

**MINUTES**  
**JAMES CITY COUNTY BOARD OF ZONING APPEALS**  
**REGULAR MEETING**  
**James City County Government Center, Building F Board Room**  
**December 7, 2017**  
**5:00 PM**

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**A. CALL TO ORDER**

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

Mr. Campana presented the mission statement of the Board of Zoning Appeals (BZA) 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. Marvin Rhodes  
Mr. Stephen Rodgers

Others Present:  
Mr. Louis Pancotti, Zoning Officer  
Ms. Christy Parrish, Zoning Administrator  
Mr. Max Hlavin, Assistant County Attorney

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

1. ZA-0006-2017. 124 Indigo Dam Road

Mr. Louis Pancotti presented the staff report.

Mr. Pancotti stated that Mr. Adam Witkowski of Architektura, on behalf of Mieczyslaw & Irena Bozyk, has applied for a variance to Section 24-255(a), Area Requirements, to reduce the minimum lot area from 10,000 square feet to 8,670 square feet to allow for the subdivision of 124 Indigo Dam Road into two lots. This property is currently zoned R-2, General Residential, and can further be identified as James City County Real Estate Tax Map No. 3841000011.

Mr. Pancotti stated that the lot located at 124 Indigo Dam Road is 0.482 acres and is currently served by public water and sewer. The dwelling located on the lot was constructed in 1963 and met the current setback requirements set forth in the R-2 zoning.

Mr. Pancotti stated that Indigo Dam Road is a 40-foot right-of-way. Section 19-42 of the James City County Subdivision Ordinance requires the subdivider to dedicate half of the width necessary to result in a 50-foot right-of-way to the Virginia Department of Transportation (VDOT). This area may not be counted toward meeting the minimum area requirement specified in the zoning district. In this instance, five feet of road frontage along the property would be required to be dedicated.

Mr. Pancotti stated that after the VDOT dedication, a subdivision where the existing and the proposed dwellings both meet the setback requirements would make the new lot at 8,670 square feet in size, as shown in Attachment No. 3. However, even without the required VDOT dedication, the new lot would only be 9,104 square feet. If the lot was subdivided to make both lots 10,000 square feet, the existing residence would encroach approximately 3.3 feet over the property line.

Mr. Pancotti stated that 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 (the "County Code") 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
  - a. 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;
  - b. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
  - c. 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;

d. 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

e. 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. Pancotti stated that in this case, 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. Staff had received a phone call from a neighbor who had concerns regarding the traffic impacts a new lot would create.

Mr. Pancotti stated that 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. Marvin Rhodes asked about the VDOT dedication and how other lots have been subdivided along the street.

Mr. Pancotti stated that all of the lots that were subdivided were able to dedicate the required land to VDOT without the need for a variance.

Mr. Stephen Rodgers asked if the previously subdivided lots were 10,000 square feet.

Mr. Pancotti stated that all of the lots were 100 feet x 100 feet.

Mr. David Otey asked when the Subdivision Ordinance was adopted.

Mr. Maxwell Hlavin stated that the Subdivision Ordinance was created in 1964.

Mr. Otey confirmed that the house preexisted the Ordinance.

Mr. William Geib asked if the present owners constructed the house in its current location.

Mr. Pancotti stated that the house was constructed before the present owners purchased the property.

Mr. Geib stated that one of the lots on the street looked smaller than the others.

Mr. Pancotti stated that the County records show that the subdivided lots are all 100 feet x 100 feet.

Mr. Geib asked about the removal of the existing sheds.

Mr. Pancotti stated that it was his understanding that some of the sheds will be removed.

Mr. Rodgers stated that some of the structures on the street appear to be located within the setbacks.

Mr. Pancotti stated that it was possible that these lots were improved before the County had setback requirements.

Mr. Geib asked about the zoning of the neighboring development.

Ms. Christy Parrish stated that the development was zoned R-2 with a cluster overlay. She stated that cluster developments have reduced area and setback requirements.

Mr. Geib stated that it appeared that there were other parcels on the street that could be subdivided. He asked if those parcels would also require a variance.

Mr. Pancotti stated that the parcels could possibly be subdivided if they met all area and setback requirements.

Mr. Geib stated that he was concerned that granting the variance request would set a precedent for other properties on the street.

Mr. Rhodes stated that the Board of Zoning Appeals does not set precedents and decisions are made on individual cases only.

Mr. Otey asked if a special exception could be granted as an alternative to a variance.

Ms. Parrish stated that the County does not issue special exceptions.

Mr. Campana asked if staff had received any correspondence from neighbors for or against the granting of the variance.

Mr. Pancotti stated that one person called to inquire about the case.

Being no further questions, Mr. Campana then opened the Public Hearing.

Mr. Adam Witkowski with Architektura read the a letter on behalf of the property owners.

*"The Bozyk's relocated to Virginia from New Jersey and have been living at their current address for the past eight years. Soon after, their three children moved to Williamsburg, bought their own houses and started their families, six grandchildren later (seventh on the way), The Bozyk's love Williamsburg and see no other place they rather live. With Ms. Bozyk being retired and helping with the grandchildren, Mr. Bozyk, at age of sixty four, is on the verge of retirement and both would like to secure themselves for the future. The Bozyk's would like to subdivide their property, build a house for their daughter, help raise their grandchildren, be close to their family and feel safe, if help is ever needed. The existing lot of 21,000 s.f., is large enough to be divided and it would be capable of subdividing without variance if vacant because this lot meets the requirements in subdivision ordinance but the existing house was built in the wrong place to allow for subdivision due to setbacks and area requirements. As presented in the drawings, with the location of the existing house and the implemented setbacks, the new lot would have been 9,104 s.f. only less than 9% shy of the 10,000 sf requirement. However, due to the five feet of the frontage being lost to VDOT for the right of way, the Bozyk's must give up 434 sf of their property to VDOT, bringing total area of the new lot to 8,670 s.f. Nevertheless, the new lot is well large enough to accommodate all the city setbacks, provide a 2,500 s.f. house footprint which will not change the character of the district and not impact the visual perception in a negative aspect. After the subdivision and giving the front five feet to VDOT for the right-of-way, in total, the two lots will combine for*

*20,000 s.f. In conclusion, we appreciate your time and this opportunity to present our case. We believe that with proper site planning, design and architectural details, the new house will not take away from the neighborhood and feel right at home. Again, thank you very much."*

Mr. Witkowski also stated that he received a letter from a neighbor in favor of the subdivision.

Mr. Campana asked if the purpose of the subdivision was to sell the new lot or to build a house for the family.

Mr. Witkowski stated that they would like to keep the new house and lot in the family.

Mr. Campana asked staff if they could add another house to the property.

Ms. Parrish stated that the owner must prove that the lot could be subdivided in order to construct an additional dwelling on the property.

Mr. Campana asked if a smaller house than what was proposed could be built without the need for a variance.

Mr. Witkowski stated that the drawing showed the maximum allowable building footprint; however, the owners were willing to build a smaller house with increased side yards.

Mr. Geib asked if the existing sheds were to be removed or relocated.

Mr. Witkowski stated that the shed that was over the proposed property line would be removed and that the owners would remove any other sheds that might impact the subdivision.

Mr. Geib asked if there was a home owners association for the community.

Mr. Witkowski stated no.

Mr. Rhodes stated that the aerial photograph showed a shed that was not on the site plan.

Mr. Witkowski stated that was not a permanent shed and it could be removed.

Mr. Rodgers inquired about the placement of the existing house if both lots were 10,000 square feet.

Mr. Pancotti stated that the house would be 3.3 feet over the property line.

Mr. Rhodes ask if the owner considered moving the existing house to the right.

Mr. Witkowski stated that moving or removing the house would be expensive because the house is old.

Mr. Rhodes ask if the owners were committed to building on the new lot.

Mr. Witkowski stated the owners wanted to build a new house for a family member.

Mr. Otey asked if the configuration of the new lot could be changed to meet the

Ordinance requirements.

Mr. Pancotti stated that the Subdivision Ordinance prohibited the creation of unusually shaped lots for the purposes of meeting the Zoning Ordinance requirements as determined by staff.

Ms. Parrish stated that it would be a judgment call by the Director of Planning.

Mr. Geib asked if a variance could be granted for relief from the side setback instead of the area requirements.

Mr. Pancotti stated that if the new lot was 10,000 square feet, the existing house would encroach over the property line.

Mr. Witkowski stated that if the VDOT dedication was not required, the new lot would be 10,000 square feet and the existing house would be 1.7 feet from the new property line.

Ms. Parrish stated she believed that the Building Code had increased stipulations when a house is within a certain distance to the property line.

Mr. Geib stated that fire rating the wall would not be impossible but it would be costly.

Mr. Rhodes asked what the hardship was in order to grant the variance.

Mr. Witkowski stated that the hardship was that the house was built prior to the existence of the Ordinance and was not planned in a way to give future owners the option to subdivide.

Mr. Campana asked if there were any more questions for Mr. Witkowski.

There being none, Mr. Campana asked if there was anyone else in the audience that wanted to speak.

Ms. Agnieszka Nowak, 2947 Lake Powell Road, stated that she was the daughter of the property owners. She stated that her father was ill and when he retired she would live next door to help care for him. She asked for the variance to be granted.

Ms. Judy Mecham, 121 Indigo Dam Road, stated that she had no problem with the granting of a variance. She stated that many property owners had reconfigured lots and structures so that they could subdivide. She asked for the variance to be granted.

Mr. Campana asked staff if the new lot could be restricted to family ownership and if a deadline could be applied to the variance.

Mr. Hlavin stated that those sort of conditions would not be possible since a variance runs with the property not the owner.

Mr. Otey asked if a family subdivision was an option.

Mr. Hlavin stated that a family subdivision was only available in R-8 and A-1 Zoning Districts.

Mr. Campana asked if there were any further comments.

There being none, Mr. Campana closed the Public Hearing at 5:46 pm.

Mr. Rodgers stated that there was no clear hardship as the property was being utilized as intended by the existence of a single-family dwelling. He also stated it appeared that there are nonconforming structures which do not meet setback requirements on Indigo Dam Road and the variance would not negatively impact the neighborhood.

Mr. Otey stated that since the Subdivision Ordinance was adopted after the house was constructed in its current location, he would like to find a way to make the subdivision possible.

Mr. Geib stated that this was a case where a property owner was negatively impacted by the subsequent adoption of an Ordinance. He stated that there are many homes on the street that appear to be nonconforming and granting the variance would not negatively impact the neighborhood.

Mr. Otey stated that when this development was platted, this area was very rural and the original developers would not have put much thought into where to put the house in regards to future subdivisions.

Mr. Campana reopened the Public Hearing.

Mr. Rhodes asked staff if an addition to the existing house would be possible.

Mr. Hlavin stated that an addition would be possible if it met the Zoning Ordinance requirements.

Mr. Pancotti stated that a duplex would require a special use permit.

Ms. Parrish stated an attached accessory apartment that was 35% or less of the total square footage is permitted.

Mr. Campana closed the Public Hearing.

Mr. Rhodes stated that he was conflicted because he was having trouble establishing what the hardship was.

Mr. Campana stated that while an addition to the existing house may seem reasonable, the house was old and an addition may be risky and cost prohibitive. Mr. Campana stated that granting a variance seemed reasonable.

Mr. Otey made a motion to approve the resolution.

Mr. Rodgers seconded the motion.

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

On a roll call vote, the Board voted to approve the variance described. (4- 1)

Ayes: Campana, Geib, Otey, Rodgers.

Nays: Rhodes.

**E. MINUTES**

1. August 3, 2017 Meeting Minutes

Mr. Campana asked if anyone had any comments or corrections to the August 3, 2017 minutes.

Mr. Campana stated he abstained from the vote since he was not at the meeting.

Mr. Gieb discussed the minutes and confirmed that they correctly reflected the amended variance language that was approved.

Mr. Rhodes motioned to approve the minutes as presented.

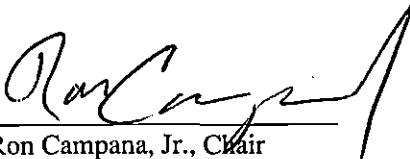
On a voice vote, the Board voted to approve the August 3, 2017 minutes (4-0).

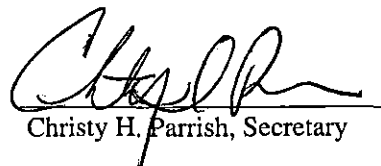
**F. MATTERS OF SPECIAL PRIVILEGE**

Ms. Parrish suggested that the Board email any questions that may require research on adjacent properties or neighborhood prior to the meeting. She stated this would allow staff time to prepare to ensure they provide correct responses. She also stated that staff would disclose any questions to the applicant.

**G. ADJOURNMENT**

There being no further business, Mr. Campana adjourned the meeting at 6:03 p.m.

  
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Ron Campana, Jr., Chair

  
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Christy H. Parrish, Secretary