

**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**  
**February 6, 2020**  
**5:00 PM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. OLD BUSINESS**

**D. NEW BUSINESS**

1. BZA-19-0008, 116 Fairmont Drive-Rear Yard Variance Request
2. Board of Zoning Appeals 2020 Meeting Schedule
3. Draft 2019 Board of Zoning Appeals Annual Report

**E. MINUTES**

1. October 3, 2019 Meeting Minutes

**F. MATTERS OF SPECIAL PRIVILEGE**

1. Election of Officers for 2020

**G. ADJOURNMENT**

**ITEM SUMMARY**

DATE: 2/6/2020

TO: The Board of Zoning Appeals

FROM: John Rogerson, Senior Zoning Officer

SUBJECT: BZA-19-0008 - 116 Fairmont Drive

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**ITEM SUMMARY**

DATE: 2/6/2020

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: Board of Zoning Appeals 2020 Meeting Schedule

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The draft meeting schedule for 2020 is attached for your consideration.

**ATTACHMENTS:**

	Description	Type
	Draft Board of Zoning Appeals 2020 Meeting Schedule	Exhibit

**REVIEWERS:**

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	1/28/2020 - 3:12 PM

**BZA 2020 Schedule – Meetings begin at 5:00 p.m.**

Meeting Dates	Application Deadlines	Ad to the Press	Ad Display Dates	APO/Applicant Letters	
Feb 6	Jan 2	Jan 17	Jan 22 & Jan 29	Jan 17	
Mar 5	Jan 30	Feb 14	Feb 19 & 26	Feb 14	
Apr 2	Feb 27	Mar 13	Mar 18 & 25	Mar 13	
May 7	Apr 2	Apr 17	Apr 22 & 29	Apr 17	
June 4	Apr 30	May 15	May 20 & 27	May 15	
July 2	May 28	Jun 12	Jun 17 & June 24	June 12	
Aug 6	July 2	Jul 17	Jul 22 & 29	Jul 17	
Sept 3	July 30	Aug 14	Aug 19 & 26	Aug 14	
Oct 1	Aug 27	Sept 11	Sep 16 & 23	Sep 11	
Nov 5	Oct 1	Oct 16	Oct 21 & 28	Oct 16	
Dec 3	Oct 29	Nov 13	Nov 18 & 25	Nov 15	
Jan 7 2021	Dec 3	Dec 18	Dec 23 & 30	Dec 18	

**ITEM SUMMARY**

DATE: 2/6/2020

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: Draft 2019 Board of Zoning Appeals Annual Report

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Attached is the draft 2019 Board of Zoning Appeals Annual Report to the Board of Supervisors for your review and comment.

**ATTACHMENTS:**

	Description	Type
📎	Draft 2019 Board of Zoning Appeals Annual Report	Exhibit

**REVIEWERS:**

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	1/28/2020 - 3:14 PM



# 2019 BOARD OF ZONING APPEALS ANNUAL REPORT

## 2019 BOARD OF ZONING APPEALS MEMBERS

Name	District	Appointment	Term Expires
William J. Geib, Chairman *	Powhatan	4/2013	3/31/2023
Stephen M. Rodgers, Vice Chairman	Berkeley	4/2011	3/31/2024
Ron Campana, Jr. *	Jamestown	8/2011	6/30/2021
Mark Jakobowski *	Roberts	4/2018	3/31/2023
David Otey, Jr. *	Roberts	3/2010	3/31/2020

\* Virginia Certified BZA Member

## 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 definition of variance reads:

*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 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 purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.*

The Board must find that the strict application of the Zoning Ordinance would unreasonably restrict the utilization of the property. Any decision made by the Board may be appealed to the James City County Circuit Court within 30 days.

State Code language places the burden of proof on the applicant with these five standards as the criteria:

*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 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*

- (i) 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;*
- (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.*

## MEETINGS

The James City County BZA is scheduled to meet the first Thursday of every month at 5 p.m. in Building F at the James City County Government Complex. The BZA met four times in 2018.



## VARIANCES/APPEALS

Six applications for variances were considered in 2018. Two were for administrative variances and four applications went before the BZA. The synopses of the applications are as follows:

**BZA-19-0003, 6283 Centerville Road**- This was an appeal of the Zoning Administrator's determination made on February 1, 2019 that the property is being used for a contractor's storage yard which includes the storage of contractor's equipment, trailers and vehicles. The BZA upheld the Zoning Administrator's interpretation on May 2, 2019.

**BZA-19-0004, 4551 John Tyler Highway** - This was an application for a variance to Section 24-393(a), Yard Requirements, to reduce the required minimum yard setback from 50 feet to 48.27 feet. This is to permit the continued placement of a structure. This application was approved by the BZA on May 2, 2019.

**BZA-19-0006, 2054 Jamestown Road** - This was an application 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. This application was approved on October 3, 2019.

**BZA-19-0007, 121 Leisure Road** - This was an application for a administrative variance to Section 24-217(a), Yard requirements, to reduce the required side yard setback from 5 feet for accessory structures to 4.1 feet. This variance allows for the continued placement of the one story pole building. This application was approved by the Zoning Administrator on October 21, 2019.

## CHANGES

On March 12, 2019 The Board of Supervisors approved Case No. ORD-18-0007, which authorized the Board of Zoning Appeals to grant a reasonable modification in accordance with the Americans with Disabilities Act or State and Federal Fair Housing Laws, as applicable. Section 24-650 of the James City County Zoning Ordinance was updated to reflect these changes as well as adding the reference to the Code of Virginia for establishing criteria for variances.



From left to right: Ron Campana, Jr., David Otey, Jr. William J. Geib, Mark Jakobowski, and Stephen Rodgers.



**ITEM SUMMARY**

DATE: 2/6/2020

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: October 3, 2019 Meeting Minutes

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**ATTACHMENTS:**

	Description	Type
📎	October 3, 2019 Meeting Minutes	Minutes

**REVIEWERS:**

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	1/29/2020 - 9:01 AM
Publication Management	Daniel, Martha	Approved	1/29/2020 - 9:13 AM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	1/29/2020 - 9:15 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**  
**October 3, 2019**  
**5:00 PM**

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**A. CALL TO ORDER**

Mr. Geib called the meeting to order at 5:02 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

Mr. Ron Campana, Jr.

Staff Present:

Ms. Christy Parrish, Zoning Administrator

Ms. Liz Parman, Assistant County Attorney

**C. OLD BUSINESS**

None

**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)

Ms. Christy Parrish, Zoning Administrator, stated that 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. The property is currently zoned B-1, General Business.

Ms. Parrish stated that the James City County Marina was located on Powhatan Creek, behind Jamestown Island and across the street from Jamestown Settlement and Jamestown Beach Event Park. She explained that James City County was proposing to upgrade and reconfigure the Marina as the existing infrastructure has reached or exceeded its design life. The project was to be completed in two phases. Phase one included 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 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 would complete the dredging of the basin, replace the two existing floating boatsheds, provide additional uncovered boat slips, and install a new boat ramp.

Ms. Parrish stated that James City County participated 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 was accomplished through the adopted Floodplain Area Regulation found in the James City County Zoning Ordinance. The special flood hazard area was defined as the land in the floodplain subject to 1% or greater of being flooded in any given year. A large portion of the Marina was located in a special flood hazard area. 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 prohibited the distribution of petroleum and the storage of oil and oil products 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.

Ms. Parrish stated that Mr. Cook, Assistant Director of Stormwater and Floodplain Manager, provided a detailed summary of the proposed changes and factors to consider when granting the requested variance that was included in the meeting materials. In summary, the existing fueling system was outdated and the storage tank is located on the edge of the water adjacent to the failing bulkhead. The existing fuel dispensing line was 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.

Ms. Parrish stated that the proposed improvements to the Marina relocates the fuel storage tank outside the special flood hazard area. However, the fuel dispensing line would extend approximately 350 feet to a new fuel dispenser located landside adjacent to a new bulkhead. The new line would be double walled to minimize any leakages. The new dispenser would have a sump chamber beneath it that would contain an alarm system to detect any fuel leak. Emergency Shut Off Buttons would be located near the fuel dispenser and the Marina office that could be activated by users and County staff. Staff recognized the sale of gasoline at marinas was 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 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.

Ms. Parrish stated that while this situation did not appear to meet the definition of a variance, the Floodplain Area Regulations allowed the Board of Zoning Appeals to grant variances to the Overlay District when certain criteria are met. The sale of fuel at a marina was permitted in the underlying B-1, General Business Zoning District so the Board of Zoning Appeals need only consider the factors listed in Section 24-603, Variances; factors to be considered. This variance request was 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.

Ms. Parrish concluded that staff concurred 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 was a necessary feature for the facility and patrons. Staff concurred that the applicant had provided sufficient information to satisfy the additional factors as described in Section 24-603, Variance;

factors to be considered by the BZA. Staff recommended approval of the variance with the following conditions included in the resolution.

Mr. Geib asked staff to explain the authority that that Board has to grant variances in this type of circumstance.

Ms. Parrish stated that the Floodplain Overlay District provided separate variance criteria in accordance with the NFIP. These regulations permit the Board of Zoning Appeals to grant variances to the Floodplain Overlay District only when the request complies with the underlying zoning district and the variance criteria in the Floodplain Overlay District.

Mr. Otey asked staff to clarify Factor No.1 in the resolution that states that no variance shall be granted for any proposed use, development or activity within any floodway district that will cause any increase in the one percent annual chance flood elevation.

Ms. Parrish stated that the language was verbatim from the Ordinance, but this property was not located within a floodway district.

Mr. Jakobowski asked staff to discuss Condition No. 5 in the resolution that states that the applicant is aware that the issuance of a variance increases the risk to life and property and result in increased premium rates for flood insurance.

Ms. Parrish stated that the condition served as the notification to the property owner as prescribed in the Floodplain Overlay District and that DCR recommended the language be included in the resolution.

Mr. Otey asked how other marinas complied with this requirement.

Ms. Parrish stated that staff did not research other marinas. Existing marinas may have been in existence prior to the establishment of this requirement or approved in error. However, should an existing marina apply to upgrade its system, a variance would be needed. Staff will look at the possibility of updating the language at a future time.

Mr. Campana asked what the proposed timing of construction was for this project.

Ms. Parrish stated that the site plan was almost ready to be approved which would allow the project to go out to bid.

Mr. Otey asked if staff was aware of any position a member of the Board of Supervisors had on this issue.

Ms. Parrish replied no, but the proposed changes to the Master Plan for the Marina was recently presented at a Board of Supervisors Work Session.

Hearing no further questions for staff, Mr. Geib opened the Public Hearing.

Mr. Darryl Cook, Assistant Director of Stormwater, stated he was the project manager for the project and the staff report provided was a complete description of the work. The project was waiting on site plan approval and a wetlands permit before it was able to go out to bid. The goal was to be under construction by the beginning of the year and phase one completed by Memorial Day. Mr. Cook clarified the fuel system was not an insurable structure under the NFIP and the proposed improvements would make the system safer.

Mr. Otey asked if he knew when the marina at Governor's Land was constructed.

Mr. Cook replied that he did not believe that the marina existed prior to 1990.

Mr. Geib asked if there was a safety mechanism should the fuel tank be struck and severed from the platform to prevent gas siphoning out from the hose.

Mr. Tony Loubier, Vanasse Hangen Brustlin, Inc. and consulting engineer on the project, stated bollards will be installed around the tank to prevent vehicles from hitting the tank.

Mr. Geib asked if there was a requirement for a fire suppression system on the dock.

Mr. Cook stated that there would be a spill prevention plan but is unaware of a fire suppression plan.

Ms. Parrish stated that the Fire Department would review the site plan in accordance with the Fire Prevention Code.

Mr. Jakobowski stated that the Kingsmill Marina does dispense gasoline and it appeared that the Governor's Land Marina was constructed around 1992.

Ms. Parrish stated that if the dispensing of gasoline was granted by an approved site plan in conflict with the Ordinance, the marina would have a vested right and considered non-conforming. However, any change or upgrade would required a variance until the Ordinance is changed.

Seeing no further speakers, Mr. Geib closed the Public Hearing.

Mr. Campana stated he was familiar with the gas pumps at this location for many years and he did not object to the variance.

Mr. Jakobowski made a motion to grant the variance as recommended by staff with Conditions Nos.1-4 in the resolution. Condition No. 5 serves as a notice to James City County.

Mr. Rodgers seconded the motion.

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

On a roll call vote, the BZA voted to approve the variance and adopt the resolution (5-0).

#### **E. MINUTES**

##### **1. May 2, 2019 Meeting Minutes**

Mr. Geib asked if anyone had any corrections to the May 2, 2019 Meeting Minutes.

Hearing none, Mr. Jakobowski made a motion to approve the May 2, 2019 Meeting Minutes.

Mr. Otey seconded the motion.

Mr. Campana abstained from the vote as he was not present at the May 2, 2019 meeting.

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

#### **F. MATTERS OF SPECIAL PRIVILEGE**

None

**G. ADJOURNMENT**

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

Mr. Campana seconded the motion.

On a voice vote, the Board voted to adjourn the meeting (5 -0).

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William Geib, Chairman

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Christy H. Parrish, Secretary

**ITEM SUMMARY**

DATE: 2/6/2020

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: Election of Officers for 2020

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**REVIEWERS:**

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	1/27/2020 - 3:31 PM