Appeals must consider certain statutory considerations when reviewing a Variance request. The Board may grant a Variance if the evidence shows that the strict application of the terms of the ordinance 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 the ordinance, and:

- 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;
- 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;

- 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;
- 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
- v. the relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application.

The Board must make each of the above findings in order to grant a Variance as required by the Code of Virginia. Approval of a Variance that does not meet each finding would be unlawful. The Board may impose, as part of an approval, conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and they may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

After evaluation of the above factors, Planning staff has the following response comments:

***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:***

The subject property was purchased as a retirement home for the applicants upon selling their existing farm in Fluvanna County. The applicants purchased the property with the understanding that an addition could be added; however, it was not clear that an addition would necessarily be limited in size due to the small size of the property and the 30' setback when working with the home builder, Ryan Homes, who constructed their existing home.

***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 fronts Virginia Avenue and the adjacent properties to the south and east are both designated open spaces. The adjacent property on the east is the open space lot for River Oaks rural cluster subdivision. The adjacent property on the north side is also part of Village Oaks subdivision and would have its viewshed slightly affected by the addition.

***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 applicant's location at the end of Virginia Avenue within a master planned community is such that the situation of the property does not lend itself to the formulation of a general regulation nor will one be created in order to resolve the 30' rear yard setback requirement.

***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:***

The proposed rear addition to this single-family, detached dwelling would become a part of the use permitted by right in the R-3 Zoning District and it would not necessitate a change in the subject property's zoning classification.

***The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application:***

A special use permit process is not available to the applicants and no zoning ordinance amendment is currently in progress at the time of filing of this Variance application request.

**Suggested Motion:**

I move to (Approve/deny/defer) BZA 21:01, a request for a Variance to Fluvanna County Section 22-7-11(B) of the Zoning Ordinance to allow for the reduction of the minimum rear yard setback from thirty (30) feet to twenty-five (25) feet, for the purpose of adding an addition to the existing single-family, detached dwelling that is located on Tax Map 9, Section 13, Parcel 1 and is known as 8 Virginia Avenue.

**Attachments:**

- A – Application and APOs
- B – Aerial Vicinity Map
- C – Zoning Map
- D – Draft Resolution

Copy: Edward Theodore and Mary A. Whalen, via email – [whalen\\_mary@yahoo.com](mailto:whalen_mary@yahoo.com)



## COMMONWEALTH OF VIRGINIA COUNTY OF FLUVANNA Variance Application (BZA)

**Owner of Record:** Mary/Edward Whalen **Applicant of Record:** Same  
**E911 Address:** 8 Virginia Ave. **E911 Address:** Same  
**Phone:** 434-589-8898 **Fax:** \_\_\_\_\_ **Phone:** Same **Fax:** 501  
**Email:** whalen-mary@yahoo.com **Email:** whalen-mary@yahoo.com

**Representative:** \_\_\_\_\_ **Note: If applicant is anyone other than the owner of record, written authorization by the owner designating the applicant as the authorized agent for all matters concerning the request shall be filed with this application.**  
**E911 Address:** 8 Virginia Ave  
**Phone:** 434-589-8898 **Fax:** \_\_\_\_\_  
**Email:** whalen-mary@yahoo.com

**Tax Map and Parcel(s):** 9-13-1 **Deed Book Reference:** INST 20002163  
**Acreage:** 0.148 **Zoning:** R-3 **Deed Restrictions?**  No  Yes (Attach copy)

**E911 Address of Parcel:** 8 Virginia Ave.

**Description of Property:** \_\_\_\_\_  
 Request for a variance from Section 22-7-11 (B) of the Fluvanna County Code in respect to the requirement for \_\_\_\_\_ in order to build on addition

Fill in only the line(s) that apply to your request(s)	Applicant has	Code requires or permits	Variance requested
Total Area			
Lot Width			
Front yard setback			
Minimum side yard setback			
Total side yard setback			
Rear yard setback			<u>30' to 25'</u>
Public road frontage			
Other (write in)			

Two copies of a plan must be submitted, showing size and location of the lot, dimensions and location of the proposed building, structure or proposed use, and the dimensions and location of the existing structures on the lot.

By signing this application, the undersigned authorizes entry onto the property by County employees, the Planning Commission, the Board of Supervisors, and the Board of Zoning Appeals during the normal discharge of their duties in regard to this request.

**All plats must be folded prior to submission to the Planning Department. Rolled plans will not be accepted.**  
Edward Whalen/Mary A. Whalen 4/27/21 Mary A. Whalen/Mary A. Whalen  
 Owner/Applicant Name (Please Print) Date Owner/Applicant Signature

OFFICE USE ONLY		
Date Received: <u>4/27/2021</u>	PH Sign Deposit Received: <u>4/27/2021</u>	Application #: <u>BZA 21 : 01</u>
\$550 plus mailing cost and fee paid: <u>\$\$\$119550.00</u> Mailing Costs: \$20.00 Adjacent Property Owner (APO) after 1st 15, Certified		
Election District: <u>Palmyra</u>	Planning Area: <u>Rivanna Community Planning Area</u>	
Approved _____ Denied _____ Date: _____	Zoning Administrator: _____	

**IMPROVEMENTS PROPOSED**

Describe the improvements proposed. State whether new buildings or structures are to be constructed, existing buildings or structures are to be used, or additions made to existing buildings or structures.

*Add on a sunporch*

**SPECIAL CONDITIONS**

Relate here the special conditions or circumstances (topography, soil type, shape of property) peculiar to the above described land, building, or structure or to the intended use or development of the land, building or structure involved that do not apply generally to other property in the same district.

**UNNECESSARY HARDSHIP**

Describe here how the literal interpretation and enforcement of Section \_\_\_\_\_ of the Zoning Ordinance would effectively prohibit or unreasonably restrict the use or intended use or development of the properties involved by the applicant.

**ADJACENT PROPERTY**

Describe the effects of this variance on adjacent property and the surrounding neighborhood. How will adjoining property owners be protected.

**PLAN**

Furnish plot plan showing boundaries and dimensions of property, width of abutting right-of-ways, location and size of buildings and structures on the site, roadways, walks, off-street parking and loading space, landscaping and the like. (Architect's sketches showing elevations of proposed buildings and structures and complete plans are desirable and may be required with the application if available.)

*See plat*



COMMONWEALTH OF VIRGINIA  
COUNTY OF FLUVANNA  
Public Hearing Sign Deposit

Name: Mary / Edward Whalen  
Address: 8 Virginia Ave.  
City: Palmyra  
State: Virginia Zip Code: 22963

I hereby certify that the sign issued to me is my responsibility while in my possession. Incidents which cause damage, theft, or destruction of these signs will cause a partial or full forfeiture of this deposit.

Edward Whalen  
Mary Whalen  
Applicant Signature Date 4/27/2021

\*Number of signs depends on number of roadways property adjoins.

OFFICE USE ONLY	
Application #: BZA <u>21:01</u> CPA _____ : SUP _____ : ZMP _____ : ZTA _____ :	
\$90 deposit paid per sign*: <u>#120 \$90.00</u>	Approximate date to be returned:

# Property Location, 2018 Aerial Imagery

Fluvanna County



# Property Zoning

Fluvanna County







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# COUNTY OF FLUVANNA

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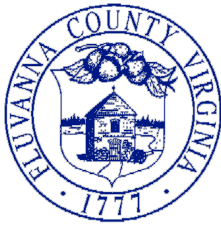
*"Responsive & Responsible Government"*

132 Main Street  
P.O. Box 540  
Palmyra, VA 22963  
(434) 591-1910  
Fax (434) 591-1911  
[www.fluvannacounty.org](http://www.fluvannacounty.org)

## MEMORANDUM

**Date:** May 6, 2021  
**From:** Valencia Porter  
**To:** Douglas Miles  
**Subject:** APO Memo Complete

Please be advised the attached letter went out to the attached list of Adjacent Property Owners for the May 18, 2021 Board of Zoning Appeals meeting.



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# COUNTY OF FLUVANNA

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## NOTICE OF PUBLIC HEARING

May 6, 2021

### Re: Public Hearing on BZA 21:01

This letter is to notify you that the Fluvanna County Board of Zoning Appeals will hold a public hearing on the above referenced item as noted below:

**Purpose:** Board of Zoning Appeals Hearing  
**Day/Date:** Tuesday, May 18, 2021  
**Time:** 7:00 PM  
**Location:** Meeting Room, Fluvanna County Library, Palmyra, VA

The applicant or applicant's representative will be attending the Board of Zoning Appeals meeting remotely for a request for a variance that is described as follows:

**BZA 21:01 – Edward Theodore & Mary A. Whalen:** A Variance request to Section 22-7-11 (B) setback lines to allow for the reduction of the rear yard setback from thirty (30) feet to twenty-five (25) feet to construct a rear addition on Tax Map 9 Section 13 Parcel 1. The subject property is zoned R-3, Residential Planned Community District within Village Oaks residential subdivision and is known as 8 Virginia Avenue. The property is located in the Palmyra Election District and is in the Rivanna Community Planning Area.

The regular meeting of the Board of Zoning Appeals will be held virtually due to the Public Health Emergency and physical, in-person access to meetings has been suspended. Instructions for public participation during the meeting will be made available on the Fluvanna County website: <https://www.fluvannacounty.org> Interested persons may submit written comments prior to the scheduled meeting to [dmiles@fluvannacounty.org](mailto:dmiles@fluvannacounty.org) and any questions may be directed to Douglas Miles, Community Development Director at 434-591-1910, between 8:00 am and 5:00 pm, M-F.

If you have any questions regarding this variance request or the Public Hearing, please contact me at 434-591-1910.

Sincerely,

*Douglas Miles*

Douglas Miles, AICP, CZA  
Community Development Director





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## COUNTY OF FLUVANNA

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# MEMORANDUM

To: Fluvanna County Board of Supervisors Members

From: Douglas Miles, Community Development Director

Date: May 19, 2021

Subject: **2020 General Assembly – BZA Legislative Revisions**

Please find the attached BZA Zoning Text Amendment, as prepared by the County Attorney's Office staff, and as reviewed by the County Attorney for your consideration and for approval by the Board of Supervisors' members.

You will find the zoning text amendments shown in blue as provided in the enabling legislation and that relate to: variance requests being granted for persons with a disability as is defined under the Americans with Disabilities Act of 1990; written orders shall be sent to the last known address that is shown in the real estate tax assessment records or as the address of the registered agent and that is shown in the records of the Clerk of the State Corporation Commission; certiorari to review decisions as are filed with the Clerk of the Circuit Court are styled in a certain way, as shown and goes on further to define timeframes to be extended and or to respond to the Court; such actions shall not be considered an action against the board and the board shall not be a party to the proceedings; and court costs shall not be allowed against the locality or the governing body or it can be considered whether such appeal was frivolous; and other minor zoning text changes.

Once this BZA Zoning Text Amendment is reviewed and adopted by the Board of Supervisors then Planning Staff will make the current Board of Zoning Appeals members aware of the adopted changes for the BZA.

## RESOLUTION

**Be it resolved by the Fluvanna County Board of Supervisors**, pursuant to Fluvanna County Code Sec. 22-20-1(c), that the Board of Supervisors intends to adopt the following amendment to the Fluvanna County Code:

### **AN ORDINANCE TO AMEND SECTIONS 22-17-8A, 22-18-1, 22-18-2, 22-18-3, 22-18-4, AND 22-18-7 OF THE FLUVANNA COUNTY CODE TO CONFORM THE SECTIONS TO AMENDMENTS TO THE ENABLING LEGISLATION**

BE IT ORDAINED BY THE FLUVANNA BOARD OF SUPERVISORS pursuant to Virginia Code Section 15.2-2285 that the County Code be, and it is hereby, amended, in Chapter 22, Sections 22-17-8A, 22-18-1, 22-18-2, 22-18-3, 22-18-4, and 22-18-7 as follows:

#### **Sec. 22-17-8A. – Flood protection.**

This section is adopted pursuant to the authority granted to localities by section 15.2-2280 *and section 15.2-984* of the Code of Virginia.

#### **Sec. 22-18-1. – Board of zoning appeals.**

(A) A board consisting of five (5) members shall be appointed by the Circuit Court of Fluvanna County. Members of the board shall be residents of Fluvanna County. Members of the board may receive such compensation as may be authorized by the governing body. Members shall be removable for cause by the appointing court after hearing held after at least fifteen (15) days' notice. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

(B) The term of office shall be for five (5) years, except that of the first five (5) members appointed, one (1) shall serve for five (5) years, one (1) for four (4) years, one (1) for three (3) years, one (1) for two (2) years and one (1) for one (1) year. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his successor is appointed and qualifies. Members of the board shall hold no other public office in the County, except that one of the five appointed members may be an active member of the planning commission, *any member may be appointed to serve as an officer of election as defined in section 24.2-101 of the Code of Virginia, and any member may serve as an elected official of the Town of Scottsville.*

(C) Any member of the board shall be disqualified to act upon a matter before the board with respect to property in which the member has a legal interest.

(D) The board shall choose annually its own chairman and vice chairman who shall act in the absence of the chairman. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not be entitled to vote on matters before the board.

### **Sec. 22-18-2. – Powers of the Board of Zoning Appeals.**

The Board of Zoning Appeals shall have the following powers and duties:

(A) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this ordinance or of any ordinance adopted pursuant thereto.

(1) The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct.

(2) At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden to rebut such presumption of correctness by a preponderance of the evidence.

(3) The board shall consider any applicable ordinances, laws, and regulations in making its decision. For the purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer.

(4) Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

(B) Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined by section 15.2-2201 of the Code of Virginia. The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in section 15.2-2201 of the Code of Virginia and the criteria set out in this section, as follows:

(1) Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance 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 the ordinance, *or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability*; and

(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;

(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;

(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;

(iv) The granting of such 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

(v) The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application.

*(2) Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the Board of Zoning Appeals under this section is required in order for such request to be granted.*

~~(2)~~(3) No such variance shall be considered except after notice and hearing as required by section 15.2-2204 of the Code of Virginia, as amended; however, notice of such hearing may be given via first-class mail rather than registered or certified mail pursuant to section 1.2-2309 of the Code of Virginia.

~~(3)~~(4) In granting 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.

(C) To hear and decide appeals from the decision of the Zoning Administrator. No such appeal shall be heard except after notice and hearing as provided by section 15.2-2204 of the Code of Virginia; however, notice of such hearing may be given via first-class mail rather than registered or certified mail pursuant to section 15.2-2309 of the Code of Virginia.

(D) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by section 15.2-2204 of the Code of Virginia, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, notice of such hearing may be given via first-class mail rather than registered or certified mail pursuant to section 15.2-2309 of the Code of Virginia. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

(E) No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

### **Sec. 22-18-3. – Rules and regulations.**

(A) The Board of Zoning Appeals may adopt, alter and rescind such rules and regulations for its procedures, consistent with ~~these~~ ordinances of the County and the general laws of the Commonwealth, as it may consider necessary.

(B) Meetings of the board shall be held at the call of its chairman or at such times a quorum of the board may determine.

(C) The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses.

(D) The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(E) All meetings of the board shall be open to the public.

(F) A quorum shall be at least three (3) members.

(G) The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass or to effect any variance from the ordinance.

### **Sec. 22-18-4. – Applications for variances, appeals to the Board of Zoning Appeals.**

(A) Applications for variances may be made by any property owner, tenant, government official, department, board or bureau. Such application shall be made to the



Zoning Administrator in accordance with rules adopted by the board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket to be acted upon by the board. The Zoning Administrator shall also transmit a copy of the application to the local *planning* commission which may send a recommendation to the board or appear as a party at the hearing. Substantially the same application will not be considered by the board within one year after the decision of the board.

(B) An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the County affected by any decision of the Zoning Administrator or from any order, requirement, decisions or determination made by any other administrative officer in the administration and enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to this chapter.

(1) Any written notice of a zoning violation or a written order of the Zoning Administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty (30) days in accordance with this section, and that the decision shall be final and unappealable if not appealed within thirty (30) days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given *and the Zoning Administrator's written order is sent by registered or certified mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission.* ~~A written notice of a zoning violation or a written order of the Zoning Administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section.~~

(2) Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, and with the board, a notice of appeal specifying the grounds thereof.

(3) Upon the filing of the appeal, the Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed was taken.

(4) A decision by the board on appeal shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the Zoning Administrator. The owner's actual notice of such notice of zoning violation or written order or active

participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order.

(5) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

(6) In no event shall a written order, requirement, decision or determination made by the Zoning Administrator or other administrative officer be subject to change, modification or reversal by any Zoning Administrator or other administrative officer after sixty (60) days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the Zoning Administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the Zoning Administrator or other administrative officer or through fraud. The sixty (60) day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical errors.

(C) In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

**Sec. 22-18-7. – Certiorari to review decisions of Board of Zoning Appeals.**

(A) Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board or bureau of the County, may *file with the clerk of the circuit court for the County a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of Fluvanna County"* ~~present to the circuit court of the County a petition~~ specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the board.

(B) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon *the secretary of the Board of Zoning appeals or, if no secretary exists, the chair of the Board of Zoning Appeals, which shall not be less than 10 days and may be extended by the court. Once the writ of certiorari is served, the Board of Zoning Appeals shall have 21 days or as ordered by the court to respond.* ~~the relator's attorney, which shall not be less than ten (10) days and may be extended by the court.~~ The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

*(C) Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the Board of Zoning Appeals shall be necessary parties to the proceedings in the circuit court. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals.*

*(D)(C) The Board of Zoning Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof as may be called for by such writ. The return shall concisely set forth such facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.*

*(E)(D) The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.*

*(F)(E) Costs shall not be allowed against the *locality or the governing body*board, unless it shall appear to the court that it acted in bad faith or with malice ~~in making the decision appealed from~~. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or person who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ of certiorari. *If the petition is withdrawn subsequent to the filing of the return, the locality or the governing body may request that the court hear the matter on the question of whether the appeal was frivolous.**

**And be it further resolved** that the public purpose for the proposed amendment is to conform the sections to amendments to the enabling legislation in the Code of Virginia.