

**TOWN OF BUENA VISTA  
APPLICATION FOR A VARIANCE**

Month April Day 11 Year 2014

TO THE BUENA VISTA BOARD OF ADJUSTMENT:

I/We, Desmond and Molly Jones, hereby petition the Board of Adjustment for a VARIANCE from the literal provisions of the Town of Buena Vista Zoning Ordinance because, under the interpretation given to me by the Zoning Enforcement officer, I am prohibited from using the parcel of land described in the attached General Application Form in a manner shown by the plot plan attached to that form. I request a variance from the following provisions of the ordinance (cite paragraph numbers):

Section 312 (c) Side yard setback in R-2 District

I/we request this variance so the above-mentioned property can be used in a manner indicated by the plot plan attached to the General Application form or, if the plot plan does not adequately reveal the nature of the variance, as more fully described herein: [If a variance is requested for a limited time only, specify duration requested.]

We request a three foot variance from the side yard setback (relief from minimum 15 foot requirement)

**Factors Relevant to the Issuance of a Variance**

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the state enabling act, the Board is required to reach four conclusions as outlined below before it may issue a variance. In the spaces provided below, indicate the *facts* that you intend to show and the *arguments* that you intend to make to convince the Board that it can properly reach these four required conclusions (Section 10.4, Buena Vista Zoning Ordinance):

**1. Unnecessary hardship would result from the strict application of the ordinance.**

It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

The side yard variance is necessary because without it there will be no possible way to build a needed addition to our home at this location. We are surrounded by developed lots, so no additional land is available to accommodate an expanded septic system. My aging parents need additional care, and I, Molly, am their only child. Putting them in a nursing home is out of the question. Our son has been looking for work for over a year without success, and by moving back home he could save money and help look after his grandparents. Our existing home is very small, and we must build an addition to make room for three more people.

**2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.**

Hardships resulting from personal circumstances MAY NOT be the basis for granting a variance.

Hardships resulting from conditions that are common to the neighborhood or the general public MAY NOT be the basis for granting a variance.

The three-foot variance from the side yard setback is necessary because unique land characteristics demand that the addition be constructed closer to the property line than the required fifteen feet. According to the county Health Department, the large rock outcrop and wet soil on part of our property prevent placement of an expanded septic system and addition to our home anywhere else on the property. Between the setbacks, the rocks, wet soil, existing house and drain field, and area for the expanded drain field, there is no other way to configure the placement of the addition. A smaller addition would not meet our needs for space.

We know of no other rock outcrops like ours in the neighborhood, and according to the Health Department, larger homes built recently were able to find suitable areas on their property for septic systems.

We did a survey of the homes in our subdivision in the tax office, and over one-half of the 35 homes are approximately the size our home will be, once we build the addition. Of the six homes built since 1995, all of them are at least 2,000 square feet in area. We are not asking for a special privilege that no one else in the neighborhood has.

**3. The hardship did not result from actions taken by the applicant or the property owner.**

The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The boulders were here when we bought the property—we did not bring them into our yard. Neither did we cause the wet soils on the property.

We have no experience with septic systems and have never heard of a town that didn't supply its residents with adequate public utilities. Given the choice we would readily connect to a sanitary sewer system, like the one where we were living before.

**4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

The variance requested will not detract from the character of the neighborhood because with this addition, our home will still be of similar size and character to other nearby homes. It will actually raise property values in the neighborhood. We have asked for a small deviation from the setback laws on one side of our home. The deviation is the least distance possible based upon the information provided by the county Health Department, our builder, and the Building Inspector. Issuing this variance will allow us to use this property in a reasonable manner, especially

considering that we have already spent a great deal of money on renovations to make the interior of our home handicapped-accessible.

If denied, we believe there will be a serious injustice done for the reasons stated previously. We had nothing to do with how the lots were originally laid out and have no control over the natural landscape that includes wet areas and large boulders.

The variance should be issued because it seems only fair that we be able to use our property as most of our neighbors have done and not have this right taken away because of just three feet of yard space, when there is no public sewer available.

We/I certify that all of the information presented by us/me in this application is accurate to the best of our/my knowledge, information and belief.

*Desmond and Molly Jones*

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Applicant

**Town of Buena Vista**  
**Board of Adjustment**  
**Staff Report**

**STAFF LIASON:** Virginia Faust (828-251-6914) [vfaust@nccommerce.com](mailto:vfaust@nccommerce.com), April 1, 2014

**PETITIONER:** Molly Jones

**PROPERTY OWNER(S):** Desmond and Molly Jones

**PROPERTY IDENTIFICATION NUMBER (PIN):** 9697-34-0001

**STREET ADDRESS:** 248 Oak Drive, Buena Vista, NC 27766

**ZONING:** R-2

**NATURE OF REQUEST:**

The applicants are requesting a variance of Section 312 (c) of the Zoning Ordinance (variance addresses side yard setback) in order to construct an addition to their single-family home on the above-referenced property.

**Variance:**

The applicant is requesting a variance of 3 feet from the required side yard setback of 15 feet. This request would allow the addition to the home to be 12 feet from the property line on the east side of the property.

**Background:**

The 0.50 acre (21,780 sf) parcel is currently occupied by a single-family dwelling approximately 1,000 sf in size; the home was built in 1965, has two bedrooms and one bath, and is served by a septic system. The Wynn Brook subdivision was recorded in 1960 at the Pleasant County Register of Deeds; there are 35 lots in the subdivision. All 35 lots have been built upon. The applicant submitted plans to build an 800 sf addition to the house on January 21, 2014, which would expand the number of bedrooms to three and add two baths.

When the Building Inspector reviewed the plans for the addition, he noted that the increase in the number of bedrooms would likely require an expansion of the septic system. He sent the plans to the Environmental Health section, and their staff went out in the field to evaluate the existing system, as well as determine where an additional drain field should be located, if necessary. This process took several weeks due to a backlog of work orders and staff reductions. The Environmental Health section staff analyzed the lot and is requiring an expanded drain field to accommodate the additional wastewater that will be generated by the new bedrooms. Due to the rock outcrops and wet soil located

on part of the property, the Health Department determined there is only one area where the expanded septic drain field can be located which, in turn, is dictating where the planned addition to the house can be built.

The original plans for the addition met the side yard setback, but the location of the addition had to change in order to meet all of the site constraints. A report from the County Health Department provides details regarding the size and location of the drain field that would be required for an addition to a residence the size indicated on the submitted plans (three bedrooms, three bathrooms). The report also indicates that the approved location for the drain field takes up a significant portion of the lot and a structure cannot be placed in this area. A summary sketch of this report is included in the packet.

Proper notice of this meeting has been given in accordance with G.S. 160A-388(a2). Letters to adjacent property owners were deposited in the mail on March 28, and a sign was posted on the property on that date.

