

**TOWN OF ROUND HILL  
BOARD OF ZONING APPEALS  
BZA CASE No. BZA-2021-01  
APPLICATION FOR VARIANCE**

**Applicant:** Marc & Linda Renner  
39 New Cut Rd.  
Round Hill, VA 20141

**Property Owner:** Marc & Linda Renner  
39 New Cut Rd.  
Round Hill, VA 20141

**Site Location:** 39 New Cut Road

**Tax Map Number/PIN:** /34/A/1/A///9/ MCPI 585-40-7384-0000

**Zoning District:** R-2 Residential Single-Family District

**Current Land Use:** Urban Single Family

**Existing Parcel Size:** 141,134.4 square feet or 3.24 Acres

**Adjacent Zoning:** Adjacent parcels are zoned R-2 Residential-Single Family, R-6 Residential – Duplex & Townhouse and PDH3 County Zoning

**Adjacent Land Use:** The adjacent land use is residential

**Election District:** Blue Ridge

**Application Received:** July 9, 2021

**Date of Staff Report:** August 2, 2021

**Staff Report By:** Danielle Albright, Town Planner  
Melissa Hynes, Zoning Administrator

**STAFF REPORT**  
**BZA CASE No. BZA-2021-01**  
**APPLICATION FOR VARIANCE**  
**39 New Cut Road**

The Round Hill Board of Zoning Appeals is considering an application, submitted by Marc & Linda Renner for a variance to a specific provision of the Round Hill Zoning Ordinance (RHZO). The applicants are requesting a variance to the following Zoning Ordinance section:

Article 3 – R-2 Residential; Section 3.4.a Accessory Uses: Other accessory uses and structures customarily appurtenant to a permitted use; provided however, that the total footprint for all accessory structures on a lot does not exceed 6% of the total lot area and in any case may not exceed 1800 square feet There is a minimum requirement of 10 feet between any and all building footprints. A single accessory structure's footprint cannot cover more than 4% of the total lot area and the maximum size of a single accessory structure's footprint regardless of lot size is 1200 square feet Any lot may have a single accessory structure with a footprint of up to 600 square feet.

The variance requested by the applicants is to increase the maximum permitted square footage of an accessory building from 1200 square feet to 1530 square feet.

**SUMMARY:**

Marc and Linda Renner request a variance to the maximum 1200 square foot size requirement for an accessory structure in the R-2 Residential District. A garage, which has already been constructed on the property, was built larger than the maximum size limit and without obtaining the appropriate Land Use Permit prior to construction. According to the enclosed information provided to the Town by the applicant, the structure totals 1,530 square feet.

An accessory structure is defined in the Round Hill Zoning Ordinance Article 2 – Definitions as “A building or structure subordinate and incidental to and located on the same lot with a principal building, the use of which is customarily found in association with and is clearly incidental to that of a principal building or to the use of the land, and which is not attached by any part of a common wall or roof to the principal building.” Typical accessory structures may include things like a shed or garage that would normally appear on a single-family lot.

Mr. and Mrs. Renner allege a hardship stating that the current maximum size requirement of an accessory structure does not allow for storage of equipment required to maintain multiple properties and family vehicles and that a larger structure is needed to provide a buffer against noise and light nuisance from Route 7.

Mr. and Mrs. Renner also claim that special conditions exist because “maintaining 6 acres of heavily wooded property including waterfront requires additional storage space for equipment”.

Mr. and Mrs. Renner own two additional parcels totaling 5.08 acres, one immediately adjacent to this property (County PIN#'s 585-40-5595 and 585-40-7039) as shown in Attachment 5.

The completed structure, which totals 1,530 square feet, meets all setback requirements for accessory structures in the R-2 District including 5 feet from all property lines for structures less than 16 feet in height, it exists outside of the front yard setback, and it is at least 10 feet from all other structures.

## **VARIANCE STANDARDS**

Standards established for the issuance of a variance are contained in both the State Code and the Town Zoning Ordinance. The BZA is required to consider all of these standards when reviewing and acting on a variance.

The Code of Virginia in § 15.2-2201 defines a variance as follows:

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning."

The Code of Virginia in § 15.2-2309 further specifies, "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 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 that is authorized in the ordinance....." (Code of Virginia, 1950, as amended) These are essentially the same as the variance criteria included in Town Zoning Ordinance Section 15.5.

## STAFF ANALYSIS

The staff analysis for each variance criteria are outlined below:

1. **Criteria:** That the property was acquired in good faith  
**Staff Analysis:** MEETS CRITERIA. In support of this application for variance, the Applicant submitted evidence to support that the subject property was acquired in good faith on April 8, 2019.
2. **Criteria:** Any hardship was not created by the applicant for the variance.  
**Staff Analysis:** DOES NOT MEET CRITERIA. In this case, a hardship was created by the applicant by constructing the accessory structure in violation of the size limitation in the Zoning Ordinance and without receiving the appropriate permits.
3. **Criteria:** The strict application of the terms of the ordinance would prohibit or unreasonably restrict the utilization of the property based on exceptional physical conditions concerning narrowness, shallowness, size or shape, topographic conditions, or other extraordinary situation or condition of the property or of adjacent properties.  
**Staff Analysis:** DOES NOT MEET CRITERIA. The strict application of the Zoning Ordinance **will not** prohibit or unreasonably restrict the utilization of the property based on any exceptional physical conditions of this property or adjacent properties. The enclosed plat demonstrates that the property has no unusual physical conditions that would justify a variance from the size limitation for an accessory structure on this property. The zoning of the property, as noted earlier, would permit a large accessory structure of up to 1200 square feet, and any accessory structure is required to be clearly related and subordinate to the principle use on this property, which is a single-family home.
4. **Criteria:** The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.  
**Staff Analysis:** DOES NOT MEET CRITERIA. Property maintenance, as proposed by the applicant, is not a clearly demonstrable hardship that can be distinguished from special privilege or convenience sought by the applicant. In fact, a hardship was created by the applicant, as specified in Item 2 above, and **cannot** be the justification for a variance.
5. **Criteria:** That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.  
**Staff Analysis:** DOES NOT MEET CRITERIA. The alleged hardship proposed by the applicants regarding noise and light nuisance due to the proximity to Route 7 is shared by residents who live on Falls Place and Newberry Crossing, as well as residents who live in Lake Point and Falls Wood. Noise and light nuisance due to the proximity to Route 7 is not a condition unique to this property.

6. **Criteria:** That authorization of the variance will not be of substantial detriment to adjacent property.  
**Staff Analysis:** We do not have sufficient information to determine if the variance would be of substantial detriment to adjacent properties.
7. **Criteria:** That the character of the zoning district will not be changed by the granting of the variance.  
**Staff Analysis:** To the extent that permitting a larger accessory structure on this property might increase pressure on the Town to permit additional larger accessory structures, such a variance could result in a change to the character of the zoning district.

## CONCLUSION

The staff is not able to recommend approval of this variance application. The application does not meet all the criteria required by the State Code and Town Zoning Ordinance for approval of a variance as indicated in the analysis above. In particular, the applicants have created their own hardship by building an accessory structure without a permit that exceeds the 1200 square-foot size limitation for accessory structures on this property. This reason alone is sufficient for the BZA to deny the variance application, as the State Code specifically prohibits the granting of a variance where the alleged hardship was created by the applicant.

In addition, State Code § 15.2-2309.3. indicates that, “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 § 15.2-2201 and the criteria set out in” that section. As demonstrated in the staff analysis of the variance standard and criteria above, the applicants have not proven that the requested variance meets these standards.

## MOTIONS

I move the Round Hill Board of Zoning Appeals deny BZA-2021-01 application for variance submitted by Marc and Linda Renner. Based on the evidence provided, the Board of Zoning Appeals finds that the Application does not meet the conditions for granting a variance as outlined in Code of Virginia of 1950, as amended § 15.2-2309 for the following reasons:

1. The applicants have not met the burden of proof to establish that the 1200 square-foot limitation in the R-2 Zoning District for an accessory structure is a hardship. In fact, the applicants have created their own hardship through their own actions by constructing an accessory structure that exceeds the size limitation without the required Town permit and are requesting a special privilege or convenience in order to keep the structure as it is, rather than comply with the Zoning Ordinance.
2. The zoning limitation on accessory structure size is shared by all properties in the R-2 Zoning District; and
3. The strict application of the Zoning Ordinance in this case **will not** prohibit or unreasonably restrict the utilization of the property based on any exceptional physical conditions of this property or adjacent properties. The applicants have not proven by a

preponderance of the evidence that the property has any physical conditions that would justify a variance from the size limitation for an accessory structure on this property. The zoning of the property would permit a large accessory structure of up to 1200 square feet.

OR

I move that the Round Hill Board of Zoning Appeals grant BZA-2021-01 Application for Variance by Marc and Linda Renner based on the following findings:

1. \_\_\_\_\_

### **NOTIFICATION**

Staff certifies that newspaper advertisements, letters to abutting property owners and property owners directly across from the subject parcel and the posting of a sign on the property has been carried out in accordance with the Code of Virginia of 1950, as amended § 15.2-2310.

### **ATTACHMENTS**

1. Variance Application
2. Deed of ownership
3. Survey of property
4. Survey indicating placement of existing garage on the property
5. GIS photo showing additional properties owned by Applicant
6. Garage contract and specification sheet
7. Photo of garage