

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 4, 2021
5:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. OLD BUSINESS

D. NEW BUSINESS

1. Case No. BZA-20-0015. 6702 Richmond Road
2. Case No. BZA-20-0017. 5374 Centerville Road
3. Case No. BZA-20-0016. 121A Queen Mary Court

E. MINUTES

1. January 7, 2021 Meeting Minutes

F. MATTERS OF SPECIAL PRIVILEGE

G. ADJOURNMENT

ITEM SUMMARY

DATE: 2/4/2021

TO: The Board of Zoning Appeals

FROM: Taylor B. Orne, Zoning Officer

SUBJECT: Case No. BZA-20-0015. 6702 Richmond Road

ATTACHMENTS:

	Description	Type
☐	Staff Report	Cover Memo
☐	Survey of the Property	Exhibit
☐	Property Location Map	Exhibit
☐	Resolution	Resolution

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	1/28/2021 - 3:05 PM

M E M O R A N D U M

DATE: February 4, 2021

TO: The Board of Zoning Appeals

FROM: Taylor B. Orne, Zoning Officer

SUBJECT: Case No. BZA-20-0015. 6702 Richmond Road

Project Description

Mr. Danny Bridges of McGill Associates P.A., on behalf of the James City Service Authority (JCSA), has applied for a variance to Section 24-39, Special provisions for lots for public utilities, to reduce the required setback from 15 feet from any property line to approximately 14.7 feet from the left side property line and 6.2 feet from the rear property line for the proposed improvement of the existing well facility W-4 Williamsburg Pottery at 6702 Richmond Road. This property is zoned M-1, Limited Business/Industrial and can further be identified as James City County Real Estate Tax Map Parcel No. 2430100031A.

Parcel History and Ordinance Information

The property located at 6702 Richmond Road (the “Property”) consists of approximately 0.34 acres of land. The property currently has a well facility and one 500,000-gallon water storage tank operated by JCSA. The purpose of the variance request is to accommodate the placement of a new chemical feed building for a water treatment improvement project.

JCSA constructed this well facility in 1980. A site plan was approved to add a disinfection building in 1993. The Zoning Ordinance at that time allowed for administrative waivers to reduce lot area, lot width, and lot frontage for public utilities with no distance requirements from property lines. The Zoning Ordinance was then updated in 1998 which required structures to be located a minimum of 15 feet from any property line.

JCSA will be adding zinc orthophosphate to the water treatment process at all seven central water system facilities. Sodium hypochlorite is currently used in the water treatment process and the chemical is stored in a disinfection building. Due to the nature of these chemicals, the zinc orthophosphate cannot be stored in the same building as the sodium hypochlorite.

The location of the addition was selected based on the proximity to existing facilities and suitable access to accept delivery of the chemical and perform the required maintenance. The proposed addition will be consistent with the current use of the property, and will be landscaped and fenced to screen them from nearby roads, residences, and other developments.

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; and
 - 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; and
 - 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; and
 - 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.

Recommendation

An unnecessary hardship exists when the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property. Staff supports this variance for the following reasons: 1) the existing size and current infrastructure of the lot restricts the location of the proposed improvement which is not shared by others in the same vicinity; 2) the chemical that will be located in the building addition prolongs the useful life of the well facility and its improvements; and 3) the proposed improvement does not adversely affect neighboring properties.

Staff recommends approval of the requested variance as described in the attached resolution.

TBO/nb

BZA20-15-6702RichRd-mem

Attachments:

1. Survey of the Property
2. Property Location Map
3. Resolution

Case No. BZA-20-0015, 6702 Richmond Road Location Map



RESOLUTION

CASE NO. BZA-20-0015. GRANTING A VARIANCE ON JAMES CITY COUNTY

REAL ESTATE TAX MAP PARCEL NO. 2430100031A

WHEREAS, Mr. Danny Bridges of McGill Associates P.A., on behalf of the James City Service Authority, has appeared before the Board of Zoning Appeals of James City County (the "Board") on February 4, 2021, to request a variance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 2430100031A and further identified as 6702 Richmond Road (the "Property") as set forth in the application BZA-20-0015; 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 24-39, Special provisions for lots for public utilities, to reduce the required setback from 15 feet from any property line to approximately 14.7 feet for the left side property line and 6.2 feet from the rear property line for the construction of a chemical feed building for a water treatment improvement project with no further encroachment, as shown on the attached Site Plan identified as Attachment No. 1 in the memorandum which is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned M-1, Limited Business/Industrial, and can further be identified as James City County Real Estate Tax Map Parcel No. 2430100031A.

NOW, THEREFORE, 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; and
 - 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; and
 - 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; and

- 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 24-39, Special provisions for lots for public utilities, to reduce the required setback from 15 feet to 14.7 feet for the left side and 6.2 feet for the rear to allow for the construction of a chemical feed building for a water treatment improvement project with no further encroachment, as shown on the attached Site Plan identified as Attachment No. 1 in the memorandum which is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned M-1, Limited Business/Industrial, and can further be identified as James City County Real Estate Tax Map Parcel No. 2430100031A.

Stephen Rodgers
Chairman, Board of Zoning Appeals

ATTEST:

Christy Parrish
Secretary to the Board

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

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 4th day of February, 2021.

BZA20-15-6702RichRd-res

ITEM SUMMARY

DATE: 2/4/2021

TO: The Board of Zoning Appeals

FROM: Taylor B. Orne, Zoning Officer

SUBJECT: Case No. BZA-20-0017. 5374 Centerville Road

ATTACHMENTS:

	Description	Type
☐	Staff Report	Cover Memo
☐	Survey of the Property	Exhibit
☐	Property Location Map	Exhibit
☐	Resolution	Resolution

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	1/28/2021 - 2:55 PM

MEMORANDUM

DATE: February 4, 2021
TO: The Board of Zoning Appeals
FROM: Taylor B. Orne, Zoning Officer
SUBJECT: Case No. BZA-20-0017. 5374 Centerville Road

Project Description

Mr. Danny Bridges of McGill Associates P.A., on behalf of James City Service Authority (JCSA), has applied for a variance to Section 24-39, Special provisions for lots for public utilities, to reduce the required setback from 15 feet from any property line to approximately 9.9 feet from the right side property line for the proposed improvement of the existing well facility W-33 Ford's Colony at 5374 Centerville Road. This property is zoned R-4, Residential Planned Community and can further be identified as James City County Real Estate Tax Map Parcel No. 3040100003A.

Parcel History and Ordinance Information

The property located at 5374 Centerville Road (the "Property") consists of approximately 0.57 acres of land. The property currently has a well facility and one 20,000-gallon water storage tank operated by JCSA. The purpose of the variance request is to accommodate the placement of a new chemical feed building for a water treatment improvement project.

JCSA constructed this well facility in 1988. In 1993, a site plan was approved to add a disinfection building with associated improvements. The current facility meets the required minimum 15-foot building setback from any property line.

JCSA will be adding zinc orthophosphate to the water treatment process at all seven central water system facilities. Sodium hypochlorite is currently used in the water treatment process and the chemical is stored in the disinfection building. Due to the nature of these chemicals, the zinc orthophosphate cannot be stored in the same building as the sodium hypochlorite.

The location of the new addition was selected based on the proximity to existing facilities and suitable access to accept delivery of the chemical and perform the required maintenance. The proposed addition will be consistent with the current use of the property, and will be landscaped and fenced to screen them from nearby roads, residences, and other development.

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; and
 - 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; and
 - 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; and
 - 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.

Recommendation

An unnecessary hardship exists when the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property. Staff supports this variance for the following reasons: 1) the existing size and current infrastructure of the lot restricts the location of the proposed improvement which is not shared by others in the same vicinity; 2) the chemical that will be located in the building addition prolongs the useful life of the well facility and its improvements; and 3) the proposed improvement does not adversely affect neighboring properties.

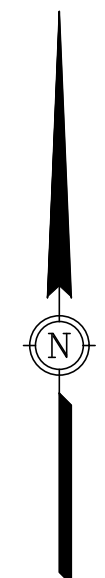
Staff recommends approval of the requested variance as described in the attached resolution.

TBP/nb

BZA20-17-5374CntrvilleRd-res

Attachments:

1. Survey of the Property
2. Property Location Map
3. Resolution



C-100



Case No. BZA-20-0017. 5374 Centerville Road Location Map



RESOLUTION

CASE NO. BZA-20-0017. GRANTING A VARIANCE ON JAMES CITY COUNTY

REAL ESTATE TAX MAP PARCEL NO. 3040100003A

WHEREAS, Mr. Danny Bridges of McGill Associates P.A., on behalf of the James City Service Authority, has appeared before the Board of Zoning Appeals of James City County (the "Board") on February 4, 2021, to request a variance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 3040100003A and further identified as 5374 Centerville Road (the "Property") as set forth in the application BZA-20-0017; 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 24-39, Special provisions for lots for public utilities, to reduce the required setback from 15 feet from any property line to approximately 9.9 feet from the right side property line for the construction of a chemical feed building for a water treatment improvement project with no further encroachment, as shown on the attached Site Plan identified as Attachment No. 1 in the memorandum which is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned R-4, Residential Planned Community, and can further be identified as James City County Real Estate Tax Map Parcel No. 3040100003A.

NOW, THEREFORE, 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; and
 - 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; and
 - 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; and

- 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 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 24-39, Special provisions for lots for public utilities, to reduce the required setback from 15 feet to 9.9 feet rear to allow for the construction of a new chemical feed building for a water treatment improvement project with no further encroachment, as shown on the attached Site Plan identified as Attachment No. 1 in the memorandum which is attached hereto, made part hereof and incorporated into this resolution. This property is currently zoned R-4, Residential Planned Community, and can further be identified as James City County Real Estate Tax Map Parcel No. 3040100003A.

Stephen Rodgers
Chairman, Board of Zoning Appeals

ATTEST:

Christy Parrish
Secretary to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
RODGERS	___	___	___
OTEY	___	___	___
JAKOBOWSKI	___	___	___
GEIB	___	___	___
CAMPANA	___	___	___

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 4th day of February, 2021.

BZA20-17-5374CntrvllRd-res

ITEM SUMMARY

DATE: 2/4/2021

TO: The Board of Zoning Appeals

FROM: Terry Costello, Deputy Zoning Administrator/Senior Planner

SUBJECT: Case No. BZA-20-0016. 121A Queen Mary Court

ATTACHMENTS:

	Description	Type
▣	Staff Report	Cover Memo
▣	Survey of the Property	Exhibit
▣	Location Map	Exhibit
▣	Resolution	Resolution

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	1/28/2021 - 8:53 AM
Publication Management	Daniel, Martha	Approved	1/28/2021 - 8:57 AM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	1/28/2021 - 8:59 AM

MEMORANDUM

DATE: February 4, 2021

TO: The Board of Zoning Appeals

FROM: Terry Costello, Deputy Zoning Administrator/Senior Planner

SUBJECT: Case No. BZA-20-0016. 121A Queen Mary Court

Project Description

Mr. Danny Bridges of McGill Associates P.A., on behalf of James City Service Authority (JCSA), has applied for a variance to Section 24-39, Special provisions for lots for public utilities to reduce the required setback from 15 feet from any property line to approximately 5.7 feet from the right side property line and 10.1 feet from the front property line for the proposed improvement of the existing well facility W-5 Ewell Hall at 121A Queen Mary Court. The property is zoned R-2, General Residential and can be further identified as James City County Real Estate Tax Map Parcel No. 3240200011A.

Parcel History and Ordinance Information

The property located at 121A Queen Mary Court (the "Property") consists of approximately 0.23 acres of land located at 121 A Queen Mary Court. This Property currently has a well facility and two 20,000-gallon water storage tanks operated by JCSA. The purpose of the variance request is to accommodate the placement of a new chemical feed building for a corrosion control project.

JCSA records show that the well located on the Property was drilled in 1967. It is assumed that the pump house was constructed at the same time. The private well facility was acquired by JCSA in 1979. In 1993, a site plan was approved to add a disinfection building with associated improvements. The Zoning Ordinance at that time allowed for administrative waivers to reduce lot area, lot width, and lot frontage for public utilities with no distance requirements from property lines. The Zoning Ordinance was then updated in 1998 which required structures to be located a minimum of 15 feet from any property line. In 2002, a site plan was approved for the construction of an addition to the pump and well house, and to replace the 5,000- and 20,000-gallon water storage tanks with two 20,000-gallon water storage tanks.

JCSA will be adding zinc orthophosphate to the water treatment process at all seven central water system facilities. Currently, sodium hypochlorite (chlorine) is used in the water treatment process and the chemical is stored in the disinfection building. Due to the nature of these chemicals, the zinc orthophosphate cannot be stored in the same building as the sodium hypochlorite.

The location of the new buildings/additions were selected based on the proximity to existing facilities and suitable access to accept delivery of the chemical and perform the required maintenance. The proposed buildings/additions will be consistent with the current use of the property, and will be landscaped and fenced to screen them from nearby roads, residences, and other development.

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; and
 - 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; and
 - 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; and
 - 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.

Recommendation

An unnecessary hardship exists when the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property. Staff supports this variance for the following reasons: 1) the existing size and current infrastructure of the lot restricts the location of the proposed improvement which is not shared by others in the same vicinity; 2) the chemical that will be located in the building addition prolongs the useful life of the well facility and its improvements; and 3) the proposed improvement does not adversely affect neighboring properties. Staff recommends approval of the requested variance as described in the attached resolution.

TC/md
BZA20-16_121AQnMryCt-mem

Attachments:

1. Survey of the Property
2. Property Location Map
3. Resolution

LINEWORK NEWS/PROJECTS/2019 PROJECTS/18.08508 JAMES CITY COUNTY - JCSA CENTRAL SYSTEM CORROSION CONTROL TREATMENT DRAWINGS/VARIANCE FIGURES/EWELL HALL VARIANCE DWG PLOT DATE: 12/4/2020 10:10 AM MATTHEW OETTING

PARCEL INFORMATION

NUMBER	3240200011A
ADDRESS	121-A QUEEN MARY STREET WILLIAMSBURG, VA 23188-1915
OWNER	JAMES CITY SERVICE AUTHORITY
ZONING	R2 (GENERAL RESIDENTIAL)
STREET SETBACK	25' FROM R/W FOR STREETS 50' WIDE OR GREATER 50' FROM C/L FOR STREETS NARROWER THAN 50'
SIDE SETBACK	10'
REAR SETBACK	35'

EXISTING PARCEL BOUNDARY (TYP.)

N/F
RALPH G. & SUE U. BROWN
PIN #3240200012
LOT 11
123 QUEEN MARY CT.

N/F
WILLIAMSBURG MEMORIAL PARK
PIN #3220100109
130 KING WILLIAM DR.

N/F
MARTHA EILEEN GORDON
PIN #3240200011
LOT 10
121 QUEEN MARY CT.

N/F
JAMES CITY SERVICE AUTHORITY
PIN #3240200011A
D.B. 192, PG. 175
121A QUEEN MARY STREET

SUBDIVISION OF EWELL HALL PLAT BOOK 24, PAGE 10

mcgill

Williamsburg, VA 23188

757.788.3040

VA Firm License # 0411001403

mcgillassociates.com

NO.	DATE	BY	DESCRIPTION

JAMES CITY SERVICE AUTHORITY
CENTRAL SYSTEM WATER TREATMENT IMPROVEMENTS
JAMES CITY SERVICE AUTHORITY
JAMES CITY COUNTY, VIRGINIA

10 0 5 10 20 GRAPHIC SCALE DIVISION VALUE = 10 FEET	
OFFICE MANAGER D. BRIDGES	DESIGNER M. OETTING
PROJECT MANAGER M. DOWD	REVIEWER D. BRIDGES

W05 - EWELL HALL VARIANCE REQUEST EXHIBIT		
DATE MARCH 2020	PROJECT # 18.08508	FUNDING # N/A

SHEET

C-100

BZA-20-0016

121A Queen Mary Court



RESOLUTION

CASE NO. BZA-20-0016. GRANTING A VARIANCE ON JAMES CITY COUNTY

REAL ESTATE TAX MAP PARCEL NO. 3240200011A

WHEREAS, Mr. Danny Bridges of McGill Associates P.A., on behalf of the James City Service Authority, has appeared before the Board of Zoning Appeals of James City County (the "Board") on February 4, 2021, to request a variance on a parcel of property identified as James City County Real Estate Tax Map Parcel No. 3240200011A and further identified as 121A Queen Mary Court (the "Property") as set forth in the application BZA-20-0016; 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 24-39, Special provisions for lots for public utilities, to reduce the required setback from 15 feet from any property line to approximately 5.7 feet from the right side property line and 10.1 feet from the front property line, for the construction of a chemical feed building for a corrosion control project with no further encroachment, as shown on the attached Site Plan identified as Attachment No. 1 in the memorandum 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. 3240200011A.

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; and
 - 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; and
 - 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; and

- 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 24-39, Special provisions for lots for public utilities, to reduce the required setback from 15 feet to 5.7 feet for the right side and 10.1 feet for the front, to allow for the construction of a new chemical feed building for a corrosion control project with no further encroachment, as shown on the attached Site Plan identified as Attachment No. 1 in the memorandum 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. 3240200011A.

Stephen M. Rodgers
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 4th day of February, 2021.

BZA20-16_121AQnMryCt-res

ITEM SUMMARY

DATE: 2/4/2021

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: January 7, 2021 Meeting Minutes

ATTACHMENTS:

	Description	Type
	January 7, 2021 Meeting Minutes	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	1/20/2021 - 3:38 PM
Publication Management	Daniel, Martha	Approved	1/20/2021 - 3:42 PM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	1/20/2021 - 3:45 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
January 7, 2021
5:00 PM

A. CALL TO ORDER

Mr. Rodgers called the meeting to order.

B. ROLL CALL

Ms. Christy Parrish called the roll:

Present:

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

Staff Present:

Ms. Christy Parrish, Zoning Administrator
Ms. Liz Parman, Assistant County Attorney
Ms. Beth Klapper, Community Development Assistant

C. OLD BUSINESS

None

D. NEW BUSINESS

Mr. Rodgers presented the mission statement of the Board of Zoning Appeals (BZA) for those present in the audience. He stated that the BZA was a five-member Board consisting of James City County residents. It has the power to hear and decide appeals to decisions of the Zoning Administrator and applications for special exceptions, such as yard and setback variances. A favorable vote of three members of the Board was always required to pass a motion. Variances are not granted unless the strict application of the Ordinance would unreasonably restrict the utilization of the property, the need for a variance was not shared generally by other properties, and the variance was not contrary to the purpose of the Ordinance. Variances are not granted as a special privilege or convenience. If the variance was requested because the physical condition of the property or improvements thereon restrict the utilization of the property, the following additional requirements must be met: (i) the property must have been acquired in good faith and any hardship cannot be created by the applicant; (ii) the granting of the variance cannot be substantially detrimental to nearby properties; and (iii) the condition or situation cannot be so general or recurring as to make the formulation of an amendment to the Ordinance reasonably practicable to address the condition or situation. If the Board does authorize a variance, it may impose conditions regarding the location, character or any other features it may deem necessary in the public interest.

1. Case No. BZA-20-0014. 7218 Merrimac Trail - Zoning Administrator's Determination Appeal

Ms. Christy Parrish, Zoning Administrator, stated that Dr. William S. Dodson, Jr., was

appealing the Zoning Administrator's decision that a mural painted on the outside wall of the existing building on property located at 7218, 7218-A, 7218-B, and 7218-C Merrimac Trail is a sign regulated by the James City County Zoning Ordinance. Ms. Parrish further stated that the property was currently located in the B-1, General Business District.

Ms. Parrish stated that this appeal was in accordance with Section 15.2-2311 of the Code of Virginia.

Ms. Parrish stated that on November 12, 2020, Dr. Dodson submitted a sign permit request for a wall mural to be located on a building on the property. Ms. Parrish stated that the request proposed a 600-square-foot non-illuminated mural to be painted on the outside wall of the existing building facing the parking lot and adjacent vacant property located at 7214 Merrimac Trail.

Ms. Parrish stated that Section 24-67 of the Ordinance defines a sign as:

“Sign - Any structure, display, device, or other object or thing, or part thereof, visible from any public street or right-of-way, any area open to use by the general public, or any navigable body of water, including, but not limited to, any word, letter, series of words or letters, designs, symbols, fixtures, colors, illumination, painting, mural, logo, insignia, emblem, service mark, or other graphic or pictorial representation, that: (i) identifies or advertises, or directs or attracts attention to, any institution, organization, business, product, merchandise, service, event, business, or establishment; or (ii) suggests the identity or nature of any business or establishment; or (iii) invites or proposes a commercial transaction; or (iv) communicates a message of a noncommercial nature. For clarification, examples of items which typically do not satisfy the necessary elements of this definition and would not be considered signs include, but are not limited to, architectural elements incorporated into the style or function of a building, numerals signifying a property address, notifications of a “private residence,” nonilluminated postings less than four square feet in size on private property in areas zoned agricultural, corner stones (or foundation stones) and flags of any nation, state, or municipality.”

Ms. Parrish stated that staff determined that the proposed 600-square-foot mural would be visible from a public right-of-way and adjacent properties and will therefore attract attention to the establishment. Ms. Parrish further stated that based on the above sign definition, the mural was considered a sign and was subject to the regulations set forth in the Ordinance.

Ms. Parrish stated that in addition, staff determined that the proposed mural was considered a building face sign as defined in Section 24-67 of the Ordinance as “any sign attached to and erected parallel to, or painted on the face of the outside wall of a building...” Ms. Parrish stated that Section 24-71 of the Ordinance limited the area devoted to building face signs to 60 square feet or smaller based on varying situations. Ms. Parrish stated that staff was unable to approve the 600-square-foot mural as submitted because the size exceeds what was permitted in the Ordinance for building face signs.

Ms. Parrish stated that a letter was issued on November 24, 2020, that denied the request on the basis that the size of the mural exceeded what the Ordinance allowed for building face signs.

Ms. Parrish stated that staff recommended that the Board of Zoning Appeals uphold the Zoning Administrator's interpretation regarding this matter and find that the proposed mural was a sign regulated by the James City County Zoning Ordinance.

Ms. Parrish stated that it is important to mention that the United States Supreme Court issued a ruling, in *Reed v. Town of Gilbert*, that localities may not regulate signage based on the sign's content. Ms. Parrish stated that as noted article by *Virginia Town and City* (the magazine of

the Virginia Municipal League) that was provided in the Agenda packet, if a Sign Ordinance organizes and regulates signs based on their message or content, then those portions of the Ordinance will be subject to strict scrutiny; in other words, a locality may not regulate specific signs differently, based on their messages or content; that such a provision and allowance would be unconstitutional. Ms. Parrish stated that on January 10, 2017, the James City County Board of Supervisors approved revisions to the Code to ensure the Ordinance was content-neutral.

Ms. Parrish stated that should the Board of Zoning Appeals uphold the decision, the applicant could (1 request the Board of Supervisors amend the Ordinance to permit murals, (2 apply for a variance for a larger sign, or (3 shield the mural from the right-of-way and adjacent properties.

Mr. Ron Campana inquired if there were other similar signs in the County.

Ms. Parrish stated that she only knew of one.

Mr. Campana inquired if the property was within the Edge District.

Ms. Parrish stated that she was not certain that it fell within those boundaries, but that it was certainly in proximity.

Dr. William Dodson stated that the property was within the boundaries of the Edge District.

Mr. Rodgers opened the Public Hearing.

Dr. Dodson made a presentation to the Board on the proposed mural and his rationale for appealing the Zoning Administrator's decision.

Dr. Dodson stated that six years ago, when the idea for the project came forward, he studied the existing Sign Ordinance and designed the project to satisfy the existing Ordinance requirements.

Dr. Dodson further stated that he wanted to make an important contribution to the community through this mural.

Dr. Dodson stated that he was surprised to find that the Ordinance had been amended to include murals under the definition of a sign. Dr. Dodson further stated that this interpretation seems to be unique to James City County since the majority of other localities in Hampton Roads permit murals or community art.

Dr. Dodson provided the Board with examples of community art in other localities, as well as examples of the artist's other projects.

Dr. Dodson stated that the existing free standing sign was limited in visibility due to the restrictions on its location and adjacent plantings.

Dr. Dodson noted that once the adjacent property was built according to the Site Plan, the screening will severely limit visibility of the building façade that would be covered by the mural.

Dr. Dodson stated that the mural would recognize the Powhatan People and include the image of Chief O.T. Custalow with the hope of tying into a federal tribal recognition application. Dr. Dodson further stated that the artist, Sam Welty, hopes to tie into a nonprofit community art effort.

Dr. Dodson noted that the area where the property was located was being re-branded as an entertainment district with food, beverage, art, and music.

Dr. Dodson stated that his understanding was that there were four avenues to resolve the issue: approve an exception due to hardship; approve as community art; refer the matter to the Board of Supervisors to amend County Code; or deny the application. Dr. Dodson requested that if the Board denied the application, it provide feedback on which other avenue he should pursue to move forward with the mural.

Dr. Dodson thanked the Board for its time and stated that he would be happy to answer any questions.

Mr. Rodgers closed the Public Hearing.

Mr. Campana commented that he did not think the BZA should offer advice on next steps. Mr. Campana further stated that based on the Ordinance, the proposed mural does meet the definition of a sign.

Mr. David Otey stated that the BZA has limited authority. Mr. Otey stated that in this instance, the Board can only determine if the Zoning Administrator's determination should be upheld or overturned.

Mr. Rodgers stated that the Ordinance was very specific by calling out murals in the definition. Mr. Rodgers further stated that community art was not addressed in the Ordinance.

Mr. Jakobowski stated that the mural would draw attention to the building which meets the criteria in the definition.

Mr. Geib stated that in his experience, this situation did not meet the criteria to qualify for a hardship or variance. Mr. Geib further noted that the BZA was not a legislative body and has no purview to amend the Ordinance. Mr. Geib stated that the Board of Supervisors would be the proper avenue to have this issue addressed.

Ms. Parrish stated that the Board of Supervisors could decide that murals and community art should be addressed in the Ordinance. Ms. Parrish stated that the Board of Supervisors could pass an Initiating Resolution and refer the matter to the Policy Committee to develop the draft Ordinance amendment.

Mr. Jakobowski questioned whether it would be legal for the Board to recommend a potential action.

Ms. Liz Parman, Assistant County Attorney, stated that the purview of the Board was to determine if the Zoning Administrator interpreted the Ordinance correctly.

At the request of the applicant, Mr. Rodgers re-opened the Public Hearing.

Dr. Dodson stated that he was considering either requesting a variance or approaching the Board of Supervisors regarding a change to the Zoning Ordinance.

Ms. Parrish provided an overview of the timeline for amending an Ordinance.

Dr. Dodson stated that based on the plans for the distillery, an Ordinance amendment would take too long. Dr. Dodson further stated that he had hoped to leave something behind to benefit the community when the distillery relocated.

Dr. Dodson stated that his other alternative was to request a variance. Dr. Dodson inquired about what was needed to prove hardship.

Mr. Geib stated that Dr. Dodson should work with staff to review the purview of the BZA and the criteria to prove hardship.

Mr. Rodgers stated that he did not believe hardship would apply in this instance.

Mr. Campana stated that he could see the merit in the idea of the mural; however, the Ordinance was very strict in its regulations. Mr. Campana stated that it might be worth working with Economic Development regarding performance standards in the Edge District.

Mr. Sam Welty addressed the BZA regarding the mural.

Mr. Rodgers closed the Public Hearing.

Mr. Geib made a motion to Adopt the Resolution upholding the Zoning Administrator's decision.

Mr. Otey seconded the motion.

On a roll call vote, the BZA voted to Adopt the Resolution to uphold the Zoning Administrator's decision. (5-0)

2. Board of Zoning Appeals 2021 Meeting Schedule

The BZA discussed the proposed Meeting Schedule for 2021.

Mr. Rodgers made a motion to Adopt the 2021 Meeting Schedule.

On a voice vote the BZA voted unanimously to Adopt the 2021 Meeting Schedule.

3. Board of Zoning Appeals 2020 Draft Annual Report

Ms. Parrish presented the Draft 2020 Annual Report to be included in the 2020 Planning Commission Annual Report to be presented to the Board of Supervisors.

Mr. Otey made a motion to Approve the 2020 Draft Annual Report.

On a voice vote, the BZA voted unanimously to Approve the 2020 Draft Annual Report.

E. MINUTES

1. November 5, 2020 Meeting Minutes

Mr. Otey made a motion to Approve the November 5, 2020 Meeting Minutes.

On a voice vote the BZA voted unanimously to Approve the November 5, 2020 Meeting Minutes.

F. MATTERS OF SPECIAL PRIVILEGE

1. Election of Officers for 2021

The BZA discussed the matter of Officers for 2021.

Mr. Otey made a motion to Elect Mr. Rodgers as Chair and Mr. Jakobowski as Vice Chair.

On a voice vote, the BZA unanimously Elected Mr. Rodgers as Chair and Mr. Jakobowski as

Vice Chair.

G. ADJOURNMENT

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

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

Stephen Rodgers, Chairman

Christy Parrish, Secretary