

**MINUTES**  
**JAMES CITY COUNTY BOARD OF ZONING APPEALS**  
**REGULAR MEETING**  
**County Government Center, Building F**  
**April 6, 2017**  
**5:00 PM**

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**A. CALL TO ORDER**

Mr. Ron Campana, Jr. called the meeting to order at 5:00 p.m.

Mr. Campana presented the mission statement of the Board of Zoning Appeals for those present in the audience. He stated that the BZA is a five-member board consisting of James City County residents. It has the power to hear and decide appeals to decisions of the zoning administrator and applications for special exceptions, such as yard and setback variances. A favorable vote of three members of the board is always required to pass a motion. Variances are not granted unless the strict application of the ordinance would unreasonably restrict the utilization of the property, the need for a variance is not shared generally by other properties, and the variance is not contrary to the purpose of the ordinance. Variances are not granted as a special privilege or convenience. If the variance is requested because the physical condition of the property or improvements thereon restrict the utilization of the property, the following additional requirements must be met: (i) the property must have been acquired in good faith and any hardship cannot be created by the applicant; (ii) the granting of the variance cannot be substantially detrimental to nearby properties; and (iii) the condition or situation cannot be so general or recurring as to make the formulation of an amendment to the ordinance reasonably practicable to address the condition or situation. If the Board does authorize a variance, it may impose conditions regarding the location, character, or any other features it may deem necessary in the public interest.

**B. ROLL CALL**

Ms. Christy Parrish called the roll.

Present:

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

Others Present:

Mr. John Rogerson, Senior Zoning Officer  
Ms. Christy Parrish, Zoning Administrator  
Mr. Max Hlavin, Assistant County Attorney

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

1. Case No. ZA-0001-2017. Granting a Variance on James City County Real Estate Tax Map Parcel No. 3210700035

Mr. John Rogerson presented the staff report. He stated that Mr. Simon Davies of David Nice Builders, Inc., on behalf of the property owners, has applied for a variance to Section 24-258(b), Yard Requirements, to reduce the rear yard setback from 35 feet to 30 feet to allow for the expansion of the existing kitchen and dining area. This property is currently zoned R-2, General Residential and can further be identified as James City County Real Estate Tax Map Parcel No. 3210700035.

The home, located at 106 Southeast Trace in the Seasons Trace neighborhood off Longhill Road, was constructed in 1986 and the current lot size is 0.252 acres. At the time the home was constructed, the property was zoned R-3, General Residential. The R-3, General Residential setbacks at that time were 35 feet from a street right-of-way 50 feet or greater, 25 feet from the rear property line, minimum side yard of 10 feet and minimum total width of the two required side yards of 25 feet. These distances are reflected on the original subdivision plat. The property was rezoned to R-2, General Residential in 1992, which changed the minimum setback requirements. The current R-2, General Residential setbacks are 25 feet from a street right-of-way 50 feet or greater, 35 feet from the rear property line and 10 feet from side property lines.

Mr. and Mrs. Jenkins, property owners, purchased the home in 1987, and at the time the home met all required setbacks for the R-3, General Residential Zoning District. When the R-3, General Residential properties were rezoned to R-2, General Residential and the setbacks were changed, the home still met the new setback requirements.

In order to have a variance granted, the applicant must prove by a preponderance of the evidence that the standard for a variance as defined in Virginia Code § 15.2-2201 has been met (that the strict application of the ordinance would unreasonably restrict the utilization of the property, the need for a variance is not shared generally by other properties, the variance is not contrary to the purpose of the ordinance and the variance does not result in a change of use), and that the following criteria are satisfied:

1. The strict application of Chapter 24 of the Code of James City County would unreasonably restrict the utilization of the property; or
2. The granting of a 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; and
  1. 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;
  2. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
  3. 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;
  4. 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
  5. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to Subdivision 6 of § 15.2-2309 or the process for modification of a Zoning Ordinance pursuant to Subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

The applicant provided a narrative and other information explaining their case for meeting the requirements for granting a variance and those documents have been included in your packet as Articles A, B, C and D. The applicant stated that granting the variance does not appear to be a detriment to the surrounding area.

Staff believes the strict application of the terms of the Zoning Ordinance would not unreasonably restrict the utilization of the property, as the property has been put to use by the existence of a single-family residence. The desire to expand the kitchen on the rear of the house and encroach into the rear setback is a hardship created by the applicant. The strict application of the terms of the Zoning Ordinance does not unreasonably restrict the utilization of the property. The property has been put to use by the existence of a single-family dwelling. Therefore, staff cannot support this application and recommends denial.

Mr. Rhodes asked what the purpose was for the general rezoning from R-3 to R-2.

Mr. Rogerson stated that all lots in the County that were zoned R-3 were rezoned to R-2. Staff was unaware of the rezoning's purpose. He further confirmed that the front and rear yard setbacks were essentially reversed by this action.

Mr. Geib asked if the rezoning adversely affected other homes within the development and put them in non-compliance.

Mr. Rogerson confirmed that there are homes in this development that do not meet the current setback requirements due to the rezoning action. He stated that he remembers a few variances granted in the past that addressed homes which encroach into the rear setback.

Mr. Otey stated he drove by the property and felt that most of the surrounding homes lined up based on his view of the street. However, he did notice that one particular home was set back further than the rest and he questioned whether staff knew if a variance was granted for that property.

Mr. Rogerson stated that he did not know if a variance was granted for that particular property.

Mr. Otey asked staff to clarify the requirement when granting a variance that states "the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to Subdivision 6 of § 15.2-2309 or the process for modification of a Zoning Ordinance pursuant to Subdivision A4 of § 15.2-2286 at the time of the filing of the variance application."

Mr. Max Hlavin stated that this part of the Code only applies to localities that authorize the Board of Zoning Appeals to grant special use permits and/or special exception permits. The James City County Board of Supervisors has reserved that right to themselves and this section of the Code is met on every case.

Mr. Otey stated that letters received were in support of the variance with one exception. He asked if any of the letters were from property owners immediately behind the house.

Mr. Rogerson stated the applicant is prepared to answer the question when the public hearing is open.

Mr. Rodgers discussed the provision when granting a variance that stated "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." He stated that it appeared to him visually that many properties may be able to look at this precedent when adding onto a home when it is already in the setback since it is of general nature due to the rezoning.

Mr. Campana asked if the applicant had exhausted using the front of the property since it

appears an addition may be constructed in that location without seeking a variance.

Mr. Rogerson stated that the applicant may be able to address the question.

Being there were no further questions for staff, Mr. Campana opened the public hearing at 5:21 p.m.

Mr. Simon Davies of David Nice Builders, Inc., 4571 Ware Creek Road, stated he was the applicant on behalf of the property owners. He stated the house was constructed in 1986 and the property owners have lived there for 30 years. He continued by giving a description of the property, stating the lot was on a heavy slope, the home is set back further on the lot than neighboring homes and the lot backs up to a buffer owned by the Homeowner's Association (HOA) that is roughly 25-30 feet and is heavily wooded.

Mr. Rodgers asked what was planned outside of the rear exit of the addition.

Mr. Davies replied that nothing was planned such as a deck and the exit would be to the earth.

Mr. Otey asked if a side setback would be needed.

Mr. Davies replied that the proposed addition would be on the side yard setback line but would not go any further.

Mr. Rhodes asked Mr. Davies to elaborate more on the heavy slope located on the lot.

Mr. Davies replied that if you build toward the slope it would need to be a basement structure but he would refer to the property owners for additional details.

Ms. Nina Jenkins, 106 Southeast Trace, stated they purchased the house when her sons were ages six and nine. The house at the time was a perfect size for their small family but over time the family has grown. They have remodeled the house several times over the years as their needs changed but currently they often eat and sit in the backyard because there is no place in the house to accommodate the family. Ms. Jenkins continued to state that she feels this is an American family story of traditions and her family is present in the audience to illustrate the growth of their family. She stated family meals are a dying tradition and it takes a lot of work to keep a family together. She further elaborated on family care and activities and requested a variance to use 93 square feet of their backyard. The variance would allow them to simply square off the addition and keep it in line with the home. The space will alleviate the tension, stress and sometimes physical pain that come with the scenarios that she previously described. She concluded that this is their American Dream and they respectfully ask for a favorable decision which will aid them in living it.

Mr. Geib asked if the stone and timber retaining walls as shown on the plan exhibit would remain.

Mr. Butch Jenkins, 106 Southeast Trace, stated both walls will be entirely or partially removed for the addition.

Mr. Rodgers inquired about the current layout of the kitchen and dining area. Mr. Jenkins replied that there is an approximate 12'x20' dining room and a small eat-in kitchen with two stools at a bar-top. The proposed addition will allow for a larger kitchen and a larger dining and gathering area.

Mr. Rodgers further discussed the current layout of home with Mr. and Mrs. Jenkins for better understanding of the request.

Mr. Rhodes asked if the five-foot variance requested is the minimum necessary to construct the addition.

Mr. Jenkins replied that the five feet allows the building to square off the back of the addition.

Mrs. Jenkins noted that area is where the kitchen is located.

Mr. Rhodes discussed with Mr. and Mrs. Jenkins the location of the owners who provided the letters of support and letter of concern.

Mr. Geib discussed and clarified the layout of the proposal.

Hearing no further questions, Mr. Campana closed the public hearing at 5:46 p.m.

Mr. Campana asked for comments from the Board.

Mr. Geib stated that the Board has approved variances when the rezoning of a particular neighborhood have created situations which brought existing dwellings out of compliance. However, when reviewing variance applications where the rezoning did not bring the home out of compliance, the Board has less judicial authority to grant the variance. Mr. Geib further discussed the proposal layout and stated that he does not believe this case unreasonably restricts the use of the property.

Mr. Rhodes stated that property owners could have legally expanded the home from 1987 -1992 and changes to the Zoning Ordinance is what created the problem. He also stated that the only objection received was related to a parking issue and not about the expansion of the house.

Mr. Rodgers stated that his line of thinking was similar to Mr. Geib and he discussed possible alterations to the addition that would not go beyond the setback line. He stated he did not think this case met the first criteria for granting a variance which would be an unreasonable restriction of what the property is intended to be which is a single-family house. He discussed that while this variance request is small and the addition is quite nice, there is case law that speaks to the idea that it can be inappropriate for a Board of Zoning Appeals to grant a variance because the proposed design is either superior or more attractive.

Mr. Otey commented that Mr. Rodgers' analysis is right since the property is being used as a single-family residence; however, the word unreasonable is a powerful word. He further commented that this family would not be in this situation if the Zoning Ordinance had not change. He concluded that he could support the variance.

Mr. Campana discussed that the Board cannot focus on the financial aspect of the property. He proposed re-opening the public hearing to ask Mr. Davies about the possibility of modifying the addition and rearranging rooms so it could meet setbacks without the need for the variance.

Mr. Campana re-opened the public hearing at 6:00 p.m.

Mr. Davies explained that moving a living room to the front of the house would be a simple task. However, moving a kitchen is not so simple. He discussed the challenges of the current location of the chimney and the elevation of the roofs. He stated this type of change would be a substantial amount of work and twice the amount to construct.

Mr. Geib asked if there is an active Homeowners Association (HOA) in the community.

Mr. Jenkins replied yes.

Mr. Geib asked if the owners had applied and received approval from the HOA.

Mrs. Jenkins stated no they had not but it is certainly something they would do. Mrs. Jenkins also commented that they cannot afford to put the addition on the front of the house and this was the best design with the money they can spend. She discussed that there was a hardship in the case and the rooms are too small and narrow for their family. She concluded that moving was out of the question and the request of 93 square feet would be unreasonable not to allow it.

Mr. Rhodes stated he could support the variance with a condition that the addition would need approval from the HOA.

Mr. Otey agreed with Mr. Rhodes because the variance would run with the land.

Mr. Geib stated while the proposal is an ideal situation, he discussed possible modifications that could be made to keep it in compliance.

Mr. Davies requested the Board consider the rezoning change that created this situation in their decision.

Hearing no further questions, Mr. Campana closed the public hearing at 6:13 p.m.

Mr. Rodgers commented that the law says that the variance request has to unreasonably restrict the utilization of the property. He discussed his finding that for something to be considered unreasonable is considered absurd, exceeding the bounds of reason, exceeding moderation and to be unconscionable. He concluded the doorway could be moved which will still allow for a significant addition.

Mr. Geib made a motion to deny the variance request.

Mr. Hlavin clarified that a vote in favor of the motion would be to deny the variance request.

Mr. Campana asked Ms. Parrish to call the roll.

A motion to Deny was made by William Geib, the motion result was Failed.

AYES: 2 NAYS: 3 ABSTAIN: 0 ABSENT: 0

Ayes: Geib, Rodgers

Nays: Campana Jr., Otey Jr., Rhodes

Mr. Campana made a motion to approve the variance subject to the HOA approval.

Mr. Campana asked Ms. Parrish to call the roll.

A motion to Approve w/ Conditions was made by Ronald Campana Jr., the motion result was Passed.

AYES: 4 NAYS: 1 ABSTAIN: 0 ABSENT: 0

Ayes: Campana Jr., Geib, Otey Jr., Rhodes

Nays: Rodgers

**E. MINUTES**

1. January 5, 2017 Minutes

Mr. Campana asked if anyone had any comments or corrections to the January 5, 2017 minutes.

After hearing none, Mr. Otey motioned to approve the minutes as presented.  
Mr. Geib seconded the motion.

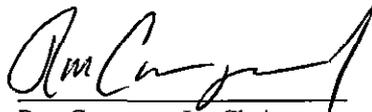
Ayes: Campana Jr., Geib, Otey Jr., Rhodes, Rodgers

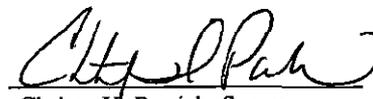
**F. MATTERS OF SPECIAL PRIVILEGE**

Mr. Hlavin reminded the Board of the 2015 legislation changes which included provisions regulating conversations between BZA members and applicants and BZA members and staff. All communication must be shared with all parties.

**G. ADJOURNMENT**

There being no further business, Mr. Campana adjourned the meeting at 6:30 p.m.

  
Ron Campana, Jr., Chair

  
Christy H. Parrish, Secretary