



ANDERSON TOWNSHIP PLANNING AND ZONING - STAFF REPORT

CASE NUMBER 21-2024 BZA

595 BIRNEY LANE

FOR CONSIDERATION BY THE BOARD OF ZONING APPEALS ON SEPTEMBER 5, 2024

APPLICANT: Rylan A. Babbs, property owner.

LOCATION & ZONING: 595 Birney Lane
(Book 500, Page 331, Parcel 87) – “AA” Residence

REQUEST: Multiple variance requests for accessory structures on the property. **Variance A** is a request to allow two accessory structures in the front and side yards, both size 12’ x 12’ where accessory structures are only permitted in the rear yard per Article 5.2, A, 7. **Variance B** is a request to allow one agricultural structure, size 8’ x 15’, in the front yard with a proposed setback of 21’ where 100’ is required per Article 3.1, C, 11.

SITE DESCRIPTION:

Tract Size: 0.897 Acres
Frontage: Approximately 145’ on Birney Lane
Topography: Steep, over 20’ of elevation change between the southern and northern ends of the property.
Existing Use: Single Family Residence

SURROUNDING CONDITIONS:	<u>ZONE</u>	<u>LAND USE</u>
North:	“AA” Residence	Single Family Residential
South:	“AA” Residence	Interstate 275
East:	“AA” Residence	Single Family Residential
West:	“AA” Residence	Anderson Township Greenspace

PROPOSED DEVELOPMENT:

Variance A: The applicant is requesting to keep an existing 12’ x 12’ shed located in the front yard on the east side of the property by the driveway, approximately 75’ from the southern property line and 95’ from the eastern property line. The applicant is requesting a variance to install another 12’ x 12’ shed in the front yard on the west side of the property, approximately 40’ from the southern property line and 45’ from the western property line.

Variance B: The applicant is requesting to keep an existing 8’ x 15’ chicken coop, located in the front yard in the southwest corner of the property, 21’ from the southern property line and 25’ from the western property line (Township Greenspace property).

HISTORY: The house was constructed in 1959 and purchased by the current property owner in December of 2019. A zoning certificate is on file for a 4’ high, 75% open fence in the front and side yard installed by the current property owner in December of 2019.

On June 24, 2024, staff received a complaint about chickens on the property. Staff inspected the property from the right of way and found a structure in the front yard and a yard sign that read “fresh eggs for sale.” A letter was sent to the property owner on July 16, 2024, informing him of the violation and informing him that the chicken coop would need to be removed, or a variance would be needed to bring the property into compliance. In late July, the property owner applied for a zoning certificate for the proposed 12’ x 12’ shed and was informed by staff that the open violation would need to be resolved before a zoning certificate could be issued. Initially, the property owner denied that there was a chicken coop, stating that the structure visible from the road was a playset. Staff asked for permission to inspect the property to confirm that there was no chicken coop, but this request was denied by the property owner. Staff then informed him that a variance would be necessary to keep the “playset” and shed in their current locations and allow the new shed in its proposed location.

Upon applying for a variance, the applicant revised his statement, stating that the structure he initially claimed was a playset was indeed a chicken coop which was confirmed when staff inspected the premises with the property owner’s permission to prepare for the Board of Zoning Appeals meeting.

FINDINGS:

To authorize by the grant of a special zoning certificate after public hearing, the Board of Zoning Appeals shall make a finding that the proposed variance is appropriate in the location proposed. The finding shall be based upon the general considerations set forth in Article 2.12, D, 2, b.

VARIANCE A:

Staff is of the opinion that the property in question will yield a reasonable return without granting the variances for the two sheds. The property is zoned for single-family residence and will yield a reasonable return without the variances. While the topography poses a challenge, the property would be permitted to have both sheds in the rear yard, 3’ from property lines.

Staff is of the opinion that the variance may be substantial. The locations of the existing shed and the proposed shed are well outside the rear yard. However, their location may not have a significant impact visually due to the hilly topography. The sheds are also screened by vegetation during the summer, but it is unclear whether they would be visible during the winter.

Staff is of the opinion that the essential character of the neighborhood might not be altered. The structures are screened by existing vegetation, and the parcels nearest the proposed shed are Township Greenspace and the right of way for Interstate 275.

The variance would not adversely affect the delivery of governmental services.

Staff is of the opinion that the property owner's predicament may not be feasibly obviated through some method other than a variance. The terrain may present a challenge which cannot be overcome without a variance.

Staff is of the opinion that the spirit and intent behind the zoning requirement might be observed by granting the variance. The intent of requiring accessory structures to be in the rear yard is to keep them out of public view to prevent a cluttered aesthetic from the roadway. These structures are hidden from the road.

VARIANCE B:

Staff is of the opinion that the property in question will yield a reasonable return without granting the variance of an agricultural structure 21' and 25' from the closest property lines where 100' is required. The property is zoned for single-family residence and will yield a reasonable return without the variances.

Staff is of the opinion that the variance may be substantial. The location of the chicken coop is outside of the rear yard, and only 21' from the nearest property line which is a significant deviation from the 100' required setback for agricultural structures. However, these deviations might be mitigated by the natural screening and hilly topography which makes the chicken coop less visible from the road.

Staff is of the opinion that the essential character of the neighborhood might not be altered. The chicken coop is partially screened by existing vegetation, and the parcels nearest the proposed shed are Township Greenspace and the right of way for Interstate 275. Additionally, the chicken coop is located away from neighboring residences.

The variance would not adversely affect the delivery of governmental services.

Staff is of the opinion that the spirit and intent behind the zoning requirement might not be observed by granting the variance. Buildings or structures incidental to the use of land for agricultural purposes, on lots of 5 acres or less, shall be set back at least 100' from every property line to prevent agricultural structures on lots which cannot provide enough distance to not be a nuisance to neighboring properties. The impetus for this application was a complaint about chickens on the applicant's property.

**STANDARDS TO
BE CONSIDERED:**

The aforementioned variance requested should be evaluated on the following criteria:

- (1) The property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.
- (2) The variance is substantial.
- (3) The essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.
- (4) The variance would not adversely affect the delivery of governmental services (i.e. water, sewer, garbage).
- (5) The property owner purchased the property with knowledge of the zoning restrictions.
- (6) The property owner's predicament can be feasibly obviated through some method other than a variance.
- (7) The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Disclaimer: This staff recommendation is based on the facts known to the author at the time the recommendation was made. Staff attempted to use those known facts to analyze the relationship of those facts to the standards set forth in the Zoning Resolution for the particular issue and property before the BZA, and in keeping with past decisions of the BZA. The BZA members have an obligation to consider all of the evidence that is entered into this case during the BZA hearing through the sworn testimony of the witnesses, as well as the documents submitted as part of the witnesses' testimony. The staff recommendation should be considered as part of the evidence before you. The Zoning Resolution empowers the BZA to make reasonable interpretations of the Zoning Resolution, to judge the credibility and reliability of the witnesses, and to decide each case based on the evidence presented during the BZA hearing process.