

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
May 2, 2019
5:00 PM

A. CALL TO ORDER

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

Absent:

Mr. Ron Campana, Jr.

Staff Present:

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

C. OLD BUSINESS

None

D. NEW BUSINESS

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.

1. Case No. BZA-19-0004. Granting a Variance on James City County Real Estate Tax Map Parcel No. 4710100116

Ms. Terry Costello, Deputy Zoning Administrator, stated that Mr. Richard M. Wiatt, Jr. of Vanasse Hangen Brustlin, Inc. on behalf of Branscome Office Property, LLC, has applied for a variance to Section 24-393(a), Yard Requirements of the Code of James City County, Virginia to reduce the minimum rear building setback from 50 feet to 48.27 feet to allow for the continued placement of a structure located at 4551 John Tyler Highway.

Ms. Costello stated that the warehouse was originally constructed in 1973 with additions in 1997 and 2004. Ms. Costello further stated that in 2004, when the last addition was built, it was noted on the site plan that the rear setback was 50 feet, and that the addition would not encroach into that setback. Ms. Costello stated that in 2018, the owner contacted the County about a possible expansion, and it was then discovered that the right corner of the building encroaches in the rear setback.

Ms. Costello noted that notices of the application for a variance were set to all adjacent property owners. Ms. Costello stated that staff did not receive any comments concerning the variance.

Ms. Costello stated that 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 an office building and warehouse building. Ms. Costello further stated that staff recognizes that it was the intention of the owners at the time the last addition was constructed to be within the confines of the approved site plan. Ms. Costello noted that staff also recognizes that errors are made during the construction process. Ms. Costello stated that staff does not believe there is any evidence this variance would adversely affect any adjacent property owners or adversely affect the character of the district in which it exists. Ms. Costello stated that staff recommends approval with no further encroachment.

Mr. Geib noted that the map showed the property, the setbacks, and the encroachment.

Mr. Otey inquired if the proposed expansion that brought the encroachment to light is still in the works.

Ms. Costello stated that the project is currently in the site plan review process.

Mr. Geib opened the Public Hearing.

Mr. Richard Wiatt, Jr. of Vanasse Hangen Brustlin, Inc., 351 McLaws Circle, representing the applicant, stated that there is an approved site plan for an expansion which is a canopy addition extending into the parking lot. Mr. Wiatt further stated that the site plan currently under review is for a storage area also on the east side. Mr. Wiatt noted that where the encroachment is, there is a shared stormwater pond that is part of the approved master plan for this site and the neighboring residential area.

Mr. Rodgers inquired how long the encroachment has existed.

Mr. Wiatt stated that the warehouse has been in existence since 2004.

As no one further wished to speak, Mr. Geib closed the Public Hearing.

Mr. Geib read the resolution that was prepared by staff.

Mr. Rodgers made a motion to adopt the resolution.

Mr. Otey seconded the motion.

On a roll call vote, BZA voted to approve the variance and adopt the resolution (4-0).

2. Case No. BZA-19-0003, 6283 Centerville Road - Zoning Administrator's Determination Appeal

Ms. Christy Parrish, Zoning Administrator, stated that Ms. Leigh Major, Attorney at Law, on behalf of Hayden's Place, LLC, is appealing the Zoning Administrator's written determination on February 1, 2019, that the property located at 6283 Centerville Road is being used for a contractor's storage yard which includes the storage of contractor's equipment, trailers, and vehicles in violation of the James City County Zoning Ordinance. Ms. Parrish stated that this appeal is in accordance with § 15.2-2311 of the Code of Virginia.

Ms. Parrish stated that the owner of the Property is Hayden's Place, LLC and Mr. Timothy Soderholm is the listed registered agent with the State Corporation Commission. Ms. Parrish stated that it is staff's understanding that Mr. Soderholm is also owner of Tiki Tree and Landscape, which offers services including tree removal, stump grinding, pruning, landscaping, hardscaping, and lot clearing and excavation.

Ms. Parrish stated that on January 2, 2019, staff received a complaint that the property was being used for the operation of a commercial business. Ms. Parrish stated that the complaint further stated that trees were being removed from the property to create a storage yard. Ms. Parrish stated that additional complaints followed regarding noise and noting that a fence was constructed to shield the work from Centerville Road.

Ms. Parrish stated that various site visits were conducted by staff which revealed construction of new fencing, a graveled area, a storage container, and contractor's equipment on the Property. Ms. Parrish further stated that the contractor's equipment viewed on the property from the right-of-way included utility trailer(s), a small excavator, and a dingo loader. Ms. Parrish stated that in addition, staff has also witnessed three trucks, at least one with Tiki Tree and Landscape logos, along with trailers and equipment exiting the property.

Ms. Parrish stated that Section 24-5 of the James City County Code requires the Zoning Administrator to administer and enforce Chapter 24- Zoning of the James City County Code. Ms. Parrish stated that staff issued a "Notice of Violation" on February 1, 2019 and determined that the property is being used for a contractor's storage yard which includes the storage of contractor's equipment, trailers, and vehicles.

Ms. Parrish stated that the storage of heavy equipment and contractors' warehouses, sheds, and offices, is not a permitted use in the A-1, General Agricultural Zoning District. Ms. Parrish further stated that use of the property to store contractors, equipment, trailers, and vehicles used for commercial purposes, whether stored inside structures or storage containers, without the issuance of a Special Use Permit (SUP) constitutes a violation of the Zoning Ordinance.

Ms. Parrish stated that staff recognizes that the owner may, from time to time, hire Tiki Tree and Landscape to provide services on the property; however, the equipment may only be used on-site for the necessary amount of time it takes to complete the project. Ms. Parrish stated that undefined time limits to store contractor's materials, equipment, trailers, and vehicles used for commercial purposes on the property and/or the continuous moving of such equipment to and from the property to other job sites, constitutes using the property as a contractor's storage yard.

Ms. Parrish stated that the Notice of Violation further detailed that in order to come into compliance with the Zoning Ordinance, Hayden's Place, LLC must remove all contractor's equipment as described in the letter within 30 days from the date of the letter or apply for an SUP from the Board of Supervisors.

Ms. Parrish stated that on February 28, 2019, an appeal of this interpretation was received. Ms. Parrish stated that the appeal explanation stated "Appeal from Zoning Administrator's decision letter dated February 1, 2019 regarding contractor's storage yard." Ms. Parrish stated that no further information has been provided by the applicant or the owner.

Ms. Parrish stated that the Board of Zoning Appeals is a quasi-judicial body. Ms. Parrish further stated that the Board's decision shall be based on the Board's judgement of whether or not her interpretation of the Zoning Ordinance is correct that the use of the property to store contractor's materials, equipment, trailers, and vehicles in violation of the James City County Zoning Ordinance without the issuance of an SUP from the Board of Supervisors.

Ms. Parrish stated that staff has received four citizen letters, some in support and some in opposition of the use of the property; however, a common element in three of the letters indicates that there is storage of equipment used for business purposes on the property.

Ms. Parrish stated that the Board's decision is not whether the use of the property should be permitted an SUP; that decision can only be made by the Board of Supervisors.

Ms. Parrish stated that staff recommends that the Board of Zoning Appeals uphold the Zoning Administrator's interpretation regarding this matter that the use of the Property to store contractor's materials, equipment, and vehicles used for commercial purposes is not permitted without the issuance of an SUP from the Board of Supervisors and is a violation of the Zoning Ordinance.

Mr. Rodgers inquired about a description of the dingo loader.

Ms. Parrish stated that a dingo loader is a small piece of landscaping equipment used to move dirt or heavier objects. Mr.

Otey inquired if the photos attached to the Notice of Violation letter were taken from Centerville Road.

Ms. Parrish confirmed. Ms. Parrish further stated that the two aerial photos show the substantial difference between 2017 and 2019.

Ms. Parrish and the BZA members discussed the photos in order to be familiar with where structures and equipment were located.

Mr. Geib stated that he is familiar with the property and drives past it often. Mr. Geib further stated that the ingress and egress of vehicles is constant.

Mr. Geib stated that he wanted the applicant to clearly understand that in October 2018, in response to changes in State law, the Board of Supervisors amended County Code to establish that the burden of proof is on the applicant to establish that staff is incorrect by preponderance of the evidence.

Mr. Geib opened the Public Hearing.

Ms. Leigh Major, Attorney for Hayden's Place, LLC, stated that Mr. Solderholm's attorney was unavailable to attend the meeting. Ms. Major stated that Mr. Soderholm would address the Board first and that she would speak second. Ms. Major further stated that there had been some confusion among the neighbors receiving adjacent property owner letters as they thought the notification was related to a rezoning for the property.

Mr. Timothy J. Soderholm, 6293 Centerville Road, stated that his residence is adjacent to the subject property. Mr. Soderholm further stated that he maintains the adjacent property including care of two homes.

Mr. Soderholm noted that part of the purchase agreement for Hayden's Place, LLC was that the previous owner would have a year to remove the vehicles and equipment stored on the property. Mr. Soderholm further noted that the bulk of that equipment has been removed; however, several large items remain.

Mr. Soderholm described the work needing to be done on the property to make the grounds safe and serviceable. Mr. Soderholm stated that much of the work was done on weekends or after hours and that he was fortunate to be able to use his personal equipment for that work.

Mr. Soderholm provided an overview of the history of the property, noting that the property has been previously used as a logging yard, a family compound, car repair, and other uses that had large amounts of outdoor storage. Mr. Soderholm stated that his equipment is stored in the barn. Mr. Soderholm stated that he does use the equipment for his business and also for personal use after hours to maintain his property, Hayden's Place LLC and the Otto Ripley property. Mr. Soderholm provided detailed explanations of the various photos to clarify for the Board how the equipment is used, where it is stored, and the changes to the property.

Mr. Soderholm noted that the equipment being used is his personal equipment and does not belong to his business. Mr. Soderholm further noted that the equipment was being used to improve the property in support of the goal for Hayden's Place LLC to provide housing for single mothers and their children.

Mr. Soderholm stated that the work trucks were seen entering and leaving the property because he uses them for transportation.

Mr. Soderholm presented the Board with signed statements from his neighbors that they do not find the activities to constitute a nuisance.

Mr. Jacobowski inquired if permits were obtained for the gravel improvements to the property.

Mr. Soderholm stated that this was not a new improvement; it was reclaiming previously graveled areas that had been overgrown. Mr. Soderholm further stated that there was no clearing and grading involved.

Mr. Jacobowski noted that the graveled area was fairly extensive and seemed to be excessive for the need.

Mr. Soderholm stated that the work was necessary to make the property usable for himself and the tenants.

Mr. Jacobowski noted that there are more storage buildings in the 2019 aerial than in the 2017 photo.

Mr. Soderholm stated that there was only one new structure which is the Connex container box. Mr. Soderholm noted that the Connex is specifically to provide secure storage for the subcontractors.

Mr. Jacobowski inquired if the Connex was on a permanent foundation.

Mr. Soderholm stated that it is temporary.

Mr. Jacobowski inquired about the size of the equipment on the property. Mr. Soderholm provided details on the various pieces of equipment, noting that all but one are approximately the size of a riding lawnmower. Mr. Soderholm noted that one would be classified as heavy equipment. Mr. Soderholm stated that most of the equipment is left on the job site and only returns to the property between jobs or when he needs to use them for personal purposes. Mr. Soderholm noted that when the equipment is on the property, it is stored in the pole barn.

Mr. Jacobowski inquired how many pieces of equipment, such as bucket trucks, belong to Tiki.

Mr. Soderholm stated that he has two bucket trucks, but only one is marked Tiki. Mr. Soderholm further stated that only three pieces are owned by Tiki.

Mr. Jacobowski inquired if the equipment returns to the property every day.

Mr. Soderholm stated that they did not unless he was driving the piece of equipment home at the end of the day.

Mr. Jacobowski inquired where they are stored.

Mr. Soderholm stated that two are in need of repair and have been at Daniels Welding and Tire for over half the year.

Mr. Jacobowski noted that there is an issue with James City County's Stormwater Division regarding clearing and grading. Mr. Jacobowski inquired if Mr. Soderholm verified whether permits were needed or not prior to doing the clearing, grading, and tree work that caused this issue.

Mr. Soderholm stated that the tree removal and land disturbance was less than 2,500 square feet and did not require a clearing permit. Mr. Soderholm noted that the trees that were removed were a liability and it was necessary to take them down for the safety of tenants on the property.

Mr. Jacobowski summarized that Mr. Soderholm did discuss the project with Stormwater and Resource Protection and did not obtain a permit for the work.

Mr. Soderholm stated that none were needed.

Mr. Rodgers inquired about the ownership of Hayden's Place LLC.

Mr. Soderholm stated that he and his wife are two of the officers. Mr. Soderholm further stated that Hayden's Place LLC is a rental property with small families living in the residences.

Mr. Rodgers inquired about what is kept in the pole barn.

Mr. Soderholm stated that the pole barn is used to store equipment, machinery, and supplies.

Mr. Geib acknowledged that the work done to the properties is a vast improvement and that the letters of support indicate that Mr. Soderholm is a good neighbor.

Mr. Geib stated that the crux of the matter is whether Mr. Soderholm is running a business from the property.

Mr. Soderholm inquired about what constitutes running a business.

Mr. Geib stated that he needed to ask the questions to clarify things in his own mind.

Mr. Geib inquired if Mr. Soderholm owned Tiki Tree Service.

Mr. Soderholm confirmed.

Mr. Geib noted that Mr. Soderholm owns at least three trucks as Tiki Tree Service.

Mr. Soderholm stated that he owns the vehicles personally and that Tiki does not hold title to any equipment or property.

Mr. Geib stated that this is a convoluted situation.

Mr. Soderholm stated that he believes that customers and employees are what constitute a business. Mr. Soderholm stated that no customers come to the site and no employees come to the site; only subcontractors. Mr. Soderholm noted that Hayden's Place LLC also hires subcontractors to perform various types of work.

Mr. Geib stated that there are many other pieces of equipment on the property that could be or are used for the purposes of trees, and for landscaping. Mr. Geib inquired if those pieces of equipment would be used for Tiki.

Mr. Soderholm responded that three flatbed trailers, a chipper, and the vehicles are used for Tiki. Mr. Soderholm stated that the other equipment is owned by a family member or are used for personal work.

Mr. Geib stated that it seems reasonable to conclude that at least part of the equipment is used in the business regardless of the ownership.

Mr. Soderholm asked for clarification.

Mr. Geib stated that the staff report indicates that materials, equipment, trailers, and vehicles are used for commercial purposes. Mr. Geib further stated that Mr. Soderholm had admitted that the flatbed trailers, chipper, and vehicles are used for business purposes.

Mr. Soderholm stated that the equipment is co-used.

Mr. Geib stated that any commercial use is in violation of the Zoning Ordinance.

Ms. Major stated that in essence, the argument is that Mr. Soderholm holds all the equipment personally with a few pieces co-owned by family members. Ms. Major stated that some of those pieces are used for Tiki but also personal use. Ms. Major further stated that Hayden's Place LLC is adjacent to Mr. Soderholm's residence where he is allowed to have the home-based business. Ms. Major stated that due to the amount of equipment and the lack of storage buildings at his residence, these pieces of equipment are stored at Hayden's Place LLC. Ms. Major stated that those same pieces of equipment that have been used for Tiki have also been used for cleanup of the Hayden's Place LLC property as well as for upkeep of other properties, including the Otto Ripley estate. Ms. Major stated that the previous owner of the property has not completed the removal of his vehicles and that more reclamation will be done. Ms. Major noted that almost every neighbor signed the petition in support of Mr. Soderholm. Ms. Major further noted that the one dissenting voice was not necessarily opposed to what Mr. Soderholm is doing; she just believes he is not going about it the right way.

Ms. Major stated that Mr. Soderholm is not using the property as a contractor's yard, but

rather as a way to have the equipment available to work on Hayden's Place LLC as needed. Ms. Major stated that she hopes the Board would find in his favor.

Mr. Taylor Swick, 3 Settlers Lane, addressed the Board in support of Mr. Soderholm.

Mr. Rodgers inquired where the two vehicles would be located if they were not waiting to be repaired.

Ms. Major stated that those vehicles would generally move from job site to job site.

Mr. Soderholm noted that neither of the vehicles has been on the property since 2018. Mr. Soderholm stated that the bucket trucks are registered vehicles and are used for personal transportation in an emergency. Mr. Soderholm further stated that he needs access to those vehicles as he is essentially on call at all hours.

As no one further wished to speak, Mr. Geib closed the Public Hearing.

Mr. Otey made a motion to uphold the Zoning Administrator's Determination and adopt the resolution. Mr. Otey noted that the burden of proof had not been met and that the evidence supports the Zoning Administrator's Determination.

Mr. Jacobowski seconded the motion.

Mr. Geib noted that the proper and appropriate way for Mr. Soderholm to resolve this issue is to apply for an SUP.

On a roll call vote the Board of Zoning Appeals voted to uphold the Zoning Administrator's Determination. (4-0)

E. MINUTES

1. January 3, 2019 Meeting Minutes

Mr. Rodgers requested that staff check the spelling of his name in the January 3, 2019 Minutes and in the resolution adopted for the variance this evening.

Ms. Parrish stated that she would be certain that both are correct.

Mr. Otey made a motion to approve the January 3, 2019 Minutes.

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

F. MATTERS OF SPECIAL PRIVILEGE

1. Zoning Ordinance Update - VA Code 15.2-2309

Ms. Parrish stated that this matter is on the agenda as the Ordinance amendment approved by the Board of Supervisors relating to the authority of the BZA replacing the existing language with "... as per the State Code." Ms. Parrish noted that the main thing that changed was related to the Americans with Disabilities Act (ADA). Ms. Parrish further noted that there were some changes also related to appeals. Ms. Parrish stated that Ms. Liz Parman, Deputy County Attorney, was available to answer any questions.

Mr. Geib stated that he did not remember the requirement for the appellant to prove by a preponderance of evidence that staff was wrong in their determination. Mr. Geib noted that when dealing with setbacks and the typical situations before the Board, there is not a

preponderance of evidence.

Ms. Parrish stated that preponderance of evidence is mostly for appeals.

Ms. Parman stated that language related to the presumption that staff is correct was added to the Code of Virginia in 2015 and incorporated in County Code in 2015. Ms. Parman further stated that when talking about a variance, the applicant must prove that "strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the 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..." Ms. Parman stated that the addition of language regarding ADA in 2018 allows a variance to be granted in compliance with the ADA requirements.

Mr. Geib inquired if it would be fair to say that preponderance of the evidence is still the same for variances.

Ms. Parman stated that it is just a term to use to identify that the applicant has prevailed.

The Board also discussed why it took so long for the County to incorporate ADA requirements into its Code.

G. ADJOURNMENT

There being no further business, Mr. Rodgers made a motion to adjourn the meeting.

On a voice vote, the Board voted to adjourn the meeting. (4 -0).


William Geib, Chairman


Christy H. Parrish, Secretary

RESOLUTION

CASE NO. BZA-19-0004. GRANTING A VARIANCE ON JAMES CITY COUNTY

REAL ESTATE TAX MAP PARCEL NO. 4710100116

WHEREAS, Mr. Richard M. Wiatt, Jr., on behalf of Branscome Office Property, LLC, has appeared before the Board of Zoning Appeals of James City County (the "Board") on May 2, 2019, to request a variance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 4710100116 and further identified as 4551 John Tyler Highway (the "Property") as set forth in the application BZA-19-0004; and

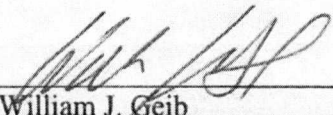
WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record and discussed a motion to grant a Variance to Section 24-393, Yard requirements, reducing the required 50-foot rear setback to 48.27 feet from the rear property line to allow for the continued placement of the warehouse 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:

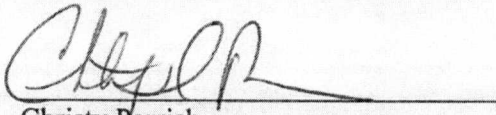
1. The strict application of Chapter 24 of the Code of James City County would unreasonably restrict the utilization of the Property; or
2. The granting of a variance would alleviate a hardship due to a physical condition relating to the Property or improvements thereon at the time of the effective date 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 24-393, Yard requirements, reducing the required 50-foot rear setback to 48.27 feet from the rear property line to allow for the continued placement of the warehouse building shown on property sketch entitled, "Branscome Warehouse Building Zoning Variance Request," dated March 14, 2019, which is attached hereto, made part hereof, and incorporated into this Resolution.


William J. Geib
Chairman, Board of Zoning Appeals

ATTEST:


Christy Parrish
Secretary to the Board

Rodgers

| | VOTES | | |
|--------------|-------------------------------------|------------|----------------|
| | <u>AYE</u> | <u>NAY</u> | <u>ABSTAIN</u> |
| JAKOBOWSKI | <input checked="" type="checkbox"/> | ___ | ___ |
| OTEY | <input checked="" type="checkbox"/> | ___ | ___ |
| ROGERS | <input checked="" type="checkbox"/> | ___ | ___ |
| CAMPANA, JR. | <u>Abst</u> | ___ | ___ |
| GEIB | <input checked="" type="checkbox"/> | ___ | ___ |

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 2nd day of May, 2019.

BZA19-04-4551JTHwy-res

RESOLUTION

CASE NO. BZA-19-0003. 6283 CENTERVILLE ROAD -

ZONING ADMINISTRATOR'S DETERMINATION APPEAL

WHEREAS, Ms. V. L. Major, on behalf of the property owners (the "Appellant"), has appealed the Zoning Administrator's written determination on February 1, 2019, that the property located at 6283 Centerville Road (the "Property") is being used for a contractor's storage yard which includes the storage of contractor's equipment, trailers, and vehicles in violation of the James City County Zoning Ordinance. The Property is currently located in the A-1, General Agriculture Zoning District and can be further identified as James City County Real Estate Tax Map Parcel No. 3120100004; and

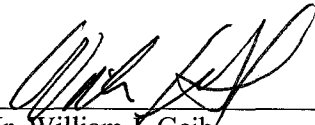
WHEREAS, the Board of Zoning Appeals at its meetings on May 2, 2019, held a public hearing and considered the statements made by the public and also reviewed and considered the materials and testimony offered by the Zoning Administrator and the Appellant; and

WHEREAS, the Board of Zoning Appeals is of the opinion that the decision of the Zoning Administrator is correct and that the Appellant's appeal should be denied.

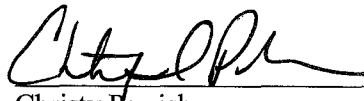
NOW, THEREFORE, BE IT RESOLVED that the Board of Zoning Appeals of James City County, Virginia, does hereby uphold the Zoning Administrator's written determination on February 1, 2019, that the property located at 6283 Centerville Road is being used for a contractor's storage yard in violation of the James City County Zoning Ordinance and in consideration of such decision, the Board of Zoning Appeals makes the following specific findings of fact:

1. Section 15.2-2309 of the Code of Virginia, 1950, as amended (the "Virginia Code"), authorizes the Board of Zoning Appeals to hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto.
2. Section 24-5 of the James City County Code requires that the zoning administrator administer and enforce Chapter 24- Zoning of the James City County Code (the "Zoning Ordinance").
3. Section 15.2-2309 of the Virginia Code requires that the Zoning Administrator's interpretation is presumed to be correct and the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.
4. The Board of Zoning Appeals finds the Zoning Administrator's interpretation is correct, the appellant has not met his burden of proof, and that the property located at 6283 Centerville Road is being used for a contractor's storage yard which includes the storage of contractor's materials, equipment, trailers, and vehicles.

5. The Board of Zoning Appeals finds that the storage of contractor's materials, equipment, trailers, and vehicles on the Property is a specially permitted use and requires the issuance of a Special Use Permit (SUP) by the James City County Board of Supervisors.
6. The Board of Zoning Appeals finds that the storage of contractor's materials, equipment, trailers, and vehicles on the Property without issuance of an SUP stands in violation of Section 24-212 Use List of the James City County Zoning Ordinance.
7. The Board of Zoning Appeals orders that the owner of the Property come into compliance by removing all contractor's materials, equipment, trailers, and vehicles used for commercial purposes from the Property or apply for an SUP within 45 days from May 2, 2019.


Mr. William J. Geib
Chairman, Board of Zoning Appeals

ATTEST:


Christy Harrish
Secretary to the Board

Rodgers

| | 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>ABSENT</u> | ___ |
| GEIB | <u>X</u> | ___ | ___ |

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 2nd day of May 2019.

BZA19-3-6283Cntrville(uphold)-res