

A G E N D A
JAMES CITY COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
James City County Government Center, Building F Board Room
December 6, 2018
5:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. OLD BUSINESS

D. NEW BUSINESS

1. Case No. BZA-18-0009. Granting a Variance on James City County Real Estate Tax Map Parcel No. 3221200039 - 5124 West Grace Court

E. MINUTES

1. November 1, 2018 Meeting Minutes

F. MATTERS OF SPECIAL PRIVILEGE

G. ADJOURNMENT

ITEM SUMMARY

DATE: 12/6/2018

TO: The Board of Zoning Appeals

FROM: John Rogerson, Senior Zoning Officer

SUBJECT: Case No. BZA-18-0009. Granting a Variance on James City County Real Estate Tax Map Parcel No. 3221200039 - 5124 West Grace Court

ATTACHMENTS:

	Description	Type
☐	Memorandum	Cover Memo
☐	Resolution	Resolution
☐	Location map	Exhibit
☐	Adjacent property owner map	Exhibit
☐	Current survey	Exhibit
☐	Survey showing proposed addition	Exhibit
☐	Plat of Approved Subdivision	Exhibit
☐	Image of similar addition	Exhibit
☐	Narrative	Exhibit
☐	Signed letter from adjacent property owners	Exhibit
☐	5124 West Grace Court photos of rear yard	Exhibit
☐	Applicant's Attachment	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	11/29/2018 - 4:31 PM
Publication Management	Daniel, Martha	Approved	11/29/2018 - 4:49 PM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	11/29/2018 - 4:50 PM

M E M O R A N D U M

DATE: December 6, 2018

TO: The Board of Zoning Appeals

FROM: John Rogerson, Senior Zoning Officer

SUBJECT: Case No. BZA-18-0009. Granting a Variance on James City County Real Estate Tax Map Parcel No. 3221200039 - 5124 West Grace Court

Project Description

Kenneth R. Trustee and Jane Armstrong, property owners, have applied for a variance to Section 24-258(b) Yard requirements to reduce the required 35-foot rear yard setback to 26 feet to allow for the construction of a deck, sunroom and placement of a hot tub. The property is currently located in the R-2, General Residential Zoning District and can be further identified as Parcel No. (12-0-0039) on the James City County Real Estate Tax Map (32-2).

Parcel History and Ordinance Information

The property is located at 5124 West Grace Court in the Scott's Pond subdivision. The parcel is 0.28 acres in size and contains an existing single-family dwelling approximately 2,708 square feet in size. The existing dwelling was constructed in 2001. The current owner purchased the property in July of 2003.

Mr. Armstrong contacted staff regarding the possibility of adding a sunroom, deck and hot tub on the rear of the property. After reviewing the existing as-built survey of the lot that was done during the original construction of the house, staff discovered that there was only approximately 2.5 feet from the left rear of the house to the required 35-foot rear yard setback line. Staff informed Mr. Armstrong that there was not enough room at the rear of his house to construct the proposed sunroom, deck and hot tub without encroaching into the rear setback. Staff advised Mr. Armstrong that the hot tub could be placed in the rear yard as an accessory structure as long as the hot tub was located more than 10 feet from the rear of the house.

Variance Criteria

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 has been met (that the strict application of the Ordinance would unreasonably restrict the utilization of the property, the need for a variance is not shared generally by other properties, the variance is not contrary to the purpose of the Ordinance and the variance does not result in a change of use), and that the following criteria are satisfied:

1. The strict application of Chapter 24 of the Code of James City County (the "County Code") 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.

The applicant has provided a narrative and other information explaining his case for meeting the requirements for granting a variance and those documents have been included in your packet as an attachment.

Recommendation

Staff cannot support the variance request as the strict application of the terms of the Zoning Ordinance does not unreasonably restrict the utilization of the property, as the property has been put to use by the existence of a single-family residence. Therefore, staff recommends denial.

JR/nb
BZA18-9-5124WGraceC-mem

Attachments:

1. Location map
2. Adjacent property owner map
3. Current survey
4. Survey showing proposed addition
5. Plat of Approved Subdivision
6. Image of similar addition
7. Narrative
8. Signed letter from adjacent property owners
9. 5124 West Grace Court photos of rear yard
10. Applicant's Attachment

RESOLUTION

CASE NO. BZA-18-0009. GRANTING A VARIANCE ON JAMES CITY COUNTY

REAL ESTATE TAX MAP PARCEL NO. 3221200039 - 5124 WEST GRACE COURT

WHEREAS, Kenneth R. Trustee & Jane Armstrong, property owners, have appeared before the Board of Zoning Appeals of James City County (the "Board") on December 6, 2018, to request a variance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 3221200039 and further identified as 5124 West Grace Court (the "Property") as set forth in the application BZA-18-0009; 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 24-258(b), Yard Requirements, to reduce the minimum rear yard setback from 35 feet to 26 feet to allow for the construction of a deck, sunroom and hot tub with no further encroachment, as shown on the attached Site Plan identified as Attachment No. 4 in the memorandum and described in the applicants' narrative Attachment No. 7 which is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned R-2, General Residential and can further be identified as James City County Real Estate Tax Map Parcel No. 3221200039.

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;
 - 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 24-258(b), Yard Requirements, to reduce the minimum rear yard setback from 35 feet to 26 feet to allow for the construction of a deck, sunroom and hot tub with no further encroachment, as shown on the attached Site Plan identified as Attachment No. 4 in the memorandum and described in the applicants' narrative Attachment No. 7 which is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned R-2, General Residential and can further be identified as James City County Real Estate Tax Map Parcel No. 3221200039.

William Geib
Chair

ATTEST:

Christy Parrish
Secretary to the Board

	<u>VOTES</u>		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
ROGERS	_____	_____	_____
OTEY	_____	_____	_____
JACOBOWSKI	_____	_____	_____
GEIB	_____	_____	_____
CAMPANA	_____	_____	_____

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 6th day of December, 2018.

BZA18-9-5124WGraceC-res

JCC BZA-18-0009

5124 West Grace Building setback reduction



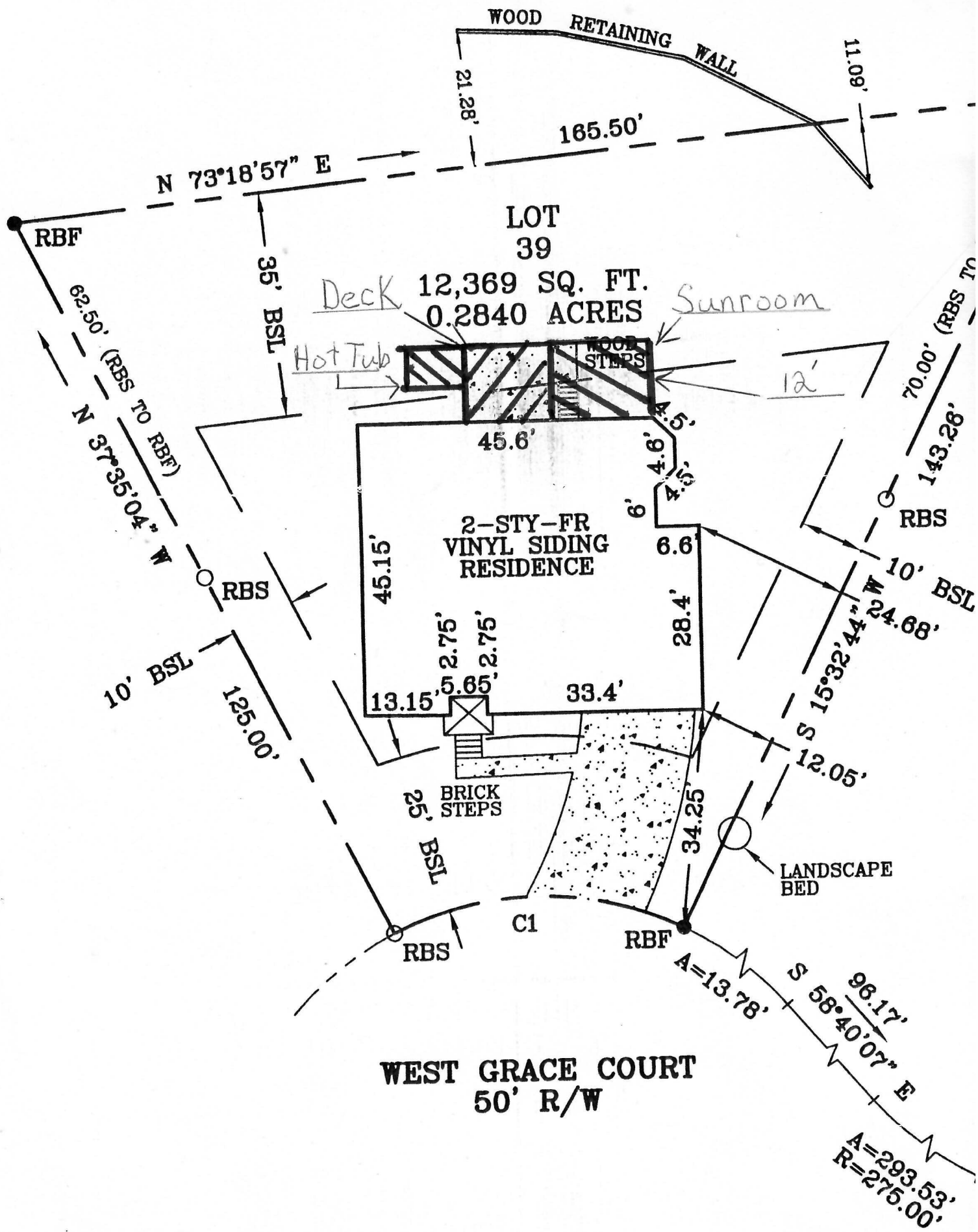
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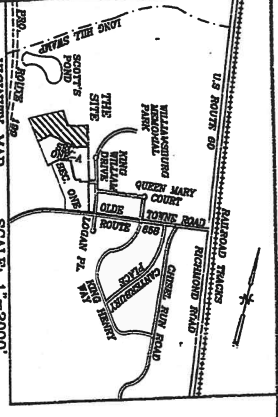
JCC BZA-18-0009

5124 West Grace Building setback reduction



OPEN SPACE TO BE DEDICATED TO
SCOTT'S POND HOMEOWNERS ASSOCIATION





VICINITY MAP SCALE: 1"=2000'

THE SUBDIVISION OF LAND SHOWN ON THIS PLAN AND KNOWN AS SCOTT'S POND, SECTION ONE-B, IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS, PROFESSIONERS, AND TRUSTEES, KY & EX, INC.

DATE: March 23, 1999
 DATE: Nov 28, 1990
 DATE: July 29, 99

OWNER'S OF TITLE
 C. K. TUDOR, MEMBER

CERTIFICATE OF NOTARIZATION

STATE OF VIRGINIA
 CITY/COUNTY OF NEWPORT NEWS
 A NOTARY PUBLIC IN AND FOR THE CITY/COUNTY AND STATE OF VIRGINIA, DO HEREBY CERTIFY THAT THE PERSON WHOSE NAME IS SIGNED TO THE FOREGOING WRITING HAS AGREED TO SIGN THE SAME BEFORE ME IN THE CITY/COUNTY OF NEWPORT NEWS, VIRGINIA, ON THIS 27th DAY OF MARCH, 1999.
 MY COMMISSION EXPIRES 5-31-01

DATE: 03/25/99
 DATE: Nov 28, 1990

NOTARY PUBLIC
 GERALD L. PASSARO
 VICE PRESIDENT
 CENTRAL SECURITY NATIONAL BANK

CERTIFICATE OF NOTARIZATION

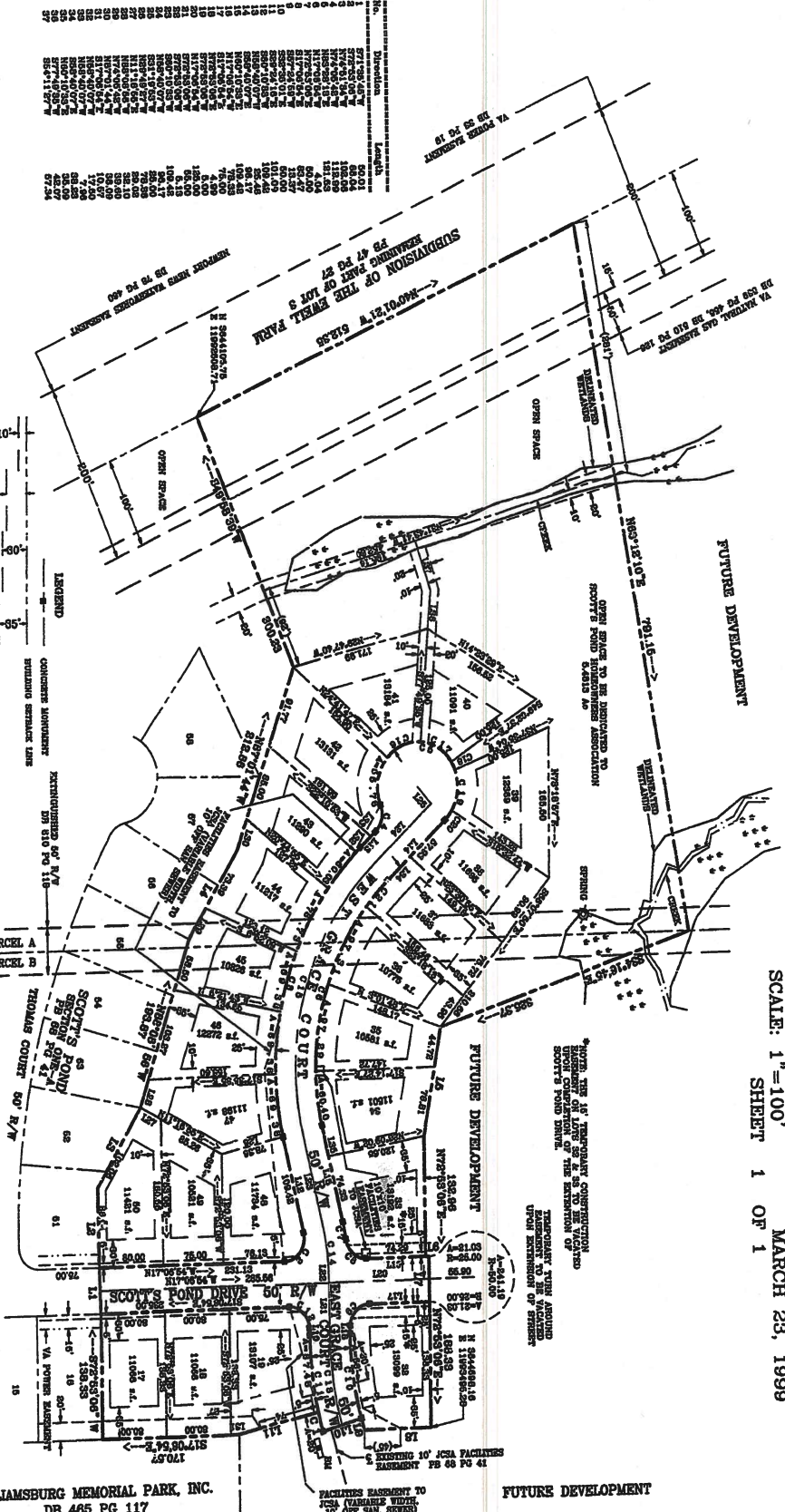
STATE OF VIRGINIA
 CITY/COUNTY OF NEWPORT NEWS
 A NOTARY PUBLIC IN AND FOR THE CITY/COUNTY AND STATE OF VIRGINIA, DO HEREBY CERTIFY THAT THE PERSON WHOSE NAME IS SIGNED TO THE FOREGOING WRITING HAS AGREED TO SIGN THE SAME BEFORE ME IN THE CITY/COUNTY OF NEWPORT NEWS, VIRGINIA, ON THIS 27th DAY OF MARCH, 1999.
 MY COMMISSION EXPIRES 5-31-01

CERTIFICATE OF SOURCE OF TITLE
 THE PROPERTIES SHOWN ON THIS PLAN WERE CONVEYED BY: PARCEL A: BENJAMIN S. SCOTT LIMITED LIABILITY COMPANY BY DEED DATED JANUARY 2, 1996 AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF THE COUNTY OF JAMES CITY IN DEED BOOK 773, PAGE 65. PARCEL B: GRACE REBECCA SCOTT PALUISAY TO KT & BK, L.L.C., A VIRGINIA LIMITED LIABILITY COMPANY, BY DEED DATED JANUARY 2, 1996 AND RECORDED IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF THE COUNTY OF JAMES CITY IN DEED BOOK 773, PAGE 65.

SUPERVISOR'S CERTIFICATE
 I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THE ABOVE DESCRIBED PROPERTY IS SUBJECT TO THE REQUIREMENTS OF THE BOARD OF SUPERVISORS AND ORDINANCES OF THE COUNTY OF JAMES CITY, VIRGINIA, REGARDING THE PLATING OF SUBDIVISIONS WITHIN THE CITY/COUNTY OF JAMES CITY IN DEED BOOK 773, PAGE 65.

DATE: March 23, 1999
 DATE: March 23, 1999

COUNTY OF JAMES CITY
 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE COUNTY OF JAMES CITY THIS 27th DAY OF MARCH, 1999, I HAVE RECORDED AND ADMITTED TO THE RECORD AS THE LAW DIRECTOR.
 THE Honorable S. William S. Spivey, III, CLERK
 FILE BOOK 773, PAGE 65



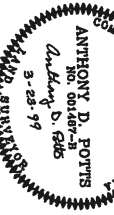
NOTES:
 1. MINIMUM BUILDING SETBACK 25'
 2. MINIMUM SIDE YARD 5'
 3. MINIMUM REAR YARD 10'
 ALL LOTS WITHIN THIS SUBDIVISION SHALL BE SERVED BY PUBLIC WATER SUPPLY SYSTEMS AND SEWERAGE SYSTEMS.
 10' SOUTH OF R/W OF EAST GRACE EXTENDED 10' ELEV. = 74.71'

LEGEND
 CONCRETE EASEMENT
 EXTENDED R/W
 DRAINAGE EASEMENT
 DRAINAGE & UTILITY EASEMENT

AREA OF DEDICATED R/W: 14197 AC.
 OPEN AREA: 54933 AC.
 TOTAL AREA: 69130 AC.

SCOTT'S POND
 SECTION ONE-B
 POWHATAN DISTRICT
 JAMES CITY COUNTY, VIRGINIA
 A.D. POTTS & ASSOCIATES, INC.
 11524 JEFFERSON AVENUE
 NEWPORT NEWS, VIRGINIA
 SCALE: 1"=100'
 SHEET 1 OF 1
 MARCH 23, 1999

CERTIFICATE OF APPROVAL
 THIS SUBDIVISION IS APPROVED BY THE UNDERSIGNED IN ACCORDANCE WITH EXISTING SUBDIVISION REGULATIONS AND MAY BE ADMITTED TO RECORD.
 DATE: 3/23/99
 DATE: 3/23/99
 DATE: 3/23/99



ANTHONY D. POTTS
 Notary Public
 State of Virginia
 Commission Expires 3-28-99

JOB NO. 96-177 FILE NO. 10-976

5124 West Grace proposed construction of sunroom and deck

John,

I forgot the 'va' at the end of your e-mail address yesterday.

Attached is:

A word document which you can cut and paste into the application.

A scanned document with signatures of our 5 nearest neighbors indicating that they are OK with our plans.

A picture of our neighbors house which is the same model as ours and has a sunroom and deck similar to what we are looking to build. Our deck will not extend beyond the sunroom.

Thanks for your all of your help.

Ken



Please describe the variance request by listing the applicable Zoning Ordinance section(s) and specific reasons for such request.

Variance Request

We would like to add a 16' x 12' sunroom, 13' x 12' deck (approx. 18" in height) and 7.5' x 7.5' hot tub in the back of our house. The deck and hot tub would be situated on top of an existing concrete pad, which has a depth of 12'. The sunroom would have the same 12' depth as the deck. We do not have 12' between the back of our house and the rear building setback line. With the house not situated squarely on the property, we are requesting a variance of 8' on the west side of the house to 4' on the east side of the house.

Reason for Variance

The back door on our house is approximately 5' above grade level. We currently have an 8-step staircase to descend in order to access our backyard, an area where we spend a great deal of time. As we age this staircase will become a hard ship, which can be avoided with a sunroom, built level with the back door. We currently possess some medical conditions, which are already making this an issue. The hot tub will be partly for therapeutic reasons due to arthritis.

The reason that we don't have room for the above additions is that our property is on a cul-de-sac. The depth of our lot is approximately 20% less and the buildable depth 35% less than our neighbors who are not on the cul-de-sac. Since our property is quite wide at the back, the setbacks of the new structures from the sides would be substantial at 29' on the west side and 37' on the east side.

With an existing concrete pad in place, the area to be occupied by the above additions is already being used for the same purposes. We are only looking to raise and/or cover part of the area.

We have reviewed these plans with our 5 nearest neighbors and have a signed document indicating that they have no issues with our plans. Our plans will in no way impact them in the slightest manner.

We deeply enjoy our property, neighbors and the Williamsburg community and plan to age in place. The approval of this variance will solidify these plans.

Please complete the following section for all Board of Zoning Appeals variance requests. If applying for an Administrative variance, please skip to the required signature box.

Support Information:

Our property backs onto a wooded/protected area owned by the Scotts Pond Homeowner's Association. As such there will never be houses directly behind ours. The closest houses to the rear of our house are opposite the protected area, which is approximately 100 yards away and not visible, when the trees have foliage. Due to the shape of our cul-de-sac property, our adjoining neighbors would not even see the hot tub and deck. The neighbor to our east would

have only a partial view of the sunroom. There is additional homeowner association owned common property on the west side of our property providing an additional buffer from our property and our neighbor to the west.

Applicant must provide evidence of following: 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. Please provide a description below that supports this requirement:

Support Information:

The sunroom, deck and hot tub are all for our and our family's personal use only.

Applicant must provide evidence of following: The relief or remedy sought by the variance application is not so general or recurring in nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Zoning Ordinance. Please provide a description below that supports this requirement:

Support Information:

This variance request is specific to the circumstances of our cul-de-sac located property, which has no neighbors to the rear.

Applicant must provide evidence of following: 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. Please provide a description below that supports this requirement:

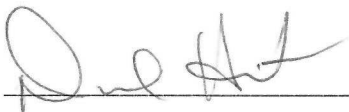
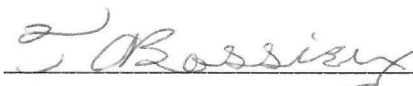

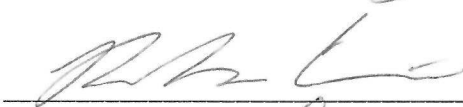

Support Information:

We were unaware of the limitations that the building setback limit imposed when we acquired the property in 2003.

11/04/18

Jane and Ken Armstrong, residing at 5124 W Grace Ct Williamsburg, VA, would like to add a 16' x 12' sunroom, 13' x 12' deck (approx. 18" in height) and 7.5' x 7.5' hot tub in the back of their residence. This can't be done without an approved zoning variance from James City County as this would infringe on the 35' setback requirement from the rear property line. A variance for between 5' and 10' is required.

The details of the variance request have been discussed with the undersigned, the more immediate neighbors of Jane and Ken Armstrong, and the undersigned have no issues with this variance request.

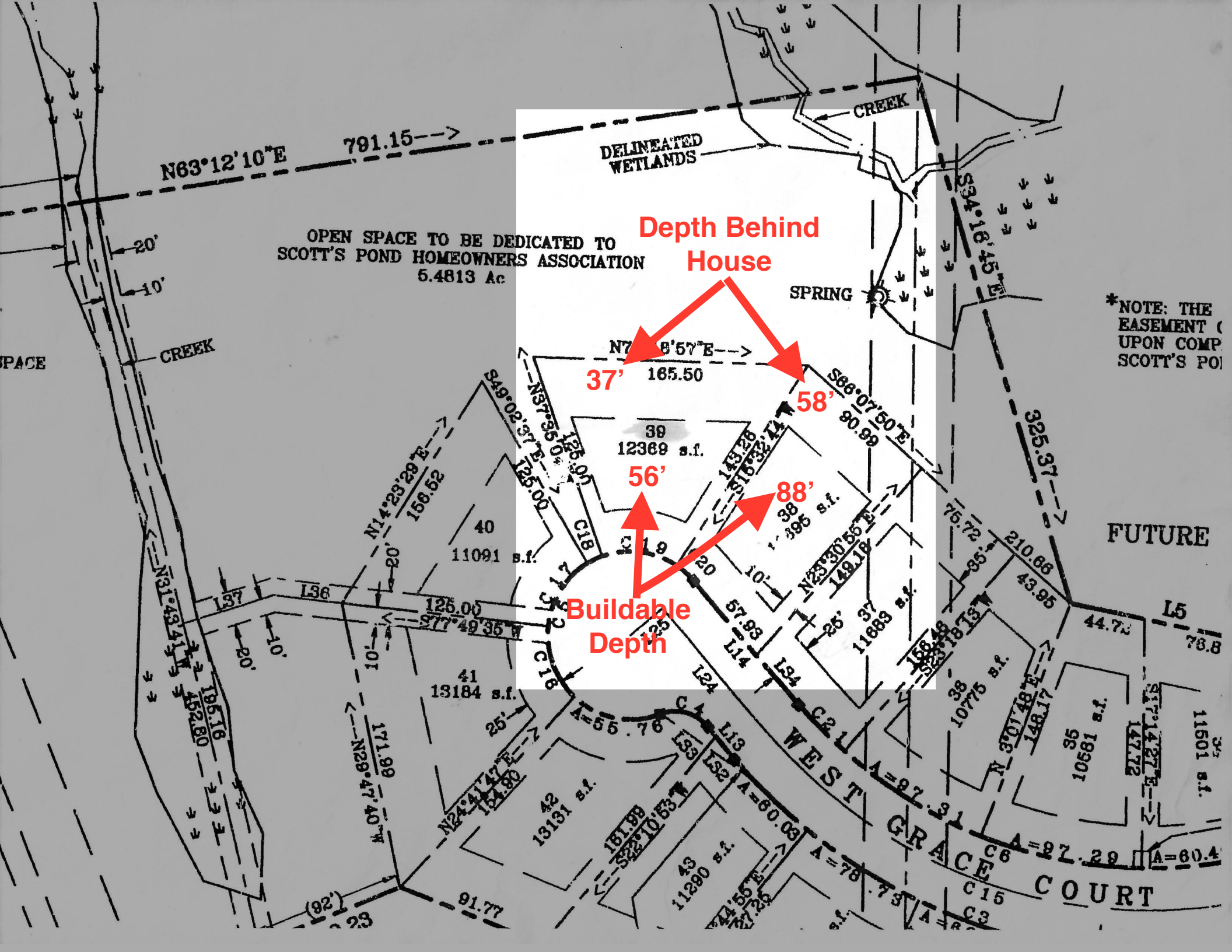
<u>Name:</u>	<u>Signature:</u>	<u>Date:</u>
DAVID HUNT		11/4/18
Terry Bossieux		11/4/18
Alex Hoening		11/4/18
Ruben Cimbron		11/4/18
William DAVID JAMES Jr		11-6-18

5124 West Grace Court-Photos of Rear Yard









OPEN SPACE TO BE DEDICATED TO
SCOTT'S POND HOMEOWNERS ASSOCIATION
5.4813 Ac

**Depth Behind
House**

**Buildable
Depth**

*NOTE: THE
EASEMENT (UPON COMP
SCOTT'S POI

FUTURE

SPRING

DELINEATED
WETLANDS

N63°12'10"E
791.15

S34°16'45"E
125.00

N78°8'57"E
165.50

37'

58'

56'

88'

40
11091 s.f.

38
12369 s.f.

39
396 s.f.

41
13184 s.f.

42
13131 s.f.

43
11290 s.f.

35
10561 s.f.

32
11501 s.f.

WEST GRACE COURT

CREEK

CREEK

SPACE

20'

10'

L37

L36

20'

10'

(92')

91.77

L5

78.8

A=97.29

A=80.4

325.37

210.66

43.95

44.72

75.72

85

25'

37'

11089 s.f.

10775 s.f.

10775 s.f.

10775 s.f.

10775 s.f.

10775 s.f.

10775 s.f.

10775 s.f.

ITEM SUMMARY

DATE: 12/6/2018
TO: The Board of Zoning Appeals
FROM: Christy H. Parrish, Zoning Administrator
SUBJECT: November 1, 2018 Meeting Minutes

ATTACHMENTS:

	Description	Type
☐	November 1, 2018 Meeting Minutes	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	11/29/2018 - 4:31 PM
Publication Management	Daniel, Martha	Approved	11/29/2018 - 4:47 PM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	11/29/2018 - 4:48 PM

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 1, 2018
5:00 PM

A. CALL TO ORDER

B. ROLL CALL

Mr. Geib asked Ms. Parrish to call the Roll.

Present:

Mr. William Geib

Mr. Stephen Rodgers

Mr. Mark Jakobowski

Mr. David Otey, Jr.

Mr. Ron Campana

Others Present:

Mr. Louis Pancotti, Senior Zoning Officer

Ms. Christy Parrish, Zoning Administrator

Ms. Liz Parman, Assistant County Attorney

C. OLD BUSINESS

None

D. NEW BUSINESS

1. Case No. BZA-18-0007. 8864 Richmond Road

Mr. Louis Pancotti presented the staff report.

Mr. Pancotti stated that Mr. John Hopke of Hopke & Associates, on behalf of M M & W Properties, LLC, has applied for a variance to Section 24 215(a), Setback Requirements, to reduce the minimum front building setback from 50 feet to 18.9 feet to allow for the continued placement and alteration of the structure located at 8864 Richmond Road. He stated that the property was currently zoned A 1, General Agriculture, and can further be identified as James City County Real Estate Tax Map No. 1110100006.

Mr. Pancotti stated that the James City County Real Estate records indicated that the structure was built in 1950 and the first Zoning Ordinance was adopted March 1, 1969, 19 years after the structure was built. He stated that Section 24215, Setback Requirements, of the current Zoning Ordinance required structures be located a minimum of 50 feet from any street right-of-way which was 50 feet or greater in width for nonresidential uses. He stated that the structure was located 18.9 feet from the edge of the right-of-way and the structure was legally nonconforming.

Mr. Pancotti stated that the proposed expansion included the enclosure of the front porch encroached over the 50-foot front setback. He stated that the portion of the expansion

would not meet the current zoning requirements, therefore a variance was required. He also stated that restaurants and taverns were specially permitted uses in the A-1 Zoning District and Special Use Permits (SUPs) were granted by the Board of Supervisors in 1996 and 2016.

Mr. Pancotti 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 (that 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, the variance was not contrary to the purpose of the Ordinance, and the variance did not result in a change of use) and that the following criteria were satisfied:

1. The strict application of Chapter 24 of the Code of James City County (the “County Code”) 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; and
 - 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;
 - The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
 - 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;
 - 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
 - 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.

Mr. Pancotti stated that staff believes the strict application of the terms of the Zoning Ordinance would not unreasonably restrict the utilization of the property, as the property had been put to use by the existence of a restaurant. He stated that the strict application of the terms of the Zoning Ordinance did not unreasonably restrict the utilization of the property and the property had been put to use by the existence of a restaurant. He stated that staff believed that if the variance was to be granted, the variance would not be a detriment to adjoining properties nor alter the character of the area.

Mr. Rodgers asked if the Board of Supervisors considered variances when approving SUPs.

Ms. Parrish stated that the enclosure of the front porch was not proposed during the recent SUP process and the restaurant use came into conformance when the SUP was issued in 1996.

Mr. Otey stated that the Board of Supervisors could have imposed conditions when granting the SUP but apparently did not in this case.

Ms. Parrish stated that the Board of Supervisors does not have the authority to grant variances to setbacks.

Mr. Geib asked about the history of the front porch.

Ms. Parrish stated the porch was essentially a handicap ramp that will now be enclosed.

Mr. Geib asked where the current building footprint was in relation to the proposed enclosure, and if the front porch was removed whether a variance would be needed. He also stated that he had safety concerns regarding the existing parking lot and its close proximity to Richmond Road.

Mr. Pancotti stated that the parking lot was planned to be relocated to the rear of the restaurant. He also stated that the porch was only being enclosed and it did not expand further into the setback.

Ms. Parrish stated that if a portion of the building was being removed out of the setback, it would be considered less non conforming and would not require a variance.

Mr. Geib then opened the Public Hearing.

Mr. Hopke began his presentation by addressing the parking issue. He stated that the overall plan was to close the restaurant's entrance on the Richmond Road side and convert the current parking lot into greenspace. He stated that all parking will be moved to the rear of the building where the new front entrance was planned. He stated that the existing entrance will be converted into a dining area.

Mr. Hopke also stated that the roof above the vestibule area was held up by columns and if the porch were to be removed, a large portion of the roof would also have to be removed. He also stated that the proposed enclosure would improve the aesthetics of the building.

Mr. Jakobowski asked if the building modifications that would bring the building up to Code would be inherently expensive.

Mr. Hopke stated that the new addition will be in compliance and would add handicap accessible entrances and bathrooms. He stated that the renovations to the existing building would be very expensive, but portions of the existing building could certainly be used as dining space.

Mr. Otey asked if the rear of the lot would be used for future expansions and what would the chance be that another variance would be required.

Mr. Hopke stated that behind the proposed parking lot is the Resource Protection Area and not much more could be done in that area.

Mr. Geib asked if there was more than one owner of the property since there appears to be a shared access.

Mr. Hopke stated that one owner owned both properties.

Mr. Geib asked if the front wall was on the proposed floor plan.

Mr. Hopke stated yes and from a zoning stand point enclosing the porch was an expansion into the setback. He stated that not allowing the variance would unreasonable restrict the restaurant as a business relies on curb appeal. He also stated that the proposed design would improve the curb appeal.

Mr. Geib asked what type of landscaping would be added in front of the building.

Mr. Hopke stated that the landscaping plan will be approved as part of the site plan process, but mainly bushes would be installed that provided screening.

Mr. Geib stated he was concerned that people will park in front of the restaurant out of habit.

Mr. Hopke stated it will be clear that the parking lot has been relocated to the rear of the building.

Ms. Parrish stated that SUPs usually contain conditions which require the landscaping plan to be approved by the Director of Planning.

Mr. Geib stated that the exit of the parking lot should be adjacent to the median cut on Richmond Road.

Mr. Hopke agreed, and stated that the proposal would fix this issue.

Mr. Jakobowski asked if the Board could impose a condition prohibiting parking in front of the restaurant.

Ms. Parrish stated that the site is governed by a Master Plan that was approved by the Board of Supervisors. She stated that research would need to be done to see if the Board of Zoning Appeals can impose such a condition.

Mr. Otey stated that they could require that the variance is approved only in accordance with the proposal that was presented.

Ms. Parman stated that adding such conditions may be overstepping the bounds of the Board's power.

Mr. Geib stated that the Board has the ability to impose such conditions regarding the location, character and other features of the proposed structure for use as it may deem necessary in the public interest.

Ms. Parrish stated that those conditions should be directly related to the variance whereas parking was detached from the variance and has already been vetted by the Board of Supervisors during the SUP process.

Mr. Otey stated that a copy of the SUP would have been helpful.

Mr. Geib ask Mr. Hopke to reassure the Board that the area in front the building will not be used for parking.

Mr. Hopke confirmed that the area in front the building will not be used for parking.

Mr. Rodgers stated he does not believe the BZA has the power to force the applicant to give something up.

Mr. Campana stated that the parking has already been decided by the Board of Supervisors. He also stated that the only thing the BZA is addressing is the "boxing in" of the porch which will not extend any further into the setback.

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

Mr. Campana stated that he did not have an issue with the proposal and has no problem approving the variance as proposed

Mr. Otey stated he agreed.

Mr. Geib asked if anyone had any comments or changes to the resolution.

Hearing none, Mr. Campana made a motion to approve the resolution as presented. Mr. Rodgers seconded the motion. The motion was approved 5- 0.

E. MINUTES

1. June 7, 2018 Meeting Minutes

Mr. Geib asked Mr. Rodgers to lead the minute discussion as he was absent from the June 7, 2018 meeting.

Mr. Rodgers asked if there were any corrections to the June 7, 2018 meeting minutes.

After hearing none, Mr. Otey motioned to approved the minutes from the June 7, 2018 meeting. Mr. Campana seconded the motion.

On a voice vote, the motion was approved 4 -0. (Mr. Geib abstained.)

F. MATTERS OF SPECIAL PRIVILEGE

Ms. Parrish stated that a Zoning Ordinance amendment would be going to the Board of Supervisors that would reflect the changes to the powers of the BZA passed by the State Legislature.

Mr. Geib asked Ms. Parman to present the limits of potential conditions that the BZA could impose at the next meeting.

G. ADJOURNMENT

There being no further business Mr. Geib adjourned the meeting at 5:50 p.m.

William Geib, Vice Chairman

Christy H. Parrish, Secretary