

ZONING APPEAL STAFF REPORT
BZA# VAR18-358

APPLICANT: EMANUEL SHIFFLETT
ADDRESS: 463 WATERTOWER ROAD
PENN LAIRD, VA 22846

AMOUNT OF LAND: .631 ACRE **ZONING:** A-2
TAX MAP NO.: 126C-(A)-25

DESCRIPTION: (existing use of property) according to tax records:
Single-family dwelling
2 small outbuildings

HISTORY: This property was owned by Claude Shifflett, father of the applicant. Emanuel Shifflett obtained the property in 2012 following his father's death.

The house was constructed in 1978. The applicant had no knowledge that the house was in violation until recently when he tried to sell the property. The applicant has attempted to purchase land from the adjoining landowner to bring the side yard into compliance. However, that property owner had no interest in selling any of his property.

In talking with VDOT, they indicated to Mr. Shifflett that Watertown Road may very well have been widened since 1978 causing the setback violation from the center of the road. Additionally, I received an email from VDOT stating that they could find no concrete evidence that the roadway had been widened, but given the evidence of the right-of-way being 40' it was likely that the road was improved at some point. (The survey shows a 30' right-of-way, but VDOT has evidence that it is a 40' right-of-way).

VOOT has no objection to the variance and stated it does not appear to be having a negative impact to the roadway network.

REQUEST: Applicant is requesting a side yard reduction from 15' to 10.4' (4.6' reduction) and a setback reduction from 60' to 51.6' (8.4' reduction) from the center of the road.

THINGS TO CONSIDER:

1. Is there a topographical hardship?
2. If there is not a topographical hardship, is there a hardship approaching confiscation?
3. Is this request a necessity or is it a convenience to the applicant?
4. Is this a self-imposed hardship brought about by the applicant?
5. Does the applicant have an alternative that could be used which would bring the property into compliance with the law?

POINTS TO REMEMBER:

1. **THE BURDEN OF THE PROOF IS ON THE APPLICANT. IT IS NOT UP TO THE BOARD TO FIND A WAY TO GRANT THE VARIANCE. IT IS UP TO THE APPLICANT TO PROVE TO THE BOARD WHY THE VARIANCE SHOULD BE GRANTED.**
2. **THE BOARD SHOULD BASE ITS DECISION ON THE EVIDENCE PRESENTED TO IT.**
3. **FINANCIAL HARDSHIP CANNOT BE THE SOLE REASON USED FOR GRANTING A VARIANCE.**
4. **THE CRITERIA SET ASIDE BY THE STATE OF VIRGINIA FOR GRANTING A VARIANCE MUST BE MET. IF THAT CRITERIA CANNOT BE MET, THE VARIANCE SHOULD NOT BE GRANTED.**