

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
October 3, 2019
5:00 PM

A. CALL TO ORDER

Mr. Geib called the meeting to order at 5:02 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
Mr. Ron Campana, Jr.

Staff Present:

Ms. Christy Parrish, Zoning Administrator
Ms. Liz Parman, Assistant County Attorney

C. OLD BUSINESS

None

D. NEW BUSINESS

1. Granting a Variance to the Article VI, Overlay Districts Floodplain Regulations on James City County Real Estate Tax Map Parcel No. 4640100012 (Case No. BZA-19-0006, 2054 Jamestown Road, Jamestown Marina - Distribution of Petroleum in a Special Flood Hazard Area Variance Request)

Ms. Christy Parrish, Zoning Administrator, stated that Mr. Darryl Cook, on behalf of James City County, has applied for a variance to Section 24-594(a)(4), Prohibited uses, for the continued placement, use, and proposed improvement of the distribution of petroleum at an existing Marina located in a floodplain district at 2054 Jamestown Road. The property is currently zoned B-1, General Business.

Ms. Parrish stated that the James City County Marina was located on Powhatan Creek, behind Jamestown Island and across the street from Jamestown Settlement and Jamestown Beach Event Park. She explained that James City County was proposing to upgrade and reconfigure the Marina as the existing infrastructure has reached or exceeded its design life. The project was to be completed in two phases. Phase one included dredging the majority of the basin, replacement of the existing 670 feet of fixed dock and slips with a new floating, Americans with Disabilities Act accessible dock system, installation of a living shoreline to replace the failing bulkhead, and relocation of an existing fueling tank and controls with new distribution system and dispenser. The second phase would complete the dredging of the basin, replace the two existing floating boatsheds, provide additional uncovered boat slips, and install a new boat ramp.

Ms. Parrish stated that James City County participated in the National Flood Insurance Program ("NFIP") which allows the federal government to make flood insurance available to the community. In order to participate in this program, James City County must regulate all development located in the special flood hazard areas in accordance with the NFIP. This was accomplished through the adopted Floodplain Area Regulation found in the James City County Zoning Ordinance. The special flood hazard area was defined as the land in the floodplain subject to 1% or greater of being flooded in any given year. A large portion of the Marina was located in a special flood hazard area. During the site plan review stage of the project, staff identified that the proposed changes to the existing gasoline storage tank and distribution line were in conflict with the Floodplain Overlay District regulations. Section 24-594 Prohibited uses, specifically prohibited the distribution of petroleum and the storage of oil and oil products when located in a special flood hazard area. The regulation prohibiting these uses in the special flood hazard area was adopted in 1990. Based on staff's research, the existing gasoline storage tank and distribution line were located on-site prior to 1988 therefore making them nonconforming. Nonconforming uses may continue as it existed when it became nonconforming.

Ms. Parrish stated that Mr. Cook, Assistant Director of Stormwater and Floodplain Manager, provided a detailed summary of the proposed changes and factors to consider when granting the requested variance that was included in the meeting materials. In summary, the existing fueling system was outdated and the storage tank is located on the edge of the water adjacent to the failing bulkhead. The existing fuel dispensing line was single walled that extends approximately 60 feet over the water to a location on a fixed pier. The existing fuel dispenser does not have an alarm feature that detects fuel leaks.

Ms. Parrish stated that the proposed improvements to the Marina relocates the fuel storage tank outside the special flood hazard area. However, the fuel dispensing line would extend approximately 350 feet to a new fuel dispenser located landside adjacent to a new bulkhead. The new line would be double walled to minimize any leakages. The new dispenser would have a sump chamber beneath it that would contain an alarm system to detect any fuel leak. Emergency Shut Off Buttons would be located near the fuel dispenser and the Marina office that could be activated by users and County staff. Staff recognized the sale of gasoline at marinas was very common and necessary for boaters. Upon discussing this issue with the Department of Conservation and Recreation's Acting NFIP Coordinator ("DCR"), it was determined that the distribution of petroleum and the storage of oil and oil products were not prohibited uses in the NFIP and that the James City County regulation was more restrictive. It was also discussed that a variance to the Floodplain Area Regulations would be necessary as the proposed changes constituted an improvement to the current gasoline distribution system.

Ms. Parrish stated that while this situation did not appear to meet the definition of a variance, the Floodplain Area Regulations allowed the Board of Zoning Appeals to grant variances to the Overlay District when certain criteria are met. The sale of fuel at a marina was permitted in the underlying B-1, General Business Zoning District so the Board of Zoning Appeals need only consider the factors listed in Section 24-603, Variances; factors to be considered. This variance request was the minimum necessary under the Floodplain Overlay District regulations to allow the proposed project to occur. All phases of the project including the construction and installation methods for the fuel distribution lines must comply with all Floodplain Overlay District and NFIP regulations.

Ms. Parrish concluded that staff concurred that the proposed changes to the existing distribution of petroleum use provide enhanced safety features to better protect the surrounding environment and water features. The use in connection with the Marina was a necessary feature for the facility and patrons. Staff concurred that the applicant had provided sufficient information to satisfy the additional factors as described in Section 24-603, Variance;

factors to be considered by the BZA. Staff recommended approval of the variance with the following conditions included in the resolution.

Mr. Geib asked staff to explain the authority that that Board has to grant variances in this type of circumstance.

Ms. Parrish stated that the Floodplain Overlay District provided separate variance criteria in accordance with the NFIP. These regulations permit the Board of Zoning Appeals to grant variances to the Floodplain Overlay District only when the request complies with the underlying zoning district and the variance criteria in the Floodplain Overlay District.

Mr. Otey asked staff to clarify Factor No.1 in the resolution that states that no variance shall be granted for any proposed use, development or activity within any floodway district that will cause any increase in the one percent annual chance flood elevation.

Ms. Parrish stated that the language was verbatim from the Ordinance, but this property was not located within a floodway district.

Mr. Jakobowski asked staff to discuss Condition No. 5 in the resolution that states that the applicant is aware that the issuance of a variance increases the risk to life and property and result in increased premium rates for flood insurance.

Ms. Parrish stated that the condition served as the notification to the property owner as prescribed in the Floodplain Overlay District and that DCR recommended the language be included in the resolution.

Mr. Otey asked how other marinas complied with this requirement.

Ms. Parrish stated that staff did not research other marinas. Existing marinas may have been in existence prior to the establishment of this requirement or approved in error. However, should an existing marina apply to upgrade its system, a variance would be needed. Staff will look at the possibility of updating the language at a future time.

Mr. Campana asked what the proposed timing of construction was for this project.

Ms. Parrish stated that the site plan was almost ready to be approved which would allow the project to go out to bid.

Mr. Otey asked if staff was aware of any position a member of the Board of Supervisors had on this issue.

Ms. Parrish replied no, but the proposed changes to the Master Plan for the Marina was recently presented at a Board of Supervisors Work Session.

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

Mr. Darryl Cook, Assistant Director of Stormwater, stated he was the project manager for the project and the staff report provided was a complete description of the work. The project was waiting on site plan approval and a wetlands permit before it was able to go out to bid. The goal was to be under construction by the beginning of the year and phase one completed by Memorial Day. Mr. Cook clarified the fuel system was not an insurable structure under the NFIP and the proposed improvements would make the system safer.

Mr. Otey asked if he knew when the marina at Governor's Land was constructed.

Mr. Cook replied that he did not believe that the marina existed prior to 1990.

Mr. Geib asked if there was a safety mechanism should the fuel tank be struck and severed from the platform to prevent gas siphoning out from the hose.

Mr. Tony Loubier, Vanasse Hangen Brustlin, Inc. and consulting engineer on the project, stated bollards will be installed around the tank to prevent vehicles from hitting the tank.

Mr. Geib asked if there was a requirement for a fire suppression system on the dock.

Mr. Cook stated that there would be a spill prevention plan but is unaware of a fire suppression plan.

Ms. Parrish stated that the Fire Department would review the site plan in accordance with the Fire Prevention Code.

Mr. Jakobowski stated that the Kingsmill Marina does dispense gasoline and it appeared that the Governor's Land Marina was constructed around 1992.

Ms. Parrish stated that if the dispensing of gasoline was granted by an approved site plan in conflict with the Ordinance, the marina would have a vested right and considered non-conforming. However, any change or upgrade would required a variance until the Ordinance is changed.

Seeing no further speakers, Mr. Geib closed the Public Hearing.

Mr. Campana stated he was familiar with the gas pumps at this location for many years and he did not object to the variance.

Mr. Jakobowski made a motion to grant the variance as recommended by staff with Conditions Nos.1-4 in the resolution. Condition No. 5 serves as a notice to James City County.

Mr. Rodgers seconded the motion.

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

On a roll call vote, the BZA voted to approve the variance and adopt the resolution (5-0).

E. MINUTES

1. May 2, 2019 Meeting Minutes

Mr. Geib asked if anyone had any corrections to the May 2, 2019 Meeting Minutes.

Hearing none, Mr. Jakobowski made a motion to approve the May 2, 2019 Meeting Minutes.

Mr. Otey seconded the motion.

Mr. Campana abstained from the vote as he was not present at the May 2, 2019 meeting.

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

F. MATTERS OF SPECIAL PRIVILEGE

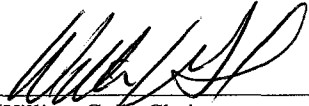
None

G. ADJOURNMENT

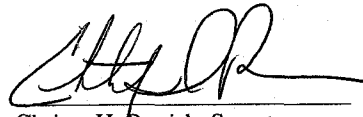
There being no further business, Mr. Rodgers made a motion to Adjourn the meeting.

Mr. Campana seconded the motion.

On a voice vote, the Board voted to adjourn the meeting (5 -0).



William Geib, Chairman



Christy H. Parrish, Secretary

RESOLUTION

GRANTING A VARIANCE TO THE ARTICLE VI, OVERLAY DISTRICTS
FLOODPLAIN REGULATIONS ON JAMES CITY COUNTY REAL ESTATE
TAX MAP PARCEL NO. 4640100012 (CASE NO. BZA-19-0006, 2054 JAMESTOWN
ROAD, JAMESTOWN MARINA - DISTRIBUTION OF PETROLEUM IN A SPECIAL
FLOOD HAZARD AREA VARIANCE REQUEST)

WHEREAS, Mr. Darryl Cook, on behalf of James City County, has appeared before the Board of Zoning Appeals of James City County (the "Board") on October 3, 2019 to request a variance to the James City County Code of Ordinances (the "County Code") Floodplain Area Regulations on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 4640100012 and further identified as 2054 Jamestown Road (the "Property") as set forth in the application Case No. BZA-19-0006; and

WHEREAS, the Board has listened to the arguments presented, has carefully considered all evidence entered into the record and discussed a motion to grant a variance to County Code Section 24-594(a)(4), Prohibited uses, for the continued placement, use and proposed improvement of the distribution of petroleum at an existing marina located in a floodplain district at 2054 Jamestown Road; and

WHEREAS, the Board, pursuant to County Code Section 24-603, has considered all relevant factors and procedures specified in other sections of the Zoning Ordinance and considered the following additional factors:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the 1% annual chance (100-year) flood elevation.
2. The danger that materials may be swept onto other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.

7. The availability of alternative locations not subject to flooding for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area.
10. The safety of access by ordinary and emergency vehicles to the property in time of flood.
11. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
12. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
13. No variance shall be granted for any accessory structure to be wet floodproofed if that structure exceeds 600 square feet.
14. Such other factors which are relevant to the purposes of this section.
 - a. Increase in flood heights;
 - b. Additional threats to public safety;
 - c. Extraordinary public expense;
 - d. Creation of nuisances;
 - e. Fraud and victimization of the public; and
 - f. Conflicts with local laws or Ordinances.

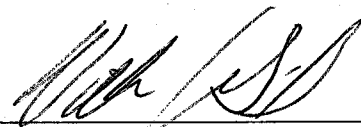
NOW, THEREFORE, BE IT RESOLVED that the Board of Zoning Appeals of James City County, Virginia, by a majority vote of its members FINDS that the variance will be the minimum required to provide relief from any hardship to the applicant.

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

To grant a variance to Section 24-594(a)(4), Prohibited uses, for the continued placement, use and proposed improvement of the distribution of petroleum at an existing marina located in a floodplain district at 2054 Jamestown Road with the following conditions:

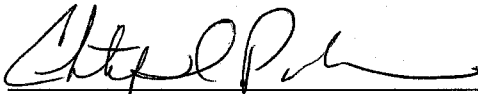
1. The fuel storage tank shall be located outside of any portion of the special flood hazard area identified on the Federal Emergency Management Agency's Flood Insurance Rate Map 51095C0182D dated December 16, 2015.

2. The fuel dispenser and dispensing line will be located on a concrete pedestal and elevated above the Base Flood Elevation minimizing the chance of the dispenser being dislodged during a flood event. The fuel dispenser shall have an alarm mechanism to detect fuel leaks and emergency shutoffs located near the fuel dispenser and the marina office. Emergency operating procedures shall be established for both public users and County staff should a fuel leak be detected. A copy of the emergency procedures shall be provided to the Zoning Administrator prior to the public use of the fuel dispenser.
3. The fuel distribution line shall be double walled and located underground or contained in the concrete pedestal.
4. All development associated with this project that is located in the special flood hazard area shall comply with Article VI, Overlay Districts, Division 3, Floodplain Area Regulations, including applying for and receiving a permit.
5. The applicant is aware that the issuance of a variance increases the risk to life and property and can result in increased premium rates for flood insurance.



William Geib
Chair

ATTEST:



Christy Parrish
Secretary to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
JAKOBOWSKI	<u>X</u>	___	___
OTEY	<u>X</u>	___	___
RODGERS	<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 3rd day of October, 2019.

BZA19-6MarinaVar-res