

A G E N D A
JAMES CITY COUNTY POLICY COMMITTEE
REGULAR MEETING
Building A Large Conference Room
101 Mounts Bay Road, Williamsburg, VA 23185
November 8, 2018
4:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. MINUTES

1. October 11, 2018 Meeting Minutes

D. OLD BUSINESS

E. NEW BUSINESS

1. Consideration of Zoning Ordinance Amendment to Authorize the Board of Zoning Appeals to Grant a Reasonable Modification in Accordance with the Americans with Disabilities Act or State and Federal Fair Housing Laws, as Applicable

F. ADJOURNMENT

ITEM SUMMARY

DATE: 11/8/2018

TO: The Policy Committee

FROM: Paul D. Holt, III, Secretary

SUBJECT: October 11, 2018 Meeting Minutes

ATTACHMENTS:

	Description	Type
	Minutes of the October 11, 2018 Meeting	Cover Memo

REVIEWERS:

Department	Reviewer	Action	Date
Policy	Secretary, Policy	Approved	11/2/2018 - 4:02 PM

MINUTES
JAMES CITY COUNTY POLICY COMMITTEE
REGULAR MEETING
Building A Large Conference Room
101 Mounts Bay Road, Williamsburg, VA 23185
October 11, 2018
4:00 PM

A. CALL TO ORDER

Mr. Heath Richardson called the meeting to order at approximately 4:00 p.m.

B. ROLL CALL

Present:

Julia Leverenz

Heath Richardson

Tim O'Connor

Absent:

Jack Haldeman, Chair

Rich Krapf

Staff:

Ellen Cook, Principal Planner

Jose Ribeiro, Senior Planner II

John Risinger, Community Development Assistant

C. MINUTES

1. August 9, 2018 Meeting Minutes

Ms. Julia Leverenz made a motion to Approve the August 9, 2018, meeting minutes.

The motion passed 3-0 by voice vote.

D. OLD BUSINESS

There was no old business.

E. NEW BUSINESS

1. Potential Ordinance Amendments to Address a Code of Virginia Change Prohibiting Mandatory Conceptual Plans

Mr. Richardson opened the discussion.

Mr. Jose Ribeiro stated that in 2016, the site plan section of the Zoning Ordinance was amended to require submittal of an enhanced conceptual plan for types of developments listed in Section 24-147 of the Zoning Ordinance. He stated that the purpose of the amendment was to provide a more flexible plan review process. He stated that in 2018, an amendment to the Code of Virginia was adopted that stated the local planning commission or other agents shall not delay the official submission of any proposed plat, site plan or plan of development by requiring pre-submission conferences, meetings or reviews. He stated that staff had consulted with the County Attorney's office and determined that the prohibiting of pre-submission reviews would also prohibit the requirement for conceptual plan submissions. He stated that

staff recommends reverting the language of Section 24-147 and Section 24-148 to how they existed prior to 2016. He stated that staff recommends that the Policy Committee recommend approval of the draft amendments to the Planning Commission.

Ms. Leverenz stated that the usage of the word “advised” in Section 24-144 is strong. She stated that staff should check with the County Attorney to understand the interpretation of those sections.

Ms. Ellen Cook stated that the County Attorney’s office had viewed the draft amendments and did not indicate that the language was problematic. She stated that staff could check with the County Attorney’s office.

Mr. Richardson stated that he thinks the usage of the word “advised” is fine.

Mr. Tim O’Connor stated that the usage of “advised” expresses that conceptual plans are encouraged because they can identify potential roadblocks early in the planning process.

Ms. Leverenz stated that in Section 24-148(d), the usage of the phrase “as deemed necessary by the planning director” might imply that it is required.

Ms. Cook stated that the phrase is referencing which agencies will review the plan.

Mr. Richardson stated that staff should verify the purpose of that phrase.

Mr. O’Connor asked what criteria determine if a plan needs to be reviewed by other agencies.

Mr. Ribeiro stated that the context and details of the plan decide which agencies will review the plan.

Ms. Leverenz asked if a conceptual plan was submitted, then it might be required for other agencies to review.

Mr. Ribeiro confirmed.

Ms. Leverenz made a motion to approve the draft amendment. The motion passed 3-0.

F. ADJOURNMENT

Mr. Richardson made a motion to Adjourn. The motion passed 3-0.

Mr. Richardson adjourned the meeting at approximately 4:20 p.m.

Mr Jack Haldeman, Chair

Mr. Paul Holt, Secretary

ITEM SUMMARY

DATE: 11/8/2018

TO: The Policy Committee

FROM: Louis Pancotti, Zoning Officer

SUBJECT: Consideration of Zoning Ordinance Amendment to Authorize the Board of Zoning Appeals to Grant a Reasonable Modification in Accordance with the Americans with Disabilities Act or State and Federal Fair Housing Laws, as Applicable

ATTACHMENTS:

	Description	Type
☐	Memorandum	Cover Memo
☐	Draft Ordinance	Ordinance
☐	2018 General Assembly Session - HB 796	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Policy	Rosario, Tammy	Approved	11/2/2018 - 4:03 PM
Policy	Secretary, Policy	Approved	11/2/2018 - 4:03 PM

MEMORANDUM

DATE: November 8, 2018

TO: The Policy Committee

FROM: Louis Pancotti, Zoning Officer

SUBJECT: Consideration of Zoning Ordinance Amendment to Authorize the Board of Zoning Appeals to Grant a Reasonable Modification in Accordance with the Americans with Disabilities Act or State and Federal Fair Housing Laws, as Applicable

Introduction

During the 2018 session of the General Assembly, amendments were made to Section 15.2-2309 of the Code of Virginia. The amendment provides authority to the Board of Zoning Appeals to alleviate a hardship by granting a reasonable modification to a property or improvement thereon requested by, or on behalf of, a person with a disability in accordance with the Americans with Disabilities Act or state and federal fair housing laws, as applicable.

Unlike rezonings and special use permits, a consideration of applications for variances is reviewed by the Board of Zoning Appeals (BZA), instead of the Planning Commission and Board of Supervisors. The BZA is composed of five County residents appointed by the Circuit Court after endorsement by the Board of Supervisors. The Code of Virginia empowers the BZA to hear and decide appeals of determinations made by the Zoning Administrator and gives them the ability to grant a variance.

A variance is permission to depart from the literal requirements of a Zoning Ordinance, as they relate to height, area and size of a structure. The Code of Virginia further provides criteria that must be met in order for the BZA to grant a variance, and since it is a quasi-judicial body, the scope of its approvals must strictly follow those criteria.

The recent Code of Virginia amendment permits any variance to be granted based on providing a reasonable modification to a property or improvement as requested by or on behalf of a person with a disability.

Even though the Planning Commission does not review applications for variances, the new changes must be reflected in the County's Zoning Ordinance, amendments to require Policy Committee, Planning Commission and Board of Supervisors approval.

Recommendation

Section 24-650 of the Zoning Ordinance currently establishes the criteria that the BZA must find in order to grant a variance. While the General Assembly often reviews and modifies BZA's powers and duties, it has been suggested that the County modify Section 24-650 to simply adopt the powers granted by the Code of Virginia by referencing Section 15.2-2309 of the Code of Virginia. This change would alleviate future amendments as the BZA is only empowered to act in accordance with the criteria prescribed by statute.

Staff recommends that the Policy Committee recommend approval of the Ordinance amendment to the Planning Commission.

Consideration of Zoning Ordinance Amendment to Authorize the Board of Zoning Appeals to Grant a Reasonable Modification in Accordance with the Americans with Disabilities Act or State and Federal Fair Housing Laws, as Applicable

November 8, 2018

Page 2

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Attachments:

1. Draft Ordinance
2. 2018 General Assembly Session - HB 796

Section 24-650. Powers and duties; granting of variances.

The board of zoning appeals shall have the following powers and duties:

- (1) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter or of any ordinance adopted pursuant thereto.
- (2) To grant upon appeal or original application in specific cases a variance as defined in Va. Code § 15.2-2201 and section 24-2 of the County Code; provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the defined standard for a variance and the following criteria:
 - a. 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:~~ *only in accordance Va. Code § 15.2-2309.*
 1. ~~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;~~
 2. ~~The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;~~
 3. ~~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;~~
 4. ~~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;~~
 5. ~~The relief or remedy sought by the variance application is not available through the process for modification of a zoning ordinance pursuant to section 24-644 of the County Code at the time of the filing of the variance application.~~
 - b. No such variance shall be considered except after notice and hearing as required by ~~section 15.2-2204 of the Code of Virginia~~ *Va. Code § 15.2-2204.*
 - c. In granting a variance the board may impose such conditions regarding the location, character and other features of the proposed structure for use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
- (3) To hear and decide appeals from the decision of the zoning administrator.
- (4) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after a public hearing with notice as required by Va. Code § 15.2-2204 , the board may interpret the map in such way as to carry out the intent and purpose of this chapter for the particular section or district in question. The board shall not have the power, however, to rezone property or substantially to change the locations of district boundaries as established by ordinance.

Ordinance to Amend and Reordain
Section 24-650
Page 2

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2018 SESSION

CHAPTER 757

An Act to amend and reenact §§ 15.2-2283 and 15.2-2309 of the Code of Virginia, relating to zoning; disabilities.

[H 796]
Approved April 4, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2283 and 15.2-2309 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2283. Purpose of zoning ordinances.

Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.2-2200. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (v) to protect against destruction of or encroachment upon historic areas and working waterfront development areas; (vi) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other dangers; (vii) to encourage economic development activities that provide desirable employment and enlarge the tax base; (viii) to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment; (ix) to protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities; (x) to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated; ~~and~~ (xi) to provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard; *and (xii) to provide reasonable modifications in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.) or state and federal fair housing laws, as applicable.* Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in § 62.1-255.

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. 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. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

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 the 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 (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 A 4 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.*

No variance shall be considered except after notice and hearing as required by § **15.2-2204**. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § **15.2-2204**. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § **15.2-2204**, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.