M I N U T E S 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 February 6, 2020 5:00 PM

A. CALL TO ORDER

Mr. Geib called the meeting to order.

B. ROLL CALL

Ms. Christy Parrish called the roll:

Present: Mr. William Geib Mr. Stephen Rodgers Mr. David Otey, Jr. Mr. Ron Campana, Jr.

Absent: Mr. Mark Jakobowski

Staff Present: Christy Parrish, Zoning Administrator John Rogerson, Senior Zoning Officer Taylor Orne, Zoning Officer Liz Parman, Assistant County Attorney

C. OLD BUSINESS

None

D. NEW BUSINESS

1. Case No. BZA-19-0008, 116 Fairmont Drive Rear Yard Variance Request

Mr. John Rogerson presented the staff report.

Mr. Rogerson stated that Mr. Daniel Swartzel, property owner, had applied for a variance to Section 24-238(b) Yard requirements, of the James City County Zoning Ordinance. The variance request is to reduce the required 35-foot rear yard setback to 22 feet to allow for the construction of a screened-in porch in the rear yard setback located at 116 Fairmont Drive. The property is currently located in the R-1, Limited Residential Zoning District. Mr. Rogerson stated that the lot is 0.37 acres in size and contains an existing one-story single-family dwelling with a walk-out basement approximately 2,050 square feet in size. The dwelling was constructed in 2013 and the current owner purchased the property in 2018.

Mr. Rogerson stated that the property is a corner lot which fronts on two streets at their intersection. He explained that for the purpose of building setbacks, Section 24-239(a) Special provisions for corner lots of the Zoning Ordinance requires the shorter of the two sides fronting on streets be the front. Though the existing dwelling faces Fairmont Drive, the front property line faces Birdlington Way and the rear property line is opposite of the front property line. The porch is proposed to be off the side of the house which will encroach into the

required 35-foot rear yard setback.

Mr. Rogerson stated that Mr. Swartzel is proposing to construct a screened-in porch to assist with his disabled son diagnosed with autism. The current layout of the dwelling does not permit his son to safely access the backyard without being escorted down an enclosed stairway into the basement and out the back basement door. The finished first floor of the dwelling is approximately eight feet off the ground on the back of the house. This situation has been found difficult and dangerous for the family. The proposed location of the porch will be approximately three feet off the ground and will allow access to the fenced in backyard from the side of the house having to use minimal steps. The porch will allow the family to monitor all the children at once.

Mr. Rogerson stated that Mr. Swartzel is requesting this variance be granted as a reasonable modification on behalf of a person with a disability. He stated that the applicant has provided a narrative which explained the request and the need to alleviate a hardship by granting a reasonable modification on behalf of a person with a disability.

Mr. Rogerson stated that while the strict application of the terms of the Zoning Ordinance does not restrict the utilization of the property, staff finds the request a reasonable modification on behalf of a person with a disability which will provide safety and enjoyment of the property. He stated that §15.2-2309 of the Code of Virginia states that "any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted."

Mr. Rogerson stated that should the Board of Zoning Appeals find that the variance request will alleviate a hardship by granting a reasonable modification on behalf of a person with a disability, staff recommended approval of the variance request. He also stated that the Board, if desired, may also include a condition that the screened-in porch be removed when the person benefited by it is no longer in need of the modification to such property provided by the variance.

Mr. Rogerson stated that he would be happy to answer any questions.

Mr. Stephen Rodgers asked what were the dimensions of the proposed screened-in porch.

Mr. Rogerson stated that the proposed screened-in porch was 15 feet X 16 feet.

Mr. Rodgers asked if staff was contacted by any of the adjacent property owners.

Mr. Rogerson stated no.

Mr. David Otey asked if staff had verified the elevation difference of eight feet on the rear of the house.

Mr. Rogerson stated that a site visit was made and confirmed the elevation difference. He explained that a room addition on the rear of the property would require approximately eight feet of steps to get to the ground level but the addition on the side of the house would only require approximately three feet of steps to get to the ground level.

Mr. Otey asked if staff was able to verify that the Swartzel's son had autism.

Mr. Rogerson stated that the Mr. Swartzel was here this evening and brought documentation

of their son's medical diagnosis of autism to the meeting.

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

Mr. Daniel Swartze, property owner, introduced himself and his wife Elizabeth. He stated that he brought documentation of the medical diagnosis of autism of his son. He explained that his son tended to be a little rambunctious and needed constant attention. He also stated that access to fresh air and the outdoors was extremely important to his son's health.

Mrs. Elizabeth Swartzel stated her son always try to engage in dangerous behavior by jumping and climbing and that her son does not perceive danger the way most young people do. She stated her son did not understand dangers, risks or the consequences.

Mr. Swartzel explained that building a deck on the rear of the house would be easier since there was a door already there but, the risk of their son hurting himself was not a chance he was willing to take.

Mr. Geib asked if there were any other design options that could be considered for a deck on the rear of the house.

Mr. Swartzel replied that he could not come up with a design on the rear of the house that he felt was safe for this son.

After seeing no further speakers, Mr. Geib closed the Public Hearing.

The Board discussed the merits of the case and whether or not to include a condition that would require the porch to be removed when no longer needed.

Mr. Ron Campana made a motion to approve the variance and adopt the resolution without the condition to remove the porch when no longer needed.

Mr. Rodgers seconded the motion.

On a roll call vote, the Board voted to Approve the variance and Adopt the resolution without the condition to remove the screened-in porch when no longer needed (4-0).

2. Case No. BZA-19-0009, 100 Paddock Lane Side Yard Variance Request

Mr. Taylor Orne presented the staff report.

Mr. Orne stated that David and Roberta Sulouff, property owners, have applied for a variance to Section 24-238(a) Yard requirements, of the James City County Zoning Ordinance. The variance request is to reduce the required 15 feet side yard setback to two feet. The variance request is to allow for the construction of an addition for an attached accessory apartment to the existing residence at 100 Paddock Lane. The property is located at 100 Paddock Lane and is currently located in the R-1, Limited Residential Zoning District. The parcel is 0.49 acres in size and contains an existing two story-single-family dwelling with approximately 1,254 square feet in size. The dwelling was constructed in 1958 and the current owner purchased the property in 2019.

Mr. Orne stated the property fronts on John Tyler Highway and is adjacent to a shared driveway known as Paddock Lane. The proposed addition is for an attached accessory apartment that will encroach into the required 15-foot left side yard setback closest to Paddock Lane. In addition, Section 24-32(a) (3) special requirements for accessory apartments, requires that attached accessory apartments meet all setback and yard and height regulations of the main structure.

Mr. Orne stated that Mr. and Mrs. Sulouff are requesting this variance be granted as a reasonable modification on behalf of persons with a disability and are proposing to construct the one-story attached accessory apartment to accommodate her parents and sister. According to the documentation provided, both the mother and sister are disabled. The

proposed location of the accessory apartment is necessary to provide easier access from the parking area to the dwelling using the minimal amount of stairs.

Mr. Orne also stated that Mr. and Mrs. Sulouff only discovered the setback encroachment after applying for the building permit. It was believed that the shared driveway known as Paddock Lane was part of their property. However, after much research and a new survey, this area is actually its own parcel of land. If the shared driveway was part of their property, a variance would not be necessary.

Mr. Orne stated that while the strict application of the terms of the Zoning Ordinance cloes not restrict the utilization of the property, staff does find the request a reasonable modification on behalf of a person with a disability which will provide safety and enjoyment of the property. However, §15.2-2309 of the Code of Virginia states that "any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted."

Mr. Orne stated that should the Board of Zoning Appeals find that the variance request will alleviate a hardship by granting a reasonable modification on behalf of a person with a disability, staff recommends approval of the variance request with the condition that the addition be removed when the person benefited by it is no longer in need of the modification to such property provided by the variance.

Mr. Orne stated that he would be happy to answer any questions.

Mr. Rodgers asked if 100 Paddock Lane was the only property affected by the gravel driveway.

Mr. Orne confirmed.

Mr. Geib asked what the proposed addition was on the right side of the plat.

Ms. Parrish stated that the addition on the right side was not part of the variance request.

Mr. Geib asked what the interior layout of the proposed addition looked like.

Mr. Orne deferred to the applicant.

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

Mrs. Roberta Sulouff stated that they purchased the home this past summer because they needed a home to accommodate her family with easy accessibility and close proximity to herself. She also stated that when designing the addition, it was understood that they owned the driveway. She stated that the intention of the addition is to provide for her parents. After closing on the property and obtaining a survey for the building permit, it was discovered that the driveway did not belong to them. The mortgage company required construction after six months of owning the property but ultimately viewed the driveway ownership situation as good faith and extended the deadline. She further stated that to determine the ownership of the driveway, they hired an attorney and a private investigator. After conducting research, it was determined that Paddock Lane was a leftover portion of the original subdivision from the 1940s. The private investigator was able to find the heirs of the subdivider. She stated that they plan on purchasing the driveway known as Paddock Lane and enter into a shared driveway agreement that was common among other shared driveways in the County. She stated that since obtaining the driveway will take time to do, the variance request was the last

option for them. Mrs. Sulouff acknowledged that the apartment will be close to Paddock Lane. She also emphasized that she has spoken to some of the neighbors and they do not have any objections to it. She also acknowledged that there was an objection letter that was received.

Mr. Geib asked if the property was zoned for the attached two-family dwelling.

Ms. Parrish explained that the size of the proposed addition met the Zoning Ordinance requirements for attached accessory apartments.

Mrs. Sulouff stated that the addition in question was a very small representation of the entire square footage. She also stated that an interior door was considered but it was determined that there should be a few boundaries.

Mr. Geib asked about the steps shown on the plans.

Mrs. Sulouff stated that the plans only show the topography of the front of the residence so the drawings do not accurately show the topography.

Mr. Campana asked if there would be a ramp.

Ms. Sulouff answered no.

Mr. Geib stated that he has commonly seen architects not accurately display the topography on drawings.

Mrs. Sulouff agreed and stated the drawings showed the entire house as being on a hill but the backyard is flat.

Mr. Campana asked what the details of the second floor were.

Mrs. Sulouff stated it was unfinished attic space and the proposed addition was just one story.

Mr. Geib asked if they were the only users of the driveway.

Mrs. Sulouff answered that the neighbors behind them also use the driveway but the third property with access has gated it and does not use it.

Mr. Rodgers asked how much space was between the house and the driveway.

Mrs. Sulouff answered three to four feet.

After seeing no further speakers, Mr. Geib closed the Public Hearing.

The Board discussed the merits of the case including the close proximity of the addition to the driveway.

Mr. Geib stated he did not support the condition to remove the addition when no longer needed.

Mr. Rodgers made a motion to approve the variance and adopt the resolution without the condition to remove the addition when no longer needed.

Mr. Geib seconded the motion.

On a roll call vote, the Board voted to Approve the variance and Adopt the resolution without the condition to remove the addition when no longer needed (4-0).

3. Board of Zoning Appeals 2020 Meeting Schedule

Ms. Parrish presented the proposed 2020 meeting schedule.

The Board discussed the possibility of conflicts with the July 2, 2020 meeting due to the July 4th holiday weekend. It was agreed to leave the meeting as scheduled.

On a voice vote, the Board voted to Adopt the 2020 meeting schedule as presented (4-0).

4. Board of Zoning Appeals 2019 Draft Annual Report

Ms. Parrish presented the draft 2019 Board of Zoning Appeals Annual Report for the Board of Supervisors.

On a voice vote, the Board voted to Approve the 2019 Board of Zoning Appeals Annual Report as presented (4-0).

E. MINUTES

1. October 3, 2019 Meeting Minutes

Mr. Geib asked if there ware any corrections to the October 3, 2019 meeting minutes.

After hearing none, Mr. Geib motioned to approve the minutes of the October 3, 2019 as presented.

Mr. Campana seconded the motion.

On a voice vote, the motion was Approved 4-0.

F. MATTERS OF SPECIAL PRIVILEGE

1. Election of Officers for 2020

After a brief discussion, Mr. Otey motioned to Conduct the Election and nominated Mr. Rodgers for Chairman for the 2020 calendar year.

Mr. Geib seconded the motion.

On a voice vote, the Eoard elected Mr. Rodgers as Chairman for the 2020 calendar year (4-0).

Mr. Campana nominated Mr. Jakobowski as Vice Chairman for the 2020 calendar year.

Mr. Otey seconded the motion.

On a voice vote, the Board elected Mr. Jakobowski as Vice Chairman for the 2020 calendar year (4-0).

G. AUJOURNMENT

Seeing and hearing no further business, Mr. Geib adjourned the meeting at 6:06 p.m.

Christy Parrish, Secretary Stephen Redgers, Charman

RESOLUTION

CASE NO. BZA-19-0008. GRANTING A VARIANCE ON JAMES CITY COUNTY

REAL ESTATE TAX MAP PARCEL NO. 1331000003 - 116 FAIRMOUNT DRIVE

- WHEREAS, Mr. Daniel Swartzel, property owner, has appeared before the Board of Zoning Appeals of James City County (the "Board") on February 6, 2020, to request a variance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 1331000003 and further identified as 116 Fairmont Drive (the "Property") as set forth in the application BZA-19-0008; 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 24-238(b), Yard requirements, to reduce the minimum rear yard setback from 35 feet to 22 feet to allow for the construction of a screened-in porch with no further encroachment, as shown on the attached Site Plan identified as Attachment No. 1 in the memorandum which is attached hereto, made part hereof, and incorporated into this resolution. This property is currently zoned R-1, Limited Residential, and can further be identified as James City County Real Estate Tax Map Parcel No. 1331000003; and
- WHEREAS, Mr. Swartzel is requesting this variance be granted as a reasonable modification on behalf of a person with a disability.
- NOW, THEREFORE, the Board of Zoning Appeals of James City County, Virginia, by a majority vote of its members finds that:

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- 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 or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a Robert Street in disability; 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; and
 - 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; and
 - 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; and

- 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 24-238(b), Yard requirements, to reduce the minimum rear yard setback from 35 feet to 22 feet to allow for the construction of a screened-in porch with no further encroachment, as shown on the attached Site Plan identified as Attachment No. 1 in the memorandum which is attached hereto, made part hereof, and incorporated into this resolution. This property is currently zoned R-1, Limited Residential, and can further be identified as James City County Real Estate Tax Map Parcel No. 1331000003.

William Geib

Chairman, Board of Zoning Appeals

ATTEST:	
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Christy Parrish Secretary to the Board

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2~~~	JAKOBOWSKI OTEY	X			
	RODGERS	X			
	CAMPANA, JR. GEIB	$-\frac{1}{2}$			
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Adopted by the Board of Zoning Appeals of James City County, Virginia, this 6th day of February, 2020.

BZA19-8FairmtDr-res

Attachment #1

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62A-17-0008

RESOLUTION

CASE NO. BZA-19-0009. GRANTING A VARIANCE ON JAMES CITY COUNTY

REAL ESTATE TAX MAP PARCEL NO. 4720100006.

- WHEREAS, David and Roberta Sulouff, property owners, have appeared before the B oard of Zoning Appeals of James City County (the "Board") on February 6, 2020 to request a variance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 4720100006 and further identified as 100 Paddock Lane (the "Property") as set forth in the application BZA-19-0009; 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 24-238(a), Yard Requirements, to reduce the minimum side yard setback from 15' to 2' to allow for the construction of an addition for an attached accessory with no further encroachment, as shown on the attached Site Plan identified as Attachment #1 in the memorandum which is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned R-1, Limited Residential, and can further be identified as James City County Real Estate Tax Map Parcel No. 4720100006.

David and Roberta Sulouff are requesting this variance be granted as a reasonable modification on behalf of persons with a disability.

- NOW, THEREFORE, 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 or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability; 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 othe rwise 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 24-238(a), Yard Requirements, to reduce the minimum side yard setback from 15' to 2' to allow for the construction of an addition for an attached accessory apartment with no further encroachment, as shown on the attached Site Plan identified as Attachment #1 in the memorandum which is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned R-1, Limited Residential, and can further be identified as James City County Real Estate Tax Map Parcel No. 4720100006.

William Geib, Chairman, Board of Zoning Appeals

	VOTES			
ATTEST:		<u>AYE</u>	<u>NAY</u>	ABSTAIN
Att open	RODGERS OTEY - JACOBOWSKI	X		
Christy Farrish Secretary to the Board	GEIB CAMPANA	X		

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 6th day of February, 2020.

BZA-19-0009-100PaddockLane-res

