

**BOARD OF ZONING APPEALS**  
**December 4, 2014**

Mr. David Otey Jr. called the meeting to order at 7:00 p.m.  
Mr. Jason Purse called the roll

**A. Roll Call**

Present:

Mr. Marvin Rhodes  
Mr. David Otey Jr.  
Mr. Ron Campana Jr.  
Mr. William Geib  
Mr. Stephen Rodgers

Others Present:

Mr. Jason Purse, Zoning Administrator  
Mr. John Rogerson, Senior Zoning Officer  
Mr. Maxwell Hlavin, Assistant County  
Attorney

Mr. Otey gave information on the purpose of the Board of Zoning Appeals.

**B. Old Business**

**ZA-0004-2014, 9441 Richmond Road** which was deferred from October 2, 2014.

Mr. John Rogerson presented his staff report summary:

At the October 2, 2014 meeting of the Board of Zoning Appeals the applicant, Mr. M. Anderson Bradshaw requested the BZA defer taking action on the above referenced case until he had more time to research a location for a reserve drain field. Mr. Bradshaw also said that he would like to defer the case until a full Board of five members would be available to hear the case. The BZA concurred with the request and deferred the case until the December 4th regularly scheduled meeting. Mr. Bradshaw has submitted additional information regarding the case and it has been attached for your reference.

Subsequently, staff met with an official from the Health Department and was advised that the only way to determine if there was a suitable reserve drain field location onsite would be to have a soil scientist perform a soil test. Absent that professional analysis, staff cannot make a determination on the placement of the manufactured home in relation to a potential drain field site. While it's good planning practice, having a reserve drain field on this property is not an ordinance requirement. Staff would not be able to change our recommendation for this reason.

Staff continues to find the strict application of the terms of the Zoning Ordinance does not produce an undue hardship nor does it effectively prohibit or unreasonable restrict the use of the property. The property is a half-acre in size and could support a single family dwelling and meet all existing setbacks. Therefore; staff cannot support this application. However; should the Board wish to grant the variance to reduce the front and side yard setback to allow the continued placement of the manufactured home, staff believes the variance would not alter the character of the area, as the previous house was located two feet closer to the front property line and two

adjacent properties are also located closer than 50 feet from the front property line.

Mr. Rogerson informed the Board that he would be happy to answer any questions.

Mr. Rogerson noted that there was additional information received from Mr. Bradshaw on the day the packets were to be delivered. This information was included in the packet however, the information was not considered while writing the memorandum.

**Mr. Otey reopened the public hearing**

Mr. Bradshaw restated the building permit application process that resulted in the manufactured home being placed in violation to the setback requirements in the A-1, General Agriculture zoning district.

Mr. Bradshaw provided a letter from Gayle Tyssen the current property owner of the parcel to the east of 9441 Richmond Road stating that she had no objections to the manufactured home remaining in its current location.

Mr. Bradshaw said that Mr. Everette Mann has expressed concerns about opening an automobile repair shop on the property in question.

Mr. Bradshaw stated that opening an automobile repair shop would require an approved Special Use Permit and that Mr. Mann is familiar with this process since in 2007 there was an approved Special Use Permit to allow the operation of a contractor's office and storage yard on the property located directly to the west of 9441 Richmond Road which is owned by Mr. Mann's father William H. Mann, Jr..

Mr. Bradshaw said his client had a soil scientist, Mr. Adam Herman, identify a potential location for a reserve drain field on the property if an alternative septic system were used.

Mr. Bradshaw stated the state code provides three different standards for the granting of a variance and the basis he is citing is the one that states "the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the use of the property." It is an unreasonable request to require the property owner to place the manufactured home in the only location where a reserve drain field could be constructed.

Mr. Bradshaw stated that the Board is a quasi-judicial Board and the basis for granting a variance also comes from precedent of prior decisions and that a quick review of previous determinations by the Board shows it has granted variances to allow encroachment into the front, side and rear yard setbacks that could have been corrected or prevented.

Mr. Bradshaw said that this appeal is not about speculative uses of the property in the future, but about the use of the property for residential purposes and the good faith placement of the manufactured home in accordance with the approved building permit application.

Mr. Bradshaw said that the granting of the variance would not be detrimental to adjacent

properties since there are other properties in the area that do not meet the front setback requirements, including the property immediately to the west located at 9447 Richmond Road.

Mr. Bradshaw requested that the Board grant the variance to allow the continued placement of the manufactured home.

Mr. Geib asked about the additional well that Adam's Septic Service found.

Mr. Bradshaw said that this well was not currently being used and is below ground and not visible by walking the lot.

Mr. Geib asked Mr. Bradshaw about the inspection tickets, and he explained that those are inspection tickets from the footing and foundation inspections that were approved by Building Safety and Permits.

Mr. Geib asked about a Special Use Permit and if one would be required to operate an automobile repair shop from the property.

Mr. Bradshaw responded yes a Special Use Permit would be required to operate an automobile repair shop.

Mr. Geib asked how the proposed reserve drain field could overlap the old drain field.

Mr. Bradshaw responded the reserve drain field for an alternative system would not be required to be as large as the previous conventional drain field area.

Mr. Purse added that the alternate systems do not rely on the same standards and operate differently than a conventional system.

Mr. Bradshaw said that it would take \$1000's of dollars to identify the specific design criteria for an alternative septic system and his client has not had that work done yet.

Mr. Rodgers asked if the well on the adjacent property was being used and if it still could operate.

Mr. Bradshaw said that the well on the adjacent property had not been abandoned so it could still be contaminated by a septic system.

Mr. Marvin Rhodes asked if pretreatment of the waste water would be required for the alternative septic system.

Mr. Bradshaw said yes.

Mr. Rhodes asked if the old drain field along the left property line had failed.

Mr. Bradshaw said he believed that drain field had failed since it would not be common practice

to abandon a drain field that still works.

There being no one else to speak on behalf of the applicant Mr. Otey opened the public hearing to the general public.

Mr. Everette Mann spoke on behalf of his father William H. Mann, Jr. who owns property immediately to the west of 9441 Richmond Road.

Mr. Mann stated his concerns are about the potential for the use of the property as an automobile repair shop.

Mr. Mann stated that the whole thing was a bad job and the applicants were not served well by the County, but he would not object to the granting if the variance.

**Mr. Otey closed the public hearing**

Mr. Otey recalled Mr. Rogerson to the podium

Mr. Geib asked about the daily activity report that came from Building Safety and Permits. He said the County had two separate opportunities to catch this mistake relating to the setbacks.

Mr. Rogerson explained that Building Safety and Permits does not enforce Zoning setbacks and since Zoning signed off on the building permit application they continued with their inspections not recognizing that there may be an issue with the required setbacks.

Mr. Geib asked if the County allows for grey water resulting from alternative septic systems to be used for irrigation.

Mr. Purse responded that the Health Department has the final approval on alternate septic systems since the alternative systems are designed for site specific conditions.

Mr. Rodgers asked if there is any communication between Zoning and Building Safety and Permits after the building permit application has been approved by Zoning.

Mr. Rogerson responded that there is communication but identifying a property line in the field is like finding an invisible line located on a lot.

Mr. Otey commented on the fact that the County does not require surveys for all construction that takes place in the County.

Mr. Rogerson explained that if the proposed structure is within 3 feet of a setback line staff will require a foundation survey otherwise there is no survey required.

Mr. Geib questioned the foundation inspection process and was surprised that a survey is not required every time a foundation goes in.

Mr. Otey clarified that the decision of the Board is based on whether or not the current Zoning Ordinance causes a hardship. Mr. Otey said taking all the circumstances into account he is inclined to support the variance. Due to the fact the building permit was approved, the previous house was in a similar location and the development is limited because of the various wells that are located on the property.

Mr. Rhodes commented that to reconstruct the house in the same nonconforming location the application would have been required to be submitted within 12 months of the fire and the work completed within 24 months of the fire.

Mr. Campana commented on the issue Mr. Mann brought up about automobile repair shop.

Mr. Maxwell Hlavin said that an automobile repair shop or other commercial activity would require approval from the Board of Supervisors whether the manufactured home was occupied or not.

Mr. Geib stated that when he reviews these cases he looks at several things. One is the role of staff to see if they served the applicant well, in this case we did not. The surrounding area has structures that do not meet current setback requirements and the adjacent property owners have removed their objections so, for those reasons Mr. Geib said he was leaning toward recommending approval of the variance.

Mr. Rhodes commented that he thinks this request is to make this nonconforming lot more nonconforming. Mr. Rhodes said he felt that reserving an area for reserve drain field, while not a requirement, is effective. However, he does not feel a hardship has been presented and the lot could be built on without the approval of the variance. Therefore; he is not in support of approving the variance.

Mr. Otey agreed that the lot could be built on as it stands but spending the money required to relocate the manufactured home might not be a "reasonable" thing to do. Therefore; he finds the strict application of the Ordinance requirements to be an undue hardship.

Mr. Rodgers said he feels that the strict application of the Ordinance is not "unreasonable" but the overarching issues with the reserve drain field and the fact that staff had a part in the misplacement of the manufactured home plays into the equation. Therefore; he would recommend approval of the variance.

Mr. Campana said all his questions have been covered.

Mr. Rogerson read a variance request in the form of a Resolution:

**WHEREUPON, THE BOARD OF ZONING APPEALS OF JAMES CITY  
COUNTY ADOPTS THE FOLLOWING RESOLUTION:**

To grant a variance to Section 24-215(a), Setback requirements, and to Section 24-217(a) Yard regulations of the Code of James City County. The specific variances requested are: to reduce

the front setback from 50 feet to 38.7 feet and to reduce the side yard on the West side from 15 feet to 11.1 feet to allow the continued placement of the existing manufactured home that is currently on the lot. This property is currently zoned A-1, General Agriculture and can further be identified as JCC RE Tax Map No. 0240100049. This variance is granted in accordance with the attached survey by LandTech Resources, Inc. and dated August 21, 2014 titled "Physical survey of 9441 Richmond Road Parcel ID: 0240100049 for William Jones" and dated with the Planning Division stamp August 29, 2014 which is attached hereto, made part hereof and incorporated into this resolution, provided that no further encroachments within the thirty-five 38.7 foot front yard setback with the exception of steps as necessary to enter and exit the manufactured home shall be permitted and no further encroachment within the 11.1 foot the side yard setback on the West side This property is currently zoned A-1, General Agriculture and can further be identified as JCC RE Tax Map No. 0240100049.

Mr. Rodgers made a motion to adopt the Resolution to approve the variance.

Mr. Campana Seconded the motion.

On a roll call vote the motion to approved the variance was approved 4-1

**C. New Business      BZA Schedule for 2015**

On a voice vote the BZA Schedule for 2015 was approved 5-0

**D. Minutes**

**October 2, 2014**

There were no corrections to the October 2, 2014 meeting

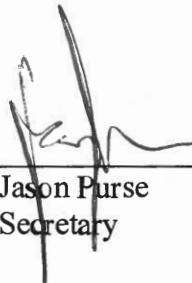
On a voice vote the minutes for the October 2, 2014 Board of Zoning Appeals meeting were approved 4-0-1. Mr. Rodgers abstained since he was absent from the meeting.

**D. Adjournment**

There being no further business Mr. Otey adjourned the meeting at 8:05 p.m.



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David Otey  
Chairman



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Jason Purse  
Secretary