

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
January 7, 2021
5:00 PM

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
Ms. Liz Parman, Assistant County Attorney
Ms. Beth Klapper, Community Development Assistant

C. OLD BUSINESS

None

D. NEW BUSINESS

Mr. Rodgers presented the mission statement of the Board of Zoning Appeals (BZA) for those present in the audience. He stated that the BZA was 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 was 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 was not shared generally by other properties, and the variance was not contrary to the purpose of the Ordinance. Variances are not granted as a special privilege or convenience. If the variance was 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-20-0014. 7218 Merrimac Trail - Zoning Administrator's Determination Appeal

Ms. Christy Parrish, Zoning Administrator, stated that Dr. William S. Lodson, Jr., was

appealing the Zoning Administrator's decision that a mural painted on the outside wall of the existing building on property located at 7218, 7218-A, 7218-B, and 7218-C Merrimac Trail is a sign regulated by the James City County Zoning Ordinance. Ms. Parrish further stated that the property was currently located in the B-1, General Business District.

Ms. Parrish stated that this appeal was in accordance with Section 15.2-2311 of the Code of Virginia.

Ms. Parrish stated that on November 12, 2020, Dr. Dodson submitted a sign permit request for a wall mural to be located on a building on the property. Ms. Parrish stated that the request proposed a 600-square-foot non-illuminated mural to be painted on the outside wall of the existing building facing the parking lot and adjacent vacant property located at 7214 Merrimac Trail.

Ms. Parrish stated that Section 24-67 of the Ordinance defines a sign as:

“Sign - Any structure, display, device, or other object or thing, or part thereof, visible from any public street or right-of-way, any area open to use by the general public, or any navigable body of water, including, but not limited to, any word, letter, series of words or letters, designs, symbols, fixtures, colors, illumination, painting, mural, logo, insignia, emblem, service mark, or other graphic or pictorial representation, that: (i) identifies or advertises, or directs or attracts attention to, any institution, organization, business, product, merchandise, service, event, business, or establishment; or (ii) suggests the identity or nature of any business or establishment; or (iii) invites or proposes a commercial transaction; or (iv) communicates a message of a noncommercial nature. For clarification, examples of items which typically do not satisfy the necessary elements of this definition and would not be considered signs include, but are not limited to, architectural elements incorporated into the style or function of a building, numerals signifying a property address, notifications of a “private residence,” nonilluminated postings less than four square feet in size on private property in areas zoned agricultural, corner stones (or foundation stones) and flags of any nation, state, or municipality.”

Ms. Parrish stated that staff determined that the proposed 600-square-foot mural would be visible from a public right-of-way and adjacent properties and will therefore attract attention to the establishment. Ms. Parrish further stated that based on the above sign definition, the mural was considered a sign and was subject to the regulations set forth in the Ordinance.

Ms. Parrish stated that in addition, staff determined that the proposed mural was considered a building face sign as defined in Section 24-67 of the Ordinance as “any sign attached to and erected parallel to, or painted on the face of the outside wall of a building...” Ms. Parrish stated that Section 24-71 of the Ordinance limited the area devoted to building face signs to 60 square feet or smaller based on varying situations. Ms. Parrish stated that staff was unable to approve the 600-square-foot mural as submitted because the size exceeds what was permitted in the Ordinance for building face signs.

Ms. Parrish stated that a letter was issued on November 24, 2020, that denied the request on the basis that the size of the mural exceeded what the Ordinance allowed for building face signs.

Ms. Parrish stated that staff recommended that the Board of Zoning Appeals uphold the Zoning Administrator's interpretation regarding this matter and find that the proposed mural was a sign regulated by the James City County Zoning Ordinance.

Ms. Parrish stated that it is important to mention that the United States Supreme Court issued a ruling, in *Keed v. Town of Gilbert*, that localities may not regulate signage based on the sign's content. Ms. Parrish stated that as noted article by *Virginia Town and City* (the magazine of

the Virginia Municipal League) that was provided in the Agenda packet, if a Sign Ordinance organizes and regulates signs based on their message or content, then those portions of the Ordinance will be subject to strict scrutiny; in other words, a locality may not regulate specific signs differently, based on their messages or content; that such a provision and allowance would be unconstitutional. Ms. Parrish stated that on January 10, 2017, the James City County Board of Supervisors approved revisions to the Code to ensure the Ordinance was content-neutral.

Ms. Parrish stated that should the Board of Zoning Appeals uphold the decision, the applicant could (1 request the Board of Supervisors amend the Ordinance to permit murals, (2 apply for a variance for a larger sign, or (3 shield the mural from the right-of-way and adjacent properties.

Mr. Ron Campana inquired if there were other similar signs in the County.

Ms. Parrish stated that she only knew of one.

Mr. Campana inquired if the property was within the Edge District.

Ms. Parrish stated that she was not certain that it fell within those boundaries, but that it was certainly in proximity.

Dr. William Dodson stated that the property was within the boundaries of the Edge District.

Mr. Rodgers opened the Public Hearing.

Dr. Dodson made a presentation to the Board on the proposed mural and his rationale for appealing the Zoning Administrator's decision.

Dr. Dodson stated that six years ago, when the idea for the project came forward, he studied the existing Sign Ordinance and designed the project to satisfy the existing Ordinance requirements.

Dr. Dodson further stated that he wanted to make an important contribution to the community through this mural.

Dr. Dodson stated that he was surprised to find that the Ordinance had been amended to include murals under the definition of a sign. Dr. Dodson further stated that this interpretation seems to be unique to James City County since the majority of other localities in Hampton Roads permit murals or community art.

Dr. Dodson provided the Board with examples of community art in other localities, as well as examples of the artist's other projects.

Dr. Dodson stated that the existing free standing sign was limited in visibility due to the restrictions on its location and adjacent plantings.

Dr. Dodson noted that once the adjacent property was built according to the Site Plan, the screening will severely limit visibility of the building façade that would be covered by the mural.

Dr. Dodson stated that the mural would recognize the Powhatan People and include the image of Chief O.T. Custalow with the hope of tying into a federal tribal recognition application. Dr. Dodson further stated that the artist, Sam Welty, hopes to tie into a nonprofit community art effort.

Dr. Dodson noted that the area where the property was located was being re-branded as an entertainment district with food, beverage, art, and music.

Dr. Dodson stated that his understanding was that there were four avenues to resolve the issue: approve an exception due to hardship; approve as community art; refer the matter to the Board of Supervisors to amend County Code; or deny the application. Dr. Dodson requested that if the Board denied the application, it provide feedback on which other avenue he should pursue to move forward with the mural.

Dr. Dodson thanked the Board for its time and stated that he would be happy to answer any questions.

Mr. Rodgers closed the Public Hearing.

Mr. Campana commented that he did not think the BZA should offer advice on next steps. Mr. Campana further stated that based on the Ordinance, the proposed mural does meet the definition of a sign.

Mr. David Otey stated that the BZA has limited authority. Mr. Otey stated that in this instance, the Board can only determine if the Zoning Administrator's determination should be upheld or overturned.

Mr. Rodgers stated that the Ordinance was very specific by calling out murals in the definition. Mr. Rodgers further stated that community art was not addressed in the Ordinance.

Mr. Jakobowski stated that the mural would draw attention to the building which meets the criteria in the definition.

Mr. Geib stated that in his experience, this situation did not meet the criteria to qualify for a hardship or variance. Mr. Geib further noted that the BZA was not a legislative body and has no purview to amend the Ordinance. Mr. Geib stated that the Board of Supervisors would be the proper avenue to have this issue addressed.

Ms. Parrish stated that the Board of Supervisors could decide that murals and community art should be addressed in the Ordinance. Ms. Parrish stated that the Board of Supervisors could pass an Initiating Resolution and refer the matter to the Policy Committee to develop the draft Ordinance amendment.

Mr. Jakobowski questioned whether it would be legal for the Board to recommend a potential action.

Ms. Liz Parman, Assistant County Attorney, stated that the purview of the Board was to determine if the Zoning Administrator interpreted the Ordinance correctly.

At the request of the applicant, Mr. Rodgers re-opened the Public Hearing.

Dr. Dodson stated that he was considering either requesting a variance or approaching the Board of Supervisors regarding a change to the Zoning Ordinance.

Ms. Parrish provided an overview of the timeline for amending an Ordinance.

Dr. Dodson stated that based on the plans for the distillery, an Ordinance amendment would take too long. Dr. Dodson further stated that he had hoped to leave something behind to benefit the community when the distillery relocated.

Dr. Dodson stated that his other alternative was to request a variance. Dr. Dodson inquired about what was needed to prove hardship.

Mr. Geib stated that Dr. Dodson should work with staff to review the purview of the BZA and the criteria to prove hardship.

Mr. Rodgers stated that he did not believe hardship would apply in this instance.

Mr. Campana stated that he could see the merit in the idea of the mural; however, the Ordinance was very strict in its regulations. Mr. Campana stated that it might be worth working with Economic Development regarding performance standards in the Edge District.

Mr. Sam Welty addressed the BZA regarding the mural.

Mr. Rodgers closed the Public Hearing.

Mr. Geib made a motion to Adopt the Resolution upholding the Zoning Administrator's decision.

Mr. Otey seconded the motion.

On a roll call vote, the BZA voted to Adopt the Resolution to uphold the Zoning Administrator's decision. (5-0)

2. Board of Zoning Appeals 2021 Meeting Schedule

The BZA discussed the proposed Meeting Schedule for 2021.

Mr. Rodgers made a motion to Adopt the 2021 Meeting Schedule.

On a voice vote the BZA voted unanimously to Adopt the 2021 Meeting Schedule.

3. Board of Zoning Appeals 2020 Draft Annual Report

Ms. Parrish presented the Draft 2020 Annual Report to be included in the 2020 Planning Commission Annual Report to be presented to the Board of Supervisors.

Mr. Otey made a motion to Approve the 2020 Draft Annual Report.

On a voice vote, the BZA voted unanimously to Approve the 2020 Draft Annual Report.

E. MINUTES

1. November 5, 2020 Meeting Minutes

Mr. Otey made a motion to Approve the November 5, 2020 Meeting Minutes.

On a voice vote the BZA voted unanimously to Approve the November 5, 2020 Meeting Minutes.

F. MATTERS OF SPECIAL PRIVILEGE

1. Election of Officers for 2021

The BZA discussed the matter of Officers for 2021.

Mr. Otey made a motion to Elect Mr. Rodgers as Chair and Mr. Jakobowski as Vice Chair.

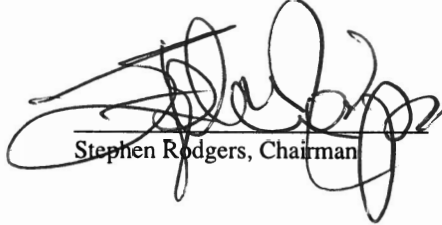
On a voice vote, the BZA unanimously Elected Mr. Rodgers as Chair and Mr. Jakobowski as

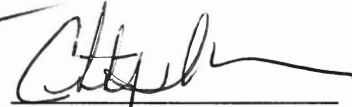
Vice Chair.

G. ADJOURNMENT

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

On a voice vote, the BZA unanimously voted to Adjourn the meeting.


Stephen Rodgers, Chairman


Christy Parfisch, Secretary

RESOLUTION

CASE NO. BZA-20-0014,

7218 MERRIMAC TRAIL - ZONING ADMINISTRATOR'S DETERMINATION APPEAL

WHEREAS, Mr. William S. Dodson, Jr., DMD (the "Appellant"), has appealed the Zoning Administrator's written determination on November 24, 2020 that a mural painted on the outside wall of the existing building on property located at 7218, 7218-A, 7218-B, and 7218-C Merrimac Trail (the "Property") is a sign regulated by the James City County Zoning Ordinance. The Property is currently located in the B-1, General Business and can be further identified as James City County Real Estate Tax Map Nos. 4141100001, 4141100001A, 4141100001B, and 4141100001C; and

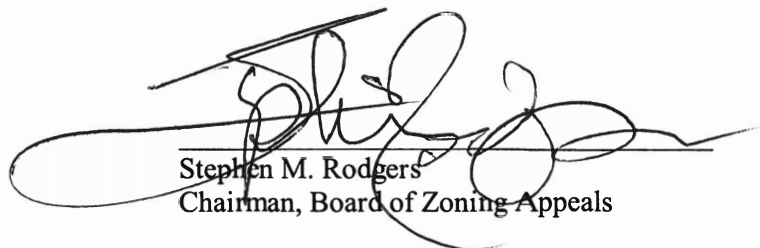
WHEREAS, the Board of Zoning Appeals at its meetings on January 7, 2021 held a public hearing and considered the statements made by the public and also reviewed and considered the materials and testimony offered by the Zoning Administrator and the Appellant; and

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 November 24, 2020 that a mural painted on the outside wall of the existing building on property located at 7218, 7218-A, 7218-B, and 7218-C Merrimac Trail is a sign regulated by the James City County Zoning Ordinance and in consideration of such decision, the Board of Zoning Appeals makes the following specific findings of fact:

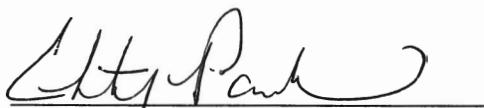
1. Section 15.2-2309 of the Code of Virginia, 1950, as amended (the "Virginia Code"), authorizes the Board of Zoning Appeals to hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of 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 a mural painted on the outside wall of the existing building on the Property is a sign as defined in Chapter 24, Division 3 of the James City County Zoning Ordinance.

5. The Board of Zoning Appeals finds that a mural painted on the outside wall of the existing building on the Property that is visible from a public right-of-way and adjacent properties will attract attention to the establishment on the Property.
6. The Board of Zoning Appeals finds a mural painted on the outside wall of the existing building on the Property is a sign regulated by the James City County Zoning Ordinance.



Stephen M. Rodgers
Chairman, Board of Zoning Appeals

ATTEST:



Christy Parrish
Secretary to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
RODGERS	✓	—	—
OTEY	✓	—	—
JACOBOWSKI	✓	—	—
GEIB	✓	—	—
CAMPANA	✓	—	—

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 7th day of January 2021.

BZA20-14AdmDetUp-res