

**APPEAL OF ADMINISTRATIVE VARIANCE
STAFF REPORT**

HEARINGS: Board of County Commissioners: November 19, 2024

REQUESTED BY: William Bell

VARIANCE NUMBER: 1486866

REFERENCE: Appeal of an Administrative Variance for Setbacks on an AR-2 (Agricultural Residential 2) Parcel

SUBJECT SITE GENERAL LOCATION: Northwest corner of Knuckey Road and Lelani Road

SUBJECT SITE PARCEL KEY NUMBER: 1012273

VARIANCE APPLICATION BACKGROUND:

On August 16, 2024, Ms. Sanitate submitted a dimensional variance request for a reduction in setbacks for her parcel located on Parcel Key Number 1012273. The request was due to a dimensional hardship and the property's overall shape and depth and the inability to meet the underlying AR-2 (Agricultural Residential 2) building setback requirements (listed herein). The subject site's depth, at its deepest point is 71.83 feet and has a Knucky Road frontage of 631.75'. The petitioner proposes a new 23.25' x 44'.0 double wide mobile home. Staff after a detailed analysis (see Finding of Facts) of the request approved the variance Administratively on September 16, 2024.

ANAYLSIS OF REQUEST:

Site Characteristics

Site Size: 0.90 acres

Surrounding Zoning & Land Uses:

North: R-1C; Single Family Homes, Undeveloped
South: AR-2; Mobile Homes, Single Family Homes
East: AR-2, R-1C; Single Family Homes, Undeveloped
West: AR-2; Single Family Homes, Undeveloped

Subject Site
Current Zoning: AR-2 (Agricultural Residential 2)

Land Use

Minimum AR-2 (Agricultural/Residential 2) Building Setbacks:

- Front: 50'
- Side: 10'
- Rear: 35'

The AR-2 district is designed to allow the continued development of low-density, single-family housing. The Hernando County Code of Ordinances, Appendix A, Article IV, Section 13 identifies the permitted uses within the AR zoning district as follows:

A. The following regulations apply to agricultural/residential districts as indicated:

(1) Permitted uses:

(a) All Agricultural/Residential-2 districts:

- i. Aquaculture
- ii. Grazing livestock at the rate of one mature animal and offspring less than one year of age, per acre.
- iii. Poultry and swine for home consumption maintained at least seventy-five (75) feet from adjacent property.
- iv. Horticultural specialty farms, including the cultivation of crops.
- v. Accessory structures related to the principal use of the land.
- vi. Pigeon aviaries with a maximum of 1,500 square feet of area devoted to housing pigeons per acre.
- vii. Sales on the premises of permitted agricultural products produced on the premises: provided that where such products are sold from roadside stands, such stand shall be set back a safe distance from any public street right-of-way and shall provide for automobile access and off-street parking space in such a manner so as to not create an undue traffic hazard on the street on which such roadside stand is located.

(b) Agricultural/Residential-2:

- i. Single Family Dwellings
- ii. Mobile Homes

Comments:

An analysis of the surrounding area indicates, existing AR-2 (Agricultural Residential 2) zoned parcels and existing mobile homes. As a result, staff elected to apply the building setbacks of the neighboring R-1C (Resident) parcel in order to avoid setting precedents and to provide building setbacks that already existed in the area. R-1C (Resident) building setbacks are as follows:

- Front: 25'
- Side: 10'
- Rear: 20'

Powers, Duties and Authority of the Administrative Official

- A. *Appointment.* The governing body shall appoint an administrative official, who shall be charged and provided with the authority to administer the zoning ordinance and to enforce the regulations and procedures contained herein governing land development and use, indicating the issuance of zoning permits and certificates of use. The administrative official, in the performance of his duties and functions, may enter upon any land and make examinations and surveys that do not occasion damage or injury to private property.
- B. *Powers and duties.* The administrative official shall have the following powers and duties:
- (1) To decide the literal interpretation of the zoning ordinance including definitions and land use classifications.
 - (2) To decide the interpretation of the exact location of zoning district boundaries according to the zoning ordinance.
 - (3) To decide the interpretation of the amount of off-street parking, loading and unloading space required according to the zoning ordinance.
 - (4) To decide the interpretation of the general environmental control criteria and performance standards according to the zoning ordinance.
 - (5) To decide any other interpretation or decision delegated by the land development regulations.
- C. *Administrative variances.* The administrative official shall have the authority to grant a minor dimensional variance of up to ten (10) percent of adopted standards when the terms of this ordinance are met. When the terms of the ordinance are not met, the administrative official shall deny the request, at which time the petitioner shall have all rights of appeal as set forth in this ordinance.

Findings of Fact

The subject parcel is considered a legal non-conforming lot due to its inability to meet the minimum setback requirements of its underline AR-2 zoning district. After reviewing the petitioner's request, the AR-2 setbacks were deemed too extensive for the parcel's overall width of only 71.83 feet and enforcing the AR-2 setbacks would render the parcel unbuildable and therefore could be deemed a "taking" by the County if the applicant was denied all reasonable use of the land. County Land Development Regulations (**Appx. A, Art. V, Sec. 3**) permits a property owner to request a variance when a hardship is encountered and therefore in this case the variance application was accepted and processed as a dimensional hardship.

Appx. A, Art. V, Sec. 3.A(2)

- (2) *The governing body may authorize upon appeal a variance from the terms of the ordinance that will not be contrary to the public interest when due to special conditions, a literal enforcement of the provisions of the ordinance would result in*

unnecessary and undue hardship. In order to authorize any variance from the terms of the ordinance, the governing body shall consider:

- (a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;*
- (b) That the special conditions and circumstances do not result from the actions of the applicant;*
- (c) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings, or structures in the same zoning district;*
- (d) That literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would work unnecessary and undue hardship on the applicant;*
- (e) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;*
- (f) That the granting of the variance will be in harmony with the general intent and purpose of the land development regulations and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.*

In staff analysis, the minimum setbacks for the parcel were reviewed for consistency and compatibility with the surrounding area. In order to avoid setting precedents, the building setbacks from the R1-C residential district were chosen. The R-1C setbacks would be compatible with the setbacks of neighboring parcels and make the parcel buildable. A rezoning would not have removed the mobile home entitlements and would have only delayed the property owner and caused unnecessary expenses.

Conclusion

Considering the limited options to remedy the setback hardship and in an effort to avoid what could be interpreted as a “taking” with a denial of the variance, the Administrative Official made a determination to apply the R-1C setbacks in order to make the lot buildable. The variance exceeded the 10% dimensional variance criteria (Appx. A, Art. V, Sec. 1) for public notice. In any scenario, the required setbacks to make the parcel buildable would have exceeded the 10% due to the requirements of AR-2, and therefore the Administrative Official made a determination to make the variance request administrative (without notice) and process the variance.

The variance was approved on September 16, 2024, and the petitioner proceeded with purchasing the mobile home. Permits have been appropriately requested and the home was ready for delivery but was delayed due to Hurricane Helene and Milton. All permits for land clearing, well and septic, and the placement of the mobile have been approved, and now is being held by the department pending the appeal.

STAFF RECOMMENDATION:

It is recommended that the Board of County Commissioners review the Administrative Official's determination and determine whether a dimensional hardship exists for the subject site and whether the prescribed setbacks are adverse to the public interest. Staff further recommends, if the Board determines that a dimensional hardship exists for the subject site and that the prescribed setbacks are not adverse to the public interest, that the Board ratify and adopt the Administrative Official's approval of Ms. Sanitate's variance request.