

1 MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF
2 HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE
3 GOVERNMENT CENTER AT PARHAM AND HUNGARY SPRING ROADS, ON
4 THURSDAY DECEMBER 15, 2022, AT 9:00 A.M., NOTICE HAVING BEEN
5 PUBLISHED IN THE *RICHMOND TIMES-DISPATCH* NOVEMBER 28, 2022, AND
6 DECEMBER 5, 2022.

7
8
9 Members Present: Walter L. Johnson, Jr., Chair
10 Terrell A. Pollard, Vice-Chair
11 Gentry Bell
12 Terone B. Green
13 James W. Reid, Jr.

14
15
16 Also Present: Leslie A. News, Assistant Director of Planning
17 Benjamin Blankinship, Secretary
18 Paul M. Gidley, County Planner
19 R. Miguel Madrigal, County Planner
20 Rob Peterman, Technology Support Specialist
21

22
23
24 Mr. Johnson - Welcome to the December 15th meeting of the Henrico Board
25 of Zoning Appeals. For all that are able, will you please stand and join us in the Pledge of
26 Allegiance.

27
28 **[Recitation of Pledge of Allegiance]**
29

30
31 Mr. Johnson - Thank you. Alright. Mr. Blankenship will read our rules.

32
33 Mr. Blankenship- Good morning, Mr. Chair, members of the Board. Good
34 morning to everyone in the room with us this morning. I'd also like to welcome everyone
35 who's joining us remotely, via WebEx. If you wish to observe the meeting, but you do not
36 intend to speak, welcome, thank you for joining us. For those of you on WebEx who do
37 wish to speak, we need to know that in advance so that we can connect you at the
38 appropriate time. So, if you are an applicant, or if you have questions or comments on
39 one of the cases, please press the chat button now. It's located in the bottom right corner
40 of the screen. When the chat window opens, please select Brendon McDowell from the
41 list of participants. Let him know your name and which case you're interested in. The chat
42 feature is only being used to identify speakers, so please do not type questions or
43 comments into a chat, but please send a chat to Brendan McDowell now.
44

45 So, acting as secretary, I will call each case, then we will ask everyone in the room,
46 intends to speak to that case to stand and be sworn in. Then a member of the Planning

47 Department staff will give a presentation. Then the applicant will speak. Then anyone else
48 who wishes to speak will be given the opportunity. We will hear from citizens in the room
49 first, and then from those on WebEx. After everyone has had a chance to speak the
50 applicant, and only the applicant, will have an opportunity for rebuttal.

51
52 This meeting is being recorded, ... excuse me..., so for those in the room we will ask you
53 to speak into the microphone at the podium in the back of the room there and to state and
54 spell your last name, so that we get it correctly in the record. Once your case is over, you
55 are free to leave, there is no need for you to stay for the rest of the meeting.

56
57 We do not have any request for deferral or withdraw this morning, that I am aware of, so
58 with that, would you like me to call the first case?

59
60 Mr. Johnson- Yes, please call the first case. Also, Mr. Blankinship, will also
61 read the captions and swear in all speakers as well.

62
63 Mr. Blankinship- Yes sir, I certainly will. So, we have two conditional use
64 permits and four variances on this morning's agenda. The first conditional use permit is
65 CUP2022 number 54.

66
67 **CUP2022-00054 LaSANDRA B. ROSE** requests a conditional use permit pursuant to
68 Section 24-4402 of the County Code to operate a large family day home at 3900
69 Rosemallow Place (Parcel 810-732-2639) zoned R-2AC, One-Family Residence District
70 (Conditional) (Fairfield).

71
72 Mr. Blankinship - Would everyone who intends to speak to this case please stand and
73 be sworn in? Anyone intend to speak to 54? Raise your right hand. Do you swear the
74 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so
75 help you God?

76
77 Mr. Rose – Yes.

78
79 Mr. Blankinship- Thank you. Mr. Gidley, you can begin your report, and then
80 we will hear from you.

81
82 Mr. Gidley- Thank you Mr. Secretary. Good morning, Mr. Chairman,
83 members of the Board. The subject property is located to the northeast of the intersection
84 of Creighton Road and Laburnum Avenue, in the Harvey Point Subdivision. This is a new
85 subdivision, and the applicant moved into her home back in March. She currently cares
86 for five children but would like to expand this to keep up to 12 children. Caring for between
87 six and twelve children requires a conditional use permit, thus today's request. This is the
88 applicants home here and it contains just over 2,500 square feet of floor area. As you can
89 see it has a large, paved driveway. It originally contained a 2-car garage, but this was
90 converted into living space back in May, and it's this living space that would be used for
91 the family day home. Finally, the neighbor, I mean the applicant's rear yard is also fenced,
92 and so when it comes to play time, the children would also utilize the rear yard. In

93 evaluating this request, it is designated as Suburban Residential 2 on the Land Use Plan.
94 This allows for single family dwellings, the zoning is R-2AC, One Family Residence
95 District, this also allows for single family dwellings. A family day home is accessory to a
96 single-family dwelling. The adjacent properties are also used for single-family dwellings,
97 as you can see back here, and I can tell you this was built in as well. So, the use is
98 consistent with what is around there. Finally, family day homes can play an important
99 service for a community by providing care for children in nearby neighborhoods. So long
100 as these are operated responsibly, they are appropriate for single-family neighborhoods.
101 As for impacts on the neighbors, as you can see here, the rear yard is enclosed by a large
102 vinyl privacy fence. This should help shield the operation from the neighbors. In addition,
103 it would keep children in the rear yard, rather than having them wonder off. The applicant's
104 driveway can also accommodate up to six vehicles. And to ensure the surrounding cul-
105 de-sac, which does contain dwellings, does not get blocked by parents dropping their
106 children off in the morning or picking them up in the afternoon, staff has proposed a
107 condition requiring drop off and pick up to occur in the driveway. Finally, the homeowner's
108 association was contacted, and they have not expressed any opposition to this case. So,
109 in conclusion, with its converted garage, fenced rear yard, and large driveway, the
110 applicant's property is certainly suitable for a proposed family day home. Any concerns
111 about traffic from drop off and pick up can be addressed by the condition requiring these
112 to occur in the driveway. Accordingly, staff can recommend approval of this request
113 subject to the conditions in your staff report. If you have any questions, I will be happy to
114 answer them. Thank you.

115
116 Mr. Johnson- You mentioned that the kids would be going into the garage.
117 Is that the area that they will be going into, staying at?
118

119 Mr. Gidley- When they're inside the house. That has been converted to
120 living space and as a result they would be within that enclosed area. Now, obviously they
121 go and play outside too and that would be within the fenced rear yard.
122

123 Mr. Johnson- Okay.
124

125 Mr. Green- When you said it's been converted to living space, does that
126 mean heating and cooling have been provided or added to that area, because you said
127 that house is 2,500 square feet, I believe once you add heating and cooling to a particular
128 area, it expands the square footage of the house, so I'm told. We don't have any pictures
129 of what it would look like, do we?
130

131 Mr. Gidley- No sir, we did not go inside the dwelling.
132

133 Mr. Johnson- Any other questions from the Board or staff? No questions?
134 Okay.
135

136 Mr. Blankinship- Yes sir. Good morning.
137

138 Mr. Rose- Good morning.

139
140 Mr. Blankinship- Tell us your name and what you're interested in applying for.
141
142 Mr. Rose- I'm Jerry Rose, I'm the husband of Ms. LaSandra Rose, we've
143 been doing daycare ever since 2010. We were in the Varina area and, off of Darbytown
144 Road, in Darbytown Subdivision, which we did this same application a few years ago.
145 Until we bought a new home, and so, we made sure that we did everything to the specs
146 when we bought the house. Your field reps, we spent a little bit of money bringing that
147 garage into living quarters, we had to insulate the ceiling, all the walls, according to the
148 code... On the right of that picture there, we added that additional sidewalk, because we
149 had no cut there from the beginning, so all the traffic for the daycare comes through that
150 door. We do have on that side an independent heating and cooling unit as well. We spent
151 over \$10,000 just for that. We spent about, almost \$30,000.00 in that one room since
152 March. And, we have blessed a lot of parents, children since 2010. When we moved
153 there, we had to tell some parents that we couldn't bring them with us because we were
154 not set up for the 12. A lot of them cried, some called and said, "Ms. Rose when you going
155 to get the license" and I said it takes time and got to go through the process to get to this
156 point. We put the fence up as well to make it a professional, safe daycare. And also, like
157 I say, I'm an ex-foster parent. We did that for 14-years as well. And I'm also a Pastor.
158
159 Mr. Johnson- 14-years?
160
161 Mr. Rose- Yes. So, Social Services said go hurry up and do what you
162 got to do. We have been blessed working with the county, and the state, and we get to
163 help families. And our, I guess our rate is actually probably one of the lowest in Virginia,
164 because we are about helping families and kids.
165
166 Mr. Johnson- You have something?
167
168 Mr. Green- Hey, Mr. Rose, question for you. When you bought the house
169 was it 2,500 square feet, when you bought it and was the garage unfinished?
170
171 Mr. Rose- Right, right. All those houses out there are unfinished, so I had
172 to spend the money to bring it up to code.
173
174 Mr. Green- So, now that the garage... how many square feet are in the
175 garage.
176
177 Mr. Rose- Well, that's a 20' by 20' garage, okay, and when you go up
178 these three steps to go into the main house, if you turn to the right, there's a bathroom
179 that we use for the daycare.
180
181 Mr. Green- I ask that because I'm told that once you add heating and air
182 conditioning, and since you've closed that space off, that adds to the square footage of
183 your home, so I would think that goes, at least, from 2,500 square feet to close to, I don't
184 know, what 3,000square feet? Which is...

185
186 Mr. Rose- I wouldn't know. I didn't calculate that, we converted
187 everything, so it would be, like a bedroom, as far as the insulation. We put lights in like
188 this all through the top of it as well. The lighting, wall to wall carpet.
189
190 Mr. Green- So, does the garage door go open?
191
192 Mr. Rose- No. The thing is sealed. We have the studs in that wall, about
193 8 to 10-inches, we had to put the blow insulation in there all around there. We had to,
194 windows, we had to go and buy special glass, or plexi-glass, thinking so that it would meet
195 the standards according to what the county told me. So, it's airtight. You can set the unit
196 at 68 degrees and it's real warm in there.
197
198 Mr. Green- Very nice, Mr. Rose. Very nice.
199
200 Mr. Rose- Thank you.
201
202 Mr. Green- Just don't let the county know they might come and reassess
203 you!
204
205 Mr. Blankinship- We've already got his building permit.
206
207 Mr. Green- For larger square footage?
208
209 Mr. Blankinship- I'm looking at the real estate record now Mr. Green, and
210 actually the 2,548 square feet does include the garage. So, it's 1,104 square feet on each
211 level, plus the 400 or so for the garage makes the total 2,500.
212
213 Mr. Green- But that was before he finished it.
214
215 Mr. Blankinship- No, that's including it. It's already been captured.
216
217 Mr. Green- Good, so you're good to go.
218
219 Mr. Pollard- Good morning.
220
221 Mr. Rose- Good morning.
222
223 Mr. Pollard - I was just wondering what's the age range that you serve.
224
225 Mr. Rose- Age range is anywhere, I guess you'd say is a baby, that is...
226 eight weeks old, ...what I like to, we can license up to children age 12, but we basically
227 keep children around age three and a half, four. We try to prepare them to go to go to a
228 daycare center. And because it's a points system, you know. A toddler under, what, 16-
229 months is four points, and your only allowed 32 points. So, with the younger the kids, the

230 less kids you can have. And when they hit two, you can do the math, you can have up to
 231 12. Children.
 232
 233 Mr. Pollard - How many staff members do you have?
 234
 235 Mr. Rose- We have right now, on hold, she had two staff members, also
 236 me. I drive a school bus, and I come back in at 9, and I'm in and out, but I'm there. So, I
 237 guess I'm the handyman,
 238
 239 Mr. Blankinship- You're a busy man.
 240
 241 Mr. Johnson- Okay.
 242
 243 Mr. Pollard- Thank you.
 244
 245 Mr. Green- Thanks again. Very nice.
 246
 247 Mr. Johnson- Are there any other questions for the applicant? Does anyone
 248 else wish to speak in support of this request? None. Does anyone wish to speak in
 249 opposition? None. Thank you.
 250
 251 Mr. Blankinship- Do we have anyone on WebEx for this case.
 252
 253 Mr. Peterman- No one to speak on WebEx.
 254
 255 Mr. Johnson- Okay. If that's all, this hearing would be closed, a motion
 256 would be in order. What is the pleasure of the Board?
 257
 258 Mr. Pollard- I move that we approve the conditional use permit, subject to
 259 the conditions recommended by the staff. It is consistent with the Comprehensive Plan
 260 and Zoning Ordinance. The property is a suitable location for a daycare home and the
 261 privacy fence will mitigate any negative impacts.
 262
 263 Mr. Green- Second.
 264
 265 Mr. Johnson- Any discussion? All in favor.
 266
 267 Board Members- Aye.
 268
 269 Mr. Johnson- Any opposed? All five approved. No one opposed. Motion
 270 passed.
 271
 272 On a motion by Mr. Pollard, seconded by Mr. Green, the Board **approved CUP2022-**
 273 **00054 LaSANDRA B. ROSE's** request for a conditional use permit pursuant to Section
 274 24-4402 of the County Code to operate a large family day home at 3900 Rosemallow

Place (Parcel 810-732-2639) zoned R-2AC, One-Family Residence District (Conditional) (Fairfield). The Board approved the request subject to the following conditions:

1. This conditional use permit authorizes the proposed large family day home. All other applicable regulations of the County Code remain in force.

2. This conditional use permit applies only to the improvements shown on the plot plan and building design filed with the application. Any additional improvements must comply with the applicable regulations of the County Code.

3. Hours of operation will be limited to 6:00 am to 6:00 pm.

4. During the hours of operation, all vehicles associated with the family day home, including employees as well as parents dropping off or picking up children, must park in the driveway, not in the right-of-way of Rosemallow Place.

Affirmative:	Bell, Green, Johnson, Pollard, Reid	5
Negative:		0
Absent:		0

Mr. Blankinship- Thank you.

Mr. Rose- Thank you. When I have my barbeque, y'all are welcome to come by.

Mr. Green- We're going to hold you to that, but I noticed you didn't tell us a date.

Mr. Rose- I'll let my friend on the second floor know...

Mr. Green- They may come by, but that don't mean necessarily that...

Mr. Rose- Well y'all work on it now. God Bless you.

Mr. Johnson- Have a nice one sir.

Mr. Pollard- Have a nice one.

Mr. Blankinship- Alright, the other conditional use permit, we also have four variances, is conditional use permit 2022 number 55. Martin Collins. Would everyone who intends to speak to this case please stand and be sworn in.

CUP2022-00055 MARTIN COLLINS requests a conditional use permit pursuant to Section 24-4404.A.1 of the County Code to allow a swimming pool in the side yard at

7990 Upper Western Run Lane (Parcel 855-688-9603) zoned A-1, Agricultural District (Varina).

Mr. Blankinship: Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Collins- I do, yes.

Mr. Blankinship- Thank you. Mr. Madrigal.

Mr. Madrigal- Thank you Mr. Secretary. Mr. Chair, members of the Board, good morning.

Board- Good morning.

Mr. Madrigal- Before you is a request to have an inground swimming pool in the side yard of a single-family dwelling. The subject property is accessed by a private road that extends half a mile south of Charles City Road. The parcel was originally part of a 102-acre tract of land owned by the Cochran family, which was divided among family members. The applicant inherited this 8-acre parcel of land. In April of 2019, he obtained a variance from the public street frontage requirement to build a single-family dwelling on the property. He subsequently built a one-story, 1,700-square-foot home with a 900-square-foot detached garage later that year. The home was placed 70 feet from the northern property line and 150 feet from the private road. The eastern part of the property adjacent to the road is generally level, but the western portion is constrained by steep slopes, a creek, and wetlands. The property is served by a private well and septic system. The applicant would like to construct a 576-square-foot inground swimming pool in the northern side yard adjacent the home. The area is 70 feet wide, relatively flat, and would not be encumbered by the existing septic drain field located behind the house. Because the pool will be in the side yard, it does require the approval of a conditional use permit. The property and proposed use are consistent with both the zoning and comprehensive plan designations of the property. The immediate area surrounding the site is rural in nature, comprising large tracts of land used for residential and farming purposes. The most affected neighbors are to the north at 7900 Upper Western Run Lane and are approximately 550 feet northwest of the proposed pool. You can see the structure here in the photograph. A one-family dwelling on a large tract of land is consistent with the general character of the area. The proposed pool will not be out of scale or intensity as compared to the surrounding area. It will also not be visible from the public right of way since the road is, Charles City Road, is approximately half a mile to the north. The pool will be partially visible from the private road, as there is an existing tree line along the western boarder of the road that obscures visibility. It will also be partially visible from the northern neighbor, but any impacts would be negligible as there is a four-and-a-half-acre pasture between the pool site and the neighbor's home. The long distance between the home and the existing topography and vegetation will mitigate any adverse impacts. So, in conclusion, based on the facts of the case staff, staff does recommend approval subject

366 to the attached conditions. That concludes my presentation. I'll be happy to answer any
367 questions.

368
369 Mr. Johnson- Any questions from the Board or staff? None. Can we hear
370 from the applicant?

371
372 Mr. Collins- I just want to add that we still, even though there are no direct
373 neighbors to see the pool, we still intend to seclude it with a hedge row and some other
374 type trees, along that fence line that was shown. On that driveway there's five homes.
375 Everybody knows everybody and frankly everybody on the driveway is excited about the
376 pool. Yeah, they're welcome to use it as well. That's all I have.

377
378 Mr. Johnson- Also, Mr. Collins, with the pool, will you have a fence around
379 it?

380
381 Mr. Collins- Actually, I'm going to have an automatic pool cover, which the
382 county doesn't require a fence when you have that, but I am also going to put a fence
383 around it, yes. So, I'll have a pool cover, an automatic style pool cover and a fence.

384
385 Mr. Johnson- Thank you.

386
387 Mr. Collins- And there's a pool house in the works too. We'll get to that
388 later.

389
390 Mr. Blankinship- Is that going to be on the side or the rear?

391
392 Mr. Collins- That's going to be towards the rear.

393
394 Mr. Blankinship- Oh, okay. Hate to drag you back here again.

395
396 Mr. Collins- Nah, nah, that will be towards the rear of the house, so we'll
397 be good on that.

398
399 Mr. Johnson- And I also noticed that it's a way from the main traffic road as
400 well.

401
402 Mr. Collins- Oh, absolutely.

403
404 Mr. Johnson- And that way you have very few people having access to it
405 anyway.

406
407 Mr. Collins- Absolutely. Yes. Yes.

408
409 Mr. Johnson- Okay.

411 Mr. Collins- Plus the automatic pool covers, that's an electric cover that
 412 comes out, and you close the pool daily. You know, it's covered daily. And that's a locking
 413 type system, so nobody's going to wander into it.
 414
 415 Mr. Johnson- Okay, thank you.
 416
 417 Mr. Collins- It's a pretty nice pool.
 418
 419 Mr. Johnson- Okay.
 420
 421 Mr. Green- We'll see it when we come there.
 422
 423 Mr. Collins- Yes sir.
 424
 425 Mr. Johnson- Any other questions for the applicant? No. Any opposed to the
 426 applicant's request? None?
 427
 428 Mr. Blankinship- Is there anyone on WebEx?
 429
 430 Mr. Peterman- No one on WebEx.
 431
 432 Mr. Blankinship- Thank you
 433
 434 Mr. Johnson- Okay, appreciate it. This hearing is now closed, a motion
 435 would be in order. What is the pleasure of the Board? I motion, I move that we approve
 436 the use permit subject to the conditions recommended by staff. And it is consistent with
 437 the Comprehensive Plan and the Zoning Ordinance. This... this side yard is the only place
 438 that they can put a pool, and the nearest house is 500-feet away. Again, I motion that we
 439 approve.
 440
 441 Mr. Pollard- Second. Second the motion.
 442
 443 Mr. Johnson- It's been motioned and seconded. All in favor?
 444
 445 Board- Aye.
 446
 447 Mr. Johnson- All opposed? None opposed.
 448
 449 Mr. Johnson- So the motion passed. All in favor.
 450
 451 On a motion by Mr. Johnson, seconded by Mr. Pollard, the Board **approved CUP2022-**
 452 **00055 MARTIN COLLINS** request for a conditional use permit pursuant to Section 24-
 453 4404.A.1 of the County Code to allow a swimming pool in the side yard at 7990 Upper
 454 Western Run Lane (Parcel 855-688-9603) zoned A-1, Agricultural District (Varina). The
 455 Board approved the request subject to the following conditions:
 456

1. This conditional use permit authorizes the placement of an in-ground swimming pool in the northern side yard. All other applicable regulations of the County Code remain in force.

2. This conditional use permit applies only to the improvements shown on the plot plan and pool design filed with the application. Any additional improvements must comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements will require a new conditional use permit.

3. Before beginning any clearing, grading, or other land disturbing activity, the applicant must obtain approval of an environmental compliance plan from the Department of Public Works.

4. Any exterior lighting must be shielded to direct light away from adjacent property and streets.

5. The swimming pool must be secured as required by the Building Code.

6. Diving boards, pool slides, and similar equipment are prohibited between the pool and the side property line.

7. The applicant must obtain a building permit for the proposed in-ground swimming pool by December 16, 2024, or this conditional use permit will expire. If the building permit is cancelled or revoked after that date due to failure to diligently pursue construction, this conditional use permit will expire at that time.

Affirmative:	Bell, Green, Johnson, Pollard, Reid	5
Negative:		0
Absent:		0

Mr. Blankinship- Alright, Mr. Chair, members of the Board, at the request of the applicant we're going to change the order of two cases here. There are four variances, as I've mentioned. Three of them are all in the same neighborhood. So, we're going to take the one that is not in that neighborhood first.

Mr. Johnson- Okay.

Mr. Blankinship- That way we will be able to flow straight through the three that are in the same neighborhood. So, we're first going to hear variance 2022 number 22, Delta Land Company, LLC.

VAR2022-00022 DELTA LAND COMPANY, LLC requests a variance from Section 24-6402.A.2 of the County Code to build a one-family dwelling at 2940 Chile's Road (Lakeview) (Parcel 774-775-4733) zoned A-1, Agricultural District (Brookland). The lot area requirement and lot width requirements are not met. The applicant has 23,958

square feet lot area and 100 feet lot width where the Code requires 30,000 square feet lot area and 150 feet lot width. The applicant requests a variance of 6,042 square feet lot area and 50 feet lot width.

Mr. Blankinship - Would everyone who intends to speak to this case please stand and be sworn in?

Do you swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Rempe - I do.

Mr. Blankinship - Thank you. Alright, Mr. Madrigal.

Mr. Madrigal- Thank you sir. Mr. Chair, members of the Board, before you is a request to build a one-family dwelling on a substandard lot in an agricultural district. The property is part of Section C of the Lakeview Subdivision which was recorded in 1924. The parcel consists of four 25-foot-wide lots, totaling 100 feet in width and 23,958 square feet in area. The lots were sold together in 1925 and remained in the family until the property was sold in 1997. In 1999, the new owner applied for a variance, but it was denied due to opposition from neighbors and their concerns that the property would not support a septic system. Since that time, the technology surrounding individual on-site septic systems has evolved, and the Department of Health has allowed alternative septic systems on land that does not perc. The current owner, Mr. Dovell, bought the property in 2004, five years after the original variance was denied. He paid \$9,000.00 for the property, which was the assessed value at the time, and was significantly lower than developable lots. The applicant, Delta Land Company, would like to build a dwelling on the property. The sketch submitted with the application shows a 40-foot front yard setback, a side setback of 38 feet from Hackett Street, 26 feet from the opposite side, and a rear yard setback of approximately 174-feet. The example house plan shows a two-story, 1900sqft home with three bedrooms, two full baths, and half bath. Section 24-6402.A.4 of the Zoning Ordinance requires that any new dwelling that is to be served by a septic system must meet current Health Department requirements. If it can't meet those requirements, a building permit cannot be approved. With respect to the Threshold question, items 1 and 2 have been satisfied and as a result the Board has the authority to grant a variance if all five subtests are met. After staff's analysis, it appears that the case meets the legal requirements to grant a variance. Briefly, the property is otherwise suitable for a dwelling, but can't be used for that purpose. The hardship is due to code changes after the property was defined. Neither the owner, nor the applicant, caused the hardship. Any detrimental impacts created by the proposed dwelling will be addressed by the Health Department and the Department of Public Works, and the conditions are specific to this lot. The use is allowed, and no other relief is available. As a result, staff recommends approval subject to conditions. Please note that we have received three letters of opposition from neighbors on this request. You all have copies of those. That concludes my presentation. I'll be happy to answer any questions.

550 Mr. Johnson- Any questions from the Board?
551

552 Mr. Reid- I have a question. One of the neighbors noted something
553 about the existing natural drainage of the area. Where, what are they referring to on the
554

555 Mr. Blankinship- The drainage area.
556

557 Mr. Madrigal- The drainage area. Let's see here. Where's that on the
558 property. It's hard to tell here, but there is a culvert on the property, that drains or picks
559 up here. Let's see if we have a picture of it. There we go.
560

561 Mr. Reid- Okay.
562

563 Mr. Madrigal- So, there you can see the culvert. The property slopes down
564 to this area, and also from the back to front. So, natural drainage line is kind of right along
565 this area here, and then it continues under the street, and goes across the street to the
566 lot across the street.
567

568 Mr. Reid- Okay.
569

570 Mr. Madrigal- There's a home across the street, and the drainage area
571 continues kind of this way here. So, if you're looking at the aerial, it kind of does this and
572 then goes across the street this way.
573

574 Mr. Reid- Okay.
575

576 Mr. Green- And what's the square footage of the house that they want to
577 build?
578

579 Mr. Madrigal- Let's see here. So, approximately 2,000 square feet, the first
580 floor is 956 square feet and the second floor is exactly the same.
581

582 Mr. Johnson- Okay. Any other questions for the applicant?
583

584 Mr. Green- Two levels?
585

586 Mr. Madrigal- Yes, sir. Two stories.
587

588 Mr. Green- You got three letters, yes.
589

590 Mr. Johnson- And that water line is what's conflicting with the sewage lines
591 as well?
592

593 Mr. Madrigal- No sir, those are, those are different. The culvert is more so
594 for rainwater, and there is no sewage line, so it's going to be an on-site septic system.

595 But because there's concerns that the property won't perc, it will probably have to be an
596 alternative septic system.

597
598 Mr. Pollard- You mentioned three letters, I only see one. Got it. Okay.

599
600 Mr. Johnson- Any other, any other questions.

601
602 Mr. Green- Not for staff, some for the builder.

603
604 Mr. Johnson- Okay. No other questions. We're ready for the applicant.

605
606 Mr. Rempe- Good morning, Mr. Chairman, Board members, and staff. My
607 name is Mark Rempe, I'm here to speak on behalf of the applicant. Happy Holidays to
608 everybody, I appreciate the staff's time working on this case.

609
610 Mr. Madrigal- Mark, you've got to adjust that microphone a little bit higher.

611
612 Mr. Rempe- Yeah, I know, my back's hurting here guys. The applicant
613 concurs with the findings of the staff, that the variance tests have been met, and we would
614 like the Board to approve the variance and get the zoning approved.

615
616 Mr. Green- Mr. Rempe, I noticed that you come before us a lot because
617 you do a lot of building. Can you address the concerns that the neighbors have about the
618 drainage, because I feel comfortable that you build so much, that you've taken that into
619 consideration. Can you explain to us how you're going to handle that.

620
621 Mr. Rempe- We will work with Public Works to make sure the drainage
622 satisfies the code. Right now, we want to, before we spend any more money, we want to
623 make sure the zoning is okay. The next big threshold issue will be the septic. We had a
624 septic consultant go out to the site. He believes he can get an alternative septic system
625 to work. He's got to meet the Health Department out there. We'll hire an engineer to work
626 to do a grading plan to make sure everything meets code for drainage. So, that will be
627 taken care of by a licensed engineer.

628
629 Mr. Green- And just for my educational purposes, when you say
630 alternative septic site, what does that mean?

631
632 Mr. Rempe- Well, a conventional septic system is one that the ground will
633 naturally take care of the sewage. The alternative septic system, it may be raised a little
634 bit higher, you might have more systems in there, more technology to take care of the
635 sewage issues. This one here is going to probably be a level 3 septic system, it's probably
636 going to cost like \$30,00.00 to put in.

637
638 Mr. Green- Thank you.

639
640 Mr. Rempe- Thank you.

41
642 Mr. Johnson- Also, with that sewage system that you were talking about,
643 would that be, it will be higher to, up on the ground than, right, than the regular one would
644 be, wouldn't it?
645

646 Mr. Rempe- A conventional system is typically underground, the soil is
647 really good, gravel, gravel trenches, very inexpensive to put in, but this case, it's going to
648 be an alternative septic system.
649

650 Mr. Blankinship- So, you'll be building up layers above the ground?
651

652 Mr. Rempe- Yes, and it will be right on the lot so. We'll work with the Health
653 Department; we'll work with County staff to make sure everything is done per code.
654

655 Mr. Johnson- Okay. Any other questions for the staff, for the applicant?
656

657 Mr. Green- Other than, Mr. Chairman, I'm going to learn what the
658 alternative septic systems are that folks are beginning to utilize. That seems to work. This
659 seems to be warranted to be educational for us. Someone else tried to put in somewhere
660 else a septic system, and they were explaining to me how it worked. That process made
661 sense.
662

663 Mr. Johnson- And has that been put in, have you done that before.
664

665 Mr. Rempe- Alternative Septic Systems?
666

667 Mr. Johnson- Yes.
668

669 Mr. Rempe- Yes. Yes, we've done a bunch. There's a lot of, a lot of lots
670 out there that have not been put into use, that can be put into use, that can add to the tax
671 revenue, first time homebuyers can be out there buying these lots, so the technology of
672 putting in an alternative system has really helped out with all these needs.
673

674 Mr. Johnson- Okay, thank you. Any other questions? None? If not, this
675 hearing is closed and the motion.
676

677 Ms. Dauberman- Sir...
678

679 Mr. Blankinship- I'm sorry, you didn't raise your hand before.
680

681 Ms. Dauberman- I'm so sorry, I just waited for you to say opposition.
682

683 Mr. Blankinship- Quite alright. So, you wish to speak to this case, would you
684 please stand and be sworn in please?
685

686 Mr. Johnson- Yes.

687
688 Mr. Blankinship- Do you swear the testimony you are about to give is the truth,
689 the whole truth and nothing but the truth, so help you God?
690
691 Mr. Dauberman- Yes.
692
693 Mr. Blankinship- Thank you.
694
695 Mr. Johnson- Go on over to the mic.
696
697 Mr. Blankinship- It's your turn so go ahead.
698
699 Mr. Dauberman- We are new to this process, Mr. Chair, members of the Board,
700 now we...
701
702 Mr. Blankinship- Tell us your name.
703
704 Mr. Dauberman- Lavan Dauberman. Last name D A U B E R M A N. Speaking
705 on behalf of Kay Atwell, or Ella Atwell, the landowner, and we feel like the zoning
706 ordinances are in place for a reason. The lot is pretty small in that area. We just ask that
707 they would be upheld.
708
709 Mr. Johnson- Okay... He's been sworn in, and if you're going up you have
710 to be sworn in as well.
711
712 Ms. Dauberman- May I do so.
713
714 Mr. Johnson- Yes.
715
716 Mr. Blankinship- Do you swear the testimony you are about to give is the truth,
717 the whole truth, and nothing but the truth, so help you God?
718
719 Ms. Dauberman- I do.
720
721 Mr. Blankinship- Thank you. Miguel, would you put the expanded aerial up?
722
723 Mr. Madrigal- Yes sir.
724
725 Ms. Dauberman- My name is Barbara Dauberman, I have lived at that property
726 for 40 years. This property is very small, it is very wet. It has been wet for my entire life.
727 It is not to the standard, and no one has tried to bring it to the standard, as far as the
728 existing footprint to make it within the agricultural zoning. So, I was very disappointed
729 when the variance was brought forward without any efforts to do so. Not to mention the
730 concern for the wetlands becoming part of the adjacent property. That would impact all of
731 the neighbors. So, my concern is, and they were out there at one point trying to move
732 land and make improvements as they called them. Which pushed water onto other

733 properties. So, I'm very concerned, and I think if you look at the property the staff may be
734 able to address that what grows in there appears to be wetlands.

735
736 Mr. Johnson- Also, can you tell me where you are?

737
738 Ms. Dauberman- We are at 2900, so our house is across the field, yes, right
739 there.

740
741 Mr. Johnson- Right there, okay.

742
743 Ms. Dauberman- And then my mother's house is the one that is adjacent to it,
744 behind it, and she's lived there since 1974. And we came when the variance was
745 requested previously. So, I also believe they were aware that there was a variance
746 request and denied before and knew the opposition. So, I don't think this is new news to
747 the homeowner, well the property owner. And they did purchase at a very discounted
748 price.

749
750 Mr. Johnson- And is that area lower, as far as land area, is that lower than
751 where you're living at?

752
753 Ms. Dauberman- Yes sir. There is a somewhat, what I would call a small creek
754 that runs through it. And the deer do love it, but that is not relevant.

755
756 Mr. Blankinship- It is to the deer.

757
758 Ms. Dauberman- It is to the deer.

759
760 Mr. Green- Excuse me, your name again is Ms.?

761
762 Ms. Dauberman- Dauberman.

763
764 Mr. Green- Dauberman. Mrs. Dauberman, I've been on this board five,
765 going on almost six years, and Mr., I forgot...

766
767 Mr. Blankinship- Rempe.

768
769 Mr. Green- Mr. Rempe seems to specialize in these kinds of properties.
770 Have you had any real discussion with Mr. Rempe as to how they're going to work,
771 because since I've been on here, we've approved a lot of the properties that are on small
772 lots. And he, and the company he represents, works for I guess, and I've just never seen
773 anyone come back and complain about it. So, I guess, Mr. Rempe...can you really explain
774 to them, once you rebut, with some of their concerns?

775
776 Ms. Dauberman- So, my concern is that the property is not actually the size
777 required to build on it, and so I do not understand how they would be able to build on a
778 smaller lot that I would not have been, and he is not the property owner, he is just the

779 developer. So, he really has no, no offense, but no interest in the surrounding, or adjacent
780 areas. Nor has he addressed or come to see any of the adjacent property owners.

781
782 Mr. Green- And to be quite honest with you, since I've been on the Board,
783 that has been some of my concern, but it seems there is a specialty market that his team,
784 or whoever he represents, is... they do that, and we have approved smaller lots. Smaller
785 lot sizes in other areas. So, I think, you know, maybe a conversation with Mr. Rempe
786 could satisfy that. Because I too was always concerned about, you know, building on
787 smaller lots, and so far, like I said, I haven't seen anybody come back with any real
788 concerns or complaints after the fact.

789
790 Ms. Dauberman- I have multiple concerns about the appearance of what that
791 septic system is going to look like above ground next to our property. I have concerns
792 about what the mitigations going to take to make those wetlands work, and how that will
793 impact our neighboring property. If we want to build on the lot behind that, which is big
794 enough to build on, we are going to be looking at that, so I think the impact to the adjacent
795 neighbors is pretty substantial as far as the property value. I feel like if I built there in
796 2004, needed to hold up to the standards, why would he not need to be held to the same
797 standard?

798
799 Mr. Dauberman- I guess we're also concerned about the precedence that sets
800 too. Does that mean everybody else in that subdivision, because there are so many lots,
801 that they would get variances too. So, I guess we are concerned about that as well.

802
803 Mr. Pollard- I guess, if Mr. Blankinship, or someone from staff could restate
804 the conditions that must be met for a variance to be approved.

805
806 Mr. Blankinship- Yes sir, I'd be happy to. Just to give you a very brief
807 explanation of the variance. The philosophy behind the variance. This is a piece of
808 property that was subdivided many years ago, as you're aware, and it was bought by a
809 property owner with the intention, at some point, of building a house on it, and the Zoning
810 Ordinance, after that was done, after the lot was created, after it was bought by a property
811 owner, the County changed the Zoning Ordinance to render that lot unbuildable. So, your
812 familiar, of course, with the constitutional prohibition on the government taking property
813 without just compensation. Well, the Supreme Court has ruled that if a regulation such as
814 the Zoning Ordinance leaves a property with no beneficial use whatsoever, that that's the
815 same as the County taking the property. There's no difference in the courts eyes between
816 us saying "we now own your land" and us saying "you still own the land, but you can't use
817 it for anything". And in this case, you know, after our review of it, we have concluded as
818 staff, that in this case, this property, if they can't build a house on it, it can't be used for
819 anything. So, if that is the case, then the variance is the mechanism for allowing a property
820 owner to get some reasonable beneficial use out of his property. But in addition to making
821 that finding; that's usually the difficult case. Most people who want a variance don't realize
822 that they have to make that argument first. That there is no reasonable use for the
823 property without the variance. But even if you do make that argument successfully, there
824 are five other tests that have to be met, and these are all in the staff report, which we

would be happy to provide you a copy. But the tests basically are that it's not the applicant's fault, he didn't create the situation. And that's true here, again because the lot was subdivided before the ordinance change. The second one is that there's no detrimental impact on the neighbors, and that is the one that is the most, the most of a judgement call for this Board to make. That they have to determine whether the detrimental impacts that you're describing, you might have to look at a house where you're not used to seeing a house, whether or not that rises to the sort of detrimental impact that would leave us in a position of saying "you can't build on that lot, you can't use your land for anything". The third one is that there has to be some sort of unique circumstance to this property. If it's something that applies all up and down the street, that in and of itself is a reason to deny a variance, because if there is a problem that affects everybody in the area, then the Board of Supervisors, who sets the Zoning Ordinance, needs to change the ordinance to address that issue. But if it's something that is unique, because you can't write an ordinance for every piece of property in the county. If it's something unique to this property then it does pass that test, and we feel that the history of this property does meet that requirement. The fourth is that they, what's the fourth test. The fifth one is that you can't be eligible for other forms of relief, such as a special exception or modification, which this property is not. Oh, the fourth one is that you are not changing the use of the property. So, the property is zoned for single-family homes, and he wants to build a single-family home. We couldn't give him a variance to build a gas station there, for example. We can't use a variance to change the use of a property. The use has to have been allowed by the Zoning Ordinance. So, there are a very strict set of criteria that are in place, and Mr. Rempe will confirm that our staff takes a very strict view of all of those legal tests, and we don't recommend approval of a case unless we really think there is very little option. But, in this case, it's our opinion that to not grant a variance would result in the taking of the property, could, could be seen by a court as resulting in the taking of a property.

Ms. Dauberman- Sir, I appreciate that education. I have one other question. When he purchased the property in 2004, was it not a requirement that he have an acre lot.

Mr. Blankinship- It was at that time, and that case has been made to the Virginia Supreme Court before, and the Supreme Court has ruled that an applicant has a right to buy a piece of property that he knows needs a variance. That that does not actively render the variance, you know, something that the Board cannot approve. It's about the land having, you know somebody at some point owned a piece of land that was buildable and then the County changed the law. Now, that has changed hands a bunch of times since then, but it is still a piece of property that there is no other use for.

Mr. Pollard- And I wanted to speak to back in 1999, the variance was denied, and for some of the same concerns that you have raised, and so, while one of the main oppositions was the septic system, and so now it's 2023, technology has changed and now it can accommodate a septic system. And so that, is what kind of brought us back here. And so, it's not a case where, you know, that was a concern of mine too, you bought this property, you know it was denied for a variance in the past, but

871 the primary reason it was denied was the septic system, and those septic system details
872 have changed.

873
874 Ms. Dauberman- And he's also not required to have the same setbacks that's
875 required for...

876
877 Mr. Blankinship- He is required to meet the setbacks in the code. I mean, you
878 can also apply for a variance to setbacks. He is not requesting a variance from the
879 setbacks. Would you put the site plan back up? The plan that he has showed meets the
880 setback requirements of the County Code.

881
882 Ms. Dauberman- So, can you refresh my memory, is it not 50-foot from the
883 front?

884
885 Mr. Blankinship- It is for newly created lots. For lots created prior to 1960, there
886 is a different set of setbacks, and the front setback there is 35 feet.

887
888 Ms. Dauberman- Thank you. I appreciate that clarification. I appreciate your
889 time. I am still opposed to this purchase, I mean we have offered to buy the property in
890 the past, so I do not feel that it's a hardship, that he could not have done something
891 different. He has chosen not to, and he's owned it since 2004, so I would just appreciate
892 your consideration and the neighbors, and the appearance of the neighborhood, and that
893 we all appreciate our rural agricultural area, and don't want this to be a precedent that is
894 set on our current existing site.

895
896 Mr. Green- Mr. Blankinship, could I ask that at some point staff, or
897 someone, show us the different septic systems that are, you know, now being utilized,
898 because she did say that she is concerned about the potential of being able to see the
899 septic system. While we know most of them are underground, and with technology
900 changing, you know, what do they look like? The different types. So, I think if we had had
901 that, I don't know if that would have alleviated any of your concerns, but I'm curious about,
902 about, you know, what they look like now.

903
904 Ms. Dauberman- If you saw that lot, you would be surprised if it passed to perc
905 at all, it is very wet. So, I'm not sure if this is even relevant, because it may not come to
906 fruition...

907
908 Mr. Blankinship- That's entirely possible.

909
910 Ms. Dauberman- Yes sir, and I understand that, and appreciate it, but I felt that
911 if I didn't at least speak today, that you would have no idea that neighbors were concerned
912 with the change.

913
914 Mr. Blankinship- Yeah, we appreciate you being here...taking time out of your
915 day to come.

916

917 Mr. Pollard- Thank you.

918
919 Mr. Green- Thank you.

920
921 Mr. Johnson- Thank you.

922
923 Mr. Blankinship- And yes, Mr. Green, I think that is an excellent idea, I know
924 just enough, you know, I've told you everything I know about alternative septic systems
925 this morning, so I would also benefit from some additional education.

926
927 Mr. Green- Yeah, just curious as to what they look like now, and houses
928 that have them, and...

929
930 Mr. Pollard- It gives me pause that in 99, it was opposed and in 99 sounds
931 like it was four or five neighbors that showed up, and then we have three letters of
932 opposition now, so I would like to be a little better educated on the differences between
933 now and then.

934
935 Mr. Blankinship- That's the reason your job as Board members is harder than
936 ours as staff, because we write our report for the public hearing and you have to make
937 your decision after the public hearing, and that detrimental impact is a call that is very
938 difficult for you to make.

939
940 Mr. Pollard- I'm not scared to delay my decision!

941
942 Mr. Johnson- Alright, any other questions?

943
944 Mr. Rempe- Yes, I would just like to point out that we appreciate the
945 opposition coming out here and we're sensitive to your concerns. We've got a long ways
946 to go with staff to connect the property with the Health Department for looking at the
947 project, so this is just about the zoning right now. I will point out that Henrico staff did walk
948 the property and they didn't find any wetlands, so that's been taken care of. This is just a
949 first step of a long process to go through before getting a building permit, honestly.

950
951 Mr. Johnson- So they've been out and observed it as well. That's one of the
952 good things, we want to see what is going on. Also, if you can't use a property, it's no
953 good to anyone, the County nor the individual that owned it. And this Zoning Ordinance
954 also, there's things that change as time goes on. You have other things coming up that
955 can curtail some of those things that were happening in the past. Thank you.

956
957 Mr. Green- Well...

958
959 Mr. Johnson- Go ahead.

960
961 Mr. Green- While appreciate that what you said, if in fact someone, like
962 the family said they were going to buy, that they wanted to buy the land, it would be some

963 use then be put on the tax rolls and added to the landscape footprint of their land. So, I
964 just wanted to throw that in.

965
966 Mr. Pollard- Before we have a motion, I wanted to say that I kind of
967 want...more time, more time for the property owner to get with the neighbors and see
968 how things, kind of explain to them how some of their concerns can be addressed given
969 that there's three people in opposition, maybe more. And then, if just to go forward for
970 approval, just to have the confidence that those aren't real concerns. That the new septic
971 system is addressing a lot of those concerns, or that what the property owner plans to do
972 will address the other concerns.

973
974 Mr. Green- I guess the next question is what kind of delay, if we delay
975 then, delay or defer, what kind of impact would that have on the individual that wants to
976 build. Does it matter a 30-day delay or what?

977
978 Mr. Johnson- Mister...?

979
980 Mr. Green- Rempe.

981
982 Mr. Johnson- Can you...

983
984 Mr. Rempe- We can certainly delay the request for 30 days if you want to.
985 We, you know, the first step is to get the zoning done, and we can spend a lot of money
986 to figure out the rest, but you know I'm here in front of the board all the time, so if you
987 guys want me to delay, I'll delay.

988
989 Mr. Bell- I take it you haven't talked to the people... that is making the
990 complaint.

991
992 Mr. Rempe- Correct. We have not spoken.

993
994 Mr. Bell- Would it be a benefit if you all got together and run through
995 what could be done with each other face to face, instead of sitting here trying to make do
996 with what we can about everybody's thinking.

997
998 Mr. Johnson- And it's...

999
1000 Mr. Bell- How long would that require if...

1001
1002 Ms. Dauberman- We'd be happy to take your card...

1003
1004 Mr. Rempe- Yeah, we can figure something out as far as the septic
1005 screening with planting and such.

1006
1007 Mr. Blankinship- The Boards next meeting is January 26th so that would give
1008 everybody six weeks.

1009 Mr. Green- And also, just for your satisfaction, we do go out, as board
 1010 members, and survey and look at land and property and this one has piqued my curiosity,
 1011 so I'll make a point to go out there and hopefully I don't get...
 1012
 1013
 1014 Mr. Dauberman- We'll be happy to meet you out there...
 1015
 1016 Mr. Green- You can't, we can't. In this process, we can't have discussions
 1017 with either side. We can only hope that nobody shoots us while we're out there.
 1018
 1019 Mr. Johnson- Okay.
 1020
 1021 Mr. Green- So trust that we'll go out and see it, or I will.
 1022
 1023 Mr. Johnson- Okay. Any others want to speak in opposition of this request?
 1024 Any on WebEx?
 1025
 1026 Mr. Blankinship- Is there anyone on WebEx?
 1027
 1028 Mr. Peterman- No one on WebEx.
 1029
 1030 Mr. Blankinship- Thank you.
 1031
 1032 Mr. Johnson- Okay. In this case... the hearing is... do you have a question?
 1033
 1034 Mr. Blankinship- ...ready for a motion.
 1035
 1036 Mr. Bell- ... a motion.
 1037
 1038 Mr. Johnson- Yes, that's what I was getting ready to do.
 1039
 1040 Mr. Bell- I move that we defer this request to January 26th to provide a
 1041 drainage study, to prove that the system... I must excuse myself, I read very well, but my
 1042 glasses that do most of the reading aren't with me right now.
 1043
 1044 Mr. Blankinship- I think you did okay. Motion to defer.
 1045
 1046 Mr. Pollard- I second the motion.
 1047
 1048 Mr. Green- Well, can I add an addition to that?
 1049
 1050 Mr. Blankinship- Sure.
 1051
 1052 Mr. Green- Could I ask that we... also have a presentation on what these
 1053 septic systems look like prior, before we do that, because that would give us some time
 1054 to understand what they all look like.

1055
 1056 Mr. Blankinship- I will certainly try to pull that together. I will have to rely on
 1057 other people to do that, so I can't speak for their schedule, but...
 1058
 1059 Mr. Green- I appreciate it.
 1060
 1061 Mr. Blankinship- We'll do what we can.
 1062
 1063 Mr. Green- Thank you sir.
 1064
 1065 Mr. Johnson- Again, all in favor...
 1066
 1067 Mr. Green- Is there a second?
 1068
 1069 Mr. Pollard- There's a second.
 1070
 1071 Mr. Blankinship- Mr. Pollard...
 1072
 1073 Mr. Green- Oh, you said second... discussing...
 1074
 1075 Mr. Johnson- Didn't we just have the discussion? Any Discussion. None. All
 1076 in favor?
 1077
 1078 Board members- Aye.
 1079
 1080 Mr. Johnson- All opposed? All five approve and none oppose.
 1081
 1082 On a motion by Mr. Bell, seconded by Mr. Pollard, the Board **deferred** case **VAR2022-**
 1083 **00022 DELTA LAND COMPANY, LLC's** request for a variance from Section 24-6402.A.2
 1084 of the County Code to build a one-family dwelling at 2940 Chiles Road (Lakeview) (Parcel
 1085 774-775-4733) zoned A-1, Agricultural District (Brookland). The case was deferred until
 1086 the January 26, 2023, meeting.
 1087
 1088
 1089 **Affirmative:** **Bell, Green, Johnson, Pollard, Reid** **5**
 1090 **Negative:** **0**
 1091 **Absent:** **0**
 1092
 1093
 1094 Mr. Blankinship- Thank y'all very much. Alright. Variance number 2022 number
 1095 21, Delta Land Company. A variance in the front yard setback, lot area requirement, and
 1096 lot width requirement to build a one-family dwelling in 3313 Waverly Boulevard, in East
 1097 Highland Park, in the Fairfield Magisterial District. Would everyone who intends to speak
 1098 to this case please stand and be sworn in.
 1099

100 **VAR2022-00021 DELTA LAND COMPANY** requests a variance from Sections 24-
1101 3105.G.1 and 24-6402.A.2 of the County Code to build a one-family dwelling at 3313
1102 Waverly Boulevard (East Highland Park) (Parcel 798-734-5927) zoned R-4, One-Family
1103 Residence District (Fairfield). The front yard setback, lot area requirement, and lot width
1104 requirement are not met. The applicant has 20 feet front yard setback, 4,336 square feet
1105 lot area, and 41 feet lot width. The Code requires 35 feet front yard setback, 6,000 square
1106 feet lot area, and 50 feet lot width. The applicant requests a variance of 15 feet front yard
1107 setback, 1,664 feet lot area, and 9 feet lot width.

1108
1109
1110 Mr. Blankinship - That's it. Everyone's already been sworn in. Alright, Mr.
1111 Gidley.

1112
1113 Mr. Gidley- Yes sir. Thank you, Mr. Secretary. The subject property is
1114 located west of Mechanicsville Pike, near where Dill Road crosses into the City of
1115 Richmond. It is part of the Highland Park Subdivision that was platted back in 1917. Due
1116 to the small size of the lots in the neighborhood, people have typically acquired two or
1117 more lots and put them together to meet lot area and lot width requirements and to provide
1118 enough room for a new home to be constructed. Both of the adjacent dwellings, for
1119 instance, were constructed on two lots. This is the home on the left, and then the home
1120 to the right is right here. As you are aware, for a variance to be granted, as Mr. Blankinship
1121 just went through, you must meet at least one of the threshold tests, along with all five
1122 subtests. First, a home may not be built on the property, however, as noted in your staff
1123 report, homes in this neighborhood have typically been built on two or more lots. Given
1124 the small size of this lot, along with its narrowness, it is doubtful whether it was ever
1125 intended to be buildable by itself. Staff does believe Threshold Test Number 2 is met,
1126 similar to the last case, because the subdivision was recorded in 1917, prior to the first
1127 Zoning Ordinance, the hardship faced by the applicant predates the Zoning Ordinance.
1128 Since one of the Threshold Tests is met, all five subtests must also be met. However,
1129 staff does not believe all of these are met. Our main concern is detrimental impact on
1130 nearby property. As I noted, both of the adjacent homes are built on two lots, the subject
1131 property by contrast is a single undersized lot that narrows to only 20-feet in the rear yard.
1132 In order to shoehorn a dwelling onto this lot that will meet side yard setbacks, the applicant
1133 is proposing a home that is only 19-feet 8-inches wide. You can see here, and this is less
1134 than half the width of the adjacent homes, which are 39 and 40-feet wide, respectively.
1135 Staff has also received letters in opposition from both of the adjacent homeowners
1136 expressing concerns about building on such a small lot, along with potential impacts on
1137 their property values. Those are in your staff report. Finally, there is also a concern about
1138 adding a driveway to this intersection. A right-angle intersection and stop sign are
1139 obviously safer. Here you have two roads that carry quite a bit of traffic as people leave
1140 the neighborhood via Dill Road, and they merge here, and to put a driveway into that
1141 would only add to the potential for an accident there. Although, the main concern, again,
1142 is the detrimental impact to the neighbors. So, in conclusion, staff believes this case
1143 meets some of the requirement for a variance, but it does not meet all of the requirements.
1144 The lot is over 27% smaller than the already reduced requirements for older lots. Building
1145 a 19-foot home on such a narrow lot would in fact have a detrimental effect on the

1146 adjacent properties. Both neighbors have expressed a similar concern. As a result, staff
1147 recommends denial of this request. This concludes my presentation. If you have any
1148 questions, I will be happy to answer them. Thank you.

1149
1150 Mr. Johnson- Any questions from this Board or staff? Any questions? Yes.
1151 Okay.

1152
1153 Mr. Gidley- Thank you.

1154
1155 Mr. Pollard- While we're passing that out (handout from applicant). And
1156 how wide are the other homes Mr. Gidley?

1157
1158 Mr. Gidley- They are 39 and 40-feet respectively. So, just over twice as
1159 wide as the proposed.

1160
1161 Mr. Johnson- Is there a limit to how small a house can be?

1162
1163 Mr. Gidley- Not in the current Zoning Ordinance, no sir.

1164
1165 Mr. Johnson- Okay.

1166
1167 Mr. Gidley- We try to make sure, you know, it fits in with what's in the
1168 surrounding area. And of course, the closest homes are the two adjacent.

1169
1170 Mr. Johnson- Okay. Thank you. And also, in this, this lot would already have
1171 a septic system already, wouldn't it?

1172
1173 Mr. Gidley- No sir, this would be hooked up to public utilities.

1174
1175 Mr. Pollard- And you said the neighbors are opposed.

1176
1177 Mr. Gidley- Yes sir. We received letters from each of the two adjacent
1178 property owners, and those are in your staff report.

1179
1180 Mr. Green- Can you talk about the variance that we approved in October
1181 that they're referencing?

1182
1183 Mr. Gidley- Yes sir, I saw that. Just speaking from memory, that's a pretty
1184 good distance from this property, and as I recall, a lot of the homes over in that section
1185 were built on single lots. Mr. Blankinship, you may have that up...

1186
1187 Mr. Blankinship- Because that was also a case where there was a house on
1188 the lot. It had fallen into disrepair, and they were demolishing that and replacing it. And
1189 they actually made it, brought it more nearly into compliance with the side yards after we
1190 reviewed it. So, it's in the same neighborhood, but it's a very different circumstance.

1191

1192 Mr. Green- Okay.

1193
1194 Mr. Gidley- And as I said, I believe the surrounding properties in that case
1195 were built on single lots, so that was kind of the pattern there.

1196
1197 Mr. Blankinship- But in any case, as we say all the time, every variance case
1198 is, by its nature, a unique circumstance. So, we really don't get too concerned about
1199 precedence as each piece of property is unique.

1200
1201 Mr. Green- Yes.

1202
1203 Mr. Johnson- Any questions? No. Okay...

1204
1205 Mr. Rempe- Again, Mark Rempe here on speaking for the applicant, and
1206 we appreciate the staffs time and we understand that there's a difference here, but... well
1207 that's okay... anyway. There's two issues here that there's a difference of opinion here.
1208 One is the substantial detriment to the neighbors and the neighborhood. The other is the
1209 reoccurring theme. And we believe that there is not a substantial detriment to the
1210 neighbors. One thing about this neighborhood, it's kind of an urban type of neighborhood.
1211 There's lots of all lots. There's diversity of housing stock. Diverse... lot of diversities. It's
1212 very similar to... not your typical suburban, where everything's kind of cookie cutter,
1213 everything's kind of the same. It's kind of got this urban feel to it. The owner passed away
1214 a year ago and his nephew got the property and he put it up on the market. So, what
1215 you're going to see here, there's a lot of ownership here, and what's going to happen, is
1216 that when people pass away, they're going to come up on the market, and that's why this
1217 variance is in front of you guys right now. The nephew, the nephew has it, and he wants
1218 to see if he can sell it. But anyway, next door to the... to the left, you have an attached
1219 townhouse type dwelling. It's a, it's a two-dwelling unit. It's a two-story type structure.
1220 Front set back is similar to what we are trying to propose to the subject property. To the
1221 right side there's a house. There's a decent tree line to the property. Also, there's the
1222 bend in the road that kind of gives you a natural separation. See how the road bends and
1223 then you get on the straight-a-way? That gives you, from a visual standpoint, a feel that's
1224 a little bit different from the property on the right. So, when you drive, the house that was
1225 constructed later on, that's approved, you see a two, kind of a small, new house, two-
1226 story structure that will fit within what is going on to the left, that structure over there. The
1227 house would sell for \$250,000, so it would bring, the improvements will be, help out with
1228 the neighborhood there. Moving on to the next page. As far as the general reoccurring,
1229 handled by the Board of Supervisors using a variance test, a variance tool for each of the
1230 properties, our thought is a variance is a best way to handle these situations. The
1231 neighborhood is kind of built out already. There's a lot of houses out there, as I've said
1232 before, for a house to be on the market it's going to be some event, someone is going to
1233 have to pass away then the house will get on the market. So, we don't think there's going
1234 to be a lot of cases reoccurring. There's a lot, there's a lot of properties that, from an
1235 environmental standpoint are not buildable. But behind it you see like seven lots, on --
1236 Road. All of those lots cannot be buildable because of environmental issues. Going to
1237 the left, if you're looking, there's a triangle piece, and there's a warehouse back there.

1238 That's going to be tough to get rezoned because the shape of the property is so narrow,
1239 the warehouse structure, demolition cost exceeds the property value of land. So, that's
1240 going to be tough getting rezoned over there. So, we think the BZA is the best way to
1241 handle these cases. Just like the one, even though it's a separate case, the board did
1242 approve that in this neighborhood. It's not a reoccurring condition for, for the Board of
1243 Supervisors to handle. Next page. There's a lot of trash being dumped on vacant
1244 properties, sometimes it's an eyesore. The better, higher use is to build a house. A family
1245 could have the beneficial use of that property. Though it's a smaller lot the side yard
1246 setbacks are still good. Our, my wife's and I's, first family was north Richmond, very small
1247 house, hardly any lot size, small setbacks, but we loved that house, so. Next page.
1248 Affordable housing is a significant, huge problem. This could be put to use. First time
1249 homebuyer. Nice house. They'll love it. It's a huge, huge problem right now, you know,
1250 affordable housing. And then, and we think the house would be... the new house would
1251 improve the neighborhood. I think the way to handle these variance cases, it's not a
1252 rezoning, but a variance case, and a new house would be a much better, better use that
1253 someone could use, like a family, that can't get anything right now, and more tax revenue
1254 for the County.

1255
1256 Mr. Johnson- Okay. Go ahead.

1257
1258 Mr. Pollard- You said the house would sell for how much?

1259
1260 Mr. Rempe- 250 to 260. Right now, most of the inventory in Henrico
1261 County, and other jurisdictions, for affordable housing is at 300 and above. This would be
1262 at 250, 260 range.

1263
1264 Mr. Johnson- I noticed that that lot is kind of narrow there, but also, on the
1265 opposite side, that larger house ... the land seems to be dropping off as well, and there
1266 is a drain... like a gutter situation.

1267
1268 Mr. Rempe- Where the public right of way is, is the drainage area and
1269 everything slopes back that way. So, all that's dumped upon. But as far as the parking
1270 issue goes, we could put kind of a, hammerhead parking area where you pull in, you have
1271 another parking area, kind of "L" shaped. Where they can pull in, they can go to the right,
1272 and they can always, you know, pull out front-ways when they, when they turn, pull out
1273 on the street. We can do that for parking. The new house would fit real nicely to what is
1274 going on to the left of it. That two-story townhouse property. The side yard setbacks are
1275 decent side yard setbacks.

1276
1277 Mr. Johnson- Okay.

1278
1279 Mr. Rempe- Eight, nine feet, I think.

1280
1281 Mr. Green- It looks like...

1282
1283 Mr. Rempe- The front yard setback kind of lines up to the house on the left.

1284
1285 Mr. Green- It looks like part of the yard is going into the other person's
1286 yard. Whose lot is that? That little patch that looks like it's been cut. Whose is that?
1287
1288 Mr. Rempe- Which one? To the left or to the right?
1289
1290 Mr. Blankinship- I think in the rear, in the rear in the subject lot.
1291
1292 Mr. Green- Right there.
1293
1294 Mr. Johnson- Right there.
1295
1296 Mr. Green- Whose is that?
1297
1298 Mr. Rempe- There is a fence that goes along the end of the property, but
1299 I'm sorry... where's it at again?
1300
1301 Mr. Johnson- See right where the cursor is at now.
1302
1303 Mr. Rempe- Right there?
1304
1305 Mr. Johnson- Yes.
1306
1307 Mr. Pollard- I don't see no lines.
1308
1309 Mr. Johnson- It seems like part of the back yard is sticking into that...
1310 opposed lot.
1311
1312 Mr. Green- Whose lot is that because it looks like somebody is cutting it.
1313
1314 Mr. Gidley- Yeah, it looks like the neighbor just went over in it. Crossed
1315 over into the adjacent property.
1316
1317 Mr. Green- But I thought there was a fence up?
1318
1319 Mr. Blankinship- I know we found, as we were preparing the materials for this
1320 case, that the GIS and the subdivision plat do not line up exactly, so...
1321
1322 Mr. Rempe- We had a survey done, and that is the plat that we show.
1323 Shows what's out there. We would, you know, every time there is an encroachment, we
1324 talk to the neighbors and try to work it out. This would be on public water...
1325
1326 Mr. Pollard- I can't find it online...
1327
1328 Mr. Johnson- Any opposition?
1329

1330 Mr. Gidley- Yes sir. Both of the adjacent property owners wrote in
 1331 opposition.
 1332
 1333 Mr. Pollard- We're talking about 21?
 1334
 1335 Mr. Blankinship- It is not on the preliminary because this case was deferred
 1336 from a previous month, but it is on the final agenda.
 1337
 1338 Mr. Rempe- There is a large area between the edge of the pavement on
 1339 the road going back to the front lot line that is consistent going down this street.
 1340
 1341 Mr. Johnson- Okay. Is this yours.
 1342
 1343 Mr. Green- Its Fairfield. You've been out there, what are your thoughts,
 1344 opinions?
 1345
 1346 Mr. Johnson- I went out there, what I was noticing was that the narrow lot,
 1347 as well, and also how on the opposite side of the large house how it drops off to a rugged
 1348 area, which is down drainage. And I was concerned with the area at the house there, it
 1349 seemed like it was, when I was looking back at it, you know, the back end of it seemed
 1350 like it was kind of like what I'm seeing here.
 1351
 1352 Mr. Gidley- It's only 20-feet.
 1353
 1354 Mr. Johnson- ... someone else... yeah, real narrow. But they're building
 1355 around there, because right across from the triangle there, on the other side they got
 1356 another house that they've start building as well.
 1357
 1358 Mr. Rempe- Yep, Liberty Homes is building across the street down there.
 1359
 1360 Mr. Johnson- Yeah.
 1361
 1362 Mr. Rempe- There's no doubt that this is a small lot, you know, I'm a fan of
 1363 putting lots into commerce. I'd rather see a new house down there that someone could
 1364 use and enjoy than just a vacant lot. You know, we have the front yard setback that is
 1365 going to be similar to what's going on to the left with the duplex. We've got side yard
 1366 setbacks of 13 and 10 and eight. Which is larger than some other zoning ordinances out
 1367 there that I've seen. There's no doubt that the back yard's narrow, but like I said, my wife
 1368 and I had a very small house when we first got married, and there wasn't much yard to
 1369 mow, which is nice. Especially on Saturday. Watch more football. My son was born in that
 1370 house, and he's at William and Mary right now, and he turned out alright. There's a big
 1371 shortage of affordable housing...
 1372
 1373 Mr. Johnson- The house would be...
 1374
 1375 Mr. Rempe- this would be good for affordable housing.

1376
1377 Mr. Johnson- Also, when... if, if it was a person put a house there, would it
1378 have the house narrowing to the back as well.
1379
1380 Mr. Rempe- No.
1381
1382 Mr. Johnson- No, because depending on how wide, how deep it is... you
1383 know, you've got the same frontage, then how much more space would you have for the
1384 house?
1385
1386 Mr. Rempe- From the front of the house, on the left side you have 13-foot
1387 setback. On the right side of the house, you'd have almost 11-feet there. If you go to the
1388 very back of the house on the left side, you have close to nine-feet, and then on the right
1389 side at the very back of the house you have close to nine-feet as well. So those are decent
1390 setbacks.
1391
1392 Mr. Johnson- Okay.
1393
1394 Mr. Rempe- Compared to other projects that I've built on. The lot is kind of
1395 a pie shape. It's an odd lot, but I'm a fan of putting things in commerce.
1396
1397 Mr. Johnson- Okay.
1398
1399 Mr. Rempe- And after it's complete if you were to drive by it, you'd look at
1400 it, you probably wouldn't...
1401
1402 Mr. Johnson- wouldn't notice.
1403
1404 Mr. Rempe- ...see the difference in the small lot. You'd see the house and
1405 the duplex, the two-story duplex there. You're on Waverly, so I think it would match up
1406 nicely.
1407
1408 Mr. Johnson- Okay.
1409
1410 Mr. Gidley- You forgot to ask if there's anyone else to speak.
1411
1412 Mr. Blankenship- Before you close the public hearing.
1413
1414 Mr. Johnson- Yes, is there anyone else on WebEx?
1415
1416 Mr. Blankinship- Is there anyone on WebEx?
1417
1418 Mr. Peterman- No one on WebEx Ben.
1419
1420 Mr. Blankinship- Thank you.
1421

1422 Mr. Johnson- Okay. Alright.
 1423
 1424 Mr. Pollard- So. I can appreciate a lot of what was said, and from a big
 1425 picture standpoint, I agree with a lot of it. I am very familiar with the street, that area, that,
 1426 if you have to, in my personal opinion, if you have to cut a house in half to get it in there,
 1427 and then you don't have the neighbors supporting it, it's hard to be in support of something
 1428 like that. I think you might be ahead of your time. I think we're going to see tiny houses
 1429 take off, in the near future, and so this will probably be one of the cases that come back
 1430 before us, but at this time, I am going to move that we deny the variance. More specifically
 1431 because almost every house in the neighborhood is on two or more lots. There are no
 1432 other houses in the neighborhood that are on a lot this small. And you therefore... I
 1433 remember you when you come before us, you've been before us a lot, and this is, in my
 1434 memory, the smallest. The proposed house does not meet the front setbacks so it would
 1435 not be to close to the street. The driveway will lead straight into a dangerous intersection.
 1436 So, I move that we deny.
 1437
 1438 Mr. Green- Second.
 1439
 1440 Mr. Johnson- Motioned and second. Is there any discussion? No
 1441 discussion. All in favor?
 1442
 1443 Board- Aye.
 1444
 1445 Mr. Johnson- All opposed. All in favor and none opposed.
 1446
 1447 On a motion by Mr. Pollard, seconded by Mr. Green, the Board **denied** case **VAR2022-**
 1448 **00021 DELTA LAND COMPANY's** request for a variance from Sections 24-3105.G.1
 1449 and 24-6402.A.2 of the County Code to build a one-family dwelling at 3313 Waverly
 1450 Boulevard (East Highland Park) (Parcel 798-734-5927) zoned R-4, One-Family
 1451 Residence District (Fairfield).
 1452
 1453
 1454 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5
 1455 **Negative:** 0
 1456 **Absent:** 0
 1457
 1458
 1459 Mr. Blankinship- Alright, our next case is variance case 2022 number 23.
 1460
 1461 **VAR2022-00023 DELTA LAND COMPANY, LLC** requests a variance from Section 24-
 1462 6402.A.2 of the County Code to build a one-family dwelling at 1517 Highland Street (East
 1463 Highland Park) (Parcel 798-734-6355) zoned R-4, One-Family Residence District
 1464 (Fairfield). The lot area requirement and lot width requirement are not met. The applicant
 1465 has 4,900 square feet lot area and 35 feet lot width where the Code requires 6,000 square
 1466 feet lot area and 50 feet lot width. The applicant requests a variance of 1,100 square feet
 1467 lot area and 50 feet lot width.

1468
1469
1470 Mr. Blankinship - I can see that we don't have anyone new to speak, so no need
1471 to swear anybody in. Mr. Madrigal you can make your presentation.
1472

1473 Mr. Madrigal- Thank you Mr. Secretary. Mr. Chair, members of the Board.
1474 Before you is a variance request to build a one-family dwelling on a substandard lot. This
1475 is in the same neighborhood as the previous case. This property happens to be just a
1476 little bit further north. The subject parcel was recorded at lot 13, block 23 of the East
1477 Highland Park Subdivision in 1917. The majority of the lots in the subdivision are 35 feet
1478 wide. Because of the narrow width of the lots, most homes of the neighborhood were
1479 typically built on two or more combined parcels. This is the case for the homes on either
1480 side of the subject property. The home to the west sits on a 75-foot-wide parcel, while the
1481 home to the east sits on a 108-foot-wide parcel. Additionally, the homes at either side are
1482 38 to 39 feet wide. The proposed home, by contrast, would only be 25 feet wide and
1483 would sit on a smaller and much narrower plot if approved. When the property was
1484 purchased in 1956, it was one of 41 lots conveyed by a single deed to the West
1485 Engineering Company. Today it is one of four residual lots in block 23, sharing a single
1486 I.D. number, owned by the same company. The applicant wishes to obtain entitlement to
1487 construct a dwelling on the single parcel to facilitate its sale. However, because of its
1488 narrow width and small size, variances are needed for both lot width and area. The
1489 southern section of the subdivision contains 57 dwellings. Five are on three or more lots,
1490 46 are on double lots, and only six are on single lots. Of the existing homes on the single
1491 lots, two are on parcels exceeding 8,000 square feet, two are on 5,400-square-foot lots,
1492 and the remaining two are on 4,900-square-foot lots. The subject property is consistent
1493 with these smaller examples. Because many of the homes in the neighborhood were built
1494 in the 1930s, they also have substandard setbacks. This is the situation with the adjacent
1495 home to the east. Having a six-foot side yard setback to the shared property line. Although
1496 the applicant will comply with the minimum side setback requirements of seven feet, the
1497 proposed home will only be 20 feet wide and will appear exceptionally narrow and too
1498 close to the adjacent home to the east if approved. Although the property does not appear
1499 to have been designed to be a buildable lot unless combined with adjacent property, it
1500 does satisfy Items 1 and 2 of the Threshold Question, and as a result a variance can be
1501 approved if it meets all five required subtests. With respect to the five subtests, Items 2
1502 and 3 are not met. When the property was purchased in 1956, it was bought as part of 41
1503 properties within the subdivision. The owner could reasonably expect to build where two
1504 or more adjoining lots could be combined. However, individual lots did not meet minimum
1505 size and lot width requirements that had been adopted 11 years earlier at that time. Now
1506 that those standards have been in place for 77 years, a contract purchaser has no
1507 reasonable expectation that the property would be treated as a buildable lot. Staff
1508 believes that the proposed variances would have a substantial detrimental impact on the
1509 adjacent homes and the southern section of this neighborhood. The homes at either side
1510 of the subject lot are built on double lots and dwellings are much wider than the proposed
1511 lot and home. Allowing a new, narrower dwelling in-between these two larger parcels
1512 would detract from the existing development pattern on this block. It would be visually
1513 intrusive, increase density, and potentially lead to parking issues. The Zoning Ordinance

1514 addresses substandard lots by way of the non-conforming lot standards found in Section
1515 24-6402, where the lot does not meet the reduced lot area and width requirements, it is
1516 up to the BZA, on a case-by-case basis, to determine whether such properties can be
1517 developed without causing a substantial detrimental impact. In this case, however, the
1518 property is too narrow and small as compared to the other homes on Highland Street.
1519 Allowing a dwelling to be crammed onto a 35-foot-wide lot would detrimentally impact the
1520 adjacent properties and the other homes on this block and would detract from the
1521 established pattern along this block face. In conclusion, although the request meets
1522 some, but not all of the legal requirements for a variance, this specifically fails two of the
1523 subtests. Because the proposed variance would be detrimental to nearby property and
1524 its general and recurring nature, staff recommends denial of this request. This concludes
1525 my presentation. I'll be happy to answer any questions.

1526
1527 Mr. Green- Can you go back to the picture showing the lot between the
1528 two houses? {in audible} So it would be those. That is where the house would be built?

1529
1530 Mr. Blankinship- Yes sir.

1531
1532 Mr. Madrigal- Right here.

1533
1534 Mr. Green- That is very tight. What happens to those power lines?

1535
1536 Mr. Madrigal- I'm sorry?

1537
1538 Mr. Green- What would happen to those power lines?

1539
1540 Mr. Madrigal- Power lines...

1541
1542 Mr. Green- Would they be moved?

1543
1544 Mr. Madrigal- They would have to be moved and that could potentially be a
1545 pretty significant undertaking. As you can see, it crosses right in front of the property there
1546 in the front yard. And that would not only be power, but also the telephone-cables lines.

1547
1548 Mr. Johnson- Any other questions from the Board?

1549
1550 Mr. Rempe- I think our arguments are the same as the last case. They're,
1551 you know, lots should be put into commerce, this being an older lot before the zoning, the
1552 side yard setbacks would be seven-point, seven and a half feet, but the arguments are
1553 the same so...

1554
1555 Mr. Johnson- Alright the hearing is now closed...

1556
1557 Mr. Blankinship- Is there anyone else? Is there anyone on WebEx?

1558
1559 Mr. Peterman- No one on WebEx.

Mr. Johnson- ...Okay. Is there any other opposition? Nope. Okay. The public hearing is now closed. A motion would be in order.

Mr. Pollard- ...My response is very similar. I do think, earlier you said you thought the way to address these would be a variance and not going through the Board of Supervisors, I think going through the Board of Supervisors may be, especially with ... if this is going to be the direction you all go in it might be better. But basically, for this individual situation, it's just too small. So, I move that we deny the variance. Almost every house in the neighborhood is on two or more lots, and then, just looking at the pictures, and I actually went by this one, you've got trees and power lines.

Mr. Green- Second.

Mr. Johnson- Motioned and second. All in favor say Aye.

Board- Aye

Mr. Johnson- All opposed say Nay. Motion passed, all in favor. No opposed.

On a motion by Mr. Pollard, seconded by Mr. Green, the Board **denied** case **VAR2022-00023 DELTA LAND COMPANY, LLC's** request for a variance from Section 24-6402.A.2 of the County Code to build a one-family dwelling at 1517 Highland Street (East Highland Park) (Parcel 798-734-6355) zoned R-4, One-Family Residence District (Fairfield).

Affirmative:	Bell, Green, Johnson, Pollard, Reid	5
Negative:		0
Absent:		0

Mr. Blankinship- Alright. The last case for this morning is variance 2022 number 24.

VAR2022-00024 DELTA LAND COMPANY, LLC requests a variance from Section 24-6402.A.2 of the County Code to build a one-family dwelling at 3321 Waverly Boulevard (East Highland Park) (Parcel 798-734-6140) zoned R-4, One-Family Residence District (Fairfield). The lot area requirement and lot width requirement are not met. The applicant has 5,040 square feet lot area and 40 feet lot width, where the Code requires 6,000 square feet lot area and 50 feet lot width. The applicant requests a variance of 960 square feet lot area and 10 feet lot width.

Mr. Blankinship - Anyone in favor or opposed, anyone who wishes to speak to this case? There are none. Mr. Gidley.

1605 Mr. Gidley- Thank you Mr. Secretary, members of the Board. This is the
1606 second case on Waverly. We just had one down here and this is on the opposite side of
1607 3317. You should have the letter of opposition that was handed out, that came in after
1608 the staff reports went out, so it should be at your desk, and that is from the neighbor at
1609 3317, right here. The subject property is in the East Highland Park Subdivision. It was
1610 platted in 1917. As it's been mentioned, typically two or more lots have been put together
1611 to enable homes to be built on these lots. Here is a street view of the subject property
1612 right here. As you can see here, there are two vacant lots located between the adjacent
1613 home here, and the unfinished right of way up here. As Mr. Johnson alluded to earlier,
1614 this is like a drainage basin that goes through the right-of-way here. And so it's steep
1615 sloped and part of that goes over onto the adjacent lot here at 3323. Both lots face the
1616 same constraints of lot area and lot width. As noted in your staff report... I'm going to be
1617 a little bit less formal...

1618
1619 Mr. Blankinship- That's fine.

1620
1621 Mr. Gidley- Here, in this case, we would agree that one of the Threshold
1622 Tests were met in that the lot was platted prior to the first Zoning Ordinance. Our concern
1623 is detrimental impact, in part to the adjacent property owner who has a home on two lots.
1624 The other concern goes back to what Mr. Blankinship was getting at earlier. For a
1625 variance, the idea is to provide some sort of value to a property owner, and while this
1626 would provide some value to the property before you, there is the adjacent property and
1627 staff is concerned that if the variance is granted it would strip that property of any potential
1628 value. At a minimum they would need to come in and get a variance, but even with a
1629 variance, due to the topography over here, we're concerned that there wouldn't be room
1630 on that property to build a home. So, it's almost like one property owner's benefitting, but
1631 the other one's being eliminated of any value that they could have. So, staff would prefer
1632 to see the two property owners work together. Combine the lots. The advantage to that
1633 is; one, there's no variance, lot area and lot width are met. Number two, you could build
1634 a home, you know, a larger home and center it a little bit more on the lot. That would be
1635 more in tune with the surrounding properties. So, at least that way both lot owners get
1636 some value from their lot and the ultimate project would fit in better with what's on the
1637 block, as far as existing homes now. So, that would be staff's recommendation. Because
1638 of that, we recommend denial of this request. And, if you have any questions, I will
1639 certainly be happy to answer those.

1640
1641 Mr. Johnson- Okay.

1642
1643 Mr. Gidley- I thank you for baring with me on that.

1644
1645 Mr. Johnson- Any questions?

1646
1647 Mr. Reid- Yes, who owns the adjoining property at 3323? Is that West
1648 Engineering as well or is that someone...

1650 Mr. Gidley- No sir. The mailing address is an address in Westham
1651 actually, in your district. It appears that home was recently split up in shares to family
1652 members. At this point, I'm just guessing, we didn't contact them directly, but it looks like
1653 it was an elderly couple who probably owned this lot and owned the home in Westham.
1654 Recently, I would assume that is their children, who divided up their property in Westham
1655 up into shares. And that just happened this year. So, whether they're even aware of this...
1656 I mean, I'm going through issues with my elderly parents so I can see how people see
1657 this variance notice and like, maybe don't realize the potential this would have on the
1658 value of their property.

1659
1660 Mr. Rempe- Is the last name Hastings?

1661
1662 Mr. Gidley- Yes sir.

1663
1664 Mr. Rempe- Yeah, they called me recently.

1665
1666 Blankinship- Oh?

1667
1668 Mr. Johnson- Okay.

1669
1670 Mr. Rempe- So that might be able to work out.

1671
1672 Mr. Blankinship- That would be good.

1673
1674 Mr. Green- So, do you want a deferral, or do you want us to vote on it?

1675
1676 Mr. Rempe- Let's go 0 for 3 guys!

1677
1678 Mr. Blankinship- Is there anyone on WebEx?

1679
1680 Mr. Peterman- No one on WebEx.

1681
1682 Mr. Blankinship- Thank you.

1683
1684 Mr. Rempe- I will say the lot is much bigger than the other ones. About 40
1685 feet in width, got some good depth, nice shape.

1686
1687 Mr. Blankinship- But it does have the additional impact on the neighboring lot.

1688
1689 Mr. Rempe- Yes.

1690
1691 Mr. Johnson- Right.

1692
1693 Mr. Blankinship- I'm glad to hear they've contacted you though. That's good
1694 news.

1696 Mr. Rempe- Yes.
1697
1698 Mr. Gidley- That's a plus.
1699
1700 Mr. Blankinship- Your mic is muted Mr. Pollard; I don't know how long it's been
1701 like that.
1702
1703 Mr. Pollard- I move that we deny the variance.
1704
1705 Mr. Green- Are we calling for a motion?
1706
1707 Mr. Johnson- Yes.
1708
1709 Mr. Blankinship- Yes.
1710
1711 Mr. Pollard- Okay. Building on this lot would leave the lot next to it without
1712 options for future development, so I'm happy to hear that you sound receptive to working
1713 with them.
1714
1715 Mr. Johnson- Okay, it's been moved.
1716
1717 Mr. Green- Second.
1718
1719 Mr. Johnson- Motioned and second. Any discussion? More discussion? All
1720 in favor say Aye.
1721
1722 Board- Aye.
1723
1724 Mr. Johnson- All opposed? All in favor and none opposed.
1725
1726 On a motion by Mr. Pollard, seconded by Mr. Green, the Board **denied** case **VAR2022-**
1727 **00024 DELTA LAND COMPANY, LLC's** request for a variance from Section 24-6402.A.2
1728 of the County Code to build a one-family dwelling at 3321 Waverly Boulevard (East
1729 Highland Park) (Parcel 798-734-6140) zoned R-4, One-Family Residence District
1730 (Fairfield).
1731
1732
1733 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5
1734 **Negative:** 0
1735 **Absent:** 0
1736
1737
1738 Mr. Green- I have a question.
1739
1740 Mr. Blankinship- Yes sir.
1741

1742 Mr. Green- When you look at TV and you see where people are building
 1743 these tiny houses. Does that come into the area, or is that possible?
 1744

1745 Mr. Blankinship- It is possible, but you would have to build it on an individual
 1746 lot, like a regular house. It would have to be permanently attached to the ground. We
 1747 would not allow a trailer. A lot of times what I see on TV is a trailer being pulled on the
 1748 property...
 1749

1750 Mr. Green- I'm talking about those tiny, real tiny houses.
 1751

1752 Mr. Blankinship- Right, but a lot of times they're built on a chassis and moved
 1753 from place to place. We would not allow it to be mobile. It would have to be fixed to the
 1754 ground and then you would have to do something for water and sewer, well and septic,
 1755 or something like that. So, you could build a small, a very small house, but you'd have to
 1756 meet all the other requirements. There are building code requirements also that will, in
 1757 some ways, constrain the size of the house.
 1758

1759 Mr. Rempe- I appreciate everyone's time. It's good to see everyone again.
 1760

1761 Mr. Blankinship- Thank you.
 1762

1763 Mr. Green- Thank you.
 1764

1765 Mr. Rempe- Happy Holidays.
 1766

1767 Mr. Pollard- Happy Holidays.
 1768

1769 Mr. Johnson- Thank you. Appreciate it.
 1770

1771 Mr. Blankinship- We'll see you next month.
 1772

1773 Mr. Rempe- Yes.
 1774

1775 Mr. Blankinship- Alright, that brings us to the minutes.
 1776

1777 Mr. Pollard- I was the only one ...
 1778

1779 Mr. Johnson- Next item.
 1780

1781 Mr. Johnson- Next item on the agenda is approval of the minutes.
 1782

1783 Mr. Green- So moved.
 1784

1785 Mr. Reid- Second.
 1786

1787 Mr. Johnson- It's motioned and second. All in favor?

1788
 1789 Board- Aye.
 1790
 1791 Mr. Johnson- All opposed? Motion passed.
 1792
 1793 On a motion by Mr. Green, seconded by Mr. Reid, the Board **approved the minutes** of
 1794 the November 17, 2022, Board of Zoning Appeals meeting.
 1795
 1796
 1797 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5
 1798 **Negative:** 0
 1799 **Absent:** 0
 1800
 1801
 1802 Mr. Blankinship- Mr. Bell, do you have anything you would like to say?
 1803
 1804 Mr. Bell- ... January...
 1805
 1806 Mr. Blankinship- Not for you!
 1807
 1808 Mr. Bell- Yes, a word or two. After a nice day, I want to say it's so good
 1809 to see when it changes over, well there's been some change overs in the past, The
 1810 quality, the respect that I see, this is a group of people that always showed it to our
 1811 customers. It makes you feel good when you walk out. And I look in the audience section
 1812 and I see Helen. She's only been here what, some 30 something years. ...do, because I
 1813 was going to say if you want to learn, you follow someone that knows where every page
 1814 is in that book and then want to come up with an answer for your property ... at times very
 1815 educated, at other times... do anything but trying to turn those places to finance, but
 1816 anyway, thank you everybody for just giving me good feelings. Whereas this group, this
 1817 is a new group. Who knows, I might come over in ten years and sit and say I remember
 1818 the guy with the glasses over there, I ... So, thank you. My wife too and us ... never had
 1819 to stay when it turned dark. I came in some mornings when it was dark, but...
 1820
 1821 Mr. Green- How long have you been on the Board?
 1822
 1823 Mr. Bell- Nine and a half years.
 1824
 1825 Mr. Blankinship- Almost 10 years.
 1826
 1827 Mr. Bell- It certainly didn't feel that way with the qualified people we
 1828 have. I just do hope that someone is quality wise and all respects and follow the lead of
 1829 what's already here. ... the guy's name...what's his, what's his name... without him, it
 1830 would be awful hard to push the paper around, some would say.
 1831
 1832 Mr. Blankinship- Thank you sir.
 1833

1834 Mr. Johnson- Thank you.

1835

1836 Mr. Blankinship- Pleasure working with you.

1837

1838 Mr. Bell- Merry Christmas.

1839

1840 Mr. Green- And I can say that with Ms. Harris being a former

1841 schoolteacher, was always doing schoolteacher stuff.

1842

1843 Mr. Green- So when she was here, and she gave you that look, you know,

1844 that schoolteacher look, and you were in trouble so...

1845

1846 Mr. Bell- That's right, she was at the college downtown for a number of

1847 years...

1848

1849 Ms. Harris- I taught high school.

1850

1851 Mr. Green- But like I said, she was a schoolteacher so, and, and

1852 imperative of schoolteachers when they gave you that look you shut up.

1853

1854 Mr. Blankinship- Barry had to take a phone call, that's good timing. So, that

1855 answers my other question.

1856

1857 Mr. Green- Thanks.

1858

1859 Mr. Blankinship- Alright. Bang that gavel, let's get out of here.

1860

1861 Mr. Johnson- Motion to adjourn...

1862

1863 Mr. Pollard- Second.

1864

1865 *Gavel bangs

1866

1867

1868

1869

1870

1871

1872

1873

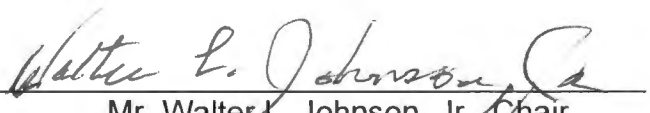
1874

1875

1876

1877

1878


Mr. Walter L. Johnson, Jr., Chair


Mr. Benjamin W. Blankinship, Secretary