

DEPARTMENT OF  
PLANNING & ZONING



PLANNING COMMISSION  
BOARD OF ZONING APPEALS

To: Chairman and Members, Nelson County Board of Zoning Appeals

From: Tim Padalino | Director | Department of Planning & Zoning

Date: May 15, 2014

**Subject: Update on Denied Variance Request #2013-002 (Curro)**

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Mr. and Mrs. Curro were notified by certified mail (dated April 8<sup>th</sup>, 2014) that their petition for a Variance (#2014-002) was denied by the Board of Zoning Appeals (BZA) at the April 7<sup>th</sup> meeting. (A copy of that denial letter is included in this report.)

Per the petitioners' rights as conveyed in that acknowledgment letter, the Curros have since appealed the BZA's decision. Specifically, their attorney (Mr. J. Lloyd Snook, III) has filed an appeal with the Circuit Court of Nelson County; and the Circuit Court has since issued a Writ of Certiorari. (A copy of that Writ of Certiorari, and the petitioners' appeal, is included in this report.)

This Writ of Certiorari requires the County to supply the Circuit Court with all pertinent files and records, and to also file a pleading with the court in the proper legal form, within 21 days. The responsibility to respond to the Writ of Certiorari within 21 days is presently being handled by County staff (including Mr. Phil Payne, County Attorney). The Board of Zoning Appeals members are not expected to be party to this appeal, and as such it is unlikely that any of you will be summoned by the Circuit Court as a witness.

The petitioners are specifically seeking a court order, "reversing the BZA's determination that a parking area on their property is a 'structure' under Virginia law and that frontyard and sideyard setbacks apply to forbid such a 'structure.'" In order for this appeal to be upheld, and for the BZA's denial to be reversed, the landowner / appellant will have to overcome a "presumption of correctness" on the part of the BZA's actions.

Thank you very much for your attention to this update on the denied Curro Variance #2014-002 request. County staff will keep the BZA apprised of further development. Please contact me with any questions you may have in the meantime.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Padalino".

Tim Padalino

[tpadalino@nelsoncounty.org](mailto:tpadalino@nelsoncounty.org) | 434-263-7090

Copy to: Mr. Stephen A. Carter, County Administrator, County of Nelson  
Mr. Phil Payne, County Attorney, County of Nelson  
Mr. Grant Massie, Planning & Zoning Specialist, County of Nelson

NELSON CIRCUIT COURT - CIVIL  
BOX 10  
LOVINGSTON, VIRGINIA  
(434) 263-7020

TO: BOARD OF ZONING APPEALS  
SERVE: STORMY HOPKINS  
80 FRONT STREET

CASE NO. 125CL14000222-00

LOVINGSTON, VA 22949

SUMMONS

THE PARTY UPON WHOM THIS SUMMONS AND THE ATTACHED COMPLAINT ARE SERVED IS HEREBY NOTIFIED THAT UNLESS WITHIN 21 DAYS AFTER SUCH SERVICE, RESPONSE IS MADE BY FILING IN THE CLERK'S OFFICE OF THIS COURT A PLEADING IN WRITING, IN PROPER LEGAL FORM, THE ALLEGATIONS AND CHARGES MAY BE TAKEN AS ADMITTED AND THE COURT MAY ENTER AN ORDER, JUDGMENT OR DECREE AGAINST SUCH PARTY EITHER BY DEFAULT OR AFTER HEARING EVIDENCE.

APPEARANCE IN PERSON IS NOT REQUIRED BY THIS SUMMONS.

DONE IN THE NAME OF THE COMMONWEALTH OF VIRGINIA ON MAY 07, 2014.

CLERK: JUDY STEVENS SKYTHERS

BY:

  
CLERK/DEPUTY CLERK

ATTORNEY: J LLOYD SNOOK III ESQ  
434-293-8195  
408 EAST MARKET ST, STE 107  
CHARLOTTESVILLE, VA 22902

VIRGINIA

IN THE CIRCUIT COURT FOR THE COUNTY OF NELSON

TERRY and BRENDA CURRO,

Petitioners

v.

Case No.

BOARD OF ZONING APPEALS OF NELSON COUNTY,

Respondent

Serve: Stormy Hopkins, Secretary  
80 Front Street  
Lovington, VA 22949

**PETITION FOR WRIT OF CERTIORARI**

Now come your Petitioners, Terry and Brenda Curro, by counsel, and petition this Court for:

- A. A writ of certiorari to review the April 8, 2014, decision of the Board of Zoning Appeals of Nelson County (“BZA”); and
- B. An order reversing the BZA’s determination that a parking area on their property is a “structure” under Virginia law and that frontyard and sideyard setbacks apply to forbid such a “structure.”

In support of the Petition, Petitioners state as follows:

- 1. Terry and Brenda Curro are the owners of 746 Mountain Road, Afton, VA, located in Nelson County. The property is referred to as Tax Map #3-A-100.

2. On April 7, 2014, as reflected in a letter of April 8, 2014, the BZA denied a requested variance over the issue of whether a concrete parking area constituted a "structure" that was subject to frontyard and sideyard setbacks.

3. Petitioner Terry Curro is disabled as a result of work injuries, and requires a wheel chair if he is to travel more than a few feet. When he uses his handicapped accessible van, he requires that he have a flat, secure surface for the van and to allow him room to get in and out of the van.

4. During the summer of 2013, Petitioners built a concrete parking area next to Mountain Road so that they could park the handicapped accessible van up by the road, on a flat, secure surface.

5. Petitioners built the concrete parking area properly, with footers, according to all applicable building codes. It is safe and sturdy

6. Petitioners were advised by contractors and surveyors that this concrete parking area did not constitute a "structure" that would require observing setback requirements.

7. In Article 2 of the Nelson County Zoning Ordinance, "structure" is defined as follows:

Structure: Anything constructed or erected, the use of which required permanent location on the ground, or attachment to something having a permanent location on the ground. Fences are excluded from this definition.

8. In Virginia Code §36-97, "structure" is defined as follows:

"Structure" means an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, storage tanks (underground and aboveground), trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Structure" shall not include roadway tunnels and bridges owned by the Department of Transportation,

which shall be governed by construction and design standards approved by the Commonwealth Transportation Board.

9. Nelson County's definition of "structure" is much broader than that authorized by state legislation.

10. Nelson County's definition of "structure" restricts the property rights of its citizens, and to the extent that it is broader than the authorized definition, that more expansive definition violates the Dillon Rule.

11. Nelson County's interpretation that anything that is built in such a way that it is "permanently located on" or "attached to" the ground is a "structure" that must observe setback requirements makes no sense, and could lead to ridiculous and unintended consequences. In essence, any parking area, any driveway, even any sidewalk would constitute a "structure." Under this definition, not only would Mr. Curro's parking area be a "structure," but so would the paved driveway. Anything except a gravel driveway would be prohibited within the 75-foot setback requirement.

12. Even under Nelson County's ordinance, a variance should have been given because:

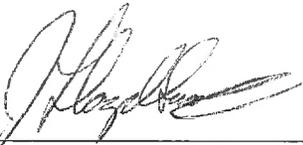
- A. Strict application of the ordinance would produce undue hardship relating to the property, in that they relied on the advice of professionals in deciding where they could put the parking area and were told by professionals that this location was permissible;
- B. The hardship that the Curros will suffer is not shared generally by other properties in the same zoning district and the same vicinity; and

C. Authorizing the variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.

13. The decision of the BZA is incorrect in that the BZA applied erroneous principles of law, and was plainly wrong and in violation of the purpose and intent of the zoning ordinance.

TERRY CURRO  
BRENDA CURRO

By Counsel



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J. Lloyd Snook, III  
VSB No. 19230  
Snook & Haughey, P.C.  
408 East Market Street, Suite 107  
P.O. Box 2486  
Charlottesville, VA 22902

(434) 293-8185  
(434) 295-0698 (fax)

DEPARTMENT OF  
PLANNING & ZONING



PLANNING COMMISSION  
BOARD OF ZONING APPEALS

April 8, 2014

Mr. and Mrs. Terry Curro  
746 Mountain Road  
Afton, VA 22920

Dear Mr. and Mrs. Curro:

Thank you for attending the Nelson County Board of Zoning Appeals meeting on April 7, 2014 requesting Variance #2013-002. The Board considered your request for a variance from the Setback Regulations required in Article 4, Sections 4-3-1a and 4-3-2 for an existing retaining wall / parking structure located on 746 Mountain Road, Afton, VA (Tax Map #3-A-100).

This letter confirms the motion made for denial of your request for Variance #2013-002, as follows:

**“Brenda Curro of 746 Mountain Road has requested a variance from the Zoning Ordinance requirements in Section 4-3-1a and 4-3-2 pertaining to a structure in the form of a parking area and retaining wall; which is located 1.5 feet from the side lot line, and is further located in the required front yard setback as well as partially in the Virginia Department of Transportation (VDOT) right-of-way. The Board of Zoning Appeals denies any variance having determined that any hardship was created by the property owner, and that the granting of variances would be detrimental to the adjacent property owner and overall character of the area. Therefore, the concrete parking area, structure, and retaining wall and any other material that supports this structure must be removed before July 1, 2014.”**

Pursuant to Article 14, Section 6-1 of the Zoning Ordinance, you have the option to present to the Circuit Court of Nelson County a petition specifying the grounds on which you feel you have been aggrieved by this decision of the Board of Zoning Appeals. If you choose to exercise that option, you must do so within 30 days from the date of this letter. Please see the enclosed ordinance excerpt (Article 14) for more information.

If we may be of assistance to you in the future, please don't hesitate to let us know.

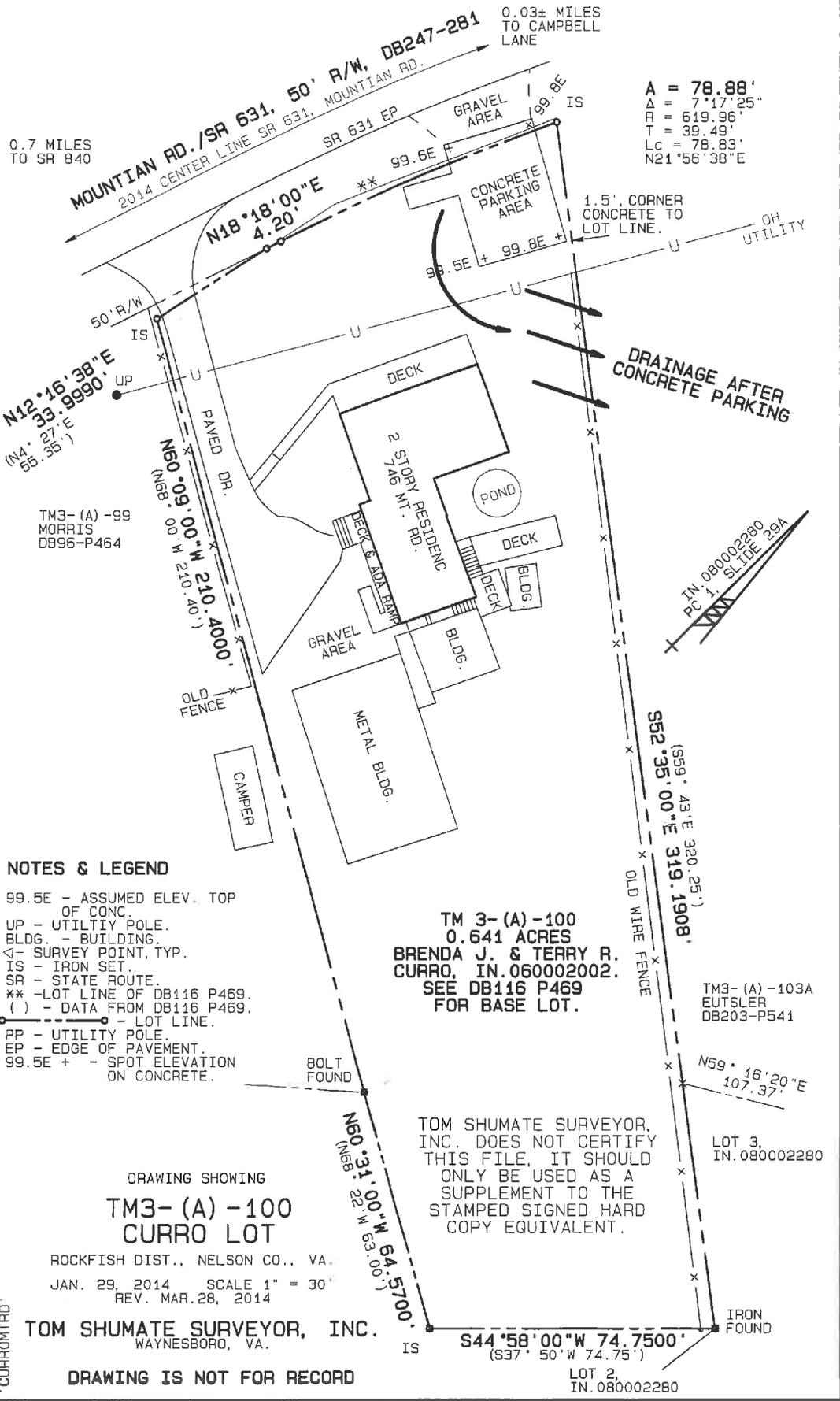
Sincerely,

A handwritten signature in black ink, appearing to read "Tim M. Padalino".

Timothy M. Padalino | Director of Planning & Zoning  
TMP/svh

CC: Mr. Stephen A. Carter | County Administrator | Clerk to the Board of Supervisors  
Mr. Gifford Childs | Chair, Board of Zoning Appeals

#04296; TM3-A-100



$A = 78.88'$   
 $\Delta = 7^{\circ}17'25''$   
 $R = 619.96'$   
 $T = 39.49'$   
 $Lc = 78.83'$   
 $N21^{\circ}56'38''E$

0.7 MILES TO SR 840

0.03± MILES TO CAMPBELL LANE

TM3-(A)-99 MORRIS DB96-P464

IN. 080002280 PC 1. SLIDE 29A

- NOTES & LEGEND**
- 99.5E - ASSUMED ELEV. TOP OF CONC.
  - UP - UTILITY POLE.
  - BLDG. - BUILDING.
  - ◁ - SURVEY POINT, TYP.
  - IS - IRON SET.
  - SR - STATE ROUTE.
  - \*\* - LOT LINE OF DB116 P469.
  - ( ) - DATA FROM DB116 P469.
  - - LOT LINE.
  - PP - UTILITY POLE.
  - EP - EDGE OF PAVEMENT.
  - 99.5E + - SPOT ELEVATION ON CONCRETE.

TM 3-(A)-100  
 0.641 ACRES  
 BRENDA J. & TERRY R. CURRO,  
 IN. 060002002.  
 SEE DB116 P469 FOR BASE LOT.

TM3-(A)-103A EUTSLER DB203-P541

TOM SHUMATE SURVEYOR, INC. DOES NOT CERTIFY THIS FILE, IT SHOULD ONLY BE USED AS A SUPPLEMENT TO THE STAMPED SIGNED HARD COPY EQUIVALENT.

LOT 3, IN. 080002280

DRAWING SHOWING  
**TM3-(A)-100 CURRO LOT**  
 ROCKFISH DIST., NELSON CO., VA.  
 JAN. 29, 2014 SCALE 1" = 30'  
 REV. MAR. 28, 2014

**TOM SHUMATE SURVEYOR, INC.**  
 WAYNESBORO, VA.

**DRAWING IS NOT FOR RECORD**

LOT 2, IN. 080002280

CURRO/MTD