

**MINUTES**  
**JAMES CITY COUNTY BOARD OF ZONING APPEALS**  
**REGULAR MEETING**  
James City County Government Center, Building F Board Room  
June 7, 2018  
5:00 PM

---

**A. CALL TO ORDER**

Mr. Stephen M. Rodgers called the meeting to order at 5:00 p.m.

**B. ROLL CALL**

Ms. Christy Parrish called the roll:

Present:

Mr. David Otey, Jr.  
Mr. Mark Jakobowski  
Mr. Stephen Rodgers  
Mr. Ron Campana, Jr.

Absent:

Mr. William Geib

Staff Present:

Ms. Terry Costello, Deputy Zoning Administrator  
Ms. Christy Parrish, Zoning Administrator

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

Mr. Stephen Rodgers 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.*

1. Case No. ZA-0004-2018, 7213 Merrimac Trail

Ms. Terry Costello presented the staff report.

Ms. Costello stated that Mr. Danny Poe, on behalf of James City Service Authority (JCSA), had applied for a variance to Section 24-39, Special Provisions for lots for public utilities, to reduce the required setback from 15 feet from any property line to approximately two feet from the rear property line. She stated that the proposed variance request was to allow for the continued placement and proposed improvement of the existing Lift Station 5-4 Control Building at 7213 Merrimac Trail.

Ms. Costello stated that the improvements to the Lift Station 5-4 Control Building was proposed due to multiple flooding events that had affected the building, damaged associated equipment and resulted in wastewater overflows into the environment. She stated that the plan included the construction of a second floor directly on top of the existing control building so that the equipment and electrical controls could be relocated.

Ms. Costello 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.

Ms. Costello stated that an unnecessary hardship exists when the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property. She stated that staff supported this variance for the following reasons: 1) the existing size and current infrastructure of the lot restricted the location of the proposed improvement which is not shared by others in the same vicinity; 2) the improvement was necessary to prevent flood damage to a public utility; 3) the improvement would eliminate wastewater overflow onto natural areas during a flood event which will protect the health, safety and welfare of the surrounding area; 4) the improvement would ensure that JCSA remains in compliance with the Special Consent Order issued in 2007; and 5) the proposed improvement did not adversely affect neighboring properties. Lastly, she stated that staff recommends approval of the requested variance as described in the attached Resolution.

Mr. Rodgers asked if an exception was needed since there was Resource Protection Area on the property.

Ms. Costello stated that the Stormwater and Resource Protection Division would require an administrative exception which would be processed during the site plan review phase of the project.

Hearing no further questions for staff, Mr. Rodgers opened the Public Hearing.

Mr. Danny Poe, on behalf of the James City Service Authority, spoke about the request. He distributed pictures of the site and stated that this site has had at least two major flooding events. He explained that when the controls are damaged due to water, the lift station will not operate until the controls are dried out.

Mr. Poe also stated that the cost of replacing equipment due to these flooding events have been over tens of thousands of dollars. He stated that the pumps have been replaced with submersible pumps and the generator and electrical equipment needed to be moved for protection.

Mr. Mark Jakobowski asked if a structural engineer had inspected the building to make sure the building could support the proposed improvements.

Mr. Poe stated that a structural engineer was hired and it was determined that the structure could handle the improvements.

Mr. Jakobowski asked if the soil conditions had been analyzed to determine if there were any issues with the existing footings.

Mr. Poe stated that the soil conditions have not be analyzed. He stated that the slab sits on top of the wet well and dry well which are approximately 20 feet deep. He explained that the entire structure would have to sink in order for it to move and that the structural engineer was confident that the current structure is adequate to handle the changes.

Hearing no further questions, Mr. Rodgers closed the Public Hearing.

After a brief discussion, Mr. Ron Campana motioned to approve the variance as requested.

Mr. Jakobowski seconded the motion.

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

The motion to approve the variance was approved 4-0. (Geib – absent)

## **E. MINUTES**

### **1. February 1, 2018, Meeting Minutes**

Ms. Christy Parrish stated the Mr. Marvin Rhodes had requested some corrections to the February 1, 2017 meeting minutes.

Mr. Jakobowski and Mr. Campana abstained from the vote since neither attended the meeting.

Mr. Otey motioned to approve the minutes from the February 1, 2018 meeting.

Mr. Rodgers seconded the motion.

On a voice vote the motion was approved 2-0 (Jakobowski, Campana abstained).

2. March 1, 2018, Meeting Minutes

Ms. Parrish asked if anyone had any comments or corrections to the March 1, 2018 meeting minutes.

After hearing none, Mr. Rodgers motioned to approve the minutes from the March 1, 2018 meeting.

Mr. Otey seconded the motion.

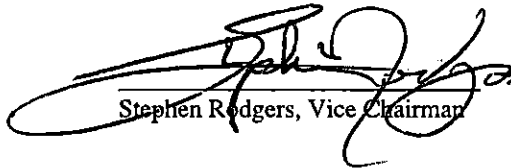
On a voice vote the motion was approved 3-0 (Jakobowski abstained).


**F. MATTERS OF SPECIAL PRIVILEGE**

None

**G. ADJOURNMENT**

There being no further business, Mr. Rodgers adjourned the meeting at 5:21 p.m.

  
Stephen Rodgers, Vice Chairman

  
Christy H. Parrish, Secretary

## RESOLUTION

### CASE NO. ZA-0004-2018. GRANTING A VARIANCE ON JAMES CITY COUNTY

#### REAL ESTATE TAX MAP PARCEL NO. 4140100007B

WHEREAS, Mr. Danny Poe, on behalf of James City Service Authority (JCSA), has appeared before the Board of Zoning Appeals of James City County (the "Board") on June 7, 2018, to request a variance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 4140100007B and further identified as 7213 Merrimac Trail (the "Property") as set forth in the application ZA-0004-2018; 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 24-39, Special provisions for lots for public utilities, reducing the required 15-foot setback from any property line to two feet from the rear property line to allow for the continued placement and proposed improvement of the existing Lift Station 5-4 Control Building.

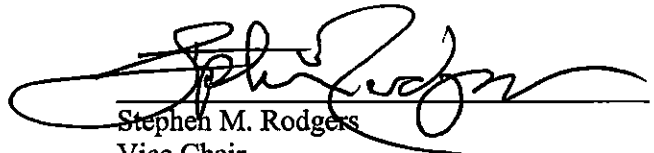
NOW, THEREFORE BE IT RESOLVED that, the Board of Zoning Appeals of James City County, Virginia, by a majority vote of its members FINDS that:


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
  - 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.

WHEREUPON, the Board of Zoning Appeals of James City County, Virginia, adopts the following Resolution:

To grant a variance to Section 24-39, Special provisions for lots for public utilities, reducing the required 15-foot setback from any property line to two feet from the rear property line for the continued placement and proposed improvement of the existing Lift Station 5-4 Control Building as shown on site plan entitled, "James City Service Authority LS 5-4 Control Building and Platform Addition," dated May 2, 2018, which is attached hereto, made part hereof, and incorporated into this Resolution.

  
Stephen M. Rodgers  
Vice Chair

ATTEST:  
  
Christy Parrish  
Secretary to the Board

|            | VOTES      |            |                |
|------------|------------|------------|----------------|
|            | <u>AYE</u> | <u>NAY</u> | <u>ABSTAIN</u> |
| RODGERS    | ✓          | —          | —              |
| OTEY       | ✓          | —          | —              |
| JAKOBOWSKI | ✓          | —          | —              |
| GEIB       | —          | —          | — Absent       |
| CAMPANA    | ✓          | —          | —              |

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 7th day of June, 2018.

ZA-4-18-7213MerrimacTrl-res