AGENDA

JAMES CITY COUNTY BOARD OF ZONING APPEALS

REGULAR MEETING

COUNTY GOVERNMENT CENTER BUILDING A LARGE CONFERENCE ROOM

101 MOUNTS BAY ROAD, WILLIAMSBURG, VA 23185

January 4, 2024

5:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. OLD BUSINESS

D. NEW BUSINESS

1. 2024 Meeting Schedule
2. 2023 Board of Zoning Appeals Annual Report

E. MINUTES

1. October 5, 2023 Meeting Minutes

F. MATTERS OF SPECIAL PRIVILEGE

1. 2024 Election of Officers

G. ADJOURNMENT

Tentative BZA 2024 Schedule – Meetings begin at 5:00 p.m.					
Meeting Dates	Application Deadlines	Ad to the Press	Ad Display Dates	APO/Applicant Letters	Agenda Publish Date
Jan 4	Nov. 30	Dec. 14	Dec. 23 & 30	Dec. 15	Dec. 28
Feb 1	Dec. 28	Jan. 11	Jan. 20 & 27	Jan. 12	Jan. 25
Mar 7	Feb. 1	Feb. 15	Feb. 24 & Mar. 2	Mar. 15	Feb. 29
Apr 4	Feb. 29	Mar. 14	Mar. 23 & 30	Mar. 15	Mar. 28
May 2	Mar. 28	Apr. 11	Apr. 20 & 27	Apr. 12	Apr. 25
June 6	May 2	May 16	Apr. 25 & June 1	May 17	May 20
July 11	June 6	June 20	June 29 & July 6	June 21	July 3
Aug 1	June 27	July 11	July 20 & 27	July 12	July 25
Sept 5	July 31	Aug. 15	Aug. 24 & 31	Aug. 16	Aug. 29
Oct 3	Aug. 29	Sept. 12	Sept. 21 & 28	Sept. 13	Sept. 26
Nov 7	Oct. 3	Oct. 17	Oct. 26 & Nov. 2	Oct. 18	Oct. 31
Dec 5	Oct. 31	Nov. 14	Nov. 23 & 30	Nov. 15	Nov. 28
Jan 2 2025	Nov. 28	Dec. 12	Dec. 21 & 28	Dec. 13	Dec. 26

2023 Board of Zoning Appeals Annual Report

2023 Board of Zoning Appeals Members

Name	District	Appointment	Term Expires
Mark Jakobowski, Chairman*	Roberts	4/2018	3/31/2028
Ron Campana, Jr. Vice Chairman*	Jamestown	8/2011	6/30/2026
Andrew Dean**	Berkely	4/2022	3/31/2024
Andrew M. Franck	Powhatan	11/2023	3/31/2024
William J. Geib *	Powhatan	4/2013	3/31/2028
David Otey, Jr. *	Roberts	3/2010	3/31/2025

* Virginia Certified BZA Member
** Resigned from the BZA in October 2023

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.

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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.

Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.

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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 2023.



APPEALS / VARIANCES

Two applications for variances were considered in 2023. The synopses of the applications are as follows:

BZA-23-0002, 196 The Maine - This was an application for a variance to Section 24-238(a), Yard requirements, to reduce the required side yard setback from 15 feet to 10.5 feet on the left side for the construction of a first-floor master bedroom addition. The BZA approved the application on August 3, 2023.

BZA-23-0003, 8224 Bridlington Way - This was an application for a variance to Section 24-238(b), Yard requirements of the James City County Zoning Ordinance. The variance request is to reduce the required rear yard setback from 35 feet to 26 feet to allow for the construction of a deck on the rear of the dwelling. The BZA approved the application on October 5, 2023.

Approved by the Board of Zoning Appeals on _____

---insert updated picture----

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MINUTES

JAMES CITY COUNTY BOARD OF ZONING APPEALS

REGULAR MEETING

COUNTY GOVERNMENT CENTER BOARD ROOM

101 MOUNTS BAY ROAD, WILLIAMSBURG, VA 23185

October 5, 2023

5:00 PM

A. CALL TO ORDER

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

Mr. Jakobowski 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.

B. ROLL CALL

Ms. Christy Parrish called the roll:

Present:
Mr. Mark Jakobowski
Mr. Andrew Dean
Mr. David Otey, Jr.
Mr. Ron Campana, Jr.

Absent:
Mr. William Geib

Staff Present:
Ms. Christy Parrish, Zoning Administrator
Ms. Paxon Condon, Deputy Zoning Administrator
Mr. John Rogerson, Senior Zoning Officer

C. OLD BUSINESS

1. Case No. BZA-23-0003. 8224 Bridlington Way

Mr. John Rogerson, Senior Zoning Officer, stated that at the September 7, 2023, meeting, the applicant requested the BZA to defer action until the full Board could be present. He stated that no changes to the request have been made.

Mr. Rogerson stated that Mr. Jordan Bond, property owner, had applied for a variance to Section 24-238(b), Yard requirements of the James City County Zoning Ordinance. Mr. Rogerson stated the variance request was to reduce the required rear setback from 35 feet to 26 feet to allow for the construction of a deck on the rear of the dwelling at 8224 Bridlington Way. He stated the property was currently located in the R-1, Limited Residential Zoning District and could be further identified as James City County Real Estate Tax Map No. 1331300025.

Mr. Rogerson stated the property was located at 8224 Bridlington Way in the Windsor Ridge Subdivision. He stated the parcel was 0.322 acres in size and contained an existing one-story single-family dwelling approximately 1,404 square feet in size. He stated the dwelling was constructed in 2017 and the applicant was the original owner.

Mr. Rogerson stated that the property owner was requesting the proposed variance to construct a deck to utilize the rear yard of the property. He stated the proposed deck was 160 square feet in size with dimensions of 10 feet x16 feet with steps located on the rear of the dwelling as shown on Attachment No. 2.

Mr. Rogerson stated that Section 24-238(b), Yard requirements, required the main structure to have a minimum rear yard of 35 feet. He stated the Zoning Ordinance permitted steps to encroach into the rear setback to permit access to the rear of the house.

Mr. Rogerson stated that in order for a variance to be granted, the applicant must prove that Virginia Code § 15.22201 has been met. He stated that alternatively, the owner was permitted to have a minimum size landing with steps which comply with the Virginia Uniform Statewide Building Code (USBC) to allow the owner access to the rear yard. He stated that in addition, a concrete or paver patio that is flush with the ground would not constitute a structure and would be permitted in the setback. He stated this alternative would allow for an outdoor space without the need for a variance.

Mr. Rogerson stated that staff recommended denial of the proposed variance.

Mr. Rogerson stated that the property owner had provided additional pictures and an adjacent property owner's letter of support.

Mr. Jordan Bond, property owner of 8224 Bridlington Way, stated he appreciated Mr. Rogerson for his help with the process and to his neighbors who were able to come out. He stated that he received letters from other neighbors who could not attend to show how innocuous the request is to the neighborhood and adjacent property owners. He stated that the proposed small rectangular deck made the most sense for privacy and for the property itself.

Mr. Bond stated that the original request was for a 10 feet x 16 feet deck but he proposed to amend the request to a 9 feet x 16 feet deck to be inline with the neighborhood and surrounding properties. He stated that he purchased the property with the assumption that they would be able to build something outside the back door.

Mr. Bond stated that he believed that the proposed deck met the intent of the zoning regulations. He stated that if the deck was shifted over to the right, they would be able to look into the neighbor’s house and decrease their privacy. He stated that he had received his neighbors’ and homeowners association's (HOA) approval, and no one had objected to the proposed deck.

Mr. Paul Lebel, 8216 Bridlington Way, stated that the majority of homes seen from his deck

also had decks. He stated that having a deck was a huge part of the usability and desirability of the property and would be a beneficial change to the house. He stated that the HOA is very conscious when granting approvals to maintain the character of the neighborhood and he believed this request is in line with the neighborhood and supported the variance request.

Mr. Michael Simmons, 8223 Bridlington Way, stated that he was in support of the variance request.

Ms. Joanne Hite, 8223 Bridlington Way, stated that Mr. Bond was more than a good friend, he was a firefighter and a hero in the community. She stated she believed that he abided by all the rules and supported the variance request.

Seeing no further speakers, Mr. Jakobowski closed the Public Hearing at 5:18 p.m.

Mr. Dean requested that the Public Hearing be reopened so he could ask the property owner a question.

Mr. Jakobowski reopened the Public Hearing at 5:18 p.m.

Mr. Dean asked Mr. Bond if he had submitted and received approval from the HOA and if that approval was subject to County approval.

Mr. Bond stated yes and if the approvals are granted, he will need to submit the deck colors he will be using for additional HOA approval.

Seeing no further speakers, Mr. Jakobowski closed the Public Hearing at 5:19 p.m.

Mr. Campana asked if there was any opposition to the request at the last meeting.

Mr. Otey confirmed that there was none.

Mr. Otey stated, primarily to the applicant and supporters, that they presented a great case. He stated that he was not able to evaluate the request based on the aesthetics of the deck or whether or not the applicant is a nice guy or a bad guy. He stated that the strict application of the Ordinance did not prevent the use of the lot for a house as intended.

Mr. Otey motioned to approve the variance.

Mr. Campana stated that it appeared that the builder may have misled the owner into thinking that he would be able to add a deck. He stated that with the support shown this evening and the HOA approval, he would support the variance request as it seemed to improve the character of the neighborhood.

Mr. Campana seconded the motion.

Mr. Otey stated that the lot was a corner lot and an unusual configuration, which is something they should support.

Mr. Jakobowski stated the lot was not a corner lot as indicated in the staff report.

Mr. Otey stated it was not a corner lot for zoning purposes.

Ms. Parrish stated that there was a strip of common area between the property and the side street.

Mr. Dean stated he believed there was some discretion when evaluating hardships. He stated

that for reasons that were already stated, he supported the variance.

Mr. Jakobowski asked Ms. Parrish to call the roll.

Ms. Parrish asked if the motion was for the revised deck configuration of 9 feet x 16 feet as proposed.

Mr. Otey confirmed that was his motion.

On a roll call vote, the BZA voted to Approve the variance request. (4-0)

D. NEW BUSINESS

None.

E. MINUTES

1. September 7, 2023 Meeting Minutes

Mr. Campana stated that since he was not present at the meeting, he would abstain from the vote.

Mr. Dean made a motion to Approve the September 7, 2023, Meeting Minutes as presented.

Mr. Otey seconded the motion.

On a voice vote, the BZA voted to Approve the September 7, 2023, Meeting Minutes. (3-0-1)

F. MATTERS OF SPECIAL PRIVILEGE

Ms. Parrish announced that Mr. Dean had accepted a new job position and will no longer be able to serve on the BZA. She thanked him for his service.

G. ADJOURNMENT

There being no further business, Mr. Campana motioned to Adjourn the meeting.

Mr. Dean seconded the motion.

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

The meeting was adjourned at approximately 5:28 p.m.

_____ _____

Mark Jakobowski, Chairman Christy Parrish, Secretary