

**MINUTES**  
**JAMES CITY COUNTY BOARD OF ZONING APPEALS**  
**REGULAR MEETING**  
James City County Government Center, Building F Board Room  
101 Mounts Bay Road, Williamsburg VA 23185  
November 1, 2018  
5:00 PM

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**A. CALL TO ORDER**

**B. ROLL CALL**

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

Present:

Mr. William Geib

Mr. Stephen Rodgers

Mr. Mark Jakobowski

Mr. David Otey, Jr.

Mr. Ron Campana

Others Present:

Mr. Louis Pancotti, Senior Zoning Officer

Ms. Christy Parrish, Zoning Administrator

Ms. Liz Parman, Assistant County Attorney

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

1. Case No. BZA-18-0007. 8864 Richmond Road

Mr. Louis Pancotti presented the staff report.

Mr. Pancotti stated that Mr. John Hopke of Hopke & Associates, on behalf of M M & W Properties, LLC, has applied for a variance to Section 24 215(a), Setback Requirements, to reduce the minimum front building setback from 50 feet to 18.9 feet to allow for the continued placement and alteration of the structure located at 8864 Richmond Road. He stated that the property was currently zoned A 1, General Agriculture, and can further be identified as James City County Real Estate Tax Map No. 1110100006.

Mr. Pancotti stated that the James City County Real Estate records indicated that the structure was built in 1950 and the first Zoning Ordinance was adopted March 1, 1969, 19 years after the structure was built. He stated that Section 24215, Setback Requirements, of the current Zoning Ordinance required structures be located a minimum of 50 feet from any street right-of-way which was 50 feet or greater in width for nonresidential uses. He stated that the structure was located 18.9 feet from the edge of the right-of-way and the structure was legally nonconforming.

Mr. Pancotti stated that the proposed expansion included the enclosure of the front porch encroached over the 50-foot front setback. He stated that the portion of the expansion

would not meet the current zoning requirements, therefore a variance was required. He also stated that restaurants and taverns were specially permitted uses in the A-1 Zoning District and Special Use Permits (SUPs) were granted by the Board of Supervisors in 1996 and 2016.

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 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. Pancotti stated that staff believes 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 restaurant. He stated that the strict application of the terms of the Zoning Ordinance did not unreasonably restrict the utilization of the property and the property had been put to use by the existence of a restaurant. He stated that staff believed that if the variance was to be granted, the variance would not be a detriment to adjoining properties nor alter the character of the area.

Mr. Rodgers asked if the Board of Supervisors considered variances when approving SUPs.

Ms. Parrish stated that the enclosure of the front porch was not proposed during the recent SUP process and the restaurant use came into conformance when the SUP was issued in 1996.

Mr. Otey stated that the Board of Supervisors could have imposed conditions when granting the SUP but apparently did not in this case.

Ms. Parrish stated that the Board of Supervisors does not have the authority to grant variances to setbacks.

Mr. Geib asked about the history of the front porch.

Ms. Parrish stated the porch was essentially a handicap ramp that will now be enclosed.

Mr. Geib asked where the current building footprint was in relation to the proposed enclosure, and if the front porch was removed whether a variance would be needed. He also stated that he had safety concerns regarding the existing parking lot and its close proximity to Richmond Road.

Mr. Pancotti stated that the parking lot was planned to be relocated to the rear of the restaurant. He also stated that the porch was only being enclosed and it did not expand further into the setback.

Ms. Parrish stated that if a portion of the building was being removed out of the setback, it would be considered less non conforming and would not require a variance.

Mr. Geib then opened the Public Hearing.

Mr. Hopke began his presentation by addressing the parking issue. He stated that the overall plan was to close the restaurant's entrance on the Richmond Road side and convert the current parking lot into greenspace. He stated that all parking will be moved to the rear of the building where the new front entrance was planned. He stated that the existing entrance will be converted into a dining area.

Mr. Hopke also stated that the roof above the vestibule area was held up by columns and if the porch were to be removed, a large portion of the roof would also have to be removed. He also stated that the proposed enclosure would improve the aesthetics of the building.

Mr. Jakobowski asked if the building modifications that would bring the building up to Code would be inherently expensive.

Mr. Hopke stated that the new addition will be in compliance and would add handicap accessible entrances and bathrooms. He stated that the renovations to the existing building would be very expensive, but portions of the existing building could certainly be used as dining space.

Mr. Otey asked if the rear of the lot would be used for future expansions and what would the chance be that another variance would be required.

Mr. Hopke stated that behind the proposed parking lot is the Resource Protection Area and not much more could be done in that area.

Mr. Geib asked if there was more than one owner of the property since there appears to be a shared access.

Mr. Hopke stated that one owner owned both properties.

Mr. Geib asked if the front wall was on the proposed floor plan.

Mr. Hopke stated yes and from a zoning stand point enclosing the porch was an expansion into the setback. He stated that not allowing the variance would unreasonable restrict the restaurant as a business relies on curb appeal. He also stated that the proposed design would improve the curb appeal.

Mr. Geib asked what type of landscaping would be added in front of the building.

Mr. Hopke stated that the landscaping plan will be approved as part of the site plan process, but mainly bushes would be installed that provided screening.

Mr. Geib stated he was concerned that people will park in front of the restaurant out of habit.

Mr. Hopke stated it will be clear that the parking lot has been relocated to the rear of the building.

Ms. Parrish stated that SUPs usually contain conditions which require the landscaping plan to be approved by the Director of Planning.

Mr. Geib stated that the exit of the parking lot should be adjacent to the median cut on Richmond Road.

Mr. Hopke agreed, and stated that the proposal would fix this issue.

Mr. Jakobowski asked if the Board could impose a condition prohibiting parking in front of the restaurant.

Ms. Parrish stated that the site is governed by a Master Plan that was approved by the Board of Supervisors. She stated that research would need to be done to see if the Board of Zoning Appeals can impose such a condition.

Mr. Otey stated that they could require that the variance is approved only in accordance with the proposal that was presented.

Ms. Parman stated that adding such conditions may be overstepping the bounds of the Board's power.

Mr. Geib stated that the Board has the ability to impose such conditions regarding the location, character and other features of the proposed structure for use as it may deem necessary in the public interest.

Ms. Parrish stated that those conditions should be directly related to the variance whereas parking was detached from the variance and has already been vetted by the Board of Supervisors during the SUP process.

Mr. Otey stated that a copy of the SUP would have been helpful.

Mr. Geib ask Mr. Hopke to reassure the Board that the area in front the building will not be used for parking.

Mr. Hopke confirmed that the area in front the building will not be used for parking.

Mr. Rodgers stated he does not believe the BZA has the power to force the applicant to give something up.

Mr. Campana stated that the parking has already been decided by the Board of Supervisors. He also stated that the only thing the BZA is addressing is the "boxing in" of the porch which will not extend any further into the setback.

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

Mr. Campana stated that he did not have an issue with the proposal and has no problem approving the variance as proposed

Mr. Otey stated he agreed.

Mr. Geib asked if anyone had any comments or changes to the resolution.

Hearing none, Mr. Campana made a motion to approve the resolution as presented. Mr. Rodgers seconded the motion. The motion was approved 5- 0.

**E. MINUTES**

1. June 7, 2018 Meeting Minutes

Mr. Geib asked Mr. Rodgers to lead the minute discussion as he was absent from the June 7, 2018 meeting.

Mr. Rodgers asked if there were any corrections to the June 7, 2018 meeting minutes.

After hearing none, Mr. Otey motioned to approved the minutes from the June 7, 2018 meeting. Mr. Campana seconded the motion.

On a voice vote, the motion was approved 4 -0. (Mr. Geib abstained.)

**F. MATTERS OF SPECIAL PRIVILEGE**

Ms. Parrish stated that a Zoning Ordinance amendment would be going to the Board of Supervisors that would reflect the changes to the powers of the BZA passed by the State Legislature.

Mr. Geib asked Ms. Parman to present the limits of potential conditions that the BZA could impose at the next meeting.

**G. ADJOURNMENT**

There being no further business Mr. Geib adjourned the meeting at 5:50 p.m.

  
William Geib, Chairman

  
Christy H. Parrish, Secretary

## RESOLUTION

CASE NO. BZA-18-0007. 8864 RICHMOND ROAD - GRANTING A VARIANCE ON

JAMES CITY COUNTY REAL ESTATE TAX MAP PARCEL NO. 1110100006

WHEREAS, Mr. John Hopke of Hopke & Associates, on behalf of M M & W Properties, LLC, has appeared before the Board of Zoning Appeals of James City County (the "Board") on November 1, 2018, to request a variance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 1110100006 and further identified as 8864 Richmond Road (the "Property") as set forth in the application BZA-18-0007; 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 24-215(a), Setback Requirements, to reduce the minimum front building setback from 50 feet to 18.9 feet to allow for the continued placement and modification of the structure as shown on the attached Site Plan identified as Attachment No. 2 in the memorandum, which plan is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned A-1, General Agriculture, and can further be identified as James City County Real Estate Tax Map Parcel No. 1110100006.

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 24-215(a), Setback Requirements, to reduce the minimum front building setback from 50 feet to 18.9 feet, with no additional encroachment, to allow for the continued placement and modification of the structure as shown on the attached Site Plan identified as Attachment No. 2 in the memorandum, which plan is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned A-1, General Agriculture, and can further be identified as James City County Real Estate Tax Map Parcel No. 1110100006.

 11/1/2018  
 William Geib  
 Chairman

ATTEST:

  
 Christy Harrish  
 Secretary to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
JAKOBOWSKI	<u>X</u>	___	___
OTEY	<u>X</u>	___	___
ROGERS	<u>X</u>	___	___
CAMPANA, JR.	<u>X</u>	___	___
GEIB	<u>X</u>	___	___

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 1st day of November, 2018.

BZA18-7-8864RichmondRd-res