

MINUTES
JAMES CITY COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
COUNTY GOVERNMENT CENTER BOARD ROOM
101 MOUNTS BAY ROAD, WILLIAMSBURG, VA 23185

September 7, 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. Paxton Condon called the roll:

Present:

Mr. Mark Jakobowski
Mr. William Geib
Mr. David Otey, Jr.
Mr. Andrew Dean

Absent:

Mr. Ron Campana, Jr.

Staff Present:

Mr. John Rogerson, Senior Zoning Officer
Ms. Paxton Condon, Deputy Zoning Administrator
Ms. Liz Parman, Deputy County Attorney

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 (JCC) 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-23-0003. 8224 Bridlington Way

Mr. John Rogerson, Senior Zoning Officer, stated Mr. Jordan Bond, property owner, had applied for a variance to Section 24-238(b), Yard requirements of the JCC Zoning Ordinance. Mr. Rogerson stated the variance request was to reduce the required rear setback from 35 feet to 26 feet to allow for the construction of a deck on the rear of the dwelling at 8224 Bridlington Way. He stated the property was currently located in the R-1, Limited Residential Zoning District, and could be further identified as JCC Real Estate Tax Map Parcel No. 1331300025.

Mr. Rogerson stated the property was located at 8224 Bridlington Way in the Windsor Ridge Subdivision. He stated the parcel was 0.322 acres in size and contained an existing one-story single-family dwelling approximately 1,404 square feet in size. He stated the dwelling was constructed in 2017 and the applicant was the original owner.

Mr. Rogerson stated that the property owner was requesting the proposed variance to construct a deck to utilize the rear yard of the property. He stated the rear access to the house consisted of a sliding glass door and the steps to access this entry were constructed by the owner after purchasing the property. He stated the proposed deck was 160 square feet in size with dimensions of 10 feet x 16 feet with steps located on the rear of the dwelling as shown on Attachment No 2.

Mr. Rogerson stated that Section 24-238(b), Yard requirements, required the main structure to have a minimum rear yard of 35 feet. He stated this lot was not considered a corner lot since there was a strip of common area between the lot and the side street. He stated the Zoning Ordinance permitted steps to encroach into the rear setback to permit access to the rear of the house.

Mr. Rogerson stated that Virginia Code § 15.22309 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. Rogerson stated that staff recognized that the existing dwelling was constructed within two feet of the rear setback line; however, staff was unable to support the variance request since the property had been put to use by the construction of a single-family dwelling. He stated that staff did not believe the strict application of the setbacks unreasonably restricted the utilization of the property.

Mr. Rogerson stated that alternatively, the owner was permitted to have a minimal sized landing with steps which comply with the Virginia Uniform Statewide Building Code (USBC) to allow the owner access to the rear yard. He stated that in addition, a concrete or paver patio that is flush with the ground would not constitute a structure and would be permitted in the setback. He stated this alternative would allow for an outdoor space without the need for a variance.

Mr. Rogerson stated that staff recommended denial of the proposed variance.

Mr. Geib asked how many feet staff would be allowed to permit administratively.

Mr. Rogerson stated 18 inches. He stated that an administrative variance would typically be granted when a structure has been built slightly over the setbacks.

Mr. Geib asked if Zoning staff would have reviewed a barricade over the sliding door.

Mr. Rogerson stated it was not part of their review.

Mr. Dean asked if the lot was a corner lot, would that make a difference.

Mr. Rogerson stated that the setbacks would vary for a corner lot and, in this case, would not be in favor of the applicant.

Mr. Otey asked if the house was a Ryan Homes house and if an additional egress at the rear of the house was permitted.

Mr. Rogerson stated that it was and that the Building Code only required another means of egress.

Mr. Otey asked if the current steps at the rear of the house were built by the applicant and if they would be in violation.

Mr. Rogerson stated that the current steps would be permitted as it is a matter of policy to allow the minimum for an exit.

Mr. Geib asked if the applicant would be required to remove the existing steps.

Mr. Rogerson stated that they would not.

Mr. Geib asked if what was built was consistent with the Building Code.

Mr. Rogerson stated that he did not have that information.

Mr. Jakobowski opened the Public Hearing.

Mr. Jordan Bond, property owner, stated that he appreciated Mr. Rogerson's professionalism and thanked the BZA for being there. Mr. Bond stated that his request was for a reasonably sized deck to be consistent with others in the neighborhood. He stated the desired deck would be 10 feet by 16 feet. He stated that the deck would allow them to make use of the property and prevent them from having stairs facing toward the property line.

Mr. Bond stated that they purchased the home from Ryan Homes and asked if he could pass out a couple of printouts.

Mr. Jakobowski confirmed with Ms. Parman that this was permissible.

Ms. Parman stated it was allowed as long as staff kept a copy as well.

Mr. Bond stated he was passing out a copy of the elevations and that it was always his assumption they would eventually be able to build a deck to match that of the surrounding homes. He stated that he also passed out a photo of the steps currently outside of his home and that the existing steps did not meet the USBC. He stated that as a Fire Department employee his priority was safety and having multiple egresses out of the home when moving in. He stated that the steps would be replaced soon.

Mr. Bond stated that with Ryan Homes it was always assumed they would be able to build a deck. He stated they have done their due diligence over the last couple of years and have planted trees. He stated that he had notified his nearby neighbors and no issues were raised. He stated that he had also checked with his homeowners association, who would be ok with everything if it was approved by the BZA. He stated that he believed that the zoning restrictions are in place to protect neighbors from neighbors, but that his neighbors had raised no issues. He stated that he would be willing to add privacy screening as well if the BZA required it.

Mr. Bond stated that putting a paver patio would be an increased cost to him and his wife. He stated that the swale of the yard would require significant groundwork to accommodate the patio and correct drainage. He stated that he was requesting the BZA allow them to improve their home, the home's usefulness, and the value of the home by allowing them to build a small deck. He stated that he felt they were meeting all the required criteria. He stated that this issue is not shared by others in the neighborhood.

Mr. Bond thanked the BZA for their time and offered to answer any questions.

Mr. Jakobowski asked what the distance from the rear left corner of the residence to the property line was.

Mr. Bond stated that it was approximately 37.1 feet.

Mr. Jakobowski asked the size of what was currently constructed.

Mr. Bond stated that it was approximately 30 to 36 inches of a sloping deck. He stated that it was constructed while they were moving and attempting to sell their previous home and about five steps down.

Mr. Jakobowski asked if the applicant applied for a building permit at that time.

Mr. Bond stated that he had not and was trying to correct that. He stated that at the time he did not know what was permitted.

Mr. Jakobowski asked if Mr. Bond had consulted with any kind of expert, Ryan Homes or a Class A contractor.

Mr. Bond stated they had not and that he was hoping the remedy was to come before the BZA. He stated that they had purchased the home under the Affordable Dwelling Unit (ADU) program, and that no additional extras could be included.

Mr. Jakobowski asked if Mr. Bond would be open to an idea.

Mr. Bonded agreed.

Mr. Jakobowski and Mr. Bond discussed the possibility of a cantilever.

Mr. Bond stated that they did not wish to build a larger deck than what was proposed and that he would work with Mr. Rogerson for what was possible outside of what they applied for.

Mr. Jakobowski stated that a contractor would be able to assist.

Mr. Bond stated that his plan was to build the deck himself.

Mr. Jakobowski asked if there were any more questions for the applicant.

Mr. Geib stated that the BZA could not decide based on the cost. He asked if the surrounding properties had decks. He stated that other properties appeared to have patios based on the aerials.

Mr. Bond stated that most of his neighbors have decks, sunroof additions, or barricades across the sliding door on the rear of the property.

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

Mr. Jakobowski stated that the BZA always tries to find a way for things to work within the law. He stated that his personal opinion was that a deck could be built on the rear of the house within the setbacks. He discussed other possibilities for the applicant to possibly build a deck or utilize the rear egress.

Mr. Geib discussed examples of the other possibilities to build a deck. He stated that he felt Ryan Homes put the applicant in this position. However, there are other ways for the applicant to meet the setback requirements. He stated that the other homes in the neighborhood with decks appear to be within setbacks.

Mr. Dean stated that if the surrounding homeowners changed, that they may not feel positively about a deck protruding into the setbacks. He stated that he was certainly empathetic regarding the cost to the homeowner.

Mr. Rogerson asked that the Chair reopen the Public Hearing at the request of the applicant until a full Board would be able to hear the case.

Mr. Jakobowski reopened the Public Hearing.

Mr. Geib made a motion to Defer the variance request until a full Board was present to hear the application.

Mr. Dean seconded the motion.

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

E. MINUTES

1. August 3, 2023 Meeting Minutes

Mr. Otey made a motion to Approve the August 3, 2023, Meeting Minutes as presented.

Mr. Geib seconded the motion.

On a roll call vote, the BZA voted to unanimously Approve the August 3, 2023, Meeting Minutes.

F. MATTERS OF SPECIAL PRIVILEGE

None.

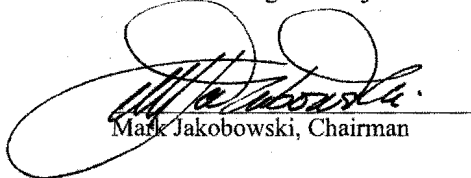
G. ADJOURNMENT

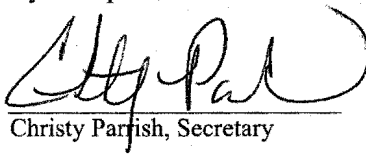
There being no further business, Mr. Geib motioned to Adjourn the meeting.

Mr. Dean seconded the motion.

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

The meeting was adjourned at approximately 5:45 p.m.


Mark Jakobowski, Chairman


Christy Parrish, Secretary