

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
August 3, 2023
5:00 PM

A. CALL TO ORDER

Mr. Mark Jakobowski called the meeting to order at 5:00 p.m.

B. ROLL CALL

Ms. Christy Parrish called the roll:

Present:

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

Absent:

Mr. Andrew Dean

Staff Present:

Ms. Christy Parrish, Zoning Administrator
Mr. Taylor Orne, Senior Zoning Officer

C. OLD BUSINESS

None.

D. NEW BUSINESS

Mr. Jakobowski 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-23-0002. 196 The Maine

Mr. Orne, Senior Zoning Officer, stated that Ms. Debra Hill and Ms. Camilla Buchanan had

applied for a variance to Section 24-238(a), Yard requirements, to reduce the required side setback from 15 feet to 10.5 feet on the left side for the construction of a first-floor master bedroom addition. He stated that the property was currently zoned R-1, Limited Residential, and was located in the First Colony neighborhood.

Mr. Orne stated that the property owners were requesting the variance be granted as a reasonable modification on behalf of a person with a disability. He stated that the proposed location of the addition was necessary to provide easier access to a bedroom and bathroom while also providing enough room for the potential use of a wheelchair.

Mr. Orne stated that the addition was proposed for the left side of the house, rather than the front or rear of the house, due to the current configuration of the house. He stated that constructing the addition on the front or rear of the house would require structural work as well as completely removing existing features in the home. He stated that according to the property owners and their contractor, in order to construct the addition on the front or rear of the house, the entire left side of the house would have to be reconfigured to accommodate the proposed addition.

Mr. Orne stated that Virginia Code § 15.2-2309 states, "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 while the strict application of the terms of the Zoning Ordinance does not restrict the utilization of the property, staff did find the request a reasonable modification on behalf of a person with a disability which would provide safety and enjoyment of the property. He stated that should the BZA find that the variance request would alleviate a hardship by granting a reasonable modification on behalf of a person with a disability, staff recommended approval of the variance request.

Mr. Campana asked if staff had received any inquiries about this request.

Mr. Orne stated that he had not received any.

Mr. Geib asked if staff knew what the distance of the neighboring house was to the property line.

Mr. Orne stated that he did not know that distance but that the property was zoned R-1, and any expansion would have to meet the 15-foot setback.

Mr. Geib discussed that as he drove through the neighborhood, he observed various structures and fencing that did not appear to comply with the required setbacks. He asked if the County had historically approved reduced setbacks for this area.

Mr. Orne stated that the Zoning Ordinance permits accessory structures such as a garage to be less than 15 feet from the side property line when located at least 10 feet from the dwelling. He stated that building permits are reviewed to ensure new structures comply with the setback requirements.

Ms. Parrish stated that there are various reasons why an existing structure could be closer to a property line. She stated that a foundation survey or an as-built survey are now required when any structure will be within three feet of the required setback. She also stated that First Colony was an older neighborhood and setback requirements have changed over time.

Mr. Otey asked if requiring a survey was a new procedure.

Ms. Parrish stated that the procedure had been in place as long as she had been in Zoning.

Mr. Otey stated that he was fairly certain that some of the houses in this neighborhood were built prior to the adoption of the Zoning Ordinance. He also stated that prior to the foundation survey procedure, approvals were based on a plan submitted to the County, and many years later it was discovered it was not constructed in the correct location in accordance with the approved plan.

Mr. Jakobowski stated that he agreed with Mr. Otey that a large portion of the houses were constructed prior to the adoption of the Zoning Ordinance.

Mr. Jakobowski opened the Public Hearing.

Ms. Debra Hill, property owner, stated she can confirm that the existing houses are not all constructed 15 feet from the property lines. She stated that they constructed their house in 1986 and their builder told them they had to be 10 feet from their neighbor. She stated she was also surprised to see that her neighbor's house appears to be less than 10 feet from the side property line.

Seeing no further questions or comments, Mr. Jakobowski closed the Public Hearing.

Mr. Geib stated that he was sympathetic to individuals who wish to remain in their home as they age. He stated that he supported granting the variance on the basis of the Americans with Disabilities Act. He stated that granting the setback reduction did not create a hardship for the community.

Mr. Campana stated that he agreed with Mr. Geib and that the request was not a self-inflicted hardship. He stated he supported the variance as requested.

Mr. Otey stated he supported the variance request as recommended by staff.

Mr. Geib asked if the resolution should be amended to state that the variance was granted for a disability.

Ms. Parrish stated that the existing resolution contained language to include requests from persons with a disability.

Mr. Geib made a motion to Approve the variance request as stated in the resolution.

Mr. Campana seconded the motion.

On a roll call vote, the BZA voted to Approve the variance request. (4-0)

E. MINUTES

1. January 5, 2023, Meeting Minutes

Mr. Geib made a motion to Approve the January 5, 2023, Meeting Minutes as presented.

Mr. Otey seconded the motion.

On a voice vote, the BZA voted unanimously to Approve the January 5, 2023, Meeting Minutes.

F. **MATTERS OF SPECIAL PRIVILEGE**

None.

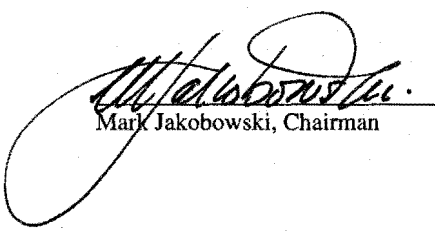
G. **ADJOURNMENT**

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

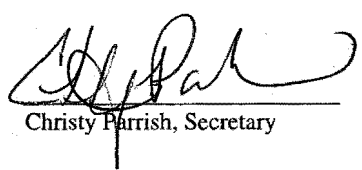
Mr. Otey seconded the motion.

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

The meeting was adjourned at approximately 5:25 p.m.



Mark Jakobowski, Chairman



Christy Parrish, Secretary

RESOLUTION

CASE NO. BZA-23-0002. GRANTING A VARIANCE ON JAMES CITY COUNTY

REAL ESTATE TAX MAP PARCEL NO. 4540200071

WHEREAS, Ms. Debra Hill and Ms. Camilla Buchanan, property owners, have appeared before the Board of Zoning Appeals of James City County (the "Board") on August 3, 2023, to request a variance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 4540200071 and further identified as 196 The Maine (the "Property") as set forth in the application BZA-23-0002; 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 required left side setback from 15 feet to 10.5 feet for the construction of a first-floor master bedroom addition. This property is currently zoned R-1, Limited Residential, and can further be identified as James City County Real Estate Tax Map Parcel No. 4540200071.

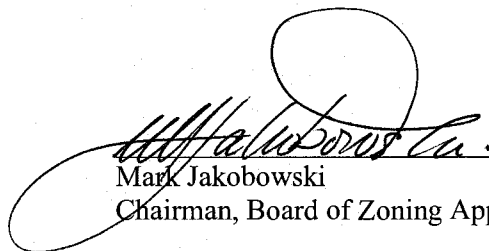
NOW, THEREFORE, BE IT RESOLVED that the Board of Zoning Appeals of James City County, Virginia, by a majority vote of its members FINDS that:

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 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; 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

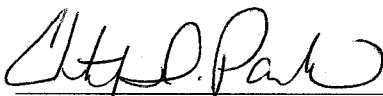
- e. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the Ordinance pursuant to Subdivision 6 of § 15.2-2309 or the process for modification of a Zoning Ordinance pursuant to Subdivision A4 of § 15.2-2286 at the time of 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(a), Yard requirements, to reduce the required left side setback from 15 feet to 10.5 feet for the construction of a first-floor master bedroom addition with no further encroachment. This property is currently zoned R-1, Limited Residential, and can further be identified as James City County Real Estate Tax Map Parcel No. 4540200071.


 Mark Jakobowski
 Chairman, Board of Zoning Appeals

ATTEST:


 Christy Parrish
 Secretary to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
DEAN	---	---	---
OTEY	✓	---	---
JAKOBOWSKI	✓	---	---
GEIB	✓	---	---
CAMPANA	✓	---	---

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 3rd day of August 2023.

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