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
September 3, 2020
5:00 PM

A. **CALL TO ORDER**

B. **ROLL CALL**

C. **OLD BUSINESS**

D. **NEW BUSINESS**

1. Appointment of the County Attorney's Office to represent the Board of Zoning Appeals in Civil Case

E. **MINUTES**

1. February 6, 2020 Meeting Minutes

F. **MATTERS OF SPECIAL PRIVILEGE**

G. **ADJOURNMENT**

AGENDA ITEM NO. D.1.

ITEM SUMMARY

DATE: 9/3/2020

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: Appointment of the County Attorney's Office to represent the Board of Zoning Appeals in Civil Case

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The Board of Zoning Appeals heard Case No. BZA-19-0003, 6283 Centerville Road-Zoning Administrator's Determination Appeal, on May 2, 2019. The applicant appealed the Board of Zoning Appeals decision to the Circuit Court and has since failed to obtain an Special Use Permit.

The County Attorney's Office has requested that the Board of Zoning Appeals discuss the matter and case representation.

ATTACHMENTS:

	Description	Type
🗋	Appointment of the County Attorney's Office to represent the Board of Zoning Appeals in Civil Case	Resolution
🗋	Haydens Place LLC TJ Soderholm Petition for Appeal from May 2 19 Zoning Board	Exhibit

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	8/25/2020 - 12:55 PM
Publication Management	Burcham, Nan	Approved	8/25/2020 - 1:25 PM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	8/25/2020 - 1:26 PM

R E S O L U T I O N

APPOINTMENT OF THE COUNTY ATTORNEY'S OFFICE TO REPRESENT

THE BOARD OF ZONING APPEALS IN CIVIL CASE NO.: CL19001010-00 IN THE

WILLIAMSBURG-JAMES CITY COUNTY CIRCUIT COURT

WHEREAS, the Board of Zoning Appeals at its meeting on May 2, 2019, held a public hearing and considered Case No. BZA-19-0003, 6283 Centerville Road, Zoning Administrator's Determination Appeal; and

WHEREAS, the Board of Zoning Appeals held in favor of the Zoning Administrator and denied the appeal; and

WHEREAS, V. L. Major, Esq., on behalf of the property owner (the "Appellant"), has appealed the May 2, 2019, Board of Zoning Appeals' decision to the Williamsburg-James City County Circuit Court, Civil Case No.: CL19001010-00; and

WHEREAS, the Board of Zoning Appeals wishes to appoint the James City County Attorney's Office to represent the interests of the Board of Zoning Appeals in this matter.

NOW, THEREFORE, BE IT RESOLVED that the Board of Zoning Appeals of James City County, Virginia, does hereby appoint the James City County Attorney's Office to represent the Board of Zoning Appeals in Civil Case No.: CL19001010-00 in the Williamsburg-James City County Circuit Court.

_____
Mr. Stephen Rodgers
Chairman, Board of Zoning Appeals

ATTEST:

_____
Christy Parrish
Secretary to the Board

	VOTES		
	AYE	NAY	ABSTAIN
JAKOBOWSKI	____	____	____
OTEY	____	____	____
RODGERS	____	____	____
CAMPANA, JR.	____	____	____
GEIB	____	____	____

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 3rd day of September 2020.

BZA-CtyAttyAppt-res

COVER SHEET FOR FILING CIVIL ACTIONS

COMMONWEALTH OF VIRGINIA

Case No. _____ (CLERK'S OFFICE USE ONLY)

City of Williamsburg and the County of James City Circuit Court

PLAINTIFF(S): Hayden's Place, LLC

v./*In re:* May 2, 2019 Decision of the Board of Zoning Appeals

DEFENDANT(S)

I, the undersigned [ ] plaintiff [ ] defendant [ ] attorney for [X] plaintiff [ ] defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- [ ] Claim Impleading Third Party Defendant
  - [ ] Monetary Damages
  - [ ] No Monetary Damages
- [ ] Counterclaim
  - [ ] Monetary Damages
  - [ ] No Monetary Damages
- [ ] Cross Claim
- [ ] Interpleader
- [ ] Reinstatement (other than divorce or driving privileges)
- [ ] Removal of Case to Federal Court

Business & Contract

- [ ] Attachment
- [ ] Confessed Judgment
- [ ] Contract Action
- [ ] Contract Specific Performance
- [ ] Detinue
- [ ] Garnishment

Property

- [ ] Annexation
- [ ] Condemnation
- [ ] Ejectment
- [ ] Encumber/Sell Real Estate
- [ ] Enforce Vendor's Lien
- [ ] Escheatment
- [ ] Establish Boundaries
- [ ] Landlord/Tenant
  - [ ] Unlawful Detainer
- [ ] Mechanics Lien
- [ ] Partition
- [ ] Quiet Title
- [ ] Termination of Mineral Rights

Tort

- [ ] Asbestos Litigation
- [ ] Compromise Settlement
- [ ] Intentional Tort
- [ ] Medical Malpractice
- [ ] Motor Vehicle Tort
- [ ] Product Liability
- [ ] Wrongful Death
- [ ] Other General Tort Liability

ADMINISTRATIVE LAW

- [X] Appeal/Judicial Review of Decision of (select one)
  - [ ] ABC Board
  - [X] Board of Zoning
  - [ ] Compensation Board
  - [ ] DMV License Suspension
  - [ ] Employee Grievance Decision
  - [ ] Employment Commission
  - [ ] Local Government
  - [ ] Marine Resources Commission
  - [ ] School Board
  - [ ] Voter Registration
  - [ ] Other Administrative Appeal

DOMESTIC/FAMILY

- [ ] Adoption
  - [ ] Adoption – Foreign
- [ ] Adult Protection
- [ ] Annulment
  - [ ] Annulment – Counterclaim/Responsive Pleading
- [ ] Child Abuse and Neglect – Unfounded Complaint
- [ ] Civil Contempt
- [ ] Divorce (select one)
  - [ ] Complaint – Contested*
  - [ ] Complaint – Uncontested*
  - [ ] Counterclaim/Responsive Pleading
  - [ ] Reinstatement – Custody/Visitation/Support/Equitable Distribution
- [ ] Separate Maintenance
  - [ ] Separate Maintenance Counterclaim

WRITS

- [ ] Certiorari
- [ ] Habeas Corpus
- [ ] Mandamus
- [ ] Prohibition
- [ ] Quo Warranto

PROBATE/WILLS AND TRUSTS

- [ ] Accounting
- [ ] Aid and Guidance
- [ ] Appointment (select one)
  - [ ] Guardian/Conservator
  - [ ] Standby Guardian/Conservator
  - [ ] Custodian/Successor Custodian (UTMA)
- [ ] Trust (select one)
  - [ ] Impress/Declare/Create
  - [ ] Reformation
- [ ] Will (select one)
  - [ ] Construe
  - [ ] Contested

MISCELLANEOUS

- [ ] Amend Death Certificate
- [ ] Appointment (select one)
  - [ ] Church Trustee
  - [ ] Conservator of Peace
  - [ ] Marriage Celebrant
- [ ] Approval of Transfer of Structured Settlement
- [ ] Bond Forfeiture Appeal
- [ ] Declaratory Judgment
- [ ] Declare Death
- [ ] Driving Privileges (select one)
  - [ ] Reinstatement pursuant to § 46.2-427
  - [ ] Restoration – Habitual Offender or 3rd Offense
- [ ] Expungement
- [ ] Firearms Rights – Restoration
- [ ] Forfeiture of Property or Money
- [ ] Freedom of Information
- [ ] Injunction
- [ ] Interdiction
- [ ] Interrogatory
- [ ] Judgment Lien-Bill to Enforce
- [ ] Law Enforcement/Public Official Petition
- [ ] Name Change
- [ ] Referendum Elections
- [ ] Sever Order
- [ ] Taxes (select one)
  - [ ] Correct Erroneous State/Local
  - [ ] Delinquent
- [ ] Vehicle Confiscation
- [ ] Voting Rights – Restoration
- [ ] Other (please specify)

[ ] Damages in the amount of $ _____ are claimed.

05/31/2019
DATE

Virginia Leigh Major

[ ] PLAINTIFF [ ] DEFENDANT [X] ATTORNEY FOR [X] PLAINTIFF [ ] DEFENDANT

Virginia Leigh Major
PRINT NAME

Post Office Box 145, Charles City, VA 23030
ADDRESS/TELEPHONE NUMBER OF SIGNATOR

(804) 977-0333

leigh@vlmajorattorney.com
EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND THE COUNTY OF JAMES CITY

In Re: May 2, 2019 Decision of the Board of Zoning Appeals of James City County

PETITION FOR ZONING BOARD APPEAL

COMES this day, the Petitioner, Hayden's Place, LLC, by counsel, and Petitions this Honorable Court to review the May 2, 2019 Decision of the Board of Zoning Appeals of James City County, Resolution Case No. BZA-19-0003, 6283 Centerville Road – Zoning Administrator's Determination Appeal, and in support of this motion states:

1. Hayden's Place, LLC, owns the property located at 6283 Centerville Road in James City County, Virginia, which is zoned A1 and is used as a residential property with 3 single family dwellings.

2. Timothy James Soderholm is owner of Tiki Tree Service, hereinafter "Tiki" as well as the managing member of Hayden's Place, LLC, hereinafter "LLC".

3. The Zoning Administrator issued a written determination February 1, 2019 that the LLC was being used as a contractor's storage yard in violation of the James City County Ordinance.

4. LLC, by counsel, filed a timely appeal to the Board of Zoning Appeals.

5. On May 2, 2019, the Board of Zoning Appeals resolved to "uphold the Zoning Administrator's written determination on February 1, 2019, that the property located at 6283 Centerville Road is being used for a contractor's storage yard in violation of the James City County Ordinance."

6. The Board of Zoning Appeals made findings of fact that are contained within the Resolution. See Attachment A.

7. LLC and, by association, Timothy James Soderholm are aggrieved by the Board's Resolution and maintain that LLC is in compliance with the County Ordinance, the Zoning Administrator's written determination was incorrect and such was shown by a preponderance of evidence at the Zoning Administrator's Decision Appeal argued on May 2, 2019, hereinafter "Appeal".

8. During the Appeal oral evidence was taken from Timothy James Soderholm, Virginia Leigh Major, Counsel for LLC, and various letters were introduced in support of Mr. Soderholm and LLC, and one letter introduced stating that the decision was up to the Board.

9. LLC's facts include:

a. When LLC purchased the property April 2018, the former owner had been using the property to store his multiple pieces of farm/construction equipment and old cars and parts for them in various states of disrepair.

b. The 3 rental units needed extensive repairs.

c. The property itself needed extensive landscaping and rehabilitation.

d. Mr. Soderholm personally owns all of the equipment used by Tiki.

e. This equipment is also used for his personal projects including repairing, rehabbing and upkeeping the LLC property at 6283 Centerville Road.

f. Mr. Soderholm also uses the equipment to maintain his personal residence at 6293 Centerville Road and help his neighbors during storms, snowfall, etc., on Centerville Road, Settler's Lane, Ruth Lane and other close locations. This is not done as work done by Tiki.

g. Mr. Soderholm uses the equipment to work on one of the partially forested properties located between the LLC and Colonial Heritage, owned by the Estate of Otto

Ripley.

h. Mr. Soderholm is using his equipment for the long-term project, cleaning up the property belonging to LLC, in the evenings and on weekends. He is only able to devote a few hours per week to this project.

i. Mr. Soderholm has historically moved his equipment from job site to job site sometimes moving equipment back and forth from sites or leaving equipment on one site for months at a time depending on the size of the project.

10. Petitioner recognizes that it has the burden to show that the Zoning Administrator's Written Decision was incorrect by a preponderance of evidence.

THEREFORE, the Defendant prays that the court finds that Hayden's Place, LLC, is in Compliance with the County Ordinance, that the property at 6283 Centerville Road is not being used for a contractor's storage yard in violation of the James City County Ordinance, and any and all remedies that the court finds appropriate for the Petitioner.

Respectfully requested,

Hayden's Place, LLC
Timothy James Soderholm,
Member and Registered Agent

By: Virginia Leigh Major
Virginia Leigh Major
Counsel for Petitioner

Virginia Leigh Major, Esquire
V. L. Major, Attorney at Law
501 Prince George Street
Suite 204
Williamsburg, Virginia 23185

Office: (804) 977-0333
Facsimile: (804) 977-0330

CERTIFICATE OF SERVICE

I HEREBY certify that on the 31st day of May, 2019, a true and accurate copy of the foregoing Petition for Zoning Board Appeal and its attachment were emailed and hand delivered to Elizabeth Parman, Esquire, Assistant County Attorney, liz.parman@jamescitycountyva.gov, 101 Mounts Bay Road, Building D, Williamsburg, VA 23185 and to Christy H. Parrish, Zoning Administrator, christy.parrish@jamescitycountyva.gov, 101-A Mounts Bay Road, Williamsburg, VA 23185 .

Virginia Leigh Major

Attachment "A"

RESOLUTION

CASE NO. BZA-19-0003. 6283 CENTERVILLE ROAD -

ZONING ADMINISTRATOR'S DETERMINATION APPEAL

WHEREAS, Ms. V. L. Major, on behalf of the property owners (the "Appellant"), has appealed the Zoning Administrator's written determination on February 1, 2019, that the property located at 6283 Centerville Road (the "Property") is being used for a contractor's storage yard which includes the storage of contractor's equipment, trailers, and vehicles in violation of the James City County Zoning Ordinance. The Property is currently located in the A-1, General Agriculture Zoning District and can be further identified as James City County Real Estate Tax Map Parcel No. 3120100004; and

WHEREAS, the Board of Zoning Appeals at its meetings on May 2, 2019, held a public hearing and considered the statements made by the public and also reviewed and considered the materials and testimony offered by the Zoning Administrator and the Appellant; and

WHEREAS, the Board of Zoning Appeals is of the opinion that the decision of the Zoning Administrator is correct and that the Appellant's appeal should be denied.

NOW, THEREFORE, BE IT RESOLVED that the Board of Zoning Appeals of James City County, Virginia, does hereby uphold the Zoning Administrator's written determination on February 1, 2019, that the property located at 6283 Centerville Road is being used for a contractor's storage yard in violation of the James City County Zoning Ordinance and in consideration of such decision, the Board of Zoning Appeals makes the following specific findings of fact:

1. Section 15.2-2309 of the Code of Virginia, 1950, as amended (the "Virginia Code"), authorizes the Board of Zoning Appeals to hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto.

2. Section 24-5 of the James City County Code requires that the zoning administrator administer and enforce Chapter 24- Zoning of the James City County Code (the "Zoning Ordinance").

3. Section 15.2-2309 of the Virginia Code requires that the Zoning Administrator's interpretation is presumed to be correct and the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.

4. The Board of Zoning Appeals finds the Zoning Administrator's interpretation is correct, the appellant has not met his burden of proof, and that the property located at 6283 Centerville Road is being used for a contractor's storage yard which includes the storage of contractor's materials, equipment, trailers, and vehicles.

5. The Board of Zoning Appeals finds that the storage of contractor's materials, equipment, trailers, and vehicles on the Property is a specially permitted use and requires the issuance of a Special Use Permit (SUP) by the James City County Board of Supervisors.

6. The Board of Zoning Appeals finds that the storage of contractor's materials, equipment, trailers, and vehicles on the Property without issuance of an SUP stands in violation of Section 24-212 Use List of the James City County Zoning Ordinance.

7. The Board of Zoning Appeals orders that the owner of the Property come into compliance by removing all contractor's materials, equipment, trailers, and vehicles used for commercial purposes from the Property or apply for an SUP within 45 days from May 2, 2019.

Mr. William J. Geib
Chairman, Board of Zoning Appeals

ATTEST:

Christy Parrish
Secretary to the Board

Rodgers

	VOTES		
	AYE	NAY	ABSTAIN
JAKOBOWSKI	X	___	___
OTEY	X	___	___
~~ROGERS~~	X	___	___
CAMPANA, JR.	Absent		___
GEIB	X	___	___

Adopted by the Board of Zoning Appeals of James City County, Virginia, this 2nd day of May 2019.

BZA19-3-6283Cntrville(uphold)-res

AGENDA ITEM NO. E.1.

ITEM SUMMARY

DATE: 9/3/2020

TO: The Board of Zoning Appeals

FROM: Christy H. Parrish, Zoning Administrator

SUBJECT: February 6, 2020 Meeting Minutes

ATTACHMENTS:

	Description	Type
🗋	February 6, 2020 Meeting Minutes	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	8/24/2020 - 9:24 AM
Publication Management	Daniel, Martha	Approved	8/24/2020 - 9:30 AM
Board of Zoning Appeals Secretary	Secretary, BZA	Approved	8/24/2020 - 9:31 AM

M I N U T E S
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

A. **CALL TO ORDER**

Mr. Geib called the meeting to order.

B. **ROLL CALL**

Ms. Christy Parrish called the roll:

Present:
Mr. William Geib
Mr. Stephen Rodgers
Mr. David Otey, Jr.
Mr. Ron Campana, Jr.

Absent:
Mr. Mark Jakobowski

Staff Present:
Christy Parrish, Zoning Administrator
John Rogerson, Senior Zoning Officer
Taylor Orne, Zoning Officer
Liz Parman, Assistant County Attorney

C. **OLD BUSINESS**

None

D. **NEW BUSINESS**

1. Case No. BZA-19-0008, 116 Fairmont Drive Rear Yard Variance Request

Mr. John Rogerson presented the staff report.

Mr. Rogerson stated that Mr. Daniel Swartzel, property owner, had applied 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 35-foot rear yard setback to 22 feet to allow for the construction of a screened-in porch in the rear yard setback located at 116 Fairmont Drive. The property is currently located in the R-1, Limited Residential Zoning District. Mr. Rogerson stated that the lot is 0.37 acres in size and contains an existing one-story single-family dwelling with a walk-out basement approximately 2,050 square feet in size. The dwelling was constructed in 2013 and the current owner purchased the property in 2018.

Mr. Rogerson stated that the property is a corner lot which fronts on two streets at their intersection. He explained that for the purpose of building setbacks, Section 24-239(a) Special provisions for corner lots of the Zoning Ordinance requires the shorter of the two sides fronting on streets be the front. Though the existing dwelling faces Fairmont Drive, the front property line faces Birdlington Way and the rear property line is opposite of the front property line. The porch is proposed to be off the side of the house which will encroach into the

required 35-foot rear yard setback.

Mr. Rogerson stated that Mr. Swartzel is proposing to construct a screened-in porch to assist with his disabled son diagnosed with autism. The current layout of the dwelling does not permit his son to safely access the backyard without being escorted down an enclosed stairway into the basement and out the back basement door. The finished first floor of the dwelling is approximately eight feet off the ground on the back of the house. This situation has been found difficult and dangerous for the family. The proposed location of the porch will be approximately three feet off the ground and will allow access to the fenced in backyard from the side of the house having to use minimal steps. The porch will allow the family to monitor all the children at once.

Mr. Rogerson stated that Mr. Swartzel is requesting this variance be granted as a reasonable modification on behalf of a person with a disability. He stated that the applicant has provided a narrative which explained the request and the need to alleviate a hardship by granting a reasonable modification on behalf of a person with a disability.

Mr. Rogerson stated that while the strict application of the terms of the Zoning Ordinance does not restrict the utilization of the property, staff finds the request a reasonable modification on behalf of a person with a disability which will provide safety and enjoyment of the property. He stated that §15.2-2309 of the Code of Virginia states that "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."

Mr. Rogerson stated that should the Board of Zoning Appeals find that the variance request will alleviate a hardship by granting a reasonable modification on behalf of a person with a disability, staff recommended approval of the variance request. He also stated that the Board, if desired, may also include a condition that the screened-in porch be removed when the person benefited by it is no longer in need of the modification to such property provided by the variance.

Mr. Rogerson stated that he would be happy to answer any questions.

Mr. Stephen Rodgers asked what were the dimensions of the proposed screened-in porch.

Mr. Rogerson stated that the proposed screened-in porch was 15 feet X 16 feet.

Mr. Rodgers asked if staff was contacted by any of the adjacent property owners.

Mr. Rogerson stated no.

Mr. David Otey asked if staff had verified the elevation difference of eight feet on the rear of the house.

Mr. Rogerson stated that a site visit was made and confirmed the elevation difference. He explained that a room addition on the rear of the property would require approximately eight feet of steps to get to the ground level but the addition on the side of the house would only require approximately three feet of steps to get to the ground level.

Mr. Otey asked if staff was able to verify that the Swartzel's son had autism.

Mr. Rogerson stated that the Mr. Swartzel was here this evening and brought documentation

of their son's medical diagnosis of autism to the meeting.

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

Mr. Daniel Swartze, property owner, introduced himself and his wife Elizabeth. He stated that he brought documentation of the medical diagnosis of autism of his son. He explained that his son tended to be a little rambunctious and needed constant attention. He also stated that access to fresh air and the outdoors was extremely important to his son's health.

Mrs. Elizabeth Swartzel stated her son always try to engage in dangerous behavior by jumping and climbing and that her son does not perceive danger the way most young people do. She stated her son did not understand dangers, risks or the consequences.

Mr. Swartzel explained that building a deck on the rear of the house would be easier since there was a door already there but, the risk of their son hurting himself was not a chance he was willing to take.

Mr. Geib asked if there were any other design options that could be considered for a deck on the rear of the house.

Mr. Swartzel replied that he could not come up with a design on the rear of the house that he felt was safe for this son.

After seeing no further speakers, Mr. Geib closed the Public Hearing.

The Board discussed the merits of the case and whether or not to include a condition that would require the porch to be removed when no longer needed.

Mr. Ron Campana made a motion to approve the variance and adopt the resolution without the condition to remove the porch when no longer needed.

Mr. Rodgers seconded the motion.

On a roll call vote, the Board voted to Approve the variance and Adopt the resolution without the condition to remove the screened-in porch when no longer needed (4-0).

2. Case No. BZA-19-0009, 100 Paddock Lane Side Yard Variance Request

Mr. Taylor Orne presented the staff report.

Mr. Orne stated that David and Roberta Sulouff, property owners, have applied for a variance to Section 24-238(a) Yard requirements, of the James City County Zoning Ordinance. The variance request is to reduce the required 15 feet side yard setback to two feet. The variance request is to allow for the construction of an addition for an attached accessory apartment to the existing residence at 100 Paddock Lane. The property is located at 100 Paddock Lane and is currently located in the R-1, Limited Residential Zoning District. The parcel is 0.49 acres in size and contains an existing two story-single-family dwelling with approximately 1,254 square feet in size. The dwelling was constructed in 1958 and the current owner purchased the property in 2019.

Mr. Orne stated the property fronts on John Tyler Highway and is adjacent to a shared driveway known as Paddock Lane. The proposed addition is for an attached accessory apartment that will encroach into the required 15-foot left side yard setback closest to Paddock Lane. In addition, Section 24-32(a) (3) special requirements for accessory apartments, requires that attached accessory apartments meet all setback and yard and height regulations of the main structure.

Mr. Orne stated that Mr. and Mrs. Sulouff are requesting this variance be granted as a reasonable modification on behalf of persons with a disability and are proposing to construct the one-story attached accessory apartment to accommodate her parents and sister. According to the documentation provided, both the mother and sister are disabled. The

proposed location of the accessory apartment is necessary to provide easier access from the parking area to the dwelling using the minimal amount of stairs.

Mr. Orne also stated that Mr. and Mrs. Sulouff only discovered the setback encroachment after applying for the building permit. It was believed that the shared driveway known as Paddock Lane was part of their property. However, after much research and a new survey, this area is actually its own parcel of land. If the shared driveway was part of their property, a variance would not be necessary.

Mr. Orne stated that while the strict application of the terms of the Zoning Ordinance does not restrict the utilization of the property, staff does find the request a reasonable modification on behalf of a person with a disability which will provide safety and enjoyment of the property. However, §15.2-2309 of the Code of Virginia states that "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."

Mr. Orne stated that should the Board of Zoning Appeals find that the variance request will alleviate a hardship by granting a reasonable modification on behalf of a person with a disability, staff recommends approval of the variance request with the condition that the addition be removed when the person benefited by it is no longer in need of the modification to such property provided by the variance.

Mr. Orne stated that he would be happy to answer any questions.

Mr. Rodgers asked if 100 Paddock Lane was the only property affected by the gravel driveway.

Mr. Orne confirmed.

Mr. Geib asked what the proposed addition was on the right side of the plat.

Ms. Parrish stated that the addition on the right side was not part of the variance request.

Mr. Geib asked what the interior layout of the proposed addition looked like.

Mr. Orne deferred to the applicant.

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

Mrs. Roberta Sulouff stated that they purchased the home this past summer because they needed a home to accommodate her family with easy accessibility and close proximity to herself. She also stated that when designing the addition, it was understood that they owned the driveway. She stated that the intention of the addition is to provide for her parents. After closing on the property and obtaining a survey for the building permit, it was discovered that the driveway did not belong to them. The mortgage company required construction after six months of owning the property but ultimately viewed the driveway ownership situation as good faith and extended the deadline. She further stated that to determine the ownership of the driveway, they hired an attorney and a private investigator. After conducting research, it was determined that Paddock Lane was a leftover portion of the original subdivision from the 1940s. The private investigator was able to find the heirs of the subdivider. She stated that they plan on purchasing the driveway known as Paddock Lane and enter into a shared driveway agreement that was common among other shared driveways in the County. She stated that since obtaining the driveway will take time to do, the variance request was the last

option for them. Mrs. Sulouff acknowledged that the apartment will be close to Paddock Lane. She also emphasized that she has spoken to some of the neighbors and they do not have any objections to it. She also acknowledged that there was an objection letter that was received.

Mr. Geib asked if the property was zoned for the attached two-family dwelling.

Ms. Parrish explained that the size of the proposed addition met the Zoning Ordinance requirements for attached accessory apartments.

Mrs. Sulouff stated that the addition in question was a very small representation of the entire square footage. She also stated that an interior door was considered but it was determined that there should be a few boundaries.

Mr. Geib asked about the steps shown on the plans.

Mrs. Sulouff stated that the plans only show the topography of the front of the residence so the drawings do not accurately show the topography.

Mr. Campana asked if there would be a ramp.

Ms. Sulouff answered no.

Mr. Geib stated that he has commonly seen architects not accurately display the topography on drawings.

Mrs. Sulouff agreed and stated the drawings showed the entire house as being on a hill but the backyard is flat.

Mr. Campana asked what the details of the second floor were.

Mrs. Sulouff stated it was unfinished attic space and the proposed addition was just one story.

Mr. Geib asked if they were the only users of the driveway.

Mrs. Sulouff answered that the neighbors behind them also use the driveway but the third property with access has gated it and does not use it.

Mr. Rodgers asked how much space was between the house and the driveway.

Mrs. Sulouff answered three to four feet.

After seeing no further speakers, Mr. Geib closed the Public Hearing.

The Board discussed the merits of the case including the close proximity of the addition to the driveway.

Mr. Geib stated he did not support the condition to remove the addition when no longer needed.

Mr. Rodgers made a motion to approve the variance and adopt the resolution without the condition to remove the addition when no longer needed.

Mr. Geib seconded the motion.

On a roll call vote, the Board voted to Approve the variance and Adopt the resolution without the condition to remove the addition when no longer needed (4-0).

3. Board of Zoning Appeals 2020 Meeting Schedule

Ms. Parrish presented the proposed 2020 meeting schedule.

The Board discussed the possibility of conflicts with the July 2, 2020 meeting due to the July 4th holiday weekend. It was agreed to leave the meeting as scheduled.

On a voice vote, the Board voted to Adopt the 2020 meeting schedule as presented (4-0).

4. Board of Zoning Appeals 2019 Draft Annual Report

Ms. Parrish presented the draft 2019 Board of Zoning Appeals Annual Report for the Board of Supervisors.

On a voice vote, the Board voted to Approve the 2019 Board of Zoning Appeals Annual Report as presented (4-0).

E. MINUTES

1. October 3, 2019 Meeting Minutes

Mr. Geib asked if there ware any corrections to the October 3, 2019 meeting minutes.

After hearing none, Mr. Geib motioned to approve the minutes of the October 3, 2019 as presented.

Mr. Campana seconded the motion.

On a voice vote, the motion was Approved 4-0.

F. MATTERS OF SPECIAL PRIVILEGE

1. Election of Officers for 2020

After a brief discussion, Mr. Otey motioned to Conduct the Election and nominated Mr. Rodgers for Chairman for the 2020 calendar year.

Mr. Geib seconded the motion.

On a voice vote, the Board elected Mr. Rodgers as Chairman for the 2020 calendar year (4-0).

Mr. Campana nominated Mr. Jakobowski as Vice Chairman for the 2020 calendar year.

Mr. Otey seconded the motion.

On a voice vote, the Board elected Mr. Jakobowski as Vice Chairman for the 2020 calendar year (4-0).

G. ADJOURNMENT

Seeing and hearing no further business, Mr. Geib adjourned the meeting at 6:06 p.m.

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Stephen Rodgers, Chairman Christy Parrish, Secretary