

A G E N D A
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
October 3, 2019
5:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. OLD BUSINESS

D. NEW BUSINESS

1. Granting a Variance to the Article VI, Overlay Districts Floodplain Regulations on James City County Real Estate Tax Map Parcel No. 4640100012 (Case No. BZA-19-0006, 2054 Jamestown Road, Jamestown Marina - Distribution of Petroleum in a Special Flood Hazard Area Variance Request)

E. MINUTES

1. May 2, 2019 Meeting Minutes

F. MATTERS OF SPECIAL PRIVILEGE

G. ADJOURNMENT

ITEM SUMMARY

DATE: 10/3/2019

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: Granting a Variance to the Article VI, Overlay Districts Floodplain Regulations on James City County Real Estate Tax Map Parcel No. 4640100012 (Case No. BZA-19-0006, 2054 Jamestown Road, Jamestown Marina - Distribution of Petroleum in a Special Flood Hazard Area Variance Request)

ATTACHMENTS:

	Description	Type
☐	Memorandum	Cover Memo
☐	Resolution	Resolution
☐	Location Map	Exhibit
☐	Floodplain Area Exhibits	Exhibit
☐	Applicant Summary	Exhibit
☐	Site Plan Exhibit	Exhibit
☐	Adjacent Property Owner Notifications	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	9/27/2019 - 10:32 AM
Publication Management	Burcham, Nan	Approved	9/27/2019 - 10:34 AM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	9/27/2019 - 11:35 AM

MEMORANDUM

DATE: October 3, 2019

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: Granting a Variance to the Article VI, Overlay Districts Floodplain Regulations on James City County Real Estate Tax Map Parcel No. 4640100012 (Case No. BZA-19-0006, 2054 Jamestown Road, Jamestown Marina - Distribution of Petroleum in a Special Flood Hazard Area Variance Request)

Mr. Darryl Cook, on behalf of James City County, has applied for a variance to Section 24-594(a)(4), Prohibited uses, for the continued placement, use and proposed improvement of the distribution of petroleum at an existing Marina located in a floodplain district at 2054 Jamestown Road. This property is currently zoned B-1, General Business and can further be identified as James City County Real Estate Tax Map Parcel No. 4640100012.

Background

The James City County Marina (“Marina”) is located on Powhatan Creek, behind Jamestown Island and across the street from Jamestown Settlement and Jamestown Beach Event Park. James City County purchased the Marina facility in 2007 and offers many amenities to boaters such as boat access and slips, boat repair, pontoon tours, kayak rentals, and retail stores. The property also features Billsburg Brewery, which has become a popular venue.

James City County is proposing to upgrade and reconfigure the Marina as the existing infrastructure has reached or exceeded its design life. The project will be completed in two phases. Phase one will include dredging the majority of the basin, replacement of the existing 670 feet of fixed dock and slips with a new floating, Americans with Disabilities Act (ADA) accessible dock system, installation of a living shoreline to replace the failing bulkhead, and relocation of an existing fueling tank and controls with new distribution system and dispenser. The second phase will complete the dredging of the basin, replace the two existing floating boatsheds, provide additional uncovered boat slips, and install a new boat ramp.

James City County participates in the National Flood Insurance Program (NFIP) which allows the federal government to make flood insurance available to the community. In order to participate in this program, James City County must regulate all development located in the special flood hazard areas in accordance with the NFIP. This is accomplished through the adopted Floodplain Area Regulation found in Article VI, Overlay Districts in the James City County Zoning Ordinance.

The special flood hazard area is defined as the land in the floodplain subject to 1% or greater (100-year) of being flooded in any given year. A large portion of the Marina is located in a special flood hazard area as shown on the Federal Emergency Management Agency’s (FEMA) Flood Insurance Rate Map 51095C0182D dated December 16, 2015.

During the site plan review stage of the project, staff identified that the proposed changes to the existing gasoline storage tank and distribution line were in conflict with the Floodplain Overlay District regulations. Section 24-594 Prohibited uses, specifically prohibits the distribution of petroleum and the storage of oil and oil products including petrochemicals when located in a special flood hazard area. The regulation prohibiting these uses in the special flood hazard area was adopted in 1990. Based on staff’s research, the

existing gasoline storage tank and distribution line were located on site prior to 1988 therefore making them nonconforming. Nonconforming uses may continue as it existed when it became nonconforming.

Staff recognizes the sale of gasoline at marinas is very common and necessary for boaters. Upon discussing this issue with the Department of Conservation and Recreation's Acting NFIP Coordinator ("DCR"), it was determined that the distribution of petroleum and the storage of oil and oil products including petrochemicals were not prohibited uses in the NFIP and that the James City County regulation was more restrictive. It was also discussed that a variance to the Floodplain Area Regulations would be necessary as the proposed changes constituted an improvement to the current gasoline distribution system.

While this situation does not appear to meet the definition of a variance in Section 24-2, Definitions, the Floodplain Area Regulations allows the Board of Zoning Appeals (BZA) to grant variances to the Overlay District when certain criteria are met. The sale of fuel at a marina is permitted in the underlying B-1, General Business Zoning District so the BZA need only consider the factors listed in Section 24-603, Variances; factors to be considered.

This variance request is the minimum necessary under the Floodplain Overlay District regulations to allow the proposed project to occur. All phases of the project including the construction and installation methods for the fuel distribution lines must comply with all Floodplain Overlay District and NFIP regulations.

Proposed Changes

Mr. Cook, Assistant Director of Stormwater and Floodplain Manager, has provided a detailed summary of the proposed changes and factors to consider when granting the requested variance.

In summary, the existing fueling system is outdated and the storage tank is located on the edge of the water adjacent to the failing bulkhead. The existing fuel dispensing line is single walled that extends approximately 60 feet over the water to a location on a fixed pier. The existing fuel dispenser does not have an alarm feature that detects fuel leaks.

The proposed improvements to the Marina relocates the fuel storage tank outside the special flood hazard area. However, the fuel dispensing line will extend approximately 350 feet (mostly underground and in the special flood hazard area) to a new fuel dispenser located landside adjacent to a new bulkhead. The new line will be double walled to minimize any leakages. The new dispenser will have a sump chamber beneath it that contains an alarm system to detect any fuel leak. Emergency shutoff buttons will be located near the fuel dispenser and the marina office that can be activated by users and County staff.

Recommendation

Staff concurs that the proposed changes to the existing distribution of petroleum use provide enhanced safety features to better protect the surrounding environment and water features. The use in connection with the Marina is a necessary feature for the facility and patrons. Staff concurs that the applicant has provided sufficient information to satisfy the additional factors as described in Section 24-603, Variance; factors to be considered by the BZA. Staff recommends approval of the variance with the following conditions:

1. The fuel storage tank shall be located outside of any portion of the special flood hazard area identified on FEMA's Flood Insurance Rate Map 51095C0182D dated December 16, 2015.
2. The fuel dispenser and dispensing line will be located on a concrete pedestal and elevated above the Base Flood Elevation minimizing the chance of the dispenser being dislodged during a flood event. The fuel dispenser shall have an alarm mechanism to detect fuel leaks and emergency shutoffs located

near the fuel dispenser and the marina office. Emergency operating procedures shall be established for both public users and County staff should a fuel leak be detected. A copy of the emergency procedures shall be provided to the Zoning Administrator prior to the public use of the fuel dispenser.

3. The fuel distribution line shall be double walled and located underground or contained in the concrete pedestal.
4. All development associated with this project that is located in the special flood hazard area shall comply with Article VI, Overlay Districts, Division 3, Floodplain Area Regulations, including applying for and receiving a permit.
5. The applicant is aware that the issuance of a variance increases the risk to life and property and can result in increased premium rates for flood insurance.

CHP/md
BZA19-6MarinaVar-mem

Attachments:

1. Resolution
2. Location Map
3. Floodplain Area Exhibits
4. Applicant Summary
5. Site Plan Exhibit
6. Adjacent Property Owner Notifications

RESOLUTION

GRANTING A VARIANCE TO THE ARTICLE VI, OVERLAY DISTRICTS
FLOODPLAIN REGULATIONS ON JAMES CITY COUNTY REAL ESTATE
TAX MAP PARCEL NO. 4640100012 (CASE NO. BZA-19-0006, 2054 JAMESTOWN
ROAD, JAMESTOWN MARINA - DISTRIBUTION OF PETROLEUM IN A SPECIAL
FLOOD HAZARD AREA VARIANCE REQUEST)

WHEREAS, Mr. Darryl Cook, on behalf of James City County, has appeared before the Board of Zoning Appeals of James City County (the “Board”) on October 3, 2019 to request a variance to the James City County Code of Ordinances (the “County Code”) Floodplain Area Regulations on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 4640100012 and further identified as 2054 Jamestown Road (the “Property”) as set forth in the application Case No. BZA-19-0006; and

WHEREAS, the Board has listened to the arguments presented, has carefully considered all evidence entered into the record and discussed a motion to grant a variance to County Code Section 24-594(a)(4), Prohibited uses, for the continued placement, use and proposed improvement of the distribution of petroleum at an existing marina located in a floodplain district at 2054 Jamestown Road; and

WHEREAS, the Board, pursuant to County Code Section 24-603, has considered all relevant factors and procedures specified in other sections of the Zoning Ordinance and considered the following additional factors:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the 1% annual chance (100-year) flood elevation.
2. The danger that materials may be swept onto other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.

7. The availability of alternative locations not subject to flooding for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area.
10. The safety of access by ordinary and emergency vehicles to the property in time of flood.
11. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
12. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
13. No variance shall be granted for any accessory structure to be wet floodproofed if that structure exceeds 600 square feet.
14. Such other factors which are relevant to the purposes of this section.
 - a. Increase in flood heights;
 - b. Additional threats to public safety;
 - c. Extraordinary public expense;
 - d. Creation of nuisances;
 - e. Fraud and victimization of the public; and
 - f. Conflicts with local laws or Ordinances.

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 the variance will be the minimum required to provide relief from any hardship to the applicant.

WHEREUPON, the Board of Zoning Appeals of James City County, Virginia, adopts the following resolution:

To grant a variance to Section 24-594(a)(4), Prohibited uses, for the continued placement, use and proposed improvement of the distribution of petroleum at an existing marina located in a floodplain district at 2054 Jamestown Road with the following conditions:

1. The fuel storage tank shall be located outside of any portion of the special flood hazard area identified on the Federal Emergency Management Agency's Flood Insurance Rate Map 51095C0182D dated December 16, 2015.

2. The fuel dispenser and dispensing line will be located on a concrete pedestal and elevated above the Base Flood Elevation minimizing the chance of the dispenser being dislodged during a flood event. The fuel dispenser shall have an alarm mechanism to detect fuel leaks and emergency shutoffs located near the fuel dispenser and the marina office. Emergency operating procedures shall be established for both public users and County staff should a fuel leak be detected. A copy of the emergency procedures shall be provided to the Zoning Administrator prior to the public use of the fuel dispenser.
3. The fuel distribution line shall be double walled and located underground or contained in the concrete pedestal.
4. All development associated with this project that is located in the special flood hazard area shall comply with Article VI, Overlay Districts, Division 3, Floodplain Area Regulations, including applying for and receiving a permit.
5. The applicant is aware that the issuance of a variance increases the risk to life and property and can result in increased premium rates for flood insurance.

William Geib
Chair

ATTEST:

Christy Parrish
Secretary to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
JAKOBOWSKI	_____	_____	_____
OTEY	_____	_____	_____
RODGERS	_____	_____	_____
CAMPANA, JR.	_____	_____	_____
GEIB	_____	_____	_____

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 3rd day of October, 2019.

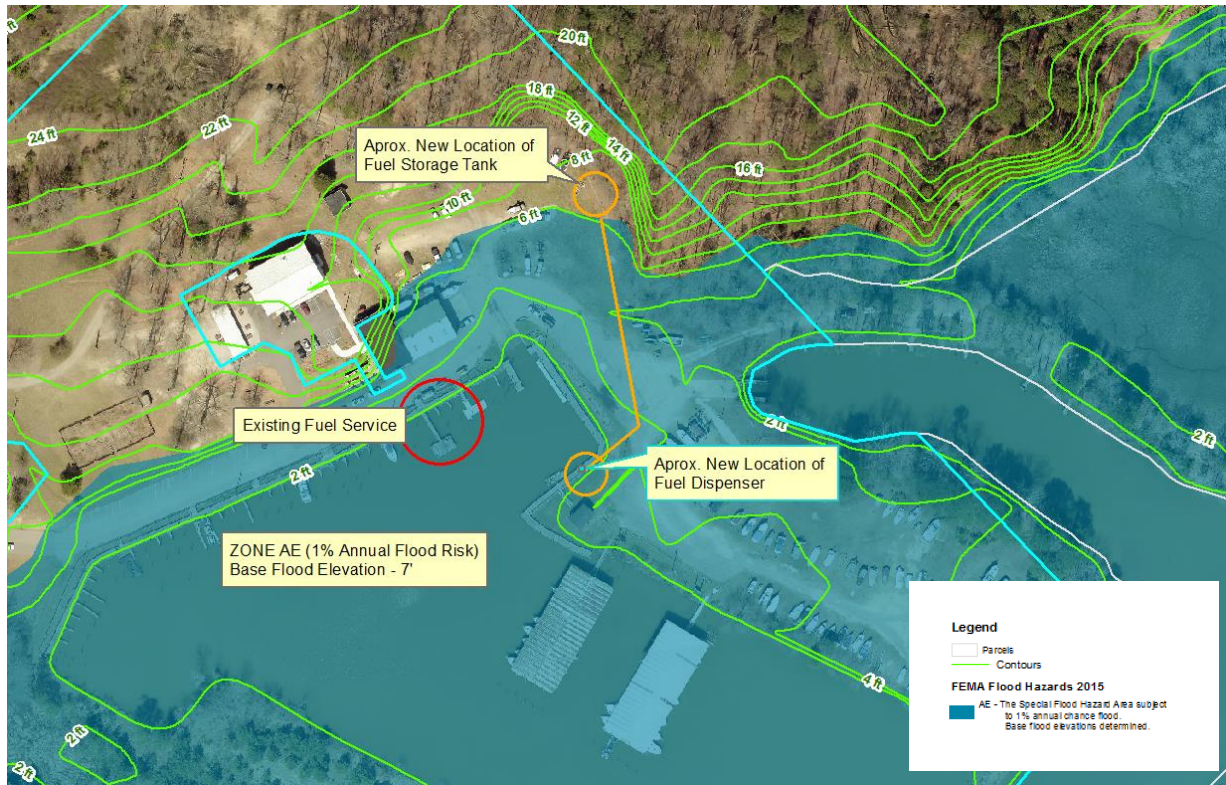
BZA19-6MarinaVar-res

Attachment #2 JCC-BZA-19-0006

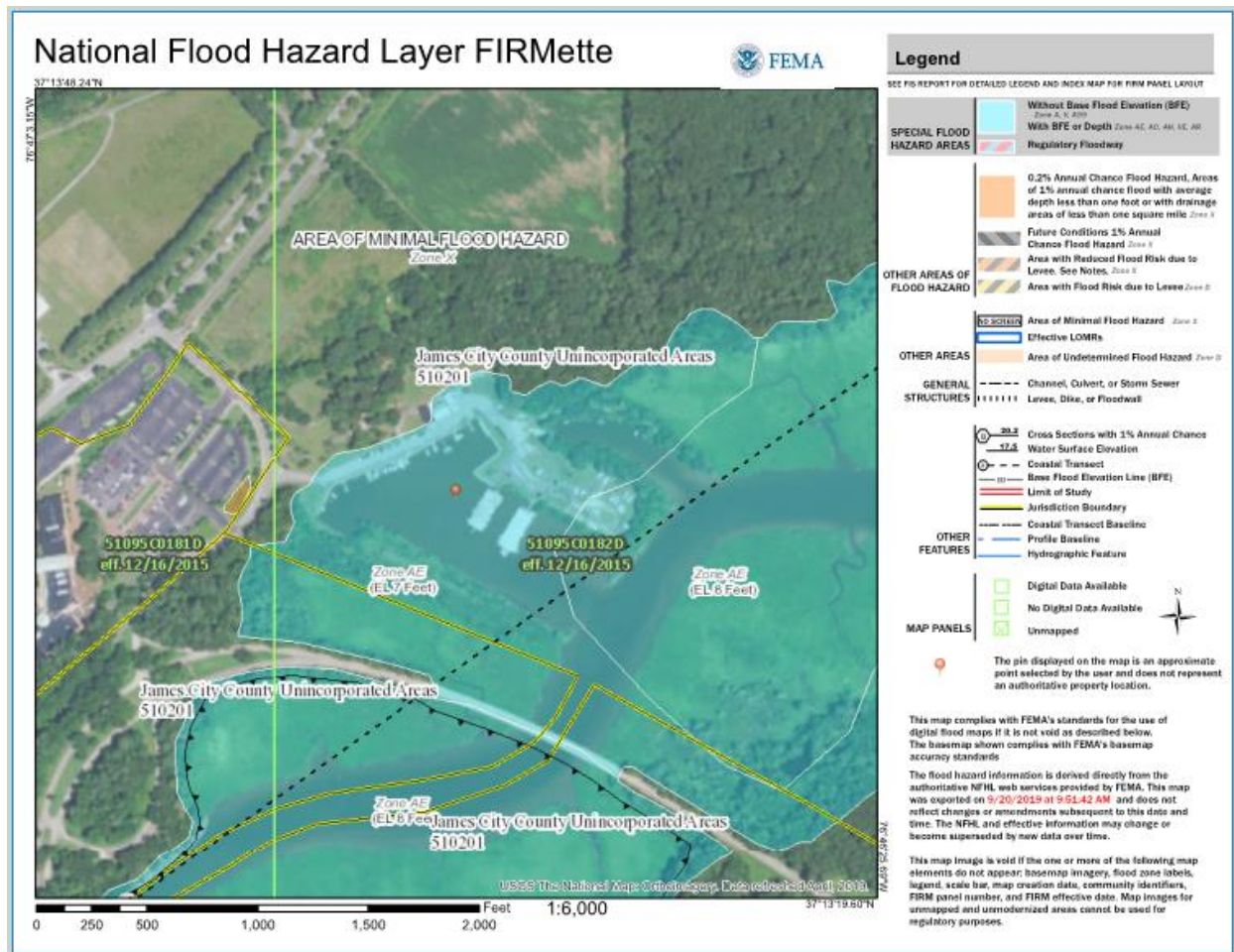
2054 Jamestown Road, James City County Marina Location Map



Copyright Commonwealth of Virginia. The data contained herein are the property of the Commonwealth of Virginia. Distribution of any of these data to anyone not licensed by the Commonwealth is strictly prohibited.



Source – James City County GIS Maps





General Services

MEMORANDUM

DATE: September 19, 2019
TO: Board of Zoning Appeals
FROM: Darryl Cook, Assistant Stormwater and Resource Protection Director
RE: James City County Marina – Variance Request

James City County is proposing to upgrade and reconfigure the James City County Marina (formerly known as the Jamestown Yacht Basin) located adjacent to Powhatan Creek. Much of the existing infrastructure has reached or exceeded its design life. The project will be accomplished in two phases. The first phase will involve dredging the majority of the basin, replacement of the existing 670 feet of fixed dock and slips with a new floating, ADA accessible dock system, installation of a living shoreline to replace the failing bulkhead and relocation of an existing fueling tank and controls with new distribution system and dispenser. The second phase will complete the dredging of the basin, replace the two existing floating boatsheds, provide additional uncovered boat slips and install a new boat ramp.

The issue for consideration by the Board is the relocation of the fuel system and distribution system. The Zoning Ordinance currently prohibits the location of this type of fueling and distribution system in the floodplain. The current location of the tank and dispenser is five feet from the existing failing bulkhead with the dispensing line extending approximately 60 feet over the water to a location on a fixed pier. The renovations to the marina will relocate the dispensing system to the opposite side of the marina with the tank being located outside of the floodplain. A variance is needed to allow for the distribution of petroleum products in the floodplain.

Before consideration of the findings that need to be made for a variance request, the improvements to the fueling system will be presented. Regarding the location of the fuel tank, it is presently on the edge of the marina located approximately five feet from the water adjacent to the existing failing bulkhead. The elevation of the base of the fuel tank is at elevation 5.25 feet, which is below the base flood elevation (BFE) of 7.0 feet. The new location of the tank will be outside of the floodplain approximately 250 feet from the nearest water and its base will now be at least at elevation 7.5 feet. The dispenser is currently located adjacent to the tank at elevation 5.35 feet with the dispensing line extending about 60 feet adjacent to a fixed dock in a gutter with the nozzle located on that fixed dock. The new configuration has the dispenser located on a

concrete pedestal elevated to the BFE of 7.0 feet with the dispensing lines located in reels attached to the dispenser above the BFE. The new dispenser will have a sump beneath it that contains an alarm system so that if there is any fuel leak, it will trigger the alarm and the fueling operation will be shut off. The existing dispenser has no alarm system. Concerning the distribution line, the line from the current tank to the dispenser is very short (5 to 10 feet) but it is a single walled line. The new distribution line is going to be double walled to minimize any chance of leakage as it would be contained within the line itself. The new line will be about 350 feet long with most of that distance being in the floodplain.

The floodplain ordinance has provisions in Section 24-603(a) for the granting of a variance to allow a fueling system to be located in the floodplain provided certain findings are made. The following information addresses the findings for the relevant factors for the fueling system:

(2) Danger that materials will be swept onto other lands or downstream to the injury of others.

As the fuel tank is being relocated outside of the floodplain, the only item that will be located above ground in the floodplain is the dispenser and the dispensing line. The dispenser and dispensing line will be located on a concrete pedestal and elevated above the BFE so there is minimal chance of the dispenser being dislodged during a flood event.

(4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

The fuel tank will be located outside of the floodplain so there is no possible flood damage to it during a base flood event (1% chance flood). The distribution line will be buried or contained in the concrete pedestal. The dispenser is located above the BFE so there would be no impact to it either during the base flood event.

(5) The importance of the services provided by the proposed facility to the community.

The James City County Marina is the only public marina on the James River in the county. There is a public boat ramp at the Chickahominy Riverfront Park but it does not have fueling facilities. Therefore, the marina provides access to the water including fueling for boaters that may not be able to access or afford other private marina facilities. The fueling system is an essential and integral component of the marina. In the Blueways and Shoreline Recreation section of the Parks and Recreation portion of the Comprehensive Plan, it was presented that 72% of the citizens stated access to waterways was either “somewhat or very important.”

(6) The requirements of the facility for a waterfront location.

The marina by its nature is a water dependent facility. The fuel system is necessary to be located adjacent to the docks in order to service both transient and resident boats.

(7) The availability of alternative locations not subject to flooding for the proposed use.

The fuel tank will be located outside of the floodplain. The distribution line and dispenser need to be located within the floodplain limits in order to serve the boats that are in the marina either on a transient or resident basis. The dispenser will be elevated above the BFE and will have an alarm system.

(8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

The marina is the focal point of the property owned by the county at this location. It is shown on the *Shaping Our Shores Master Plan* with future proposed uses such as restaurants, retail and maintenance facilities to serve both the marina patrons as well as the general public. There is a brewery located on the marina property that the Economic Development Authority has assisted with funding. The marina is the major attraction for the property that the county hopes to make into a local destination location.

(9) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

The Parks and Recreation section of the Comprehensive Plan presents in Strategy PR 4 to “Continue to provide access to major water bodies for expansion of water recreation opportunities.” It further states in Action PR 4.2 for the county “to develop recreational components of the ... Jamestown Yacht Basin (now James City County Marina) ... in accordance with approved master plans.” The *Shaping Our Shores Master Plan*, which contains the marina master plan, was adopted by the Board of Supervisors on June 9, 2009. In the action, the Board supported a mixed use revitalization to include an upgraded marina with related retail, restaurants and office space. The upgraded marina needs to include as an integral component a renovated fuel system that meets current codes and standards.

Concerning the floodplain management program, with the revised location of the fuel tank outside of the floodplain, the only item that is not in conformance with the program is the location in the floodplain of the distribution system for the fueling system. Given the improvements to the distribution system when compared to the existing system, the modifications will lessen the potential for any negative impact to the system or the marina by a flood event.

In summary, the proposed renovations to the marina and the fueling system will continue to provide and enhance the function of this facility to the public. The fueling system reconfiguration will significantly reduce the potential for any flooding or petroleum based pollution event from occurring at the marina. The renovations reduce the threat to public safety and do not involve extraordinary public expense. The changes to the distribution system are required to accommodate the relocation of the fuel tank and the double-walled distribution line is

required by code so it does not involve expense beyond what would be required. I respectfully request that the Board grant a variance to place the distribution line in the floodplain.

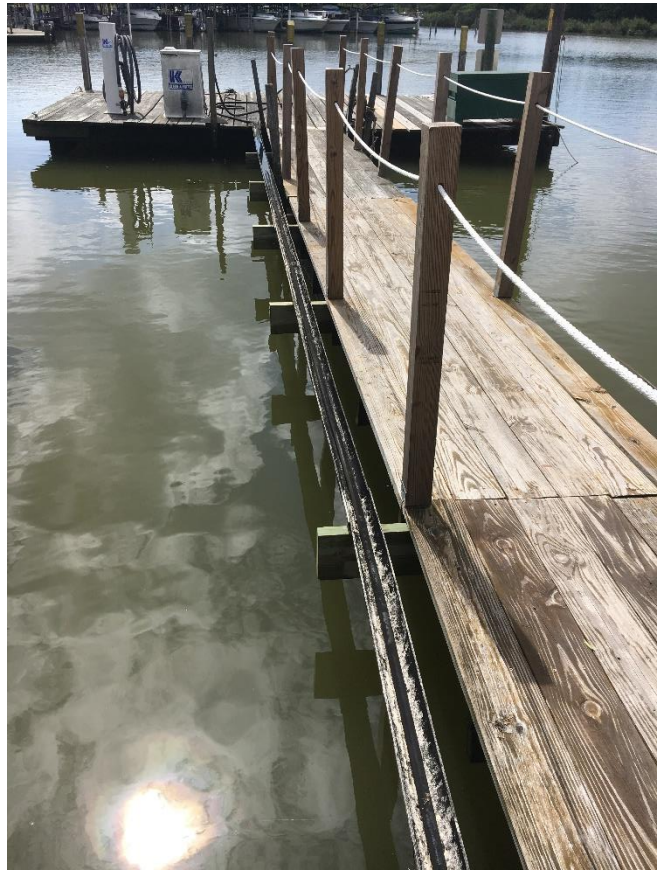
Exhibits

On the following pages are photos and other graphics that document the existing conditions of the marina's fueling system and also what the changes will be to the marina and the fuel system.

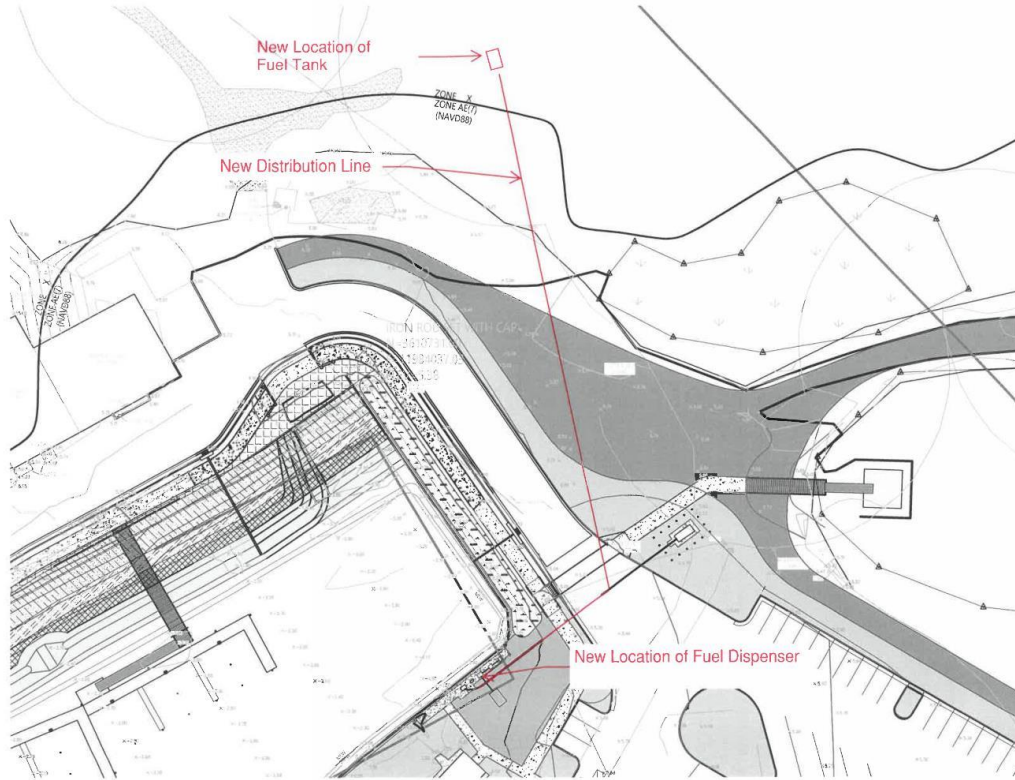
Marina Draft Master Plan and Phasing Plan



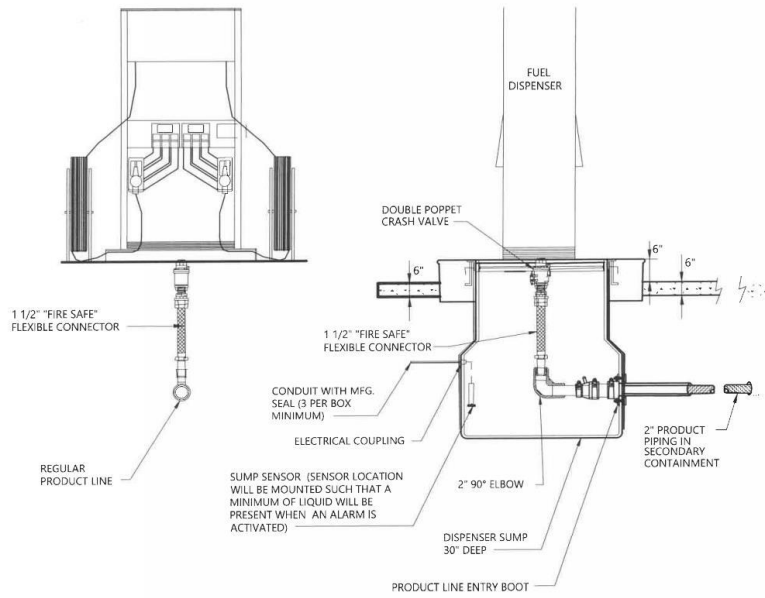
Existing Fuel Tank and Dispenser Configuration



New Location of Fuel Tank



Detail of New Dispenser Configuration



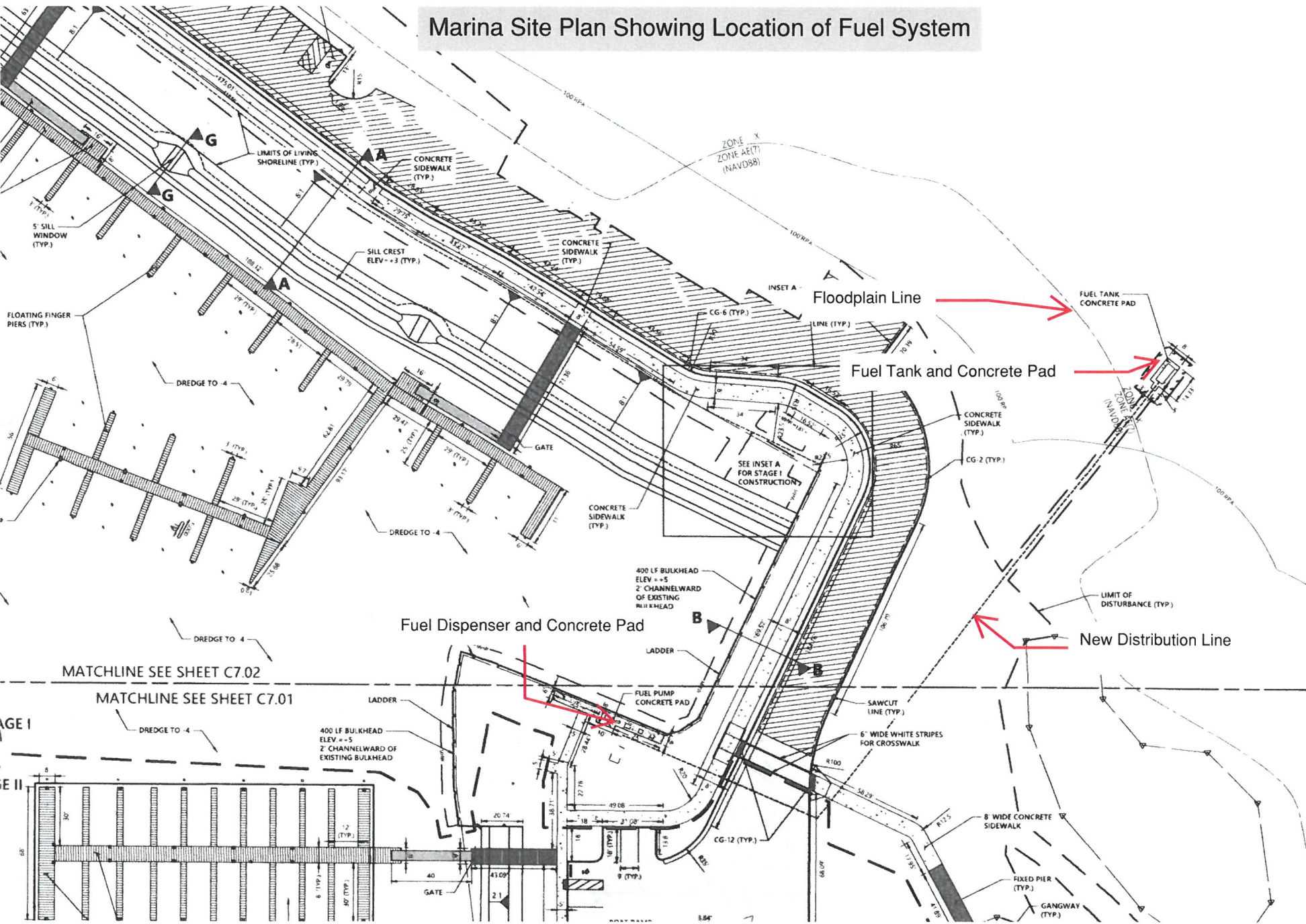
Example of New Fuel Dispenser



View of Marina from future Fuel Tank Location



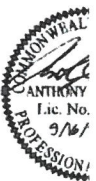
Marina Site Plan Showing Location of Fuel System



James Williams & Associates, Inc.
 2054 Jan Williams

No.	Revisions

Not Approved
 Layout Material





	A	B	C	D	E	F	G
1	PIN_1	LocAddr	Owner1	MailAddr	MailCity	MailStat	MailZip
2	4630100015	1348 COLONIAL PARKWAY	COMMONWEALTH OF VIRGINIA	1111 EAST MAIN STREET	RICHMOND	VA	23219
3	4630100016	2206 COLONIAL PARKWAY	JAMESTOWN-YORKTOWN FOUNDATION	PO BOX J	WILLIAMSBURG	VA	231873640
4	464010009A	2080 JAMESTOWN ROAD	COMMONWEALTH OF VIRGINIA JAMESTOWN FOUNDATION	1700 N MAIN STREET	SUFFOLK	VA	234344341
5	4640100012L	2054 B JAMESTOWN RD	BILLSBURG BREWERY INC ATTN: DAVE BAUM	205 KINGSWOOD DR	WILLIAMSBURG	VA	23185
5	4640100016	2000 JAMESTOWN ROAD	MAGLIERI, CAROL G TRUSTEE	122 OAK RD	WILLIAMSBURG	VA	231853215
7	4640100018	2070 JAMESTOWN ROAD	VA COMMONWEALTH OF JAMESTOWN-YORKTOWN FOUNDATION	P O BOX 1607	WILLIAMSBURG	VA	231871607
3	4732500003	119 CONSTANCE AVE	PAPAS , CONSTANTINE T TRUSTEE & TOBY	119 CONSTANCE AVE	WILLIAMSBURG	VA	231853102
3	4732500004	123 CONSTANCE AVENUE	CURRENT, PAUL W	123 CONSTANCE AVE	WILLIAMSBURG	VA	231853102
0	5610100001	541 NECK-O-LAND RD	UNITED STATES OF AMERICA	1849 C ST NW RM 2444	WASHINGTON	DC	202400002
1	4640100013		JAMES CITY COUNTY	PO BOX 8784	WILLIAMSBURG	VA	231878784
2	4640100012	2054 JAMESTOWN ROAD	JAMES CITY COUNTY	PO BOX 8784	WILLIAMSBURG	VA	231878784

ITEM SUMMARY

DATE: 10/3/2019
TO: The Board of Zoning Appeals
FROM: Christy H. Parrish, Zoning Administrator
SUBJECT: May 2, 2019 Meeting Minutes

ATTACHMENTS:

	Description	Type
☐	May 2, 2019 Meeting Minutes	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	9/27/2019 - 10:21 AM
Publication Management	Burcham, Nan	Approved	9/27/2019 - 10:28 AM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	9/27/2019 - 10:33 AM

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
May 2, 2019
5:00 PM

A. CALL TO ORDER

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

B. ROLL CALL

Ms. Christy Parrish called the roll.

Present:

Mr. William Geib
Mr. Stephen Rodgers
Mr. David Otey, Jr.
Mr. Mark Jakobowski

Absent:

Mr. Ron Campana, Jr.

Staff Present:

Ms. Christy Parrish, Zoning Administrator
Ms. Terry Costello, Deputy Zoning Administrator

C. OLD BUSINESS

None

D. NEW BUSINESS

Mr. Geib presented the mission statement of the Board of Zoning Appeals (BZA) for those present in the audience. He stated that the BZA is a five-member Board consisting of James City County residents. It has the power to hear and decide appeals to decisions of the Zoning Administrator and applications for special exceptions, such as yard and setback variances. A favorable vote of three members of the Board is 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 is not shared generally by other properties, and the variance is not contrary to the purpose of the Ordinance. Variances are not granted as a special privilege or convenience. If the variance is 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-19-0004. Granting a Variance on James City County Real Estate Tax Map Parcel No. 4710100116

Ms. Terry Costello, Deputy Zoning Administrator, stated that Mr. Richard M. Wiatt, Jr. of Vanasse Hangen Brustlin, Inc. on behalf of Branscome Office Property, LLC, has applied for a variance to Section 24-393(a), Yard Requirements of the Code of James City County, Virginia to reduce the minimum rear building setback from 50 feet to 48.27 feet to allow for the continued placement of a structure located at 4551 John Tyler Highway.

Ms. Costello stated that the warehouse was originally constructed in 1973 with additions in 1997 and 2004. Ms. Costello further stated that in 2004, when the last addition was built, it was noted on the site plan that the rear setback was 50 feet, and that the addition would not encroach into that setback. Ms. Costello stated that in 2018, the owner contacted the County about a possible expansion, and it was then discovered that the right corner of the building encroaches in the rear setback.

Ms. Costello noted that notices of the application for a variance were set to all adjacent property owners. Ms. Costello stated that staff did not receive any comments concerning the variance.

Ms. Costello stated that the strict application of the terms of the Zoning Ordinance would not unreasonably restrict the utilization of the property, as the property has been put to use by the existence of an office building and warehouse building. Ms. Costello further stated that staff recognizes that it was the intention of the owners at the time the last addition was constructed to be within the confines of the approved site plan. Ms. Costello noted that staff also recognizes that errors are made during the construction process. Ms. Costello stated that staff does not believe there is any evidence this variance would adversely affect any adjacent property owners or adversely affect the character of the district in which it exists. Ms. Costello stated that staff recommends approval with no further encroachment.

Mr. Geib noted that the map showed the property, the setbacks, and the encroachment.

Mr. Otey inquired if the proposed expansion that brought the encroachment to light is still in the works.

Ms. Costello stated that the project is currently in the site plan review process.

Mr. Geib opened the Public Hearing.

Mr. Richard Wiatt, Jr. of Vanasse Hangen Brustlin, Inc., 351 McLaws Circle, representing the applicant, stated that there is an approved site plan for an expansion which is a canopy addition extending into the parking lot. Mr. Wiatt further stated that the site plan currently under review is for a storage area also on the east side. Mr. Wiatt noted that where the encroachment is, there is a shared stormwater pond that is part of the approved master plan for this site and the neighboring residential area.

Mr. Rodgers inquired how long the encroachment has existed.

Mr. Wiatt stated that the warehouse has been in existence since 2004.

As no one further wished to speak, Mr. Geib closed the Public Hearing.

Mr. Geib read the resolution that was prepared by staff.

Mr. Rodgers made a motion to adopt the resolution.

Mr. Otey seconded the motion.

On a roll call vote, BZA voted to approve the variance and adopt the resolution (4-0).

2. Case No. BZA-19-0003, 6283 Centerville Road - Zoning Administrator's Determination Appeal

Ms. Christy Parrish, Zoning Administrator, stated that Ms. Leigh Major, Attorney at Law, on behalf of Hayden's Place, LLC, is appealing the Zoning Administrator's written determination on February 1, 2019, that the property located at 6283 Centerville Road is being used for a contractor's storage yard which includes the storage of contractor's equipment, trailers, and vehicles in violation of the James City County Zoning Ordinance. Ms. Parrish stated that this appeal is in accordance with § 15.2-2311 of the Code of Virginia.

Ms. Parrish stated that the owner of the Property is Hayden's Place, LLC and Mr. Timothy Soderholm is the listed registered agent with the State Corporation Commission. Ms. Parrish stated that it is staff's understanding that Mr. Soderholm is also owner of Tiki Tree and Landscape, which offers services including tree removal, stump grinding, pruning, landscaping, hardscaping, and lot clearing and excavation.

Ms. Parrish stated that on January 2, 2019, staff received a complaint that the property was being used for the operation of a commercial business. Ms. Parrish stated that the complaint further stated that trees were being removed from the property to create a storage yard. Ms. Parrish stated that additional complaints followed regarding noise and noting that a fence was constructed to shield the work from Centerville Road.

Ms. Parrish stated that various site visits were conducted by staff which revealed construction of new fencing, a graveled area, a storage container, and contractor's equipment on the Property. Ms. Parrish further stated that the contractor's equipment viewed on the property from the right-of-way included utility trailer(s), a small excavator, and a dingo loader. Ms. Parrish stated that in addition, staff has also witnessed three trucks, at least one with Tiki Tree and Landscape logos, along with trailers and equipment exiting the property.

Ms. Parrish stated that Section 24-5 of the James City County Code requires the Zoning Administrator to administer and enforce Chapter 24- Zoning of the James City County Code. Ms. Parrish stated that staff issued a "Notice of Violation" on February 1, 2019 and determined that the property is being used for a contractor's storage yard which includes the storage of contractor's equipment, trailers, and vehicles.

Ms. Parrish stated that the storage of heavy equipment and contractors' warehouses, sheds, and offices, is not a permitted use in the A-1, General Agricultural Zoning District. Ms. Parrish further stated that use of the property to store contractors, equipment, trailers, and vehicles used for commercial purposes, whether stored inside structures or storage containers, without the issuance of a Special Use Permit (SUP) constitutes a violation of the Zoning Ordinance.

Ms. Parrish stated that staff recognizes that the owner may, from time to time, hire Tiki Tree and Landscape to provide services on the property; however, the equipment may only be used on-site for the necessary amount of time it takes to complete the project. Ms. Parrish stated that undefined time limits to store contractor's materials, equipment, trailers, and vehicles used for commercial purposes on the property and/or the continuous moving of such equipment to and from the property to other job sites, constitutes using the property as a contractor's storage yard.

Ms. Parrish stated that the Notice of Violation further detailed that in order to come into compliance with the Zoning Ordinance, Hayden's Place, LLC must remove all contractor's equipment as described in the letter within 30 days from the date of the letter or apply for an SUP from the Board of Supervisors.

Ms. Parrish stated that on February 28, 2019, an appeal of this interpretation was received. Ms. Parrish stated that the appeal explanation stated "Appeal from Zoning Administrator's decision letter dated February 1, 2019 regarding contractor's storage yard." Ms. Parrish stated that no further information has been provided by the applicant or the owner.

Ms. Parrish stated that the Board of Zoning Appeals is a quasi-judicial body. Ms. Parrish further stated that the Board's decision shall be based on the Board's judgement of whether or not her interpretation of the Zoning Ordinance is correct that the use of the property to store contractor's materials, equipment, trailers, and vehicles in violation of the James City County Zoning Ordinance without the issuance of an SUP from the Board of Supervisors.

Ms. Parrish stated that staff has received four citizen letters, some in support and some in opposition of the use of the property; however, a common element in three of the letters indicates that there is storage of equipment used for business purposes on the property.

Ms. Parrish stated that the Board's decision is not whether the use of the property should be permitted an SUP; that decision can only be made by the Board of Supervisors.

Ms. Parrish stated that staff recommends that the Board of Zoning Appeals uphold the Zoning Administrator's interpretation regarding this matter that the use of the Property to store contractor's materials, equipment, and vehicles used for commercial purposes is not permitted without the issuance of an SUP from the Board of Supervisors and is a violation of the Zoning Ordinance.

Mr. Rodgers inquired about a description of the dingo loader.

Ms. Parrish stated that a dingo loader is a small piece of landscaping equipment used to move dirt or heavier objects.Mr.

Otey inquired if the photos attached to the Notice of Violation letter were taken from Centerville Road.

Ms. Parrish confirmed. Ms. Parrish further stated that the two aerial photos show the substantial difference between 2017 and 2019.

Ms. Parrish and the BZA members discussed the photos in order to be familiar with where structures and equipment were located.

Mr. Geib stated that he is familiar with the property and drives past it often. Mr. Geib further stated that the ingress and egress of vehicles is constant.

Mr. Geib stated that he wanted the applicant to clearly understand that in October 2018, in response to changes in State law, the Board of Supervisors amended County Code to establish that the burden of proof is on the applicant to establish that staff is incorrect by preponderance of the evidence.

Mr. Geib opened the Public Hearing.

Ms. Leigh Major, Attorney for Hayden's Place, LLC, stated that Mr. Solderholm's attorney was unavailable to attend the meeting. Ms. Major stated that Mr. Soderholm would address the Board first and that she would speak second. Ms. Major further stated that there had been some confusion among the neighbors receiving adjacent property owner letters as they thought the notification was related to a rezoning for the property.

Mr. Timothy J. Soderholm, 6293 Centerville Road, stated that his residence is adjacent to the subject property. Mr. Soderholm further stated that he maintains the adjacent property including care of two homes.

Mr. Soderholm noted that part of the purchase agreement for Hayden's Place, LLC was that the previous owner would have a year to remove the vehicles and equipment stored on the property. Mr. Soderholm further noted that the bulk of that equipment has been removed; however, several large items remain.

Mr. Soderholm described the work needing to be done on the property to make the grounds safe and serviceable. Mr. Soderholm stated that much of the work was done on weekends or after hours and that he was fortunate to be able to use his personal equipment for that work.

Mr. Soderholm provided an overview of the history of the property, noting that the property has been previously used as a logging yard, a family compound, car repair, and other uses that had large amounts of outdoor storage. Mr. Soderholm stated that his equipment is stored in the barn. Mr. Soderholm stated that he does use the equipment for his business and also for personal use after hours to maintain his property, Hayden's Place LLC and the Otto Ripley property. Mr. Soderholm provided detailed explanations of the various photos to clarify for the Board how the equipment is used, where it is stored, and the changes to the property.

Mr. Soderholm noted that the equipment being used is his personal equipment and does not belong to his business. Mr. Soderholm further noted that the equipment was being used to improve the property in support of the goal for Hayden's Place LLC to provide housing for single mothers and their children.

Mr. Soderholm stated that the work trucks were seen entering and leaving the property because he uses them for transportation.

Mr. Soderholm presented the Board with signed statements from his neighbors that they do not find the activities to constitute a nuisance.

Mr. Jacobowski inquired if permits were obtained for the gravel improvements to the property.

Mr. Soderholm stated that this was not a new improvement; it was reclaiming previously graveled areas that had been overgrown. Mr. Soderholm further stated that there was no clearing and grading involved.

Mr. Jacobowski noted that the graveled area was fairly extensive and seemed to be excessive for the need.

Mr. Soderholm stated that the work was necessary to make the property usable for himself and the tenants.

Mr. Jacobowski noted that there are more storage buildings in the 2019 aerial than in the 2017 photo.

Mr. Soderholm stated that there was only one new structure which is the Connex container box. Mr. Soderholm noted that the Connex is specifically to provide secure storage for the subcontractors.

Mr. Jacobowski inquired if the Connex was on a permanent foundation.

Mr. Soderholm stated that it is temporary.

Mr. Jacobowski inquired about the size of the equipment on the property. Mr. Soderholm provided details on the various pieces of equipment, noting that all but one are approximately the size of a riding lawnmower. Mr. Soderholm noted that one would be classified as heavy equipment. Mr. Soderholm stated that most of the equipment is left on the job site and only returns to the property between jobs or when he needs to use them for personal purposes. Mr. Soderholm noted that when the equipment is on the property, it is stored in the pole barn.

Mr. Jacobowski inquired how many pieces of equipment, such as bucket trucks, belong to Tiki.

Mr. Soderholm stated that he has two bucket trucks, but only one is marked Tiki. Mr. Soderholm further stated that only three pieces are owned by Tiki.

Mr. Jacobowski inquired if the equipment returns to the property every day.

Mr. Soderholm stated that they did not unless he was driving the piece of equipment home at the end of the day.

Mr. Jacobowski inquired where they are stored.

Mr. Soderholm stated that two are in need of repair and have been at Daniels Welding and Tire for over half the year.

Mr. Jacobowski noted that there is an issue with James City County's Stormwater Division regarding clearing and grading. Mr. Jacobowski inquired if Mr. Soderholm verified whether permits were needed or not prior to doing the clearing, grading, and tree work that caused this issue.

Mr. Soderholm stated that the tree removal and land disturbance was less than 2,500 square feet and did not require a clearing permit. Mr. Soderholm noted that the trees that were removed were a liability and it was necessary to take them down for the safety of tenants on the property.

Mr. Jacobowski summarized that Mr. Soderholm did discuss the project with Stormwater and Resource Protection and did not obtain a permit for the work.

Mr. Soderholm stated that none were needed.

Mr. Rodgers inquired about the ownership of Hayden's Place LLC.

Mr. Soderholm stated that he and his wife are two of the officers. Mr. Soderholm further stated that Hayden's Place LLC is a rental property with small families living in the residences.

Mr. Rodgers inquired about what is kept in the pole barn.

Mr. Soderholm stated that the pole barn is used to store equipment, machinery, and supplies.

Mr. Geib acknowledged that the work done to the properties is a vast improvement and that the letters of support indicate that Mr. Soderholm is a good neighbor.

Mr. Geib stated that the crux of the matter is whether Mr. Soderholm is running a business from the property.

Mr. Soderholm inquired about what constitutes running a business.

Mr. Geib stated that he needed to ask the questions to clarify things in his own mind.

Mr. Geib inquired if Mr. Soderholm owned Tiki Tree Service.

Mr. Soderholm confirmed.

Mr. Geib noted that Mr. Soderholm owns at least three trucks as Tiki Tree Service.

Mr. Soderholm stated that he owns the vehicles personally and that Tiki does not hold title to any equipment or property.

Mr. Geib stated that this is a convoluted situation.

Mr. Soderholm stated that he believes that customers and employees are what constitute a business. Mr. Soderholm stated that no customers come to the site and no employees come to the site; only subcontractors. Mr. Soderholm noted that Hayden's Place LLC also hires subcontractors to perform various types of work.

Mr. Geib stated that there are many other pieces of equipment on the property that could be or are used for the purposes of trees, and for landscaping. Mr. Geib inquired if those pieces of equipment would be used for Tiki.

Mr. Soderholm responded that three flatbed trailers, a chipper, and the vehicles are used for Tiki. Mr. Soderholm stated that the other equipment is owned by a family member or are used for personal work.

Mr. Geib stated that it seems reasonable to conclude that at least part of the equipment is used in the business regardless of the ownership.

Mr. Soderholm asked for clarification.

Mr. Geib stated that the staff report indicates that materials, equipment, trailers, and vehicles are used for commercial purposes. Mr. Geib further stated that Mr. Soderholm had admitted that the flatbed trailers, chipper, and vehicles are used for business purposes.

Mr. Soderholm stated that the equipment is co-used.

Mr. Geib stated that any commercial use is in violation of the Zoning Ordinance.

Ms. Major stated that in essence, the argument is that Mr. Soderholm holds all the equipment personally with a few pieces co-owned by family members. Ms. Major stated that some of those pieces are used for Tiki but also personal use. Ms. Major further stated that Hayden's Place LLC is adjacent to Mr. Soderholm's residence where he is allowed to have the home-based business. Ms. Major stated that due to the amount of equipment and the lack of storage buildings at his residence, these pieces of equipment are stored at Hayden's Place LLC. Ms. Major stated that those same pieces of equipment that have been used for Tiki have also been used for cleanup of the Hayden's Place LLC property as well as for upkeep of other properties, including the Otto Ripley estate. Ms. Major stated that the previous owner of the property has not completed the removal of his vehicles and that more reclamation will be done. Ms. Major noted that almost every neighbor signed the petition in support of Mr. Soderholm. Ms. Major further noted that the one dissenting voice was not necessarily opposed to what Mr. Soderholm is doing; she just believes he is not going about it the right way.

Ms. Major stated that Mr. Soderholm is not using the property as a contractor's yard, but

rather as a way to have the equipment available to work on Hayden's Place LLC as needed. Ms. Major stated that she hopes the Board would find in his favor.

Mr. Taylor Swick, 3 Settlers Lane, addressed the Board in support of Mr. Soderholm.

Mr. Rodgers inquired where the two vehicles would be located if they were not waiting to be repaired.

Ms. Major stated that those vehicles would generally move from job site to job site.

Mr. Soderholm noted that neither of the vehicles has been on the property since 2018. Mr. Soderholm stated that the bucket trucks are registered vehicles and are used for personal transportation in an emergency. Mr. Soderholm further stated that he needs access to those vehicles as he is essentially on call at all hours.

As no one further wished to speak, Mr. Geib closed the Public Hearing.

Mr. Otey made a motion to uphold the Zoning Administrator's Determination and adopt the resolution. Mr. Otey noted that the burden of proof had not been met and that the evidence supports the Zoning Administrator's Determination.

Mr. Jacobowski seconded the motion.

Mr. Geib noted that the proper and appropriate way for Mr. Soderholm to resolve this issue is to apply for an SUP.

On a roll call vote the Board of Zoning Appeals voted to uphold the Zoning Administrator's Determination. (4-0)

E. MINUTES

1. January 3, 2019 Meeting Minutes

Mr. Rodgers requested that staff check the spelling of his name in the January 3, 2019 Minutes and in the resolution adopted for the variance this evening.

Ms. Parrish stated that she would be certain that both are correct.

Mr. Otey made a motion to approve the January 3, 2019 Minutes.

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

F. MATTERS OF SPECIAL PRIVILEGE

1. Zoning Ordinance Update - VA Code 15.2-2309

Ms. Parrish stated that this matter is on the agenda as the Ordinance amendment approved by the Board of Supervisors relating to the authority of the BZA replacing the existing language with "... as per the State Code." Ms. Parrish noted that the main thing that changed was related to the Americans with Disabilities Act (ADA). Ms. Parrish further noted that there were some changes also related to appeals. Ms. Parrish stated that Ms. Liz Parman, Deputy County Attorney, was available to answer any questions.

Mr. Geib stated that he did not remember the requirement for the appellant to prove by a preponderance of evidence that staff was wrong in their determination. Mr. Geib noted that when dealing with setbacks and the typical situations before the Board, there is not a

preponderance of evidence.

Ms. Parrish stated that preponderance of evidence is mostly for appeals.

Ms. Parman stated that language related to the presumption that staff is correct was added to the Code of Virginia in 2015 and incorporated in County Code in 2015. Ms. Parman further stated that when talking about a variance, the applicant must prove that “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...” Ms. Parman stated that the addition of language regarding ADA in 2018 allows a variance to be granted in compliance with the ADA requirements.

Mr. Geib inquired if it would be fair to say that preponderance of the evidence is still the same for variances.

Ms. Parman stated that it is just a term to use to identify that the applicant has prevailed.

The Board also discussed why it took so long for the County to incorporate ADA requirements into its Code.

G. ADJOURNMENT

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

On a voice vote, the Board voted to adjourn the meeting. (4 -0).

William Geib, Chairman

Christy H. Parrish, Secretary