

**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 5, 2020**  
**5:00 PM**

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**A. CALL TO ORDER**

Mr. Rodgers called the meeting to order.

**B. ROLL CALL**

Ms. Christy Parrish called the roll:

Present:

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

Staff Present:

Ms. Christy Parrish, Zoning Administrator  
Mr. Taylor Orne, Zoning Officer  
Ms. Liz Parman, Assistant County Attorney

**C. OLD BUSINESS**

None

**D. NEW BUSINESS**

1. Case No. BZA-20-0013. 4595 Ware Creek Road

Mr. Taylor Orne presented the staff report.

Mr. Orne stated that Mr. Jeremy Brady, on behalf of Gerald and Sharon Lewis, had applied for a variance to Section 24-216(b), Minimum lot width and frontage to reduce the required lot width of 200 feet at the setback line to 185 feet to allow for the construction of a single-family dwelling. He stated that the purpose of the variance was to position the proposed single-family dwelling further outside of the Resource Protection Area (RPA).

Mr. Orne stated that the desired location of the proposed dwelling would be approximately 6.5 feet in front of the 100 foot RPA buffer. He stated that this location would not meet the required 200 feet minimum lot width at the setback for lots of three acres or more but less than five acres.

Mr. Orne stated that staff consulted with the James City County Stormwater and Resource Protection Division (SRP) regarding the variance request and confirmed that the 100 foot RPA buffer area as shown on Exhibit A was correct. He stated that SRP also stated that the applicant could request administrative approval to construct the dwelling within the 50 foot RPA buffer area which would allow the dwelling to comply with the required minimum lot width at the setback of 200 feet.

Mr. Orme 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. He stated that staff was unable to support the variance request as the new dwelling could be constructed on the property and comply with the minimum lot width requirement of 200 feet at the setback. He stated that staff recognized that the dwelling would be located in the 50 foot RPA buffer and would require an additional administrative approval. He stated that staff did not find a hardship due to a physical condition related to the property and recommended denial of this variance request as it does not appear to meet the criteria defined in Virginia Code § 15.2-2201.

Mr. Rodgers asked what the proximity of the proposed dwelling would be to the dwelling next door.

Ms. Christy Parrish showed the image of the site plan.

Mr. Rodgers asked if the property was wet and contained a swamp.

Mr. Orme deferred the question to the applicant.

Mr. William Geib asked about the buildable area in the RPA.

Ms. Parrish stated that the recorded plat showed the building setbacks and a stream, but not the RPA at the time it was recorded. She explained that construction of a dwelling in the 50 foot RPA buffer was allowed with administrative approval.

Mr. Geib asked if the County would require the applicant to replant the disturbed area in the RPA.

Ms. Parrish stated that replanting may be required, but that would come from SRP.

Mr. Geib asked if there were advantages to moving the house out of the RPA.

Ms. Parrish confirmed that there were environmental advantages, but Zoning was required to evaluate the request in accordance with the variance criteria in the Virginia State Code.

Mr. Geib asked if the specific issue was with the 200 foot minimum lot width requirement.

Mr. Orme confirmed yes.

Mr. Mark Jakobowski asked if the survey showed the 50 foot RPA buffer.

Mr. Orme confirmed yes.

Mr. Jakobowski asked if the house was moved back, would it be in the 100' RPA buffer but out of the 50' RPA.

Mr. Orme confirmed yes,

Mr. Jakobowski discussed the topography of the lot. He stated that trees would have to be removed to construct the home which would require some type of mitigation, but he did not necessarily see a hardship in this request.

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

Mr. Jeremy Brady presented a letter from one of the adjacent property owners. Mr. Brady

stated that the lot sloped to the rear of the property and they are trying to stay as far away from the RPA as possible. He also stated that if the house were pushed back, the construction machinery would have to be in the RPA. He mentioned that the steep slope was another reason they wanted to locate the house further up on the lot.

Mr. David Otey Jr., asked if he had any contact with SRP about this project.

Mr. Brady stated that he had been in contact with staff.

Mr. Orne clarified that the applicant had only been in contact with Zoning staff.

Mr. Geib asked if the proposed dwelling would be served by well and septic.

Mr. Brady confirmed yes.

Mr. Geib asked if the well was already shown on the survey and if the septic field was located away from the well.

Mr. Brady confirmed yes.

Mr. Rodgers asked what was the structure that appeared to be on the property line on the adjacent property.

Ms. Parrish stated that it was an existing barn.

Mr. Rodgers asked if the barn was in a setback.

Ms. Parrish stated it appeared to be, but it had been there for a long time.

Mr. Geib asked what the front setback was.

Ms. Parrish stated that the front setback was at least 50 feet - 75 feet from the street right-of-way; however the lot must achieve the minimum lot width of 200 feet first.

Mr. Geib stated that the issue was the 200 foot minimum lot width because of the odd shape of the lot and the varying sizes of the surrounding properties.

Ms. Parrish stated that if the RPA did not exist on this property, a variance would not be needed.

Mr. Geib asked where the creek was on the property.

Mr. Brady stated that the creek started on the left side at the rear of the property.

Mr. Geib asked if the creek was a high volume creek.

Mr. Brady stated that there was water in the creek but it was a small flow.

Mr. Geib asked what the labeled reserved area was on the survey.

Ms. Parrish stated that it was the reserve drainfield.

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

Mr. Orne stated that he was contacted by one adjacent property owner who expressed

concerns about the side setback and the possibility of future complaints regarding the smell of horse manure. He stated he sent a copy of the site plan to the adjacent property owner but had not heard anything further from them.

Mr. Rodgers asked how far back would the house need to go to be in compliance.

Mr. Orne stated that it would be about 10 feet to 15 feet further back.

Mr. Otey asked how far back was the front right corner to the back left corner of the house.

Ms. Parrish deferred to the applicant.

Mr. Rodgers reopened the Public Hearing.

Mr. Brady stated that there was about 30 feet between the front left corner and back right corner of the proposed dwelling.

Mr. Jakobowski asked about the width of the house.

Mr. Brady stated that the length of the house was about 60 feet and the width of the house was about 30 feet to 35 feet.

Mr. Otey asked if it would take about 30 feet to move the house behind the 200 foot minimum lot width line.

Mr. Brady confirmed yes.

Mr. Jakobowski asked if it was feasible to rotate the house clockwise.

Mr. Brady stated that the design of the house would make it difficult to rotate due to the topography of the property.

Mr. Ron Campana Jr., asked if it was about a 5 foot drop in topography.

Mr. Brady confirmed yes and stated that was also a reason why the house was moved over to the right side of the property.

Mr. Geib asked what caused this situation.

Mr. Brady stated that several factors delayed this project and when it was resumed they discovered the RPA situation on the property.

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

The Board discussed the merits of the case including the topography and the buildability of the other portions of the property.

Mr. Rodgers stated that it seemed that the request was to keep the proposed dwelling totally out of the RPA and protect the rest of the property. He further stated that building in the RPA should be a last resort and the request was a reasonable compromise in order to stay out of the RPA entirely.

The Board agreed with Mr. Rodgers' statement.

Mr. Campana made a motion to approve the variance request and Adopt the resolution.

Mr. Geib seconded the motion.

On a roll call vote, the Board voted to Approve the variance and Adopt the resolution (5-0).

**E. MINUTES**

1. September 3, 2020 Meeting Minutes

Mr. Rodgers asked if there were any corrections to the September 3, 2020, meeting minutes.

Hearing no corrections, Mr. Geib made a motion to Approve the minutes for the September 3, 2020, meeting as presented.

On a voice vote, the motion was Approved 5-0.

**F. MATTERS OF SPECIAL PRIVILEGE**

Ms. Parrish stated that there were no matters of special privilege.

**G. ADJOURNMENT**

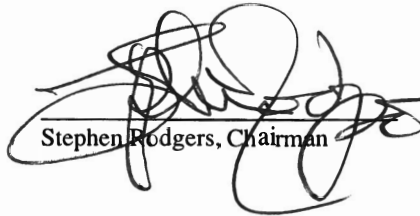
Seeing and hearing no further business, Mr. Rodgers asked for a motion to Adjourn the meeting.

Mr. Geib motioned to Adjourn the meeting.

Mr. Jakobowski seconded the motion.

On a voice vote, the motion was Approved 5-0.

Mr. Rodgers adjourned the meeting at 5:50 p.m.



Stephen Rodgers, Chairman



Christy Parrish, Secretary

## RESOLUTION

CASE NO. BZA-20-0013. GRANTING A VARIANCE ON JAMES CITY COUNTY

REAL ESTATE TAX MAP PARCEL NO. 1410100016A.

WHEREAS, Jeremy Brady, on behalf of Gerald and Sharon Lewis, has appeared before the Board of Zoning Appeals of James City County (the "Board") on November 5, 2020 to request a variance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 1410100016A and further identified as 4595 Ware Creek Road (the "Property") as set forth in the application BZA-20-0013; 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 24-216(b), Minimum lot width and frontage, to reduce the required lot width of 200' at the setback line to 185' to allow for the construction of a single-family dwelling further outside of the Resource Protection Area, as shown on the attached Site Plan identified as Exhibit A in the memorandum which 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. 1410100016A.

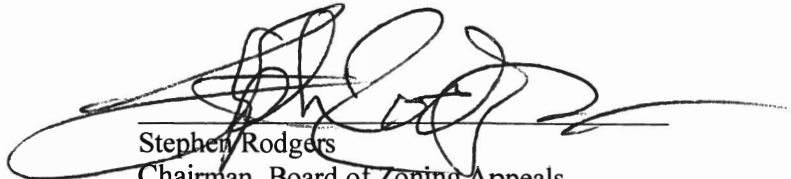
NOW, THEREFORE, the Board of Zoning Appeals of James City County, Virginia, by a majority vote of its members finds that:

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 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 24-216(b), Minimum lot width and frontage, to reduce the required lot width of 200' at the setback line to 185' to allow for the construction of a single-family dwelling further outside of the Resource Protection Area, as shown on the attached Site Plan identified as Exhibit A in the memorandum which 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. 1410100016A.



Stephen Rodgers  
Chairman, Board of Zoning Appeals

ATTEST:



Christy Parrish  
Secretary to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
RODGERS	<input checked="" type="checkbox"/>	___	___
OTEY	<input checked="" type="checkbox"/>	___	___
JAKOBOWSKI	<input checked="" type="checkbox"/>	___	___
GEIB	<input checked="" type="checkbox"/>	___	___
CAMPANA	<input checked="" type="checkbox"/>	___	___

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 5<sup>th</sup> day of November, 2020.

**GENERAL NOTES**

- BOUNDARY, EASEMENTS AND SETBACK INFORMATION AS SHOWN WAS TAKEN FROM RECORD PLAT. TOPOGRAPHY AS SHOWN IS BASED UPON A CURRENT FIELD SURVEY. NO UNDERGROUND UTILITIES HAVE BEEN LOCATED WITH THE EXCEPTION OF VISIBLE STRUCTURES WHICH MAY BE SHOWN. CONTRACTOR TO CONTACT "MISS UTILITY" PRIOR TO ANY LAND DISTURBANCE.
- HOUSE DIMENSIONS ARE BASED UPON INFORMATION SUPPLIED BY THE OWNER AND/OR BUILDER. CONTRACTOR SHALL VERIFY ALL DIMENSIONS, ALIGNMENTS AND PROVISIONS SHOWN HEREON PRIOR TO BEGINNING CONSTRUCTION.
- ALL TREES MAY BE REMOVED WITHIN THE CLEARING LIMITS SHOWN HEREON.
- TREES LARGER THAN 3" IN DIAMETER AND OUTSIDE THE CLEARING LIMITS **WILL NOT BE REMOVED**.
- SILT FENCE TO BE PROVIDED ON DOWNSLOPE SIDE OF ALL DISTURBED AREAS.
- CONTRACTOR TO PROVIDE STANDARD V.O.D.T. COARSE AGGREGATE #1 STONE CONSTRUCTION ENTRANCE AND 15" RCP UNLESS SHOWN OTHERWISE.
- THE LICENSED SURVEYOR SHOWN HEREON **SHALL NOT BE CONSIDERED AS THE "RESPONSIBLE LAND DISTURBER"**.

I HEREBY CERTIFY THAT THIS PLAT IS BASED UPON A CURRENT FIELD SURVEY. ALL ELEVATIONS ARE RELATIVE TO THE BENCHMARK SHOWN.

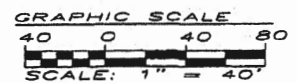
A.D. SEBERT, L.S.

**BUILDING SETBACK LIMITS**

- FRONT SETBACK: 30' FROM THE FRONT LOT LINE
- REAR SETBACK: 30' FROM THE REAR LOT LINE
- SIDE SETBACKS: 10' FROM THE SIDE LOT LINES.

**NOTE:**  
CONTRACTOR TO VERIFY ALL BUILDING DIMENSIONS PRIOR TO BEGINNING CONSTRUCTION.  
(DIMENSIONS ARE SHOWN TO ????) LINE)

STREET ADDRESS: 4595 WARE CREEK ROAD  
TAX ID: 1410100016A  
ZONE: A1-GENERAL AGRICULTURE



**SEBERT SURVEYING & LAYOUT, LLC**

177 BARLOW ROAD  
WILLIAMSBURG, VA  
PHONE 784-2113  
asebert@sebertsurveying.com

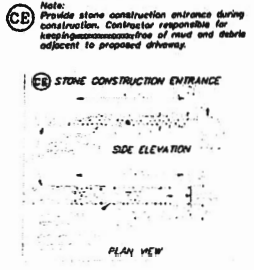
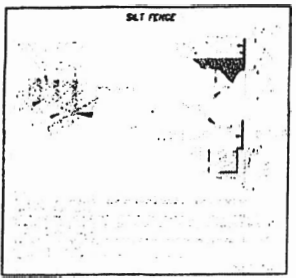
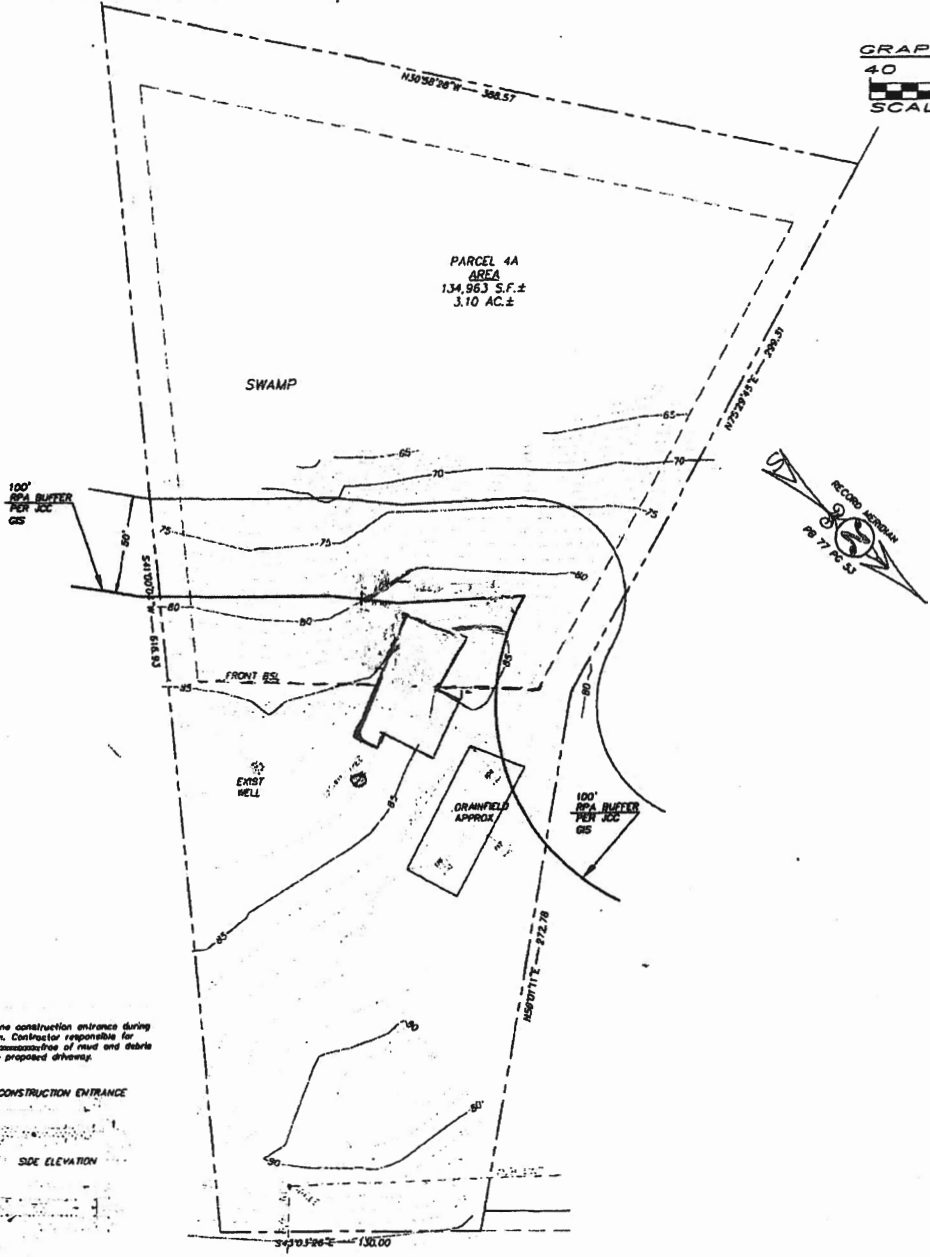
**LEGEND:**

R/F	NOW OR FORMERLY
IRF	IRON ROD FOUND
IRP	IRON PIPE FOUND
IRS	IRON ROD SET
BSL	BUILDING SETBACK LINE
R/W	RIGHT-OF-WAY
SMH	SANITARY MANHOLE
SCD	SANITARY CLEANOUT
WM	WATER METER
WV	WATER VALVE
X 98.2	EXISTING SPOT ELEVATION
• 98.2	PROPOSED SPOT ELEVATION

RESIDENTIAL SITE PLAN  
PARCEL 4A, ROULAND ESTATE  
OWNED BY:  
GERALD E. & SHARON A. LEWIS  
STONEHOUSE DISTRICT JAMES CITY COUNTY VIRGINIA

**REVISIONS**

DESIGNED BY:	ADS
DATE:	XXXXXXX
SCALE:	1" = 40'
PROJECT NO.	J141-2
DRAWING NO.	1 OF 1



DATE PLOTTED: 12/22/2023 10:51 AM EST