

**BOARD OF SEPTIC AND WELL APPEALS**  
**AGENDA**  
**July 7 2023**  
**2:00 pm**  
**GOVERNMENT CENTER, 101 CHALMERS COURT**  
**(A/B meeting room)**

1. Call to order – Clerk, Board of Septic & Well Appeals

2. Election of Officers

- ❖ Chair
- ❖ Vice Chair

3. Approval of Agenda

4. Approval of Meeting Minutes: March 2, 2022

5. **Well Variance – Public Hearing**

**Stephen Shendow is requesting a 41.5 foot variance to the Clarke County Well Ordinance so as to site an attached screened in porch closer than 50 feet from an existing well on the property identified as Tax Map #9-2-2 located at 130 Lewisville Road, Berryville, VA, Russell Election District, zoned Agricultural Open-Space Conservation (AOC). BSA-23-01**

6. Discussion item

- a. Review of §184-15.C.2 Hardship language

7. Adjournment



# Clarke County Board of Septic and Well Appeals

**DRAFT MINUTES** – Meeting Minutes

Wednesday, March 2, 2022 – 10:00AM

Berryville/Clarke County Government Center – A/B Conference Room

<b>ATTENDANCE:</b>			
Joseph Blatz (Chair)	✓	Matthew Bass (Board of Supervisors)	✓
George L. Ohrstrom, II (Vice-Chair)	✓E	Bev McKay (Board of Supervisors Alternate)	X

E – Denotes electronic participation

**NOTE:** George L. Ohrstrom, II participated electronically due to health issues related to the current pandemic.

**STAFF PRESENT:** Brandon Stidham (Director of Planning), Jeffrey Feaga (Preservation Planner / GIS Coordinator), Kristina Maddox (Office Manager/Zoning Officer)

**OTHER PRESENT:** Frank Klebieko (PRK Drilling & Blasting, Inc)

**CALL TO ORDER:** By Chair Blatz at 10:00AM.

### Approval of Agenda

The Commission voted 3-0-0 to approve the March 2, 2022 agenda as presented by Staff.

<b>Motion to approve the March 2, 2022 agenda as presented by Staff:</b>	
Joseph Blatz	<b>AYE</b>
George L. Ohrstrom, II	<b>AYE (seconded)</b>
Matthew Bass	<b>AYE (moved)</b>

### Approval of Meeting Minutes

The Commission voted 3-0-0 to approve the January 26, 2022 meeting minutes as presented by Staff.

<b>Motion to approve the January 26, 2022 Meeting Minutes as presented by Staff.</b>	
Joseph Blatz	<b>AYE (moved)</b>
George L. Ohrstrom, II	<b>AYE (seconded)</b>
Matthew Bass	<b>ABSTAINED</b>

### Blasting Plan Requirements

Mr. Feaga presented a brief summary of Clarke County’s blasting plan requirements. Mr. Klebieko apologized and said he misread the ordinance and Chair Blatz noted the ordinance has since been rewritten to be more clear. When asked by Mr. Bass, Mr. Feaga confirmed that the application now makes it clear whether or not blasting is required. Mr. Klebieko suggested that Staff also create a color-coded map to include a no blast zone, springs area, and the rest of the county in a different color. He said the regulations read as a deed and are unclear where one can blast.

**BSA-22-02, Ritter’s Construction Company (Blasting Plan Application)**

The Commission voted 3-0-0 to approve blasting plan BSA-22-02, Ritter’s Construction Company (Blasting Plan Application).

<b>Motion to approve BSA-22-02, H&amp;W Construction (Blasting Plan Application):</b>	
Joseph Blatz	<b>AYE</b>
George L. Ohrstrom, II	<b>AYE (moved)</b>
Matthew Bass	<b>AYE (seconded)</b>

**Updated Zoning Permit Application to reflect approved motion from January 26, 2022 meeting.**

The Commission unanimously voted to update the zoning permit application to reflect the approved motion from the January 26, 2022 meeting.

<b>Motion to approve BSA-22-02, H&amp;W Construction (Blasting Plan Application):</b>	
Joseph Blatz	<b>AYE</b>
George L. Ohrstrom, II	<b>AYE (moved)</b>
Matthew Bass	<b>AYE (seconded)</b>

**ADJOURN:** The March 2<sup>nd</sup> Board of Septic Well Appeals Meeting adjourned by consensus at 10:15AM.

\_\_\_\_\_  
Joseph Blatz (Chair)

\_\_\_\_\_  
Kristina Maddox (Clerk)

**WELL ORDINANCE VARIANCE REQUEST (BSA-23-01)**

**Stephen Shendow**

**July 7<sup>th</sup>, 2023 Board of Septic and Well Appeals Meeting**

**STAFF REPORT Department of Planning**

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The purpose of this staff report is to provide information to the Board of Septic and Well Appeals members to assist them in reviewing this proposed variance request. It may be useful to members of the general public interested in this proposed request.  
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**Case Summary**

**Applicant(s):**

Stephen Shendow (Owner)

**Location:**

- Subject property is located at 130 Lewisville Rd
- Russell Election District
- Zoned: Agricultural Open-Space Conservation

**Request:**

Stephen Shendow is requesting a variance of 41.5 feet to construct an attached porch closer than the minimum 50 feet from an existing well as required by Code of Clarke County Chapter 184 (Wells). The property is located at 130 Lewisville Rd., Tax Map #9-2-2, Russell Election District, zoned Agricultural Open-Space Conservation (AOC).

**Eligibility for Variance:**

The Clarke County Well Ordinance Section 184-15 Appeals & Variances states that in order to be eligible for a variance, the applicant must meet at least one of five criteria. The applicant is eligible for a variance based on the criteria which states that the private water supply system serves or is planned to serve:

- *An existing single-family dwelling or structure serving an existing business.*

**Compliance with State Regulations:**

The Commonwealth of Virginia Private Well Regulations requires a minimum 10 feet from a new private well to a non-chemically termite treated structure and 50 feet from a new private well to a chemically termite treated structure. Note that existing wells are not specifically addressed in the Private Well Regulations as they are in the County Ordinance.

**Staff Discussion/Analysis:**

The Clarke County Well Ordinance, Chapter 184 Clarke County Code, specifically, Section 184-9-I states “*Existing Wells may not be encroached upon by known contamination sources as set forth in Table I in such a manner which exceeds current location conditions.*” The existing house, which was built in 1982, is 17’ from the well and the well was installed prior to the adoption of the County well ordinance.

The applicant is requesting to add a screened-in porch 10 feet from the existing well. During the site visit, staff found that the actual distance between the proposed screened-in porch and the

well was 10 feet. The applicant previously indicated the distance as 8.5 feet and this distance is reflected in the public hearing notice.

Due to the proximity of the house from the well, rooftop runoff towards the well is substantial. According to the site sketch and the applicant's comments, the addition of a screened in porch would divert up to 75% of the current roof run-off away from the well through a downspout on the other side of the porch.

A Guide to Private Wells is a publication of the Virginia Water Resources Research Center at Virginia Polytechnic Institute and State University, 1995, states: "Good well construction and the proper location are critical in ensuring a safe drinking water supply. Prevent contaminated runoff water or other materials from entering a well by locating it on the highest suitable ground and far from potential pollution sources. Surface drainage should be directed away from the well site, and the well should not be located in an area subject to flooding."

This is the reasoning behind Well Ordinance, Section 184-9-B which states "*New water supplies shall be protected from surface wash or flooding by suitable sloping or ditching of ground surfaces or by suitable dikes or curbs. Positive surface drainage should be provided away from the well to prevent surface runoff from entering the wellbore hole prior to grouting the well casing. Water supply systems shall not be located in ground swale areas or floodways which are subject to surface runoff and/or flooding*".

Diverting a substantial amount of rooftop runoff away from the well, by changing the guttering on the addition, will help to protect the water supply from excessive surface water infiltration.

The applicant notes that the structure will not be chemically termite treated with pesticides. The applicant states that they are willing to sign an affidavit (attached) stating that no pesticides will be used on the proposed porch.

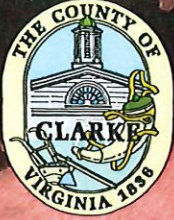
Please review the applicant's request and accompanying paperwork as well as the sketch showing the proposed porch and well location.

Staff has reviewed the applicant's submittal and has no outstanding concerns.

**Recommendation:**

Approval of Stephen Shendow's request for a variance to the Clarke County Well Ordinance §184-9-I so as to site a screened-in porch on the property identified as Tax Map #9-2-2 within 10 feet from an existing well, subject to the following condition:

1. Applicant to sign an affidavit stating that no pesticides will be used on the proposed porch.



# BOARD OF SEPTIC AND WELL APPEALS

## VARIANCE & APPEALS

### General Information

Date:	5/30/23	Tax Map #:	9-2-2
Zoning District:	RUSSELL (AOC)	Lot Size:	3 ACRE
Overlay District (if applicable):			
Site Address:	130 LEWISVILLE RD BERRYVILLE VA 22611		
Property Owner's Name:	STEPHEN SHENDOW		
Property Owner's Mailing Address:	130 LEWISVILLE RD BERRYVILLE VA 22611		
Applicant's Name: (if different than applicant)			
Applicant's Mailing Address: (if different than applicant)			
Phone:	(w) 540 667-1430	Email:	SSHENDOW@GMAIL.COM
	(Cell) 540 336-4727		

### Application Type

Select the type of application that is being submitted. A separate application is required if filing multiple types.

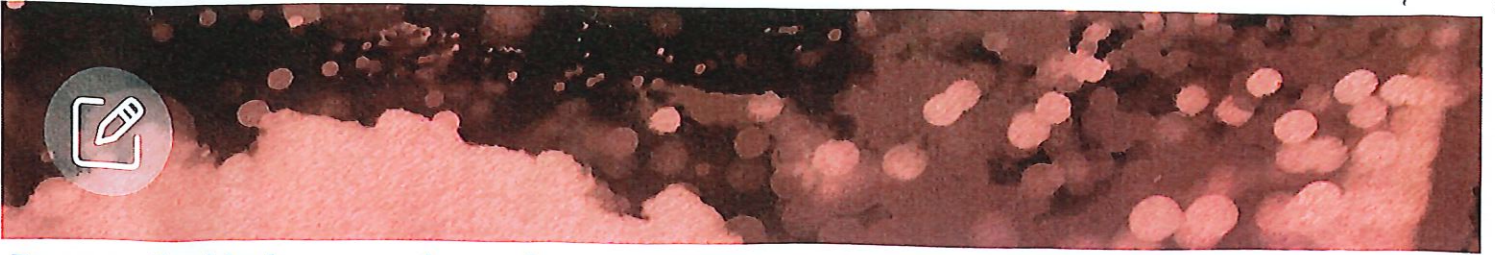
Variance

If Variance is selected, proceed to the following page.

Appeal

If Appeal is selected, proceed to the following page.





### Reason for Variance or Appeal

Provide a detailed explanation of the request. If requesting a variance, explain how your request meets the criteria of Chapter 143, Section 15C-1a. If appealing an order, requirement, decision, or determination, provide the information required by Chapter 143, Section 15B-2.

SEE ATTACHED

### Exhibits

List the exhibits or other supporting documents included with your application. This should include the required components of an application, as listed under Clarke County Code, Chapter 143, Section 143-15C-3 (variances), or Section 143-15B-2 (appeals).



By checking here, and signing below, I attest that all Clarke County delinquent taxes and charges for the subject property are paid and up-to-date and that all information provided on this application is accurate.

Signature of Applicant (if different from owner)

Date

Signature of Owner

Date

Office Use Only

DATE RECEIVED: 5/31/2023

FEE PAID: \$750.00 ✓ #6753

COMMENTS:

GIS ACCOUNT #: 819

### **Reason for Variance**

Request variance 15C-1a (i) Existing single-family Dwelling. Purpose: to build a screened in porch (approx. 13' x 20.5'), encompassing a portion of existing deck—plus “area” adjacent to existing deck. This “area” extends approx. 8.5' beyond the zoning allowable build zone, due to the location of existing 1982 well. No other location is suitable for placement of porch due to other as built conditions and the location of old growth hardwood trees. The house, built in 1982, sits on 5 acres, and is centrally located on the plat.

Mindful section 143.1's intent and the well-being of my family, it is my desire to improve, not impact, the ground water quality after screened porch build out. Re-directing current roof rainfall water discharge will result in 75% of the current roof run-off being directed further away from the well than is currently found. Thus, allowing greater ground filtration before reaching well.

The building materials selected for this project are done so to further limit ground water impact. Standing Seam metal roof, Timbertech PVC tongue and groove porch flooring, metal Deckorator pickets, Cedar Post (only one inside variance request area), metal screening, Azek PVC fascia boards...PLUS any recommendation from the committee will be adhered too.

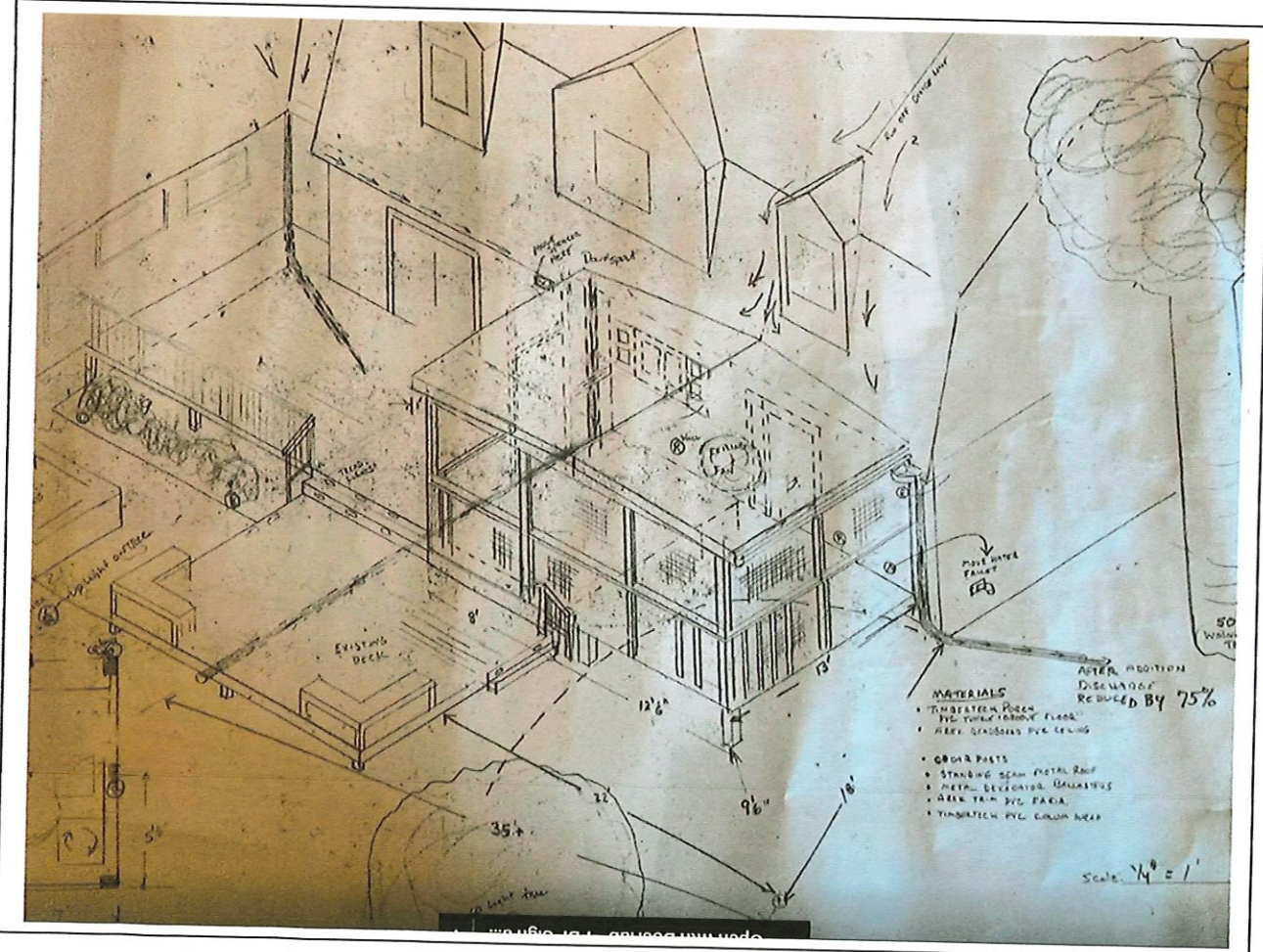
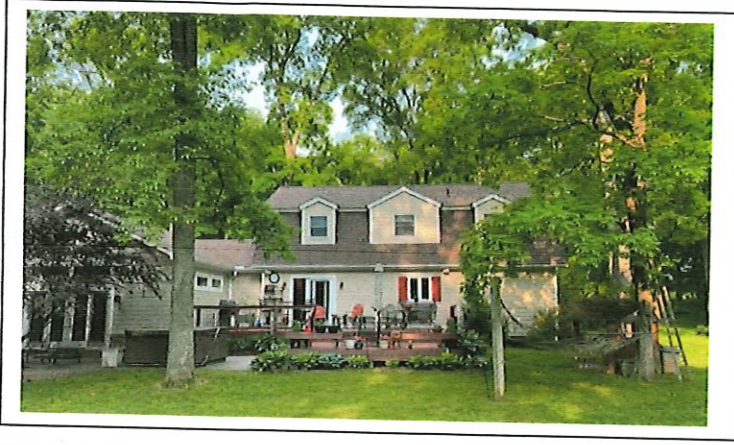
### **Exhibits**

See photos, and schematic drawing of screen porch addition.

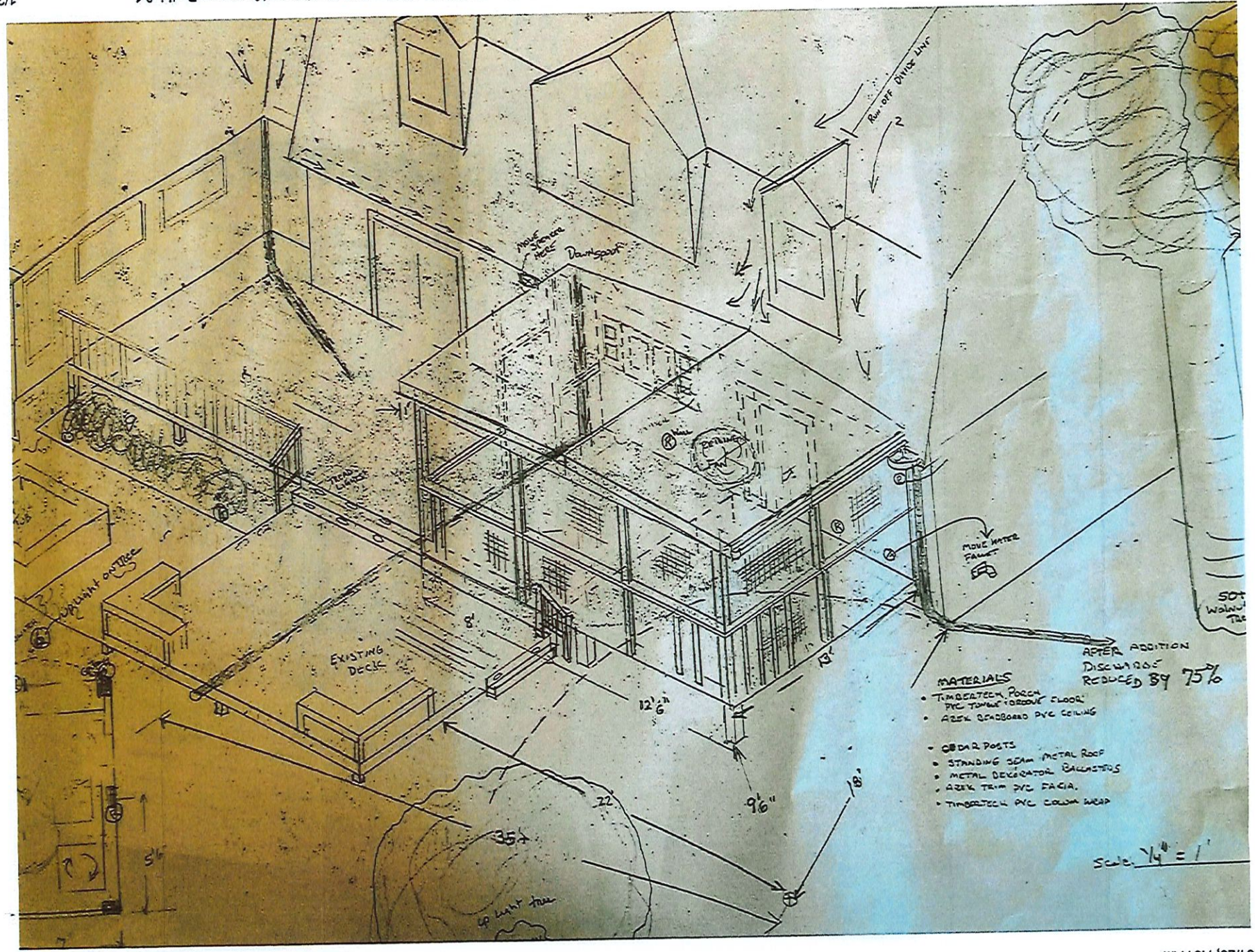
143-15C-3 No impact on drain field which is located on the far side of the property.

Section 184-9 (i) Location of water supplies. Existing wells may not be encroached upon....









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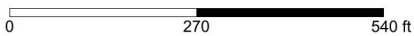




- Public
- Parcels
- Parcels With Orthos
- Clarke County Boundary
- Major Roads
- Interstate
- US Highway
- State Highway
- Surrounding Counties Op
- Surrounding Counties Non



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CLARKE COUNTY

AFFIDAVIT  
COMMONWEALTH OF VIRGINIA, AT LARGE  
COUNTY OF CLARKE, to wit:

On this \_\_\_\_\_, **Stephen Shendow** personally appeared before  
*(date)*  
me, the undersigned Notary Public, in my jurisdiction aforesaid,

**Stephen Shendow**, who, having first been duly sworn,

deposes and says as follows:

1. I request approval to locate a proposed porch structure, **10 feet** from an existing private well on the parcel identified as Clarke County Tax Map **9-2-2**.
2. I understand a variance issued by the Board of Septic and Well Appeals is required in order to locate the structure closer than **50 feet** from an existing private well, and that such structure shall not be termite treated as set forth in Section §184-18 Table 1.
3. I agree to comply with this requirement as evidenced by recording this affidavit with the Circuit Court of Clarke County which states:

“The existing well on this property is located **10 feet** from a proposed porch structure. The porch structure and foundation shall not be chemically termite treated now or in the future. In addition, chemical termite treatment is prohibited within **100 feet** of a private well water supply.”

\_\_\_\_\_  
Owner Signature

SUBSCRIBED AND SWORN TO before me, at the undersigned Notary Public in and  
for the Commonwealth of Virginia At Large, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GIVEN under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_. My commission expires \_\_\_\_\_.

NOTARY PUBLIC \_\_\_\_\_

(SEAL)

MEMORANDUM

TO: Board of Septic and Well Appeals  
FROM: Lorien Lemmon  
DATE: June 28, 2023  
SUBJECT: A) Review of §184-15.C.2 Hardship language

Current language in Chapter 184 Wells for Appeals and Variances states: “Variances shall be approved to alleviate a clearly demonstrable hardship approaching confiscation involving existing single-family dwellings or structures serving an existing business as distinguished from a special privilege or self-imposed (elective) convenience or option sought by the applicant.” “Reaching confiscation” establishes a review standard that a landowner would not be able to utilize their property unless a variance is granted. After reviewing recent cases, staff determined that the BSA has not historically applied this review standard. Below are similar instances where well variances were approved so long as the landowner agreed not to spray for termites, dating back within the past 10 years:

BSA ##	Applicant	Description
BSA-18-03	Wagner	Well 24ft from attached garage; property less than 1 acre
BSA-18-01	Maurer	Well 37ft from garage; property 15 acres, some of which were steep slopes
BSA-15-03	Caton	Well 32ft from house addition for installation of second bathroom
BSA-15-02	Coumes	Well 20ft from detached garage; property 5 acres with steep slopes
BSA-14-01	Setter	Well 19ft from carport; constructed without a permit, allowed as long bollards were placed around the well to prevent being struck by vehicles
BSA-13-01	Mellon	Well 17ft from home addition; due to architecture of house and front door, no better place

In each of these cases, applicants were constructing garages or additions to existing houses. Granting of variances in these instances were not necessary to prevent the owners from being able to use their properties and several of the variances were for the owners’ convenience. Staff asks for direction on whether the committee wants to apply the current standard as written or pursue a text amendment to change the review standard.

through into the water-bearing formation. The grouting shall be done continuously and in such a manner as will ensure the entire filling of the annular space in one operation. No drilling operation or other work in the well shall be permitted within 72 hours after the cement grouting of casings. If high early strength portland cement is used, this period may be reduced to 24 hours.

*§ 184-14. Disinfection and testing prior to use.*

General specifications for disinfecting wells, water service pipelines, pneumatic storage tanks and other water conveying or storage devices shall be as follows:

- A. Disinfection of the entire water system, per Clarke County Health Department standards, shall be performed upon completion of plumbing fixture installation and after final plumbing inspection by the Clarke County Building Department when water system and plumbing system installation are not concurrent.
- B. After operating the pump and after removal of disinfection residual, a sample shall be collected for examination by a state-certified laboratory for coliform bacteria and nitrates and, prior to placing the system into service, shall be found negative for coliform bacteria and have nitrate levels below the Environmental Protection Agency (EPA) standard.
- C. Property owners or the person taking the sample shall be required to submit an affidavit that he/she has followed proper sampling procedures as defined by the Clarke County Health Department and has submitted a sample from the well for which approval of operation from the Clarke County Health Department is requested.
- D. If testing for safe water after drilling the well identified the presence of primary (harmful) contaminants, a test for that contaminant shall be conducted to confirm the adequacy of treatment and the treatment method found to reduce the occurrence of the contaminant below maximum acceptable levels prior to placing the system into service. Private wells shall be considered contaminated if coliform is present or nitrate levels exceed EPA standards. Public wells shall be considered contaminated if any of the substances tested for exceed EPA standards.

*§ 184-15. Appeals and variances.*

[Amended 2000-04-18; 2022-12-20]

- A. Board of Septic and Well Appeals. The Board of Septic & Well Appeals, as described in Code of Clarke County Chapter 143 (Septic Systems), shall hear appeals of administrative interpretations and applications for variances to this chapter.
- B. Appeals



1. Any appeal shall be filed within 30 days of the issuance date of the order, requirement, decision, or determination.
2. Any person seeking an appeal shall apply in writing to the Board. Such application shall include:
  - a. A citation to the order, decision, determination or regulation to which an appeal of interpretation or application is requested;
  - b. Any relevant analytical results, including results of tests conducted pursuant to the requirements of this article;
  - c. Other information, if any, deemed pertinent by the applicant; and
  - d. Such other information as the Board may require.
3. The Board shall act on any appeal request within 60 calendar days from the Board's first review.
4. All appeals shall be consistent with the intent of this article. The Board may attach reasonable conditions consistent with the intent of this article in granting appeals.
5. No appeal may be heard except after notice and hearing as required by Code of Virginia §15.2-2204.
6. An appeal of a decision of the Board shall be made within 30 days to the Board of Supervisors. Any appeal of the decision of the Board of Supervisors shall be made within 30 days to the Circuit Court of Clarke County.
7. The concurring vote of two members shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which the Board is required to pass under this chapter, or to effect any variance from the regulations of this chapter.

## C. Variances

1. Variance Criteria
  - a. In order to be eligible for a variance, the private water supply system for which the variance is requested serves or is planned to serve one of the following:
    - i. An existing single-family dwelling or structure serving an existing business.

- ii. An existing single-family dwelling or structure serving an existing business that has been destroyed by circumstances beyond the control of the owner or occupant of the building within one year of the variance application.
  - iii. A building that is eligible to be on the Virginia Landmarks Register or the National Register of Historic Places or is eligible to be a contributing property in an historic district listed in the Virginia Landmarks Register or the National Register of Historic Places.
  - iv. The variance is requested so as to provide for new private water supply systems replacing existing systems that are more consistent with the regulations of this article. An existing single-family dwelling or structure serving an existing business must be located on the property with the existing water supply system.
  - v. The entire parcel of land has been placed under a permanent conservation easement.
2. Variances shall be approved to alleviate a clearly demonstrable hardship approaching confiscation involving existing single-family dwellings or structures serving an existing business as distinguished from a special privilege or self-imposed (elective) convenience or option sought by the applicant.
3. Variance Procedure.
- a. Any person seeking a variance shall apply in writing to the Board. Such application shall be in writing and shall include:
    - i. A citation to the order, decision, determination or regulation from which a variance is requested.
    - ii. Identification of which of the variance criteria in paragraph C(1) applies;
    - iii. The nature of the variance requested.
    - iv. Any relevant analytical results, including results of tests conducted pursuant to the requirements of this article.
    - v. Statements or evidence why the public health and welfare as well as the groundwater resources would not be degraded if the variance were granted.

- vi. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on public health and welfare or groundwater resources.
  - vii. Other information, if any, deemed pertinent by the applicant.
  - viii. Such other information as the Board may require.
- b. The Board of Septic and Well Appeals shall act on any variance request within 60 calendar days of receipt of the request.
  - c. The Board may attach reasonable conditions consistent with the intent of this article in granting variances. Compliance with conditions shall be required for the life of the system for which the variance is issued, unless specified otherwise by the Board.
  - d. No variance may be granted except after notice and hearing as required by Code of Virginia §15.2-2204. Posting and notification of adjacent property owners are waived for existing failed systems requiring emergency repairs, which alter the configuration of the existing system as determined by the county Health Department.
  - e. A denial of a variance, or an appeal from the terms and conditions set forth in the variance, shall be made within 30 days to the Board of Supervisors. Any appeal of the decision of the Board of Supervisors shall be made within 30 days to the Circuit Court of Clarke County.

*§ 184-16. Notice to correct.*

If upon any inspection the Health Director or his authorized agent finds a violation of any of the provisions of this chapter and/or the provisions of the permit issued under it, he shall direct the person to whom the permit was issued and/or the installer of the system and/or the current owner, by written notice, to make the necessary corrections within such reasonable period as is specified therein. No person shall fail to comply with such notice within such period.

*§ 184-17. Equitable remedies.*

In addition to the penalty provided by local code or state statute, the Health Director may initiate injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate or remove a violation of any of the provisions of this chapter.

*§ 184-18. Violations and penalties.*