

A G E N D A
JAMES CITY COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
James City County Government Center, Building A Large Conference Room
101 Mounts Bay Road, Williamsburg VA 23185
January 5, 2023
5:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. OLD BUSINESS

D. NEW BUSINESS

1. Board of Zoning Appeals 2023 Meeting Schedule
2. Board of Zoning Appeals 2022 Draft Annual Report

E. MINUTES

1. October 6, 2022, Meeting Minutes

F. MATTERS OF SPECIAL PRIVILEGE

1. Election of Officers for 2023

G. ADJOURNMENT

ITEM SUMMARY

DATE: 1/5/2023

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: Board of Zoning Appeals 2023 Meeting Schedule

ATTACHMENTS:

	Description	Type
	2023 BZA Meeting Schedule	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	12/12/2022 - 10:21 AM

BZA 2023 Schedule – Meetings begin at 5:00 p.m.

Meeting Dates	Application Deadlines	Ad to the Press	Ad Display Dates	APO/Applicant Letters	
Jan 5	Dec 1	Dec 15	Dec 21 & 28	Dec 16	
Feb 2	Dec 29	Jan 12	Jan 18 & 25	Jan 13	
Mar 2	Jan 26	Feb 9	Feb 15 & 22	Feb 10	
Apr 6	Mar 2	Mar 16	Mar 22 & 29	Mar 17	
May 4	Mar 30	Apr 13	Apr 19 & 26	Apr 15	
June 1	Apr 27	May 11	May 17 & 24	May 12	
July 6	June 1	Jun 15	Jun 21 & 28	June 16	
Aug 3	June 30	Jul 13	Jul 19 & 26	Jul 14	
Sept 7	Aug 3	Aug 17	Aug 23 & 30	Aug 18	
Oct 5	Aug 31	Sept 14	Sep 20 & 27	Sep 15	
Nov 2	Sept 28	Oct 12	Oct 18 & 25	Oct 13	
Dec 7	Nov 2	Nov 16	Nov 22 & 29	Nov 17	
Jan 4 2024	Nov 30	Dec 14	Dec 20 & 27	Dec 15	

ITEM SUMMARY

DATE: 1/5/2023

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: Board of Zoning Appeals 2022 Draft Annual Report

ATTACHMENTS:

	Description	Type
	Board of Zoning Appeals 2022 Draft Annual Report	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	12/12/2022 - 11:56 AM



2022 BOARD OF ZONING APPEALS ANNUAL REPORT

2022 BOARD OF ZONING APPEALS MEMBERS

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

* 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.*

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.

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 five times in 2022.



APPEALS / VARIANCES

One Zoning Administrator's Determination Appeal and three applications for variances were considered in 2022. The synopses of the applications are as follows:

BZA-22-0001, 5719 Peter Van Wirt Way – This was an application for a variance to Section 24-258(b), Yard Requirements, to reduce the required rear setback from 35 feet to 32 feet from the rear property line for the continued placement of an above ground pool and the addition of a new deck. The BZA approved the application on March 3, 2022.

BZA-22-0003, 4816 Hickory Signpost Road - This was an application for a variance to Section 24-236, Setback Requirements, to reduce the required front setback from 60 feet from the centerline of the street to 30 feet from the centerline of the street for the construction of a new single-family dwelling. The BZA approved the application on May 5, 2022.

BZA-22-0002, 6910 Richmond Road - This was an appeal of the Zoning Administrator's determination on February 23, 2022 that a "Conceptual Plan Supplied by the Applicant" at the time of the rezoning of the property and issuance of a special use permit for Go Karts Plus constitutes a binding master plan. The BZA overturned the Zoning Administration's determination on June 2, 2022.

BZA-22-0004, 8261 Croaker Road - This was an application for a variance to Section 24-217(a), Yard regulations, to reduce the required side setback from 15 feet to 6.5 feet on the right side and from 15 feet to 13 feet on the left side for the construction of a single-family dwelling. The BZA approved the application on October 6, 2022.

< insert BZA pictures >

ITEM SUMMARY

DATE: 1/6/2023

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: October 6, 2022 Meeting Minutes

ATTACHMENTS:

	Description	Type
	October 6, 2022 Meeting Minutes	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	12/8/2022 - 2:41 PM
Publication Management	Daniel, Martha	Approved	12/8/2022 - 2:47 PM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	12/12/2022 - 10:15 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 6, 2022
5:00 PM

A. CALL TO ORDER

Mr. Mark Jakobowski called the meeting to order.

B. ROLL CALL

Ms. Christy Parrish called the roll:

Present:

Mr. Mark Jakobowski
Mr. William Geib
Mr. David Otey, Jr.
Mr. Andrew Dean
Mr. Ron Campana, Jr.

Staff Present:

Ms. Christy Parrish, Zoning Administrator
Mr. Taylor Orne, Senior Zoning Officer

C. OLD BUSINESS

None.

D. NEW BUSINESS

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.

1. Case No. BZA-22-0004. 8261 Croaker Road

Mr. Orne, Senior Zoning Officer, stated that Mr. Vaughn Poller of the James City County Neighborhood Development Division had applied for a variance to Section 24-217(a), Yard Regulations, to reduce the required side setback from 15 feet to 6.5 feet on the right side and

from 15 feet to 13 feet on the left side for the replacement of a single-family dwelling. Mr. Orne stated that the property was located at 8261 Croaker Road and 0.21 acres in size. He stated that the existing dwelling was constructed in 1957 and was approximately 720 square feet in size.

Mr. Orne stated that through the 2021 Scattered Site Community Development Block Grant (CDBG) Program, the James City County Neighborhood Development Division was seeking to improve the property due to the age and condition of the existing single-family dwelling. He stated that Neighborhood Development staff believed that it was more fiscally responsible to demolish the existing single-family dwelling on the property and construct a new single-family dwelling in its place.

Mr. Orne stated that the owner initially contacted James City County Housing for the Home Energy Loss Prevention Program but upon inspection, Housing staff determined the home was structurally unsafe and did not qualify for assistance. He stated that Housing put the project on the waiting list for a future CDBG Housing Replacement Program. He stated that a field survey was also conducted for the 2016 James City County Housing Conditions Study which rated the home a 4 minus, where on a scale of 1 to 5, 5 is uninhabitable.

Mr. Orne stated that the existing single-family dwelling predates the Zoning Ordinance and was currently considered legally nonconforming as it does not meet the front setback established in Section 24-215(a) and the side setbacks established in Section 24-217(a).

Mr. Orne stated that since the existing single-family dwelling was not being demolished by casualty or an act of God in accordance with Section 24-634(a), any new construction must meet the current requirements of the Zoning Ordinance. He stated that due to the irregular shape and size of the property, Neighborhood Development staff have been unable to fit the proposed home on the property within the required setbacks. He stated that the proposed variance included an additional foot on both sides to accommodate any exterior features or errors that may occur during construction.

Mr. Orne stated that even though the owner was not disabled, the CDBG grant required the proposed house to have Universal Design elements to allow the owner to age in place. He stated that modification of the plans to accommodate the required setbacks may not meet Universal Design and would also require additional funding not budgeted for this project.

Mr. Orne stated that in order to have a variance granted, the applicant must prove by a preponderance of the evidence that the standard for a variance as defined in Virginia Code § 15.2-2201 had been met.

Mr. Orne stated that staff was unable to support the variance because it does not meet all of the criteria defined in Virginia Code § 15.2-2201. He stated that staff recognized that due to the irregular shape and size of the lot and CDBG's Universal Design requirements and funding limitations, it does create obstacles for improving this property.

Mr. Orne stated that should the BZA approve this variance request, staff recommended reducing the side setback from 15 feet to 6.5 feet on the right side and from 15 feet to 13 feet on the left side with no further encroachment.

Mr. Campana asked what the proposed size of the new building was.

Mr. Orne stated it was approximately 792 square feet.

Mr. Geib asked if there was currently a structure in front of the house.

Mr. Orne stated there is only a gravel driveway.

Mr. Jakobowski asked if the setbacks from the septic tank drainfield and distribution box were addressed.

Mr. Orne confirmed that they were addressed as part of the project.

Mr. Otey asked if the house had to be set back from the drainfield and distribution box in addition to the setbacks on the property.

Mr. Orne stated yes.

Mr. Geib asked why the proposed house was set back about 2 or 3 feet from the front setback line.

Mr. Orne deferred the question to Mr. Poller.

Mr. Otey asked what the setback was from the existing house.

Mr. Orne confirmed that it was about the same as the proposed house.

Mr. Otey asked about the flag lot next door.

Mr. Orne stated it was a vacant and an unimproved property.

Ms. Parrish stated that the owner of the property called and inquired about the variance request.

Mr. Otey asked if he expressed any objection to the project.

Mr. Orne stated no.

Mr. Otey asked why the variance request did not meet the requirements for a variance.

Mr. Orne stated that the hardship was created by the applicant.

Mr. Otey asked if the unique features of the property were taken into consideration.

Mr. Orne stated that because the existing structure was nonconforming and was being torn down by the applicant, the hardship was created by the applicant which did not meet the standards for a variance.

Ms. Parrish explained that the proposed house could be reduced in size and reconfigured on the lot to meet the current setback requirements but that would have resulted in increase costs for the applicant.

Mr. Jakobowski opened the Public Hearing.

Mr. Poller reiterated the scope of work and put emphasis on the project's goal of providing somewhere to age-in-place.

Mr. Geib asked if the interior had to meet Americans with Disabilities Act (ADA) guidelines.

Mr. Poller stated that it would not be fully ADA but would have some features such as wider hallways and a larger bathroom to permit turning radius.

Mr. Jakobowski asked if a ramp would have to be applied for separately in the future.

Mr. Poller confirmed.

Ms. Parrish stated that ramps are considered the same as steps and are permitted to encroach into the setback.

Seeing no further questions or comments, Mr. Jakobowski closed the Public Hearing.

Mr. Geib stated that he had reviewed the details of the application and felt that the new home was reasonably placed on the lot. He stated that there were other homes or accessory structures in the same area that appeared nonconforming as it related to setbacks. He stated that the request met variance criteria b, c, d, and e and he was in favor of granting the variance.

Mr. Campana stated that he agreed with Mr. Geib's conclusion and also supported the variance request.

Mr. Jakobowski stated he also agreed and commented that if the house was reduced to comply with the required setbacks, the house would only be approximately 500 square feet.

Mr. Campana made a motion to Approve the variance request.

Mr. Geib seconded the motion.

On a roll call vote, the BZA voted to Approve the variance request. (5-0)

E. MINUTES

1. June 2, 2022, Meeting Minutes

Mr. Geib made a motion to Approve the June 2, 2022, Meeting Minutes as presented.

Mr. Dean seconded the motion.

On a voice vote, the BZA voted unanimously to Approve the June 2, 2022, Meeting Minutes.

F. MATTERS OF SPECIAL PRIVILEGE

None.

G. ADJOURNMENT

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

Mr. Geib seconded the motion.

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

The meeting was adjourned at approximately 5:26 p.m.

Mark Jakobowski, Chairman

Christy Parrish, Secretary

ITEM SUMMARY

DATE: 1/5/2023

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: Election of Officers for 2023

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals	Secretary, BZA	Approved	12/8/2022 - 2:46 PM