

**MINUTES**  
**JAMES CITY COUNTY BOARD OF ZONING APPEALS**  
**REGULAR MEETING**  
**James City County Government Center, Building F Board Room**  
**March 1, 2018**  
**5:00 PM**

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**A. CALL TO ORDER**

Mr. William Geib called the meeting to order at 5:00 p.m.

**B. ROLL CALL**

Ms. Christy Parrish called the roll:

Present:

Mr. William Geib

Mr. David Otey, Jr.

Mr. Marvin Rhodes

Mr. Stephen Rodgers

Mr. Ron Campana, Jr.

Staff 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. ZA-0001-2018, 7801 Richmond Road

Mr. John Rogerson presented the staff report.

Mr. Rogerson stated that Mr. Wade Schmidt, property owner, had applied for a variance to Section 24-216(a) Minimum Lot Width and Frontage of the James City County Zoning Ordinance to reduce the required minimum lot width at setback for lots of five acres or more from 250 feet to 194.2 feet for the continued placement and proposed expansion of the existing dwelling located on the property. The property was currently located in the A-1, General Agriculture Zoning District and could be further identified as Parcel No. (01-0-0023A) on the James City County Real Estate Tax Map (22-2).

Mr. Rogerson stated that the property located at 7801 Richmond Road was 9.1 acres in size and contained an existing single-family dwelling approximately 1,100 square feet in size. The current owner purchased the property on September 18, 2014 and had planned to expand the existing dwelling to meet the needs of his growing family. Mr. Schmidt contacted James City County Zoning regarding the requirements to expand the existing dwelling. Upon review, staff identified that the existing dwelling was located forward of the minimum lot width of 250 feet at setback for lots of five acres or more in the A-1, General Agriculture

Zoning District. The lot width was approximately 198 feet where the existing dwelling was currently located. To achieve the required minimum lot width, the house would have to be moved back approximately 325 feet.

Mr. Rogerson explained that the parcel was created in 1979 and the existing dwelling was built in 1982. At that time, the minimum lot width at setback was 150 feet for lots over 40,000 square feet in size which permitted the existing dwelling to be constructed in its current location. However in 1989, the minimum lot width at setback changed to 250 feet for lots over five acres in the A-1, General Agricultural Zoning District. This change made the location of the existing dwelling legally nonconforming, citing Section 24-633, Expansion/improvement to nonconforming uses allows expansions of nonconforming one-family dwellings when all current zoning requirements are met. Since the parcel was able to achieve the current minimum lot width at setback further back on the property, the expansion of the existing dwelling at the current location was not achievable without obtaining a variance from the Board of Zoning Appeals.

Mr. Rogerson 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 had been met (that the strict application of the Ordinance would unreasonably restrict the utilization of the property, the need for a variance was not shared generally by other properties, the variance was not contrary to the purpose of the Ordinance, and the variance did not result in a change of use), and that the following criteria were 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
  - 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;
  - The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
  - 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;
  - 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
  - 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. Rogerson stated that the applicant has provided a narrative and other information explaining his case for meeting the requirements for granting a variance and those documents have been included in the Packet as an attachment. Also attached was a current survey showing the proposed new setback line where the lot is 194.2 feet in width.

Lastly, Mr. Rogerson stated that staff cannot support the variance as the strict application of the terms of the Zoning Ordinance would not unreasonably restrict the utilization of the property, as the property had been put to use by the existence of a single-family residence. However, staff recognized that the existing dwelling met the minimum lot width requirements at the time of construction and that the Zoning Ordinance change in 1989 created the non-conforming situation. Staff does not believe the granting of the variance will change the

character of the area and the hardship was not created by the applicant and the property was acquired in good faith.

Mr. Geib 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.

Mr. Rhodes asked if the zoning for Hunter's Creek neighborhood was different than this property.

Mr. Rogerson stated that Hunter's Creek was R-1, Limited Residential, Toano Middle School was zoned PL, Public Lands and the parcels in front of 7801 Richmond Road were zoned B-1, General Business.

Mr. Rhodes asked what was the minimum lot size for the A-1, General Agriculture property in question.

Mr. Rogerson stated it was three acres.

Mr. Rhodes asked if the parcel could be subdivided.

Mr. Rogerson stated that the lot could not be subdivided because the lot did not have the required amount of frontage on a public right-of-way.

Mr. Rogerson explained that when the lot was created in 1980, a waiver to allow the creation of the lot without road frontage was granted by the Subdivision Committee.

Mr. Rodgers ask how the applicant accessed his property.

Mr. Rogerson stated that the applicant used the existing private right-of-way to access the property.

Mr. Rhodes asked why to the Board of Supervisors changed the minimum lot width requirement.

Mr. Rogerson suggested it was to protect the rural character of the area at the time.

Mr. Geib asked if the Board of Supervisors took into consideration the unintentional consequences changing the Zoning Ordinance had on other existing properties in the same zoning district.

Mr. Rogerson stated that often an Ordinance change creates nonconforming properties or

situations. He further explained that if the lot in question did not meet minimum lot width requirements anywhere on the lot, the applicant would not need a variance in accordance with Section 24-636, Use of Nonconforming Lots.

Mr. Rhodes asked what was considered the front of the lot.

Mr. Rogerson stated that the front of the lot was considered to be closest and parallel to the public right-of-way.

Mr. Campana asked how much of the 9.1 acres was buildable.

Mr. Rogerson referenced the attachments and showed where the environmental sensitive areas on the lot were located.

Mr. Rodgers asked if the applicant would need to relocate the septic system if the house were to be moved.

Mr. Rogerson stated he was not sure of that answer.

Mr. Rodgers asked if the variance was approved would the expansion of the dwelling have a detrimental impact on the adjacent properties.

Mr. Rogerson responded that it would not.

Mr. Rhodes asked if there were any other legally nonconforming lots in this area.

Mr. Rogerson stated that there were, especially along Chickahominy Road.

Mr. Geib asked if there were any further questions from the Board. There being none, Mr. Geib opened the Public Hearing.

Mr. Wade Schmidt, property owner and applicant, stated that he needed to expand his existing dwelling. He explained that the septic tank was located behind the house and a variance to the minimum lot width requirement was needed in order to expand 20 feet to the front of his house. He also stated the house expansion would be in phases and he planned to live in the house during the construction.

Mr. Geib asked about the proposed footprint expansion.

Mr. Schmidt explained the proposed expansion and said some additional possibilities were still being explored.

Mr. Rodgers asked if adjacent property owners were notified of the variance request.

Mr. Rogerson stated that 20 adjacent property owners were notified and he was contacted by two of them. The concerns expressed were about additional houses and not about the proposed request.

Hearing no further questions, Mr. Geib closed the Public Hearing at 5:38 p.m.

Mr. Campana stated that improving the dwelling would be good for the neighboring properties.

Mr. Rodgers stated that he agreed with Mr. Campana.

Mr. Rhodes stated he could support the variance but he had concerns about the way the resolution was drafted. He stated that the resolution of approval gave the applicant a blanket approval to expand the dwelling as he pleased.

Mr. Geib concurred with Mr. Rhodes' comments and stated that he was worried that approval of the variance would allow for additional dwellings.

Ms. Parrish explained that no additional dwellings could be constructed without proving that the lot was sub-dividable.

Mr. Geib stated he could support granting the variance.

Mr. Otey motioned to approve the variance as requested.

Mr. Campana seconded the motion.

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

The motion to approve the variance was approved 5-0.

**E. MINUTES**

1. February 1, 2018, Meeting Minutes

Mr. Geib asked if anyone had any comments or corrections to the February 1, 2018 minutes.

Mr. Rhodes expressed a few minor corrections and comments.

Ms. Parrish stated she would make those minor corrections and suggested the minutes be tabled until the next meeting.

**F. MATTERS OF SPECIAL PRIVILEGE**

Mr. Geib and Ms. Parrish prepared and presented a Resolution of Appreciation for Mr. Rhodes for his past 15 years of service on the Board of Zoning Appeals.

Mr. Geib made a motion to accept the Resolution.

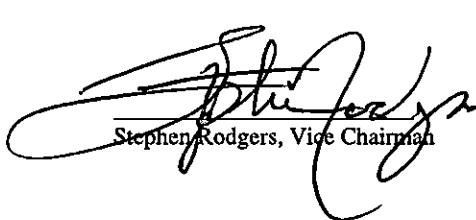
Mr. Campana seconded the motion.

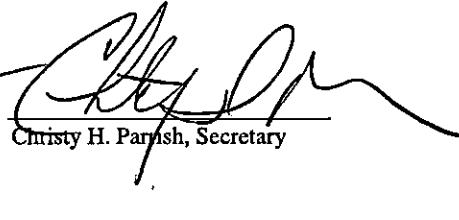
On a voice vote the motion carried 5-0.

At the conclusion of the meeting, Ms. Parrish introduced the new Board of Zoning Appeals member Mr. Jacobowski.

**G. ADJOURNMENT**

There being no further business, Mr. Geib adjourned the meeting at 5:51 p.m.

  
Stephen Rodgers, Vice Chairman

  
Christy H. Parrish, Secretary

RESOLUTION ZA-0003-2017

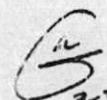
GRANTING A VARIANCE ON JCC RE TAX PARCEL NO. 1310100020

**WHEREAS**, Wade Schmidt, property owner has appeared before the Board of Zoning Appeals of James City County (the "Board") on March 1, 2018 to request a variance as set forth in the application ZA-0001-2018 on a parcel of property located at 7801 Richmond Road and further identified as JCC RE Tax Parcel No. 2220100023A (the "Property"); and

**WHEREAS**, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record and discussed a motion to grant a variance to Section 24-216(a), Minimum Lot Width and Frontage, of the Code of James City County to reduce the required minimum lot width at setback for lots of five acres or more from 250' to 194.2' for the continued placement and proposed expansion of the existing dwelling located on the property.

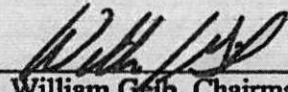
**NOW, THEREFORE**, the Board of Zoning Appeals of James City County by a majority vote of its members **FINDS** that that the standard for a variance as defined in Virginia Code § 15.2-2201 has been met, and:

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 the 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.

  
3-3-18

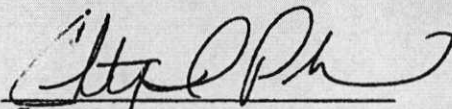
**WHEREUPON, THE BOARD OF ZONING APPEALS OF JAMES CITY COUNTY  
ADOPTS THE FOLLOWING RESOLUTION:**

To grant a variance to Section 24-216(a), Minimum Lot Width and Frontage, of the Code of James City County to reduce the required minimum lot width at setback for lots of five acres or more from 250' to 194.2' for the continued placement and proposed expansion of the existing dwelling located on the property. This property can be further identified as 7801 Richmond Road, James City County Real Estate Tax Map # 2220100023A.

  
William Geib, Chairman, Board of  
Zoning Appeals

March 1, 2018

ATTEST:

  
Secretary

	Votes		
	Aye	Nay	Abstain
Rhodes	X	—	—
Otey	X	—	—
Rodgers	X	—	—
Campana Jr.	X	—	—
Geib	X	—	—

File:  
ZA-0001-2018  
2220100023A

G<sup>2</sup>  
3-3-18