

Board of Zoning Appeals  
James City County Government Complex  
Large Conference Room, Building A

May 7, 2015 - 7 p.m.

**A. Roll Call**

**B. Old Business**

**C. New Business**

**D. Minutes - Jan. 8, 2015**

**E. Matters of Special Privilege**

1. 2014 Annual Report

2. Legislative Updates

**F. Adjournment**



## **Board of Zoning Appeals**

### **2014 Annual Report**

#### **Note from the Chair**

Applications for variances to the Zoning Ordinance were down from 2013. The Board of Zoning Appeals processed three requests for variances from the Zoning Ordinance, two of which were approved. In addition, there was one appeal of the Zoning Administrator's interpretation of the Zoning Ordinance. The appeal was denied and the Zoning Administrator's interpretation was upheld. We understood that the decision has been appealed to the Circuit Court.

There does not appear to be any recurring issues with the Zoning Ordinance that would require action by the Board of Supervisors.

Board of Zoning Appeal members and the public with whom we deal routinely compliment staff for their courteous and professionalism in their matters.

Respectfully,

David Otey, Jr. , Chair

James City County board of Zoning Appeals

## 2014 Board of Zoning Appeals Members

David Otey, Jr. \*\* – Chairman

Marvin Rhodes\*\*

Ron Campana, Jr.\*\*

Stephen M. Rodgers

William J. Geib



### Zoning Division Staff

Jason Purse, AICP, CZA, Zoning Administrator

Christy Parrish, CZA, Proffer Administrator

John Rogerson, CZA, Senior Zoning Officer

Terry Costello, CZA, Senior Zoning Officer

\*\* Virginia Certified BZA Member  
AICP – American Institute of Certified Planners  
CZA – Certified Zoning Administrator

## **Introduction**

The James City County's Board of Zoning Appeals (BZA) is a five-member, quasi-judicial body appointed by the local circuit court to serve five-year terms. Any community adopting a zoning ordinance must also establish an appeals board for review of circumstances where landowners may be unjustly burdened by the zoning ordinance.

The Board conducts public hearings to consider requests for variances to the County's Zoning Ordinance, as well as appeals of decisions made by the Zoning Administrator. The Board must find that the strict application of the Zoning Ordinance would produce undue hardship to grant a variance, and may impose conditions regarding issues such as the location, character and other features of a proposed structure when granting a variance. Any decision made by the Board may be appealed to the James City County Circuit Court within thirty days.

## **Meetings**

The James City County BZA is scheduled the first Thursday of every month at 7 p.m. in Building F at the James City County Government Complex. The BZA met six times during 2014.



## **Variances**

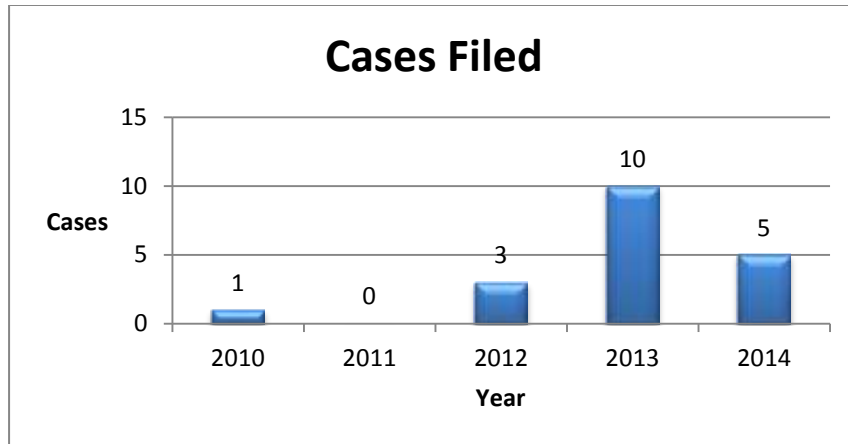
Four applications for variances were considered in 2014. The synopses of the applications are as follows:

**ZA-0011-2013, 7610 Beechwood Drive** - This was an application for a variance to Section 24-215 (a) Setback Requirements, to reduce the required (50') front yard setback to (33') for the continued placement of the existing dwelling. This application was approved by the BZA on January 9, 2014.

**ZA-0002-2014, 2 Joy's Circle** - This was an application for an appeal to the Zoning Administrator's interpretation and decision regarding Section 24-233 (a) Overall Density within subdivisions, in terms of redesignating an existing recreation lot to a single-family residential lot for the construction of a single-family home in the Hunter's Creek Subdivision. The BZA voted to support the Zoning Administrator's interpretation on July 10, 2014.

**ZA-0003-2014 – 15 Waterford Court** – This was an application for a variance to Section 24-258 (b), Yard Requirements, to reduce the required rear yard setback adjacent to Lot #17 to the East from 35 feet to 25 feet. This proposed variance would allow for the construction of a screened-in porch. This application was denied by the BZA on September 11, 2014.

**ZA-0004-2014 – 9441 Richmond Road** – This application was for a variance to reduce the front setback from 50 feet from the front property line to 35 feet and to reduce the right side setback from 15 feet to 10 feet to allow the continued placement of the manufactured home. Case was deferred from the October 2, 2014 meeting until December 4, 2014 meeting. The BZA approved this variance on a 4-1 vote on December 4, 2014 to establish front setback at 38.7' with no further encroachment with the exception of steps and landing necessary for egress and establish right side setback at 11.1' from closest of the 2 disputed property lines. This application was approved on December 4, 2014.



## James City County Board of Zoning Appeals



(From left to right: Stephen Rodgers, Ron Campana, Jr., Marvin Rhodes, William Geib, and David Otey, Jr.)

Zoning Enforcement Division of Development Management

101-A Mounts Bay Road

Williamsburg, Virginia 23185

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Email: [zoning@jamescitycountyva.gov](mailto:zoning@jamescitycountyva.gov)

Website: [www.jamescitycountyva.gov/zoning](http://www.jamescitycountyva.gov/zoning)

[history](#) | [hitite](#) | [pdf](#)**CHAPTER 597**

*An Act to amend and reenact §§ [15.2-2201](#), [15.2-2308](#), [15.2-2309](#), and [15.2-2314](#) of the Code of Virginia and to amend the Code of Virginia by adding a section numbered [15.2-2308.1](#), relating to variances.*

[H 1849]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ [15.2-2201](#), [15.2-2308](#), [15.2-2309](#), and [15.2-2314](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered [15.2-2308.1](#) as follows:

§ [15.2-2201](#). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ [15.2-2233](#) et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable statutes will be achieved.

"Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage, preserve, maintain, operate, or reside in a historic property in accordance with the provisions of § 15.2-2306 and other applicable statutes.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the *shape*, size, or area of a lot or parcel of land; or the size, *height*, area, bulk, or location of a building or structure when the strict application of the ordinance would ~~result in unnecessary or unreasonable hardship to the property owner~~ *unreasonably restrict the utilization of the property*, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the ~~intended spirit and purpose of the ordinance, and would result in substantial justice being done~~. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at



least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. ~~For~~ *Notwithstanding any other provision of law, general or special, for the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body.* Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

**§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings.**

*A. The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.*

*B. Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.*

*C. For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.*

*D. This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.*

**§ 15.2-2309. Powers and duties of boards of zoning appeals.**

Boards of zoning appeals shall have the following powers and duties:

1. 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. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct.

*The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider the purpose and intent of any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.*

~~2. To authorize Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases such a variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship, provided that the spirit of the ordinance shall be observed and substantial justice done, as follows: the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.~~

~~When a property owner can show that his Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the 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, and (i) the property interest for which the variance is being requested was acquired in good faith and where by reason of the exceptional and any hardship was not created by the applicant for the variance; narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance. (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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 (v) 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.

~~No such variance shall be authorized by the board unless it finds:~~

- ~~a. That the strict application of the ordinance would produce undue hardship relating to the property;~~
- ~~b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and~~
- ~~c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.~~

No variance shall be authorized *considered* except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

~~No variance shall be authorized unless the board finds that 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.~~

~~In authorizing~~ *granting* a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, *general or special*, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property

immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

§ 15.2-2314. Certiorari to review decision of board.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings *in the circuit court*. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.~~ The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, ~~or application for a special exception,~~ the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by ~~showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance~~ *proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.*

*In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.*

*In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.*

Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.

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**Legislative Information System**

**MEMORANDUM**

DATE: May 7, 2015  
TO: The Board of Zoning Appeals  
FROM: Jason Purse, Zoning Administrator  
SUBJECT: Legislative Update-Variances

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The Virginia State Code sections pertaining to variances were amended during the 2015 legislative session. These changes will require an ordinance amendment in James City County, and will change the evaluation criteria for the granting of variances. These changes may affect how the BZA reviews applications. Prior to any zoning ordinance amendments, Zoning staff, along with the County Attorney's office, will make a brief presentation outlining these new regulations. A strikethrough copy of the code has been attached for your reference. No action is required of the BZA at this meeting.

Attachment:

1. State Code Amendments

**BOARD OF ZONING APPEALS**  
**January 8, 2015**

Mr. David Otey Jr. called the meeting to order at 7:00 p.m.

Ms. Christy Parrish called the roll

**A. Roll Call**

Present:

Mr. Marvin Rhodes  
Mr. David Otey Jr.  
Mr. Ron Campana Jr.  
Mr. William Geib  
Mr. Stephen Rodgers

Others Present:

Mr. Jason Purse, Zoning Administrator  
Ms. Christy Parrish, Proffer Administrator  
Mr. Maxwell Hlavin, Assistant County  
Attorney

**B. Old Business**

None

**B. New Business      ZA-0006-2014    4604 John Tyler Highway**

Ms. Christy Parrish presented the staff report. She stated Mr. Danny Poe, on behalf of James City Service Authority (“JCSA”), has applied for a variance to Section 24-39, Special provisions for lots for public utilities, to reduce the required setback from 15 feet from any property line to approximately 10 feet from the front property line and approximately 3 feet from the left side property line. This proposed variance request is to allow the construction of Lift Station 4-7 Control Building replacement at 4604 John Tyler Highway. The JCSA Lift Station 4-7 control building is proposed to be replaced due to multiple flooding events that have affected the building, damaged associated equipment, and resulted in wastewater overflows into the environment. The existing control building was constructed in 1977 and is located approximately 16.3 feet from the front property line and approximately 6.3 feet from the left property line. Staff concludes that the current placement of the building is non-conforming because the requirement for “Special provisions for lots for public utilities” was not established until 1984. James City County owns the property directly adjacent to the left, right and rear of the site and is designated as a greenway area. The property is also located in the Resource Protection Area (“RPA”) but is not located in a FEMA special flood hazard area. JCSA has obtained the necessary approvals from the James City County Engineering and Resource Protection Division to construct within the RPA. To alleviate flooding, JCSA is proposing to construct a new control building that will be flood-proofed with a watertight entry door. The new building will increase in size and is proposed to encroach further into the front and left yard setbacks. Enlarging and proposed placement of the new control building is necessary for the following reasons:

1. Northeast corner of the building must remain fixed due to the suction and discharge piping for the pumps that enter and exit the building.

2. Southwest wall must be expanded to accommodate the generator so that the 29"x42" exhaust duct can be directed up the wall and out the gable end above the concrete floodwall.
3. New electrical code clearance requirements dictate a large control building.

Ms. Parrish corrected a statement in the staff report. She explained that if the variance was not granted, JCSA would have to abandon the project and not the parcel.

Ms. Parrish stated that an unnecessary hardship exists when the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property. Staff supports this variance for the following reasons: (1) the existing size and current infrastructure of the lot restricts the location of the proposed building which is not shared by others in the same vicinity; (2) the expansion is necessary to prevent flood damage to a public utility; (3) the expansion will eliminate wastewater overflow onto natural areas during a flood event which will protect the health, safety and welfare of the surrounding area; (4) the County owns the surrounding property which is held as dedicated green space; and (5) the proposed location does not adversely affect neighboring properties. Staff recommends approval of the requested variance as described in the attached resolution.

Lastly, Ms. Parrish stated that the Planning Commission had reviewed and approved this project.

Mr. Rhodes questioned why the County did not deed over the necessary acreage to the James City Service Authority for the project instead of going through this variance process.

Ms. Parrish discussed that adding additional acreage to this lot would only address the side setback issue but the front setback issue would remain the same, since the building needed to stay in the same general location.

Mr. Rhodes asked what the setback requirements were when the ordinance was originally adopted.

Ms. Parrish replied that staff was unaware of the considerations at that time but assumed it was due to the small lot size. She added that this lot size is typical for a utility lot.

Mr. Geib asked for clarification on the reasons why the building could not be constructed further back on the lot.

Ms. Parrish replied that that location of the existing pump and mechanical equipment are fixed and cannot be moved without incurring significant expense.

Mr. Otey requested an explanation of the map showing setbacks.

Ms. Parrish explained the map was only a visual exhibit displaying the overlapping setbacks on the property if were not a well lot.



**Mr. Otey reopened the public hearing.**

Mr. Danny Poe, James City Service Authority, gave a brief overview of the project. He stated that the suction and discharge piping dictates the northeast corner of the building remains fixed. In addition, access for pump and haul trucks and service trucks is essential on the eastside of the building where the driveway is located to provide emergency services which make relocating the building to the east infeasible. Lastly, the building must be expanded to meet new electrical codes which requires the exhaust to be run up and out of the building.

Mr. Poe also stated that a similar building was constructed in the Grove area of the County also due to flooding issues and they have found this design works.

Mr. Otey asked if these stations are typically located in areas that flood.

Mr. Poe stated that pump stations by their nature are located in low areas because gravity lines are sloped downward and then wastewater is pumped up to a force main or to another collection system downstream.

Mr. Geib asked if the fencing around the site was staying the same.

Mr. Poe replied yes and that there will be some landscaping added to the site.

Mr. Geib commented on the condition of the fence being rusted and bent and suggested replacing the fence as part of the project.

Mr. Poe stated that replacement of the fence was not anticipated but they would address the areas of the fence Mr. Geib pointed out.

**Mr. Otey closed the public hearing.**

Mr. Geib stated that he was satisfied and that he understands the need to replace the building from a health and safety perspective due of flooding occurrences and overflows into the environment. In addition, it does not appear that the increased building size within the same fencing would adversely affect the area or environment. He concluded by suggesting that the weeds and landscaping on the site should be taken care of to show pride in our County assets.

Mr. Rodgers stated he rode by the site and thought the staff memo did an excellent job providing compelling reasons why the variance should be granted.

Mr. Rhodes stated he did not have any concerns.

Mr. Campana stated he was in agreement with the others.

Mr. Rodgers made a motion to adopt Resolution ZA-0006-2014 to approve the variance request.

**WHEREUPON, THE BOARD OF ZONING APPEALS OF JAMES CITY  
COUNTY ADOPTS THE FOLLOWING RESOLUTION:**

To grant a variance to section 24-39, Special provisions for lots for public utilities, reducing the required fifteen foot (15') setback from any property line to ten feet (10') from the front property line and three feet (3') from the left side property line for the construction of Lift Station 4-7 Control Building replacement as shown on site plan entitled "James City Service Authority Site Plan Lift Station 4-7 Control Building Replacement" dated November 21, 2014 which is attached hereto, made part hereof and incorporated of the resolution.

Mr. Geib seconded the motion.

On a roll call vote the motion to approved the variance was approved 5-0.

**D. Minutes – December 4, 2014**

Mr. Rodgers made the following corrections to the December 4, 2014 meeting:

- Page 3 – add the word Service after Adams Septic.
- Page 3 – replace "seemed to think" with responded.
- Page 4 – correct "indivisible line" to invisible line.

Mr. Rhodes moved to approve the minutes of the December 4, 2014 meeting as amended.

Mr. Campana seconded the motion.

On a voice vote the minutes for the December 4, 2014 Board of Zoning Appeals meeting as amended were approved 5-0.

**E. Matters of Special Privilege – Election of Officers**

Mr. Geib motioned to keep the same slate of officers for 2015– Mr. David Otey, Chair and Mr. Marvin Rhodes, Vice Chair.

Mr. Campana seconded the motion.

On a voice vote the motion was were approved 5-0.

**D. Adjournment**

There being no further business Mr. Otey adjourned the meeting at 7:20 p.m.

David Otey  
Chairman

Jason Purse  
Secretary