

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 JULY 25, 2024 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN**  
5 **THE *RICHMOND TIMES-DISPATCH* JULY 8, 2024 AND JULY 15, 2024.**  
6

7  
8 **Members Present:** Walter L. Johnson, Jr., Chair  
9 Terrell A. Pollard, Vice-Chair  
10 Terone B. Green  
11 Barry R. Lawrence  
12 John R. Broadway  
13

14  
15 **Also Present:** Leslie A. News, Assistant Director of Planning  
16 Benjamin Blankinship, Secretary  
17 Sara Rozmus, County Planner  
18 Janaya Poarch, Accounting Clerk  
19  
20  
21

22 **Mr. Johnson -** Good morning. Welcome to the Henrico County Board of  
23 **Zoning Appeals.** I am the chair, but today I'm stepping down for Mr. Terrell Pollard to take  
24 **my place.** Mr. Terrell, do we have a motion?  
25

26 **Mr. Green-** So moved.  
27

28 **Mr. Broadway-** Second.  
29

30 **Mr. Johnson-** It's been motioned and seconded. All in favor say, Aye.  
31

32 **Board-** Aye.  
33

34 **Mr. Johnson-** All opposed? None.  
35

36 **Mr. Green-** Based on that, Mr. Chair, I would nominate you to serve as  
37 **Vice-Chair today.**  
38

39 **Mr. Pollard-** I second the motion.  
40

41 **Mr. Johnson-** Okay. It's been motioned and seconded. All in favor?  
42

43 **Board-** Aye.  
44

45 **Mr. Johnson-** None opposed. Okay. Congratulations.  
46

Mr. Pollard- Are we all ready to go?

Mr. Blankinship- Yes, sir.

Mr. Pollard- Good morning and welcome to today's meeting of the Henrico Board of Zoning Appeals. For those who are able, please join us in the Pledge of Allegiance. Mr. Blankinship...

**[Recitation of Pledge of Allegiance]**

Mr. Pollard- Mr. Blankinship will now read our rules.

Mr. Blankinship- Good morning, Mr. Chair, members of the Board. Good morning to everyone in the room with us today. I'd also like to welcome everyone who is joining us remotely on Webex. If you wish to observe the meeting and do not intend to speak, welcome and thank you for joining us. For those of you on Webex who would like to speak, we need to know that in advance so that we can connect you at the appropriate time. So, if you are an applicant, or if you have questions or comments on one of the cases, please press the chat button now. It's located on the bottom right corner of the screen, and when the chat window opens, please select Janaya Poarch from the list of participants and let her know your name and which case you're interested in. The chat feature will only be used to identify speakers. So, please do not type questions or comments into a chat. But please send a chat to Janaya Poarch now.

So, as Secretary, I will call each case and will ask everyone in the room who intends to speak to that case to stand and be sworn in. Then a member of the Planning Department staff will give a brief presentation. Then the applicant will give their presentation. Then anyone else who wishes to speak will be given the opportunity. We will hear from the people in the room first, and then those from Webex. After everyone has had a chance to speak the applicant, and only the applicant, will have an opportunity for rebuttal.

This meeting is being recorded. So, for those in the room, we will ask you to speak directly into the microphone at the back of the room there, next to that lectern. We'll ask everyone to state your name. And please spell your last name so that we get it correctly in the record. And just so you know, once the case you're interested in is over, you're free to leave, there's no need for you to stay for the rest of the meeting.

With that, Mr. Chair, we have two requests for deferral.

**CUP-2024-101127 - Lateisha Harvey: conditional use permit to operate a large family day home at 1023 Bogart Road, Clarendon Farms, Fairfield. Parcel 812-734-8514. Zoning: R-3C, One-Family Residence District (Conditional). Code Section: 24-4205.**

Mr. Blankinship- Conditional Use Permit 2024-101127, Lateisha Harvey: conditional use permit to operate a large family day home at 1023 Bogart Road, Clarendon Farms, in the Fairfield Magisterial District. Is there anyone here to represent the request for deferral? Okay. I did speak to Ms. Harvey yesterday and received an email from her. There has been opposition, as you have seen from the reports. Particularly from the Homeowners Association and members of the Homeowners Association. There's some question about how this use would relate to the covenants in the subdivision. And so, both parties have requested some time to work that out. I would suggest two months, just to make sure that they have time to get all that done.

Mr. Pollard- And that would be?

Mr. Blankinship- September. It's in your motion there. September 26<sup>th</sup>.

Mr. Pollard- September 26<sup>th</sup>. I make a motion that we defer this case until September 26<sup>th</sup>, Conditional Use Permit 2024-101127.

Mr. Lawrence- Second.

Mr. Pollard- The motion is made and properly seconded. Any discussion? Hearing none, all those in favor say, Aye.

Board- Aye.

Mr. Pollard- Any opposed? They Ayes have it.

On a motion by Mr. Pollard, seconded by Mr. Lawrence, the Board **deferred** case CUP-2024-101127 until the September 26, 2024 meeting.

<b>Affirmative:</b>	<b>Broadway, Green, Johnson, Lawrence, Pollard</b>	<b>5</b>
<b>Negative:</b>		<b>0</b>
<b>Absent:</b>		<b>0</b>

**VAR-2024-100763 - Katherine and Jonathan Kennedy: variance from the public street frontage requirement to build a single-family dwelling at 8701 September Drive, Tuckahoe. Parcel 755-736-1968. Zoning: R-3, One-Family Residence District. Code Section: 24-4306.E.1. The applicant has 0 feet public street frontage where the Code requires 50 feet public street frontage. The applicant requests a variance of 50 feet public street frontage.**

Mr. Blankinship- Thank you. The second request for deferral is Variance 2024-100763, Katherine and Jonathan Kennedy: a variance from the public street frontage



requirement to build a single-family dwelling at 8701 September Drive, in the Tuckahoe Magisterial District. Is there anyone here to speak to this deferral request?

Mr. Gray- I am.

Mr. Blankinship- Come on up. I'm sorry, you need to step back there quickly. Tell us your name again please.

Mr. Gray- Sorry, George Gray. G.R.A.Y. I represent the applicant.

Mr. Blankinship- Tell us a little about the deferral request.

Mr. Gray- This was originally heard several months ago, and it was continued, or deferred, in order to have a stormwater/drainage study completed. We are in the process of working through what the Department of Public Works is requesting. At this juncture, our engineer has spoken with the Department of Public Works, and I believe we have clarity on what studies they're requiring. We just need time to complete the studies.

Mr. Blankinship- Okay. Thank you, sir. Is there anyone here who is in opposition of deferring this case? Mr. Chair, a motion would be in order.

Mr. Pollard- Is there a motion?

Mr. Broadway- Mr. Chair, I move that we defer this request to August 22<sup>nd</sup>, as requested by the applicant, in order to allow additional time to study the drainage issues.

Mr. Lawrence- Second.

Mr. Pollard- Motion has been made and properly seconded. Any discussion? Hearing none, all those in favor say, Aye.

Board- Aye.

Mr. Pollard- Any opposed? They Ayes have it.

Mr. Gray- Thank you.

Mr. Blankinship- Thank you.

On a motion by Mr. Broadway, seconded by Mr. Lawrence, the Board **deferred** case **VAR-2024-100763** until the August 22, 2024 meeting.

<b>Affirmative:</b>	<b>Broadway, Green, Johnson, Lawrence, Pollard</b>	<b>5</b>
<b>Negative:</b>		<b>0</b>

**Absent:**

**0**

**CUP2023-00041 - Cynthia Leal: conditional use permit to allow short-term rental of a dwelling at 8700 Hungary Spring Road, Laurel View, Brookland. Parcel 767-756-0656. Zoning: R-3, One-Family Residence District. Code Section: 24-4431.A.**

Mr. Blankinship- Mr. Chair, we also have one request that sort of falls under the heading of "Old Business", I guess. That is Conditional Use Permit 2023-00041, Cynthia Leal: request to amend a conditional use permit to allow short-term rental of a dwelling at 8700 Hungary Spring Road, Laurel View subdivision, in the Brookland Magisterial District. The Board will remember that this application was approved almost a year ago now. There was a condition requiring a privacy fence to enclose the rear yard, and the neighbors have asked not to have the privacy fence. I spoke to the person who owns the house to the north, and lives in it, who also owns and rents two other houses immediately adjoining this one. And I spoke to them yesterday, and she said she did not want to feel boxed in by a privacy fence and she would request that the Board agree with the applicant's request to amend that condition.

Ms. Rozmus, would you...

Ms. Rozmus- Thank you Mr. Chair. I think that about sums it up. Staff recommends that we adjust the condition of the privacy fence and delete it from the application.

Mr. Green- Ben?

Mr. Blankinship- Yes, sir?

Mr. Green- {inaudible}

Mr. Blankinship- Oh! We do not have the presentation. Try pressing the room resource button up on the dais here.

Mr. Green- Okay.

Mr. Blankinship- I'm sorry, I should've done that for you when I came in.

Mr. Johnson- Thank you.

Mr. Blankinship- Sorry for the computer glitch.

Mr. Pollard- Thank you. Are there any questions from the Board?

227 Mr. Lawrence- I had a couple questions, Mr. Chairman. This could be for  
 228 staff, or for Ms. Leal. One of the conditions requires Ms. Leal to obtain a Certificate of  
 229 Occupancy for short-term rental. Has that been obtained?  
 230  
 231 Ms. Leal- Yes, sir.  
 232  
 233 Mr. Blankinship- Why don't you go ahead and introduce yourself.  
 234  
 235 Ms. Leal- Hi, my name is Cynthia Issa Leal, L.E.A.L. Yes sir, it has been  
 236 accomplished, and so has the building inspection and all of the requirements. I was happy  
 237 to meet those.  
 238  
 239 Mr. Lawrence- And when we met back in August, I think at the time you still  
 240 had your car tagged to California. But, if I understand, you were working on getting that  
 241 switched to Virginia. Has that been accomplished?  
 242  
 243 Ms. Leal- Yes, sir. Actually, I did that yesterday. I was able to  
 244 accomplish changing both my license and my license plates.  
 245  
 246 Mr. Lawrence- And I saw the information you provided. You've done a lot of  
 247 work with your neighbors. I applaud your diligent efforts. It looks like most of the neighbors  
 248 in your area have signed off on no privacy fence. Now does that include your adjoining  
 249 neighbors also?  
 250  
 251 Ms. Leal- Yes, sir. As Mr. Blankinship had stated, the surrounding  
 252 neighbors are in favor of me not having a privacy fence. And it's also a pleasure to get to  
 253 speak with all my neighbors.  
 254  
 255 Mr. Lawrence- Okay, and the last question I had, Ms. Leal, is that the  
 256 ordinance, of course, requires that you reside on the property at least 180 days per year.  
 257 I'm assuming that... I know you were transitioning from California back at the time, but  
 258 you are now residing at that residence. Is that correct?  
 259  
 260 Ms. Leal- Yes, sir. I've been doing so since, about a year.  
 261  
 262 Mr. Lawrence- Okay. Very good. Those are all the questions I had, Mr.  
 263 Chairman.  
 264  
 265 Mr. Pollard- Okay. Any other questions? And then, I have a question. If I'm  
 266 to understand correctly, everyone involved agrees with not having that as a condition?  
 267  
 268 Ms. Leal- Yes, sir.  
 269  
 270 Mr. Pollard- Is there anyone to speak for or against this? Is there a motion  
 271 in order?  
 272



273 Mr. Lawrence- I'll make a motion, Mr. Chairman. Before I do, I also want to  
274 point out that Ms. Leal does have vegetation on her fence that provides a pretty good  
275 buffer for the rear of her property and part of the side as well. So, I think that will help.  
276 When we had this requirement for the fence, we do that frequently because the neighbors  
277 want that buffering. In this case, the neighbors prefer not to have the privacy fence. I did  
278 inspect the area, and I didn't see any other privacy fences in that area. So, this would be  
279 consistent with other houses in the area. Ms. Leal has done a nice job, it looks like, of  
280 getting the property in order. With that, I will move that we revise the approved conditional  
281 use permit by removing the requirement to enclose the rear yard with a privacy fence.  
282 There are very few privacy fences in the neighborhood, as I pointed out, if any. And the  
283 neighbors do not want a privacy fence.

284  
285 Mr. Green- I'll second that, but before I do, just a question. If I'm not  
286 mistaken, when she first brought this, you did propose putting covering on the fence,  
287 right?

288  
289 Ms. Leal- Vegetation, yes. I was interested in having vegetation rather  
290 than wood.

291  
292 Mr. Green- And that was over a year ago, so that has grown in pretty  
293 good. The reason I'm asking is because it is something we should consider in the future.  
294 Because if it grows in and it looks nice, do we really need a privacy fence, or will  
295 vegetation accomplish the same goal? And you saw it so, it looks nice?

296  
297 Mr. Lawrence- Yes, sir.

298  
299 Ms. Leal- And it's evergreen as well, so it's not going to look bad in the  
300 winter.

301  
302 Mr. Green- Thank you.

303  
304 Mr. Lawrence- We appreciate your cooperation, Ms. Leal. And what you're  
305 doing to improve the property.

306  
307 Mr. Green- So moved.

308  
309 Mr. Pollard- It's been motioned and properly seconded. Any further  
310 discussion? Hearing none, all in favor say, Aye.

311  
312 Board- Aye.

313  
314 Mr. Pollard- Any opposed? Aye's have it.

315  
316 On a motion by Mr. Lawrence, seconded by Mr. Green, the Board **granted the request**  
317 **to delete condition number 4 of case CUP2023-00041.**  
318

<b>Affirmative:</b>	<b>Broadway, Green, Johnson, Lawrence, Pollard</b>	<b>5</b>
<b>Negative:</b>		<b>0</b>
<b>Absent:</b>		<b>0</b>

**CUP-2024-100875 - Sandston Moose Lodge: conditional use permit to hold a turkey shoot at 4505 Oakleys Lane, Varina. Parcel 818-719-0377. Zoning: A-1, Agricultural District and M-1, Light Industrial District. Code Section: 24-2308.B.2.**

Mr. Blankinship- Alright, thank you. The next case is Conditional Use Permit 2024-100875, Sandston Moose Lodge: a conditional use permit to hold a turkey shoot at 4505 Oakleys Lane, in the Varina Magisterial District. Would everyone who intends to speak to this case, please stand and be sworn in. Raise your right hand please.

Mr. Shook- William Shook.

Mr. Blankinship- 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. Shook- I do.

Mr. Blankinship- Thank you. Ms. Rozmus.

Mr. Shook- William Shook. Last name, S.H.O.O.K.

Mr. Blankinship- If you'll give us just a minute, we're going to hear from staff and then we'll hear from you.

Mr. Shook- Okay.

Ms. Rozmus- Thank you Mr. Secretary. Good morning, Mr. Chair. Good morning, Board. The Sandston Moose Lodge is located just north of Interstate 64, on Oakleys Lane. The northern portion of the property has the Moose Lodge parking, while the southern portion has a picnic shelter, but otherwise is mostly wooded. The Turkey Shoot would be located in the southern portion of the property, just south of the picnic shelter. There have been Turkey Shoots on and off since 1982. And the last season was from 2015 to 2016. Like previous seasons, this will be held Saturday evenings from 7PM to 11PM. When evaluating this request, the surrounding area is zoned M-1 Light Industrial District and contains a towing lot and shipping warehouses. The area to the south, towards Interstate 64, is wooded. As is the area to the west. Giving the industrial uses and wooded areas, a temporary Turkey Shoot would not be out of character with the scale of the surrounding area. As for public health, safety, and welfare, the shooting takes place behind the picnic shelter and shoots towards a target located against the structure. The location has been used for the Turkey Shoot for many years without complaint or incident. In conclusion, the event has been held for many years without incident, logistics of the event will remain the same, there have been no complaints regarding past events. As a



365 result, staff recommends approval of this request subject to the conditions in the staff  
366 report. Thank you.

367  
368 Mr. Johnson- Thank you.

369  
370 Mr. Pollard- Any questions for staff? Can we hear from the applicant? Go  
371 ahead. I'm sorry, you have a question for staff?

372  
373 Mr. Johnson- You did say there's a border that blocks the, what do you call  
374 it, the bullets that go out?

375  
376 Ms. Rozmus- Yes. So, it's pretty much heavily wooded around pretty much  
377 all sides. Let me pull up the map. So, around every side of the Moose Lodge area itself  
378 is completely wooded. It's fairly dense. And there's also kind of a berm that goes down  
379 and back up that protects 64.

380  
381 Mr. Johnson- That's what I was referring to, yes. Thank you.

382  
383 Mr. Pollard- Any other questions? Okay, let's hear from the applicant.  
384 Again, state your name and spell your last name, and then tell us why you're applying.

385  
386 Mr. Shook- William Shook. Last name, S.H.O.O.K. And the reason we're  
387 requesting this permit is because we stopped this about 2016, and we're trying to get it  
388 back up and going again. So, we got a lot of work to do to get things going, as far as  
389 structure and all that. But we just wanted to make sure we had a permit.

390  
391 Mr. Johnson- Okay.

392  
393 Mr. Pollard- And I kind of heard the details, what is a Turkey Shoot, in  
394 general?

395  
396 Mr. Shook- Excuse me?

397  
398 Mr. Blankinship- What is a Turkey Shoot?

399  
400 Mr. Pollard- Yeah, what is it?

401  
402 Mr. Shook- What is the Turkey Shoot?

403  
404 Mr. Blankinship- You put targets up. You have 16 targets on a wheel, and the  
405 wheel spins and turns when you hit the button to spin that wheel. So, you only have one  
406 shooter shooting at a time. And, of course, the purpose of it is to win prizes.

407  
408 Mr. Pollard- Okay.

409

410 Mr. Blankinship- And back in the day the grand prize was a turkey. So, you're  
 411 not shooting at turkeys, you're shooting for turkeys.  
 412  
 413 Mr. Shook- No. Shoot for turkeys, not at turkeys.  
 414  
 415 Mr. Pollard- Okay.  
 416  
 417 Mr. Green- I asked that question ... Well, the last time this came up with  
 418 somebody, I asked that question too. Are we shooting turkeys?  
 419  
 420 Mr. Blankinship- They go what?  
 421  
 422 Mr. Green- Well, we can eat them!  
 423  
 424 Mr. Pollard- I was just trying to figure out if approved how we get turkeys  
 425 out of them?  
 426  
 427 Mr. Lawrence- Didn't we have a case similar to this just a few months ago?  
 428  
 429 Mr. Blankinship- Yes, sir. We used to have about five Turkey Shoots in the  
 430 county, and then it went down to zero during covid, and I guess now there are two starting  
 431 back up.  
 432  
 433 Mr. Shook- Yes, Dabbs House is shooting.  
 434  
 435 Mr. Green- So, in other words, we have to buy our own turkeys for  
 436 Thanksgiving?  
 437  
 438 Mr. Blankinship- Afraid so, unless you're a good shot.  
 439  
 440 Mr. Lawrence- Well, also as the county urbanizes too, we're seeing less and  
 441 less of these and there was one for decades over on Nuckols Road, where the Moose  
 442 Lodge is located, Elks Lodge. And they recently, this past year, relocated out to northside  
 443 somewhere. So, that was the last one, I think, in western Henrico. So, we're seeing fewer  
 444 and fewer of these. So, maybe this will help make up for the one that disappeared off of  
 445 Nuckols.  
 446  
 447 Mr. Pollard- Any additional questions from this Board. Is there anyone at  
 448 this public hearing to speak for or against this?  
 449  
 450 Mr. Blankinship- There is no one on Webex.  
 451  
 452 Mr. Johnson- Okay.  
 453  
 454 Mr. Pollard- This public hearing is now closed. Is there a motion in order?  
 455

Mr. Johnson- Okay. I move that we approve this conditional use permit subject to the conditions recommended by staff. A Turkey Shoot has been at this location for 40 years, and there is a large parking lot with good lighting, and there've never been any complaints. Again. I move that we approve.

Mr. Lawrence- Second.

Mr. Pollard- It's been motioned and properly seconded. Any further discussion? Hearing none, all those in favor say Aye.

Board- Aye.

Mr. Pollard- Are there any opposed? The Ayes have it.

On a motion by Mr. Johnson, seconded by Mr. Lawrence, the Board **approved** case **CUP-2024-100875** subject to the following conditions:

1. Hours of operation are limited to Saturdays from 7:00 pm to 11:00 pm, September through December 2024 and 2025. This permit will expire on December 31, 2025.
2. The turkey shoot must only involve the use of shotguns no larger than 12 gauge and low powered (2-3/4") shells containing no larger than No. 8 shot.
3. No alcoholic beverages may be consumed on the premises during the turkey shoot. A sign to this effect must be conspicuously posted in the immediate vicinity of the shooting area. No person under the influence of alcohol, as defined in Section 18.2-266 of the Code of Virginia, may be permitted in the shooting area.
4. The property must be clearly posted to show the area in which shooting occurs.
5. Restrooms must be provided.

<b>Affirmative:</b>	<b>Broadway, Green, Johnson, Lawrence, Pollard</b>	<b>5</b>
<b>Negative:</b>		<b>0</b>
<b>Absent:</b>		<b>0</b>

**CUP-2024-101174 - J. E. Liesfeld Contractor, Inc.: conditional use permit to continue reclamation of a former mining site at 8950 Strath Road, Varina. Parcel 816-677-8788. Zoning: A-1, Agricultural District. Code Section: 24-4205 and 24-4327.**

Mr. Blankinship- Alright, Conditional Use Permit 1127 has been deferred so the next case is Conditional Use Permit 2024-101174, J. E. Liesfeld Contractor, Inc.: a conditional use permit to continue reclamation of a former mining site at 8950 Strath



498 Road, in the Varina Magisterial District. Would everyone who intends to speak to this  
499 case, please stand and be sworn in. Raise your right hand please. Do you swear the  
500 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so  
501 help you God? Thank you. Ms. Rozmus.

502  
503 Ms. Rozmus- Thank you. The subject property is located northwest of the  
504 intersection of Strath and Kingsland Roads. It is used to deposit soils excavated from  
505 construction sites around the area. The original use permit was approved in 2018 and  
506 was renewed in 2020 and 2022. Today's request is for another two-year extension.  
507 Excuse me?

508  
509 Mr. Blankinship- That's the deferred case. There we go.

510  
511 Ms. Rozmus- Dirt reclamation, this is a good site for the applicant because  
512 the site was previously excavated by West Sand and Gravel. Rather than filling the site  
513 to grade, they simply restored it with topsoil and planted vegetation, leaving a low area in  
514 the middle of the property. You can see that in some of these photos. While the  
515 surrounding area is rural in character, there are dwellings in the vicinity, as you can see...  
516 Sorry, there's a lot of photos in this one. There are dwellings to the left and right on this  
517 road. To protect these, the property is surrounded by a 100-foot wooded buffer. In  
518 addition, the applicant agreed in 2018 to leave wooded a 9.7-acre notch at the southern  
519 end of the property. In evaluating this request, the surrounding area is zoned A-1  
520 Agricultural District, and the operation is consistent with the zoning designation. The  
521 construction entrance is from Strath Road, which is a major collector and there are  
522 adequate sight distances along the stretch of road. Finally, there have been no complaints  
523 since the approval of the original conditional use permit in 2018. In conclusion, the  
524 previous operation left the surface, roughly, 15 to 20 feet below the original grade. The  
525 current operation will result with the site being filled to a level more consistent with the  
526 surrounding area. The applicant has taken several steps to mitigate the impacts of  
527 operation, and we have received no complaints since the commencement of the  
528 operation. As a result, staff recommends approval subject to the conditions in your staff  
529 reports.

530  
531 Mr. Pollard- Thank you. Any questions for staff? Can we hear from the  
532 applicant? State your name for the record and let us know why you're applying.

533  
534 Mr. Hooker- Good morning, Mr. Chair, members of the Board. My name is  
535 Randy Hooker. That's H.O.O.K.E.R. with Engineering Design Associates. I'm here  
536 representing J. E. Liesfeld and the request to renew this use permit. We've reviewed the  
537 conditions, take no exception to the conditions provided. If you have any questions  
538 regarding operations of the reclamation, Kelby Morgan with Liesfeld is here with me  
539 today.

540  
541 Mr. Pollard- Any questions?

543 Mr. Lawrence- I have a question, Mr. Chairman. I guess my question is what  
544 type of materials are deposited as fill in the site? I say this because if you look at condition  
545 number five, it limits the material to soil or similar materials. But I seem to recall other  
546 cases we've had like this recently have had concrete and maybe even building debris.  
547 So, I guess I'm kind of curious about what's actually going into the ground on this site.  
548

549 Mr. Morgan- Our material is just earthly material. We do have roads that  
550 use recycled materials. Maybe crushed asphalt. We use granite stone for roads, just for  
551 access. But we only accept earthen material.  
552

553 Mr. Lawrence- Well, I guess this question, my follow-up question is for staff.  
554 So, the condition says, "depositing soil or similar material", do we consider asphalt to be  
555 a similar material to soil? I'm confused a little bit by the way that's described in the  
556 conditions.  
557

558 Ms. Rozmus- I would assume that we consider asphalt to be a similar  
559 material. It's non-hazardous.  
560

561 Mr. Lawrence- Okay. That's all.  
562

563 Mr. Johnson- Go ahead.  
564

565 Mr. Pollard- Is there any one to speak for or against this?  
566

567 Mr. Blankinship- There's no one on Webex.  
568

569 Mr. Pollard- Alright. We can close the public hearing. Is there a motion in  
570 order?  
571

572 Mr. Green- Is this Fairfield?  
573

574 Mr. Blankinship- Varina.  
575

576 Mr. Green- It's Varina.  
577

578 Mr. Johnson- Oh, okay. I move that we approve this conditional use permit  
579 subject to the conditions recommended by staff. It's consistent with the Comprehensive  
580 Plan and the Zoning Ordinance. They have worked for five years with no complaint. And  
581 when the project is complete, the land will be better in shape than it was before. Again, I  
582 move for approval.  
583

584 Mr. Pollard- A motion has been made, is there a second?  
585

586 Mr. Green- Second.  
587



Mr. Pollard- Motion made and properly seconded. Any further discussion?  
All those in favor say, Aye.

Board- Aye.

Mr. Pollard- Are there any opposed? They Aye's have it.

On a motion by Mr. Johnson, seconded by Mr. Green, the Board **approved** case **CUP-2024-101174** subject to the following conditions:

1. This conditional use permit only authorizes the clearing, grading, filling, and reclamation shown on the plans titled "Liesfeld Contracting Strath Road Mine" prepared by Engineering Design Associates and revised May 9, 2022.

2. The final grades must have a minimum slope of 2% and a maximum slope of 33% (3 feet horizontal to 1 foot vertical).

3. The applicant must maintain a financial guaranty in the amount of \$135,300 insuring that the land will be restored as shown on the "Final Reclamation Plan." The applicant must maintain the financial guaranty until the Planning Department and the Department of Public Works approve the reclamation of the property. Reclamation will not be considered complete until the site has been graded as shown on the approved reclamation plan, is covered completely with permanent vegetation, and is seeded with red cedar trees, loblolly pine trees, or a similar native species in a manner approved by the Director of Planning.

4. The applicant must continuously satisfy the requirements of the environmental compliance plan approved by the Department of Public Works (DPW), including compliance with the Chesapeake Bay Preservation Act and maintenance of all erosion control measures in accordance with the approved plan. As site conditions change, updated plans and bonds may be required by DPW.

5. The material to be deposited on the site must be limited to soil and similar materials excavated from construction sites and must not include any hazardous materials as defined by the Virginia Hazardous Waste Management Regulations. The applicant must submit a quarterly report stating the origin, nature, and quantity of all material deposited on the site, certifying that no hazardous materials were included.

6. Any activity that results in sound clearly audible beyond the property lines must be limited to Monday through Friday, from 7:00 am to 5:30 pm. There must be no activity that results in sound clearly audible beyond the property lines on Saturdays, Sundays, or national holidays.

7. All access to the property must be from the designated construction entrance onto Strath Road. The applicant must maintain a gate at the entrance, which must be locked at all times except when authorized representatives of the applicant are on the property.



634  
635 8. The applicant must maintain a sign at the entrance to the site stating the name of the  
636 applicant and a telephone number to contact in case of emergency.

637  
638 9. The applicant must maintain standard "Truck Entering Highway" signs on Strath Road  
639 on each side of the entrance to the property.

640  
641 10. The applicant must maintain a standard stop sign at the entrance to Strath Road.

642  
643 11. The applicant must maintain "No Trespassing" signs every 250 feet along the  
644 perimeter of the property. At the request of the Division of Police, the applicant will send  
645 a representative to testify in court to enforce the "No Trespassing" signs.

646  
647 12. There must be no burning on the site at any time.

648  
649 13. Trucks leaving the site must travel at intervals and not in groups of three or more. If  
650 requested by the Division of Police, the applicant will provide a flagman to control traffic  
651 from the site onto Strath Road.

652  
653 14. The applicant must sweep Strath Road as necessary to prevent tracking of mud and  
654 must control dust in accordance with the latest version of the Virginia Erosion and  
655 Sediment Control Handbook.

656  
657 15. If the applicant discovers cultural or historic resources, endangered species, or  
658 significant habitat, it must notify appropriate authorities and provide them with an  
659 opportunity to investigate the site. The applicant must report the results of any such  
660 investigation to the Planning Department.

661  
662 16. At the request of the owner of any water well located within 1,000 feet west or south  
663 of the fill area, the applicant will reimburse the reasonable cost of testing the well water  
664 once per year while this permit is active. The tests will be performed by a Commonwealth  
665 of Virginia Certified Drinking Water Laboratory, and the results will be reported to the  
666 applicant, the well owner, and the Planning Department. If such tests show contamination,  
667 the applicant may request collection and testing of a new sample by an independent third  
668 party.

669  
670 17. If evidence shows that the fill operation authorized by this conditional use permit has  
671 an adverse impact on a water well, the owner of the well may request a hearing before  
672 the Board. If the Board finds, after reviewing the evidence at a public hearing, that the  
673 well was adversely affected by the fill operation, the applicant must immediately cease  
674 operations until the problem has been corrected to the satisfaction of the Board. This  
675 protection applies to wells tested pursuant to Condition 16, or any other well in the vicinity  
676 for which evidence of adverse impact can be documented.

677  
678 18. This conditional use permit will expire July 31, 2026.  
679

<b>Affirmative:</b>	<b>Broadway, Green, Johnson, Lawrence, Pollard</b>	<b>5</b>
<b>Negative:</b>		<b>0</b>
<b>Absent:</b>		<b>0</b>

**CUP-2024-101258 - Cynthia M. Rivenbark: conditional use permit to allow short-term rental of a detached guesthouse at 613 Azalea Avenue, Fairfield. Parcel 789-744-0939. Zoning: R-4, One-Family Residence District. Code Section: 24-4431.A.**

Mr. Blankinship- Alright, the next case is Conditional Use Permit 2024-101258, Cynthia M. Rivenbark: conditional use permit to allow short-term rental of a detached guesthouse at 613 Azalea Avenue, in the Fairfield Magisterial District. Would everyone who intends to speak to this case, please stand and be sworn in. Raise your right hand please. 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? Thank you. Ms. Rozmus.

Ms. Rozmus- Thank you, sir. This 1500-square-foot ranch-style home is located on Azalea Avenue, in the Fairfield Magisterial District. Ms. Rivenbark purchased the home in 2022, which includes a 576-square-foot garage. The applicant intends to renovate the garage into a guest house and is seeking a conditional use permit to allow for hosted short-term rentals of the guest house. As you can see, the property is surrounded in the rear and right sides by a wooded area, creating a natural barrier between neighbors. The property is also fenced in with a chain-link fence on all sides. The rear of the property has ample space for parking for the guest house and ample turnaround space to eliminate the issue with guests backing onto Azalea Avenue. The driveway is wide enough to host multiple vehicles and is paved. A guest house is permitted by right in the R-3 zoning district, and a short-term rental is allowed with an approved conditional use permit. The guest house is located approximately 20 feet from the neighboring property and 20 feet from the primary dwelling. You can see it in this photo here. The applicant only intends to have hosted stays on the property. Meaning no guests will occupy the space without her being present. Staff has also received no comments from the neighbors regarding this request. In conclusion, the garage with approved building permit is permitted by right as a guest house. With ample parking, turnaround space, and shielding in the rear yard, short-term guests will have adequate space for vehicles and be able to safely enter Azalea Avenue and cause minimal impact to the surrounding area. Staff recommends approval of this conditional use permit subject to the conditions outlined in the staff report.

Mr. Johnson- Okay.

Mr. Pollard- Any questions for staff?

Mr. Lawrence- I had one question for staff, Mr. Chair.

726 Ms. Rozmus- Yes, sir.  
727  
728 Mr. Lawrence- Ms. Rozmus, it appears, according to the staff report and your  
729 description, the rear of the property adjoins property owned by the City of Richmond.  
730  
731 Ms. Rozmus- It does.  
732  
733 Mr. Lawrence- So, is her rear property line, is that on the Henrico/City line?  
734  
735 Ms. Rozmus- There's a little bit of distance in-between, but pretty much it is.  
736  
737 Mr. Lawrence- So, the city part, their property actually transcends the Henrico  
738 line?  
739  
740 Ms. Rozmus- I think there's a little bit of a buffer, if I'm not mistaken.  
741 Technically, I think the line is right here, but a visual buffer is definitely in between both  
742 properties. But yeah, her property does abut the City of Richmond.  
743  
744 Mr. Lawrence- And can you clarify, again, what that city property is used for?  
745  
746 Ms. Rozmus- I was not able to figure that out. It looks like it's just open space  
747 at the time. There is a park further down, that you can't see in this aerial photo. But I  
748 couldn't really figure out if they had any plans for that area.  
749  
750 Mr. Lawrence- Is there a structure on the property there?  
751  
752 Ms. Rozmus- No. No, it's just vacant.  
753  
754 Mr. Lawrence- Sounds like a pretty good buffer. That's all I had, Mr.  
755 Chairman.  
756  
757 Mr. Pollard- Thank you. Any additional questions for staff? Let's hear from  
758 the applicant.  
759  
760 Ms. Rivenbark- Good morning, I'm Cynthia Rivenbark, R.I.V.E.N.B.A.R.K.  
761  
762 Mr. Blankinship- Oh, I apologize for mispronouncing that.  
763  
764 Ms. Rivenbark- And I actually wanted to address Mr. Lawrence's question.  
765 That is Pine Camp Art Center that backs up to my house. There is a creek between us.  
766 It's big, it's wooded, but it's Pine Camp that backs up to my property there.  
767  
768 Mr. Lawrence- Got it, thank you.  
769  
770 Ms. Rivenbark- Sure.  
771



772 Mr. Pollard- And I guess, just tell us, in general, what your plans are, or  
 773 why you put the application in.  
 774

775 Ms. Rivenbark- To renovate it into a guest house, so we can use it for when  
 776 family visits. And then, when we're not using it for our own purposes, occasionally rent it  
 777 for a short-term rental.  
 778

779 Mr. Pollard- Okay, so just to make sure I'm clear, you're using the existing  
 780 structure. You're not replacing it?  
 781

782 Ms. Rivenbark- Yeah, it's got some lawn stuff in it. That's about it.  
 783

784 Mr. Pollard- Okay. Any additional questions? Being where it's located, I  
 785 can't see where it really impacts them. Did you speak with the neighbors at all about it?  
 786

787 Ms. Rivenbark- The one neighbor on, if you're facing my house, to the left is  
 788 a good friend and she's fine with it. I actually don't know the neighbors next door. The  
 789 lady, I think, is ill.  
 790

791 Mr. Pollard- Okay. And you said no one responded?  
 792

793 Ms. Rozmus- Correct.  
 794

795 Mr. Johnson- Also, are you putting anything solar on the facility as well?  
 796

797 Ms. Rivenbark- Solar? No.  
 798

799 Mr. Johnson- Okay.  
 800

801 Mr. Pollard- Is there anyone to speak for or against this?  
 802

803 Mr. Blankinship- There is no one on Webex for this case.  
 804

805 Mr. Pollard- Alright, we'll close the public hearing. A motion would be in  
 806 order. I move that we approve this conditional use permit subject to the conditions  
 807 recommended by staff. It is consistent with the Comprehensive plan and the Zoning  
 808 Ordinance. The neighbors on both sides are protected by mature landscaping and have  
 809 not made any comments in opposition. This will be hosted stays, which do not usually  
 810 cause problems.  
 811

812 Mr. Lawrence- Second.  
 813

814 Mr. Pollard- Motion made and properly seconded. Any further discussion?  
 815 Hearing none, all those in favor say, Aye>  
 816

817 Board- Aye.

Mr. Pollard- Are there any opposed? The Ayes have it.

Ms. Rivenbark- Thank you very much.

On a motion by Mr. Pollard, seconded by Mr. Lawrence, the Board **approved** case **CUP-2024-101258**, subject to the following conditions:

1. This conditional use permit authorizes the short-term rental of a guesthouse. 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. Any substantial changes or additions to the design or location of the improvements will require a new conditional use permit.

3. This approval is subject to the County noise ordinance (Sec. 10-67 through 10-69), registry ordinance (Sec. 20-280 through 20-282), and short-term rental development standards (Sec. 24-4431). The dwelling must be occupied by the property owner for at least 185 days per year.

4. Before listing the property for short-term rental, the applicant must obtain a building permit, complete the renovation of the garage, obtain a certificate of occupancy, and complete the registration process. Approval and registration must be obtained no later than July 25, 2026, or this conditional use permit will expire.

5. All vehicles associated with the short-term rental must be parked on the property, not on the right-of-way.

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

7. The exterior of the guesthouse must continue to match the dwelling in materials and color.

<b>Affirmative:</b>	<b>Broadway, Green, Johnson, Lawrence, Pollard</b>	<b>5</b>
<b>Negative:</b>		<b>0</b>
<b>Absent:</b>		<b>0</b>

Mr. Blankinship- Let me just add, Mr. Green, in respect to your earlier comment, this is one where we looked carefully at the property on all sides and decided a privacy fence would not help the situation any. She has a chain-link fence and there is



substantial landscaping on all three sides. Mr. Lawrence is always worried about a privacy fence, that's why I asked that before.

Mr. Blankinship- Alright, we have deferred Variance 2024 number 763. So, the next case is Variance 2024, ... Oh, I'm sorry. The next two cases are companion cases. Mr. Chair, with your permission, I will call them together. There will be one public hearing, but we will need two motions and two votes.

Mr. Pollard- Yes, sir.

**VAR-2024-101257 - Steve Himelspace: variance from the public street frontage requirement, lot area requirement, and lot width requirement to build a single-family dwelling at 9750 Osborne Landing, Newstead Farms, Varina. Parcel 807-670-8807. Zoning: A-1, Agricultural District. Code Section: 24-4306.E.1 and 24-6402.A.2. The applicant has 25,000 square feet lot area outside the floodplain, 100 feet lot width, and 0 feet public street frontage, where the Code requires 30,000 square feet lot area, 150 feet lot width, and 50 feet public street frontage. The applicant requests a variance of 5,000 square feet lot area, 50 feet lot width, and 50 feet public street frontage.**

**VAR-2024-101288 - Steve Himelspace: variance from the lot area requirement to allow an existing dwelling to remain at 9770 Osborne Landing, Newstead Farms, Varina. Parcel 807-670-8807. Zoning: A-1, Agricultural District. Code Section: 24-6402.A.2. The applicant has 17,100 square feet lot area outside the floodplain where the Code requires 30,000 square feet lot area. The applicant requests a variance of 12,900 square feet lot area.**

Mr. Blankinship- So, these are Variance 2024-101257 and Variance 2024-101288. In both cases the applicant is Steve Himelspace. The first case is a variance from the public street frontage requirement, lot area requirement, and lot width requirement to build a single-family dwelling at 9750 Osborne Landing. The second case is a variance from the lot area requirement to allow an existing dwelling to remain at 9770 Osborne Landing. Both in Newstead Farms, both in the Varina Magisterial District. Would everyone here who intends to speak to this case, please stand and be sworn in. Raise your right hand please. 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? Thank you. Ms. Rozmus.

Ms. Rozmus- Thank you, Mr. Secretary. The subject property lies between Osborne Turnpike and the James River. Newstead Farms was subdivided in 1920. Most of the lots were between 10 and 20 acres. The most desirable land was along the bluff above the river and was subdivided into 12 bungalow sites of less than one acre each. In 1944, Mr. Clyde Gregson bought the subject property and adjoining lots. Lots nine, ten, eleven, and part of two other parcels. The combined property measures approximately four-acres in area, 500-feet along Osborne Landing, and 350-feet deep. In 1957, he built



910 a house on lots ten and eleven, in the middle of the property. Over the years a two-car  
911 garage, a pool, a pool house, a dock, a workshop, and two vinyl sheds have been added  
912 to the property. I will say, some of those items have been removed. The property was  
913 purchased by the applicants in 2022, and they have applied for a variance to sell lot nine  
914 to a relative in order to build a house. I would also like to point out that this was actually  
915 a variance that was seen in 2022 and was approved in 2022. When the pool house and  
916 vinyl sheds were constructed, the four lots were considered to be one property, and no  
917 attention was paid to the setbacks or property line between lots nine and ten. Here is, this  
918 is lot nine. Excuse me, this is lot nine...

919  
920 Mr. Blankinship- No, the other one.

921  
922 Ms. Rozmus- I was right the first time. This is lot nine. This is lot 10, 11, 12,  
923 kind of, combined. The survey submitted with the application shows the property line  
924 cutting through the vinyl shed adjacent to the pool house. Taken by itself, lot nine  
925 measures 100 feet wide along Newstead Landing and 313.6 feet deep on average, for a  
926 lot area of approximately 31,360 square feet. The minimum lot area requirement for this  
927 is 30,000 square feet. However, the Zoning Ordinance requires the lot area to be met  
928 exclusive of the floodplain. The front of the lot is outside of the floodplain, while the rear  
929 of the lot adjacent to the river lies within the floodplain. As I mentioned, in August 2022  
930 the Board approved a variance to allow a dwelling on lot nine, with 26,569 square feet of  
931 lot area when the code required 30,000 square feet. After the variance was approved, but  
932 before the owner applied for a building permit, the floodplain was revised by FEMA.  
933 According to the new floodplain maps only 25,125 square feet of the lot is outside the  
934 floodplain. As a result, the property no longer has the lot area for which the variance was  
935 approved. And you can see, I have a map of the old floodplain, and the revised floodplain.  
936 This mostly affects the existing lot, more than lot nine. I just want to make that aware. As  
937 for the threshold requirements of a variance, when considering the threshold  
938 requirements, lot nine is a separate lot and should be considered as a separate lot. The  
939 lot is subject to a hardship due to the physical condition relating to the property or  
940 improvements at the time of effective date of the ordinance. When Newstead Farms was  
941 subdivided in 1920, each of the bungalow sites would have been a buildable lot. However,  
942 with houses built later, lot nine is the only original bungalow site that remains vacant. The  
943 lot width requirement of 150 feet was imposed on the property long after the subdivision  
944 was recorded. The lot area requirement of 30,000 square feet would be met if the  
945 floodplain area was included in the calculation. But in 1970, the Zoning Ordinance was  
946 amended to exclude the floodplain from the lot area calculation, further encumbering the  
947 lot. Since 2022, the applicant was previously granted a variance to build on this lot and  
948 FEMA has since changed the floodplains, further restricting the buildable lot area of lot  
949 nine. The hardship was created when the Zoning Ordinance was amended to increase  
950 the width requirement, and again when the floodplain was excluded from the  
951 measurement of the lot area. The other bungalow sites have all been improved with  
952 dwellings. Lots six, seven, and eight each have one dwelling on one 100-foot-wide lot.  
953 The proposed dwelling would continue the development pattern of those three lots. The  
954 remaining lots to the south, lots 12 through 17, would not be affected by the proposed  
955 dwelling.

956  
 957 In conclusion, staff has found that this case meets the legal requirements for a variance.  
 958 The property is otherwise suitable for a dwelling but cannot be used for that purpose  
 959 currently. The hardship is due to the changes in the Zoning Ordinance after the property  
 960 was defined. Neither the seller, nor the contract purchaser, caused the hardship. Staff  
 961 does not anticipate any detrimental impacts by the proposed dwelling. The conditions are  
 962 specific to this lot, the use is allowed, and no other relief is available. Staff has also  
 963 received some feedback from the neighbor directly located to the right of the property.  
 964 She has expressed her disapproval of the variance. And that concludes my presentation  
 965 for this particular case. I can add more in further discussion about the existing lot. But  
 966 since they're together, one approved without the other doesn't really have a lot of  
 967 standing.

968  
 969 Mr. Green- Could you go back to the previous picture?  
 970

971 Ms. Rozmus- Yes.  
 972

973 Mr. Green- The other. Again. Again. Alright, so the new house is going to  
 974 be built right there.  
 975

976 Ms. Rozmus- Yes. In this area right here. Actually, I have a picture of the  
 977 proposed.  
 978

979 Mr. Green- I want the aerial because that is better. Which, it's tight.  
 980

981 Ms. Rozmus- It has the same width as this existing house right here. It  
 982 doesn't really look any different. It doesn't have any different setbacks, or side setbacks  
 983 than the other houses that are on these smaller lots. And I would like to point out that this  
 984 house, right here, was also approved to be built with a variance.  
 985

986 Mr. Pollard- How far away will they be from the neighbor?  
 987

988 Ms. Rozmus- I don't have the exact measurements.  
 989

990 Mr. Pollard- Roughly.  
 991

992 Mr. Blankinship- The minimum side yard is 20 feet.  
 993

994 Ms. Rozmus- Thank you.  
 995

996 Mr. Johnson- Twenty feet. Is that from the pool over to the ...  
 997

998 Ms. Rozmus- That would be from the neighbor.  
 999

1000 Mr. Blankinship- It would have to be 20 feet from each of the side lot lines.  
 1001



1002 Ms. Rozmus- Yes. And there has been some... This aerial is, I think, more  
1003 accurate, but there have been some items that have been moved on the existing lot. So,  
1004 they will have to meet those setbacks if those items are not far enough from the lot line.

1005  
1006 Mr. Green- What's that structure on the other side?

1007  
1008 Ms. Rozmus- Here?

1009  
1010 Mr. Green- No. Down on the right there.

1011  
1012 Ms. Rozmus- Oh, that's a cemetery. And this is the dock, and then the pool,  
1013 and the pool house is kind of along the pool.

1014  
1015 Mr. Lawrence- Can you point out again where the property is that the person  
1016 expressed opposition in the case?

1017  
1018 Ms. Rozmus- Right here.

1019  
1020 Mr. Lawrence- But that property has already received a variance from this  
1021 Board. Is that right?

1022  
1023 Ms. Rozmus- Many years ago.

1024  
1025 Mr. Johnson- Also, when you think about putting another facility there, is it  
1026 closer to Osborne, or closer to the water side?

1027  
1028 Ms. Rozmus- It's kind of in the middle. Let me go back to this one. I would  
1029 say closer to Osborne than it is to the river. But, I mean, a little off-center to the middle.

1030  
1031 Mr. Green- Direct line of sight to the other house. Based on what you're  
1032 showing me.

1033  
1034 Ms. Rozmus- Sort of. I can... Let me pull up these, these photos that show  
1035 that side. So, there's a fence and there's some vegetation here, so direct line of sight, I  
1036 think, is a little up for interpretation. I mean, in my opinion, I think that's a nice buffer, but  
1037 I don't live there, so.

1038  
1039 Mr. Pollard- What was the neighbor's opposition?

1040  
1041 Ms. Rozmus- She didn't like the original variance. She felt that... I want to...  
1042 I'm going to paraphrase a little bit... that if we keep allowing variances to the zoning code,  
1043 what's the point of the zoning code. So, she just felt that the more variances are allowed,  
1044 the more this is going to be developed and she felt that this is going to have a detrimental  
1045 impact on the private road that all neighbors have to maintain.

1046  
1047 Mr. Blankinship- And she is present this morning, so.



1048  
1049 Mr. Green- So the white house is whose house?  
1050  
1051 Ms. Rozmus- This one over here?  
1052  
1053 Mr. Green- Yeah.  
1054  
1055 Ms. Rozmus- That's the neighbor that's in opposition.  
1056  
1057 Mr. Lawrence- So, was the neighbor living on this property when the previous  
1058 variance was granted?  
1059  
1060 Ms. Rozmus- Yes.  
1061  
1062 Mr. Johnson- And she's here?  
1063  
1064 Mr. Green- Yeah, they're here.  
1065  
1066 Mr. Pollard- Any other questions for staff? Alright, then let's hear from the  
1067 applicant.  
1068  
1069 Mr. Himelspach- Good morning, gentlemen. My name is Steve Himelspach,  
1070 H.I.M.E.L.S.P.A.C.H. I am the applicant and the homeowner for 9770. Staff pretty much  
1071 summed up everything that I had to say. I'll just reiterate this; the purpose of this variance  
1072 is to permit a family subdivision of the property. To allow a one-acre site that was  
1073 previously addressed, considered, and approved by the Board back in 2022. In the  
1074 process of us going through meeting all of the requirements of that variance, FEMA did  
1075 redo the floodplain, which necessitated us coming back here to redo the variance to allow  
1076 for the new numbers, to make sure that they match. This was discovered when we went  
1077 through the subdivision process with the Planning Department, as we were commencing  
1078 forward with this project. There is no change to the scope or the scale of what the Board  
1079 previously approved. And I am happy to answer any questions pertaining to that. The only  
1080 change is to essentially allow the administrative correction of the floodplain numbers to  
1081 the variance.  
1082  
1083 Mr. Green- Well, it's two things.  
1084  
1085 Mr. Himelspach- Yes, sir.  
1086  
1087 Mr. Green- It's two things, if I'm not mistaken. It's a variance to build that  
1088 house, as well as a variance to allow you to stay in your house, correct?  
1089  
1090 Mr. Himelspach- That is correct.  
1091  
1092 Mr. Green- Okay. Now, if we did this back in 2022, this is 2024, what  
1093 happened between now and then?

1094 Mr. Himelspach- What happened between now and then is about six months  
1095 ago... Well, FEMA, started this process, I guess... about less than six months ago.  
1096 FEMA, those new floodplains became in effect, which changed the area of both properties  
1097 that are outside the floodplain. Previously we had the variance on lot nine, which was the  
1098 25,000, which was based on the old floodplain lines. But, since the floodplain line moved,  
1099 it reduced that number, and those numbers need to be updated to reflect the new value.  
1100 But lot ten and eleven did not require a variance at that time because almost a third of  
1101 that property became into the floodplain with the new line. It had more than sufficient area  
1102 prior for this subdivision. Now, by reducing that number, it requires a variance due to the  
1103 shifting of that floodplain by FEMA.  
1104

1105  
1106 Mr. Green- Yeah, but you said that was six months ago. So, what  
1107 happened six months ago, that puts us early... in 2023 potentially, early 2024. What  
1108 happened?  
1109

1110 Mr. Himelspach- What happened then is we were going through the process  
1111 with the planning board, the subdivision, that's when that change was identified. That it  
1112 was no longer compliant. When we applied, we're actually in the process of doing the  
1113 subdivision. And maybe Mr. Blankinship can speak to the mechanics of how that went a  
1114 little bit better than I can articulate them. But we were in the process of going through the  
1115 actual subdivision with the County and the Planning, and they identified that discrepancy  
1116 due to the floodplain changes.  
1117

1118 Mr. Blankinship- Had you also worked with the Health Department?  
1119

1120 Mr. Himelspach- We worked with the Health Department. The Health  
1121 Department has approved a new well site to service the lot, because the well that is  
1122 currently servicing that parcel will go to lot nine. We've identified a new well location.  
1123 We've contracted for that well to be built and installed. We're just waiting on the final  
1124 outcome of this Board for the execution of that contract.  
1125

1126 Mr. Green- The other question I have is, I noticed there was a cemetery,  
1127 and based on the schematics the cemetery looks like they're in... Are they in or out of the  
1128 floodplain?  
1129

1130 Ms. Rozmus- It is completely in the floodplain. But it was before.  
1131

1132 Mr. Green- So, what's the water level it needs to reach before the  
1133 cemetery is flooded?  
1134

1135 Ms. Rozmus- That's an excellent question. I don't know the answer to that.  
1136

1137 Mr. Blankinship- The cemetery is surrounded, I believe, with a brick wall.  
1138

1139 Mr. Himelspach- It has a concrete and brick wall. The entire area of the new  
 1140 floodplain, historically, going back has never flooded. Even going at max high water. The  
 1141 bank there is probably 25 feet from the water. Even recently, the most recent high water  
 1142 only got up to the dock level and didn't, only partially up the bank. The FEMA, not being  
 1143 a FEMA expert and not being a geologist, I can't speak as to why they made those  
 1144 changes. But those changes reflected the 1% floodplain, not the traditional floodplain.  
 1145  
 1146 Mr. Green- So, I guess, my question is how many feet of water does it  
 1147 need before your house is flooded?  
 1148  
 1149 Mr. Himelspach- I would say the water in the James River itself would have to  
 1150 rise, a non-technical estimate, thirty-some feet of water in the James River.  
 1151  
 1152 Mr. Green- Okay.  
 1153  
 1154 Ms. Rozmus- There is a pretty steep, excuse me, there's a pretty steep bank  
 1155 from the river. I don't have an excellent photo of that, but you can kind of see it drops  
 1156 down pretty low.  
 1157  
 1158 Mr. Blankinship- Let me see if I can get that number.  
 1159  
 1160 Mr. Himelspach- Like I said that bank is probably 25 feet from the water line,  
 1161 the mean waterline up to the top of the bank. And then slopes another two to three feet  
 1162 up to the house itself.  
 1163  
 1164 Mr. Johnson- But you also have a new floodplain as well that close into the  
 1165 house.  
 1166  
 1167 Mr. Himelspach- Yes.  
 1168  
 1169 Ms. Rozmus- Yeah, so I would like to just reiterate that the floodplain on the  
 1170 new lot is very minimally changed. It does change a little bit of the square footage of the  
 1171 total lot. The floodplain significantly changed the existing lot. However, if the new lot is  
 1172 not approved, we can just continue on. This house will still be okay. It does not require a  
 1173 variance. Now, if they wanted to add something to the house, it would require a variance  
 1174 to the floodplain. But because they have enough square footage in the entirety, it would  
 1175 not require a variance. Does that make sense?  
 1176  
 1177 Mr. Green- No. Two variances. One variance is for the new house.  
 1178  
 1179 Ms. Rozmus- Yes.  
 1180  
 1181 Mr. Green- The second variance is for the existing house.  
 1182  
 1183 Ms. Rozmus- Yes.  
 1184



1185 Mr. Green- So, if it doesn't require a variance, why are we even voting on  
1186 a second variance?  
1187

1188 Ms. Rozmus- We only need to vote on the second variance if the first  
1189 variance is approved. So, the first variance cuts this lot off. It cuts about, I don't have the  
1190 exact... I had to dig through to find the exact number. But it cuts off enough square  
1191 footage that the existing house does not have enough square footage outside of the  
1192 floodplain to be zoning compliant. So, if this lot is not approved, it does have enough  
1193 square footage. So, it's really kind of like...  
1194

1195 Mr. Green- You lost me.  
1196

1197 Mr. Himelspach- Because of the way zoning works, as I understand in the  
1198 application of this, the total area of the lot outside of the floodplain is applied because we  
1199 are removing lot nine, and that reduces the area. If we wanted to build inside of the  
1200 floodplain, we understand that that would require something else. We do not intend to  
1201 add, or make any changes to lot 10 and 11, which is where the original house is. The only  
1202 reason for the variance is due to the fact that the separation to make the lots still remain  
1203 a legal lot, we have to, we've been told we have to get this variance. But we do not intend  
1204 to make any changes on that lot.  
1205

1206 Mr. Green- I'm just, the way that I see it, I'm just concerned that it looks  
1207 like a portion of your house could potentially flood.  
1208

1209 Mr. Himelspach- But we do carry the flood insurance, and our flood insurers  
1210 has taken into consideration the new FEMA lots and had a \$200 change to their estimate  
1211 of what our damages were potentially.  
1212

1213 Mr. Blankinship- The height above the river is about 22 feet, according to the  
1214 county maps.  
1215

1216 Ms. Rozmus- Thank you.  
1217

1218 Mr. Blankinship- So, certainly the James can rise by that much.  
1219

1220 Mr. Green- Before it floods?  
1221

1222 Mr. Blankinship- Yes, sir.  
1223

1224 Mr. Green- Is how it floods?  
1225

1226 Mr. Blankinship- Yes. And the new house, as you can see, is farther from the  
1227 river. The proposed location is farther from the river, so it would be less likely to flood.  
1228

1229 Mr. Pollard- Alright, any other questions for the applicant?  
1230

1231 Mr. Johnson- Yes. Also, I noticed you all, you're running another line. Is that  
1232 to the pool house, or whatever?  
1233  
1234 Mr. Himelspach- What you see there, the trench, is the permitted electrical work  
1235 that was required under the first variance because of the way the original electric to the  
1236 pool house was routed through the sheds. The sheds are the black box that are on that  
1237 picture that sat on the border, the transition line. Those have to be removed. To remove  
1238 them, we had to reroute the electrical, we have a permit. And actually, we are scheduled  
1239 for final inspection on this permit later this week.  
1240  
1241 Mr. Blankinship- So the building that crosses that property line, could you point  
1242 to that please, Sara. That was there in 2022 when...  
1243  
1244 Mr. Himelspach- Yes, it was.  
1245  
1246 Mr. Blankinship- ... this was approved?  
1247  
1248 Mr. Himelspach- That has been there, as long as we know. And it was part of  
1249 the conditions that those buildings had to come down in conjunction, in order to comply  
1250 with the original variance.  
1251  
1252 Mr. Blankinship- So, has that building been removed?  
1253  
1254 Mr. Himelspach- It has not been finally removed because we are waiting on the  
1255 final electrical in order to all of that shift. Because, as I said, the electrical for the pool  
1256 house currently runs through that building and it's part of the process. It's inches away  
1257 from being pulled down.  
1258  
1259 Mr. Blankinship- So, that is still one of the conditions. One of the proposed  
1260 conditions if this is approved...  
1261  
1262 Mr. Himelspach- Yes, sir.  
1263  
1264 Mr. Blankinship- ... is that all of the buildings will have to be brought into  
1265 conformance with the setbacks.  
1266  
1267 Mr. Himelspach- Yes, sir.  
1268  
1269 Mr. Pollard- Any other questions for the applicant? Alright, do we have,  
1270 well, we know we have persons to speak for or against. Any person to speak for? And  
1271 anyone to speak against? Please go to the mic. State your name for the record.  
1272  
1273 Mr. Marshall- Robert Marshall.  
1274  
1275 Mr. Pollard- Last name, spelling of your last name please.  
1276

1277 Mr. Marshall- M.A.R.S.H.A.L.L.

1278  
1279 Mr. Pollard- Proceed.

1280  
1281 Mr. Marshall- Good morning, Board. Thank you for your service. I know it  
1282 takes a lot of time. Some of these meetings are short, and some are longer. And I  
1283 appreciate your service to the County. These boards are important, so I appreciate your  
1284 service. I'm a lifelong resident of Henrico County. I want to start off by saying that Mr.  
1285 Himelspach was incorrect. He's new to the neighborhood. So, my parents have been  
1286 there since 1969, '70. I guess they applied for a variance in 1970, perhaps, to build the  
1287 house that they are in.

1288  
1289 Mr. Blankinship- That's correct.

1290  
1291 Mr. Marshall- And so, it did flood when I was a boy in the '70s. I heard the  
1292 stories, I don't remember it. But according to the stories it surrounded the Gregson's  
1293 house on three sides. One of the concerns on the map, if you go far, the further down the  
1294 road you go there's an inlet. And that inlet floods. That inlet is literally, maybe two feet  
1295 above, three feet above inlet level. So, their other concern just for that neighborhood, not  
1296 just how high we are from the river level. So, I objected in 2022, I don't want to sit here  
1297 and reargue that case. He was granted the variance even though I thought it was  
1298 incorrect. It's not a hardship. Mr. Himelspach knew this lot didn't meet the requirements  
1299 when he bought the house because he researched it before he closed on it. So, he knew  
1300 that it didn't meet the requirements, you guys granted him the variance, and we move on.  
1301 So, if you approve this lot for him, then he has to come immediately afterwards, and you're  
1302 going to have to vote case 2024-101288 that's going to allow him to stay in the house  
1303 that he's in. So, I just, and if he had to build his house it would require all three lots  
1304 because he does have enough as he currently sits, to stay in the home without... You  
1305 won't hear the next case if you deny this case because he has to come back in and say,  
1306 "Well, hey, can I stay in my house since you approved this other house on my land". And  
1307 I think this sets a dangerous precedent for Henrico County to allow homes to be built in  
1308 floodplains. You know, I just think it opens up a can of worms potentially for this Board  
1309 and Henrico County to hear potential cases down the road on building houses in a  
1310 floodplain. And so, I don't really have, you know, like I said, I had a whole lot to say at the  
1311 last case on the lot lines and how I don't think it's appropriate. And it's not a, we can argue  
1312 about the point of hardship. It's not a hardship case. He wants to build a home on a lot  
1313 that's not conforming with Henrico County's current lot lines and square footage. It's 5,000  
1314 feet short on the square footage, and about 50 feet short... or a hundred feet short, Mr.  
1315 Blankinship?

1316  
1317 Mr. Blankinship- 50 short.

1318  
1319 Ms. Rozmus- 50 feet.

1320  
1321 Mr. Marshall- 50 feet short on the lot line. So, I really, vehemently request,  
1322 or we respectfully request that this gets turned down. And I just think that you're going to



1323 be in for a lot more cases down the road, in building homes in floodplains. And that's my  
1324 argument.

1325  
1326 Mr. Blankinship- Mr. Marshall, did you want to mention the driveway?  
1327

1328 Mr. Marshall- I do not. We all heard the case in 2022, we did not have a  
1329 plan, you know, to his defense he did not have a plan, he just wanted approval. Their  
1330 current driveway does hug right up against the adjoining property's driveway, which I'm  
1331 not a fan of. I know I live in the West End and my neighbor's driveway is right up against  
1332 mine. So, that's not anything that I love, but I don't... I'm not going to argue that Mr.  
1333 Blankinship.

1334  
1335 Mr. Blankinship- Okay.  
1336

1337 Mr. Marshall- I don't like it but I'm not going to argue that.  
1338

1339 Mr. Green- Mr. Marshall, with all due respect, I was sitting here and  
1340 vaguely remember this case, but 2022 was a long time ago, and I'm an old guy. So, if you  
1341 could refresh us with some of the prior arguments...  
1342

1343 Mr. Marshall- Sure.  
1344

1345 Mr. Green- ... that would be very helpful because we do have some new  
1346 members on the Board  
1347

1348 Mr. Marshall- So, Mr. Himelspace bought this house, and they intended to  
1349 put a family subdivision on this property. Which abuts my mother's property. She's here  
1350 today, and she's lived there since 1970. And she does not want another house that's  
1351 literally a few... She can show you the picture. I mean, where they want to put that house,  
1352 I mean, you could almost reach your arm out and hit the lot line. I think it's 20 feet is all  
1353 they have. And they're going to put a driveway in the whole 20 feet from our lot line. Which  
1354 is another maybe 12, 15 feet to her home. And so, we were not in favor of that for many  
1355 reasons. But we do think it's going to devalue our property, number one. For privacy  
1356 reasons, number two. And number three, I just didn't feel like... I feel like they knew this  
1357 lot didn't conform when they bought it. They didn't buy this property and then... They  
1358 didn't inherit this property. A hardship case to me is, my mom dies, leaves me a property  
1359 that doesn't conform, I can't do anything with it. I'm paying taxes on it. Nobody wants it.  
1360 Can I put a small home on it? Can I get it zoned B-3 so I can store cars on it? What can I  
1361 do? That's a hardship. When someone buys a home knowing that the lot, they can't build  
1362 a home on there. Then they come in before the County and applies for a variance to build  
1363 a home. To me, that's not a hardship case. That's something that's a self-interest case.  
1364 And they have good reasoning. They want to move, I think, Mr. Himelspace's sister. And  
1365 that's fine if they had the room to do it. We'd welcome them as neighbors. And we still  
1366 welcome them as neighbors. But as far as this real estate issue is concerned, it's two-  
1367 fold. I don't think it should've been passed in 2022, but they passed it, and we moved on.  
1368 But now it's come back up that it doesn't comply with FEMA, and I just think the County's

going to have a hard time explaining in the future against a case that comes in front of you why we let this case go through. And I'll be hunting some lots in this area to buy and build a home, if I potentially can, if y'all are going to allow this to happen. So, I think that's what you guys got to decide. So, it's a two-fold case where you have to go back to 2022 this wasn't an issue, but it is today.

Mr. Green- Now what's the 50-foot thing, again? Can you show me? Can you show us?

Mr. Blankinship- The lot width that's required in this district is 150 feet.

Mr. Green- Right.

Mr. Blankinship- And the lot is only 100 feet wide. And that is the same as the variance that was granted in 1970 for the lot to the north. As you can see, you can see the tail end of it there. That lot is also 100 feet wide, and the next two houses up are the same. I think the third one to the north might be 125. But they're all short of the 150-foot requirement.

Mr. Lawrence- I'm sorry. Could you clarify for me, Mr. Blankinship. It says that Mr. Marshall's lot, is his lot the one that was granted a variance in 1970 and is also 100 feet wide?

Mr. Blankinship- Yes, that is correct.

Mr. Pollard- Question.

Mr. Lawrence- Does the floodplain affect that lot as well?

Mr. Blankinship- It affects the end of the lot abutting the river. Yeah, there you go. You can see it doesn't come quite as far up.

Mr. Pollard- So, this variance, this case that we're hearing today is to create lot nine?

Mr. Blankinship- Well, the lot exists. It's been a separate lot since the 1920s.

Mr. Pollard- In 2022, is that when we created lot nine?

Mr. Blankinship- No, in 2022 lot nine was approved to be used separately from 10 and 11.

Mr. Pollard- Right.

Mr. Blankinship- And there are two other lots that...

1415 Mr. Pollard- In 2022, was approved to be used separately for a house to  
 1416 be built there.

1417

1418 Mr. Blankinship- Yes.

1419

1420 Ms. Rozmus- Yes. The house plans have not changed.

1421

1422 Mr. Pollard- Okay.

1423

1424 Mr. Blankinship- But, at that time the existing house, 9770, even if you'd cut off  
 1425 lot nine, the existing house had more than 30,000 square feet of land outside of the  
 1426 floodplain. Two years ago, there was no need for a variance for the existing house, even  
 1427 if lot nine was developed separately. But with the change in the floodplain, now if lot nine  
 1428 is sold separately the existing house on lots 10 and 11 would also be short. So, that's why  
 1429 there are two cases now, when there was only one case two years ago.

1430

1431 Mr. Green- But you said that...

1432

1433 Mr. Blankinship- And it is confusing.

1434

1435 Mr. Green- But you said that if one is denied it won't impact the other.

1436

1437 Mr. Blankinship- If the first case is denied, then lot nine could not be sold  
 1438 separately from 10 and 11. And all of the land on lots nine, 10, and 11 outside of the  
 1439 floodplain meets the 30,000 square foot requirement.

1440

1441 Mr. Marshall- And he's going to have to come in and apply immediately  
 1442 afterwards, he's going to have to argue that he can stay in his home because you  
 1443 approved the other lot. In a nutshell.

1444

1445 Mr. Blankinship- Right. That case is on the agenda. That is part of this public  
 1446 hearing. There will be two motions.

1447

1448 Mr. Marshall- Which I hope you approve it either way. I don't want them to  
 1449 be removed from their home regardless. You know, if you approve the first case, I hope  
 1450 you let them stay. I don't want anybody to be kicked out of their home. We just don't think  
 1451 that this home should be built, for multiple reasons, that I've already stated.

1452

1453 Mr. Green- See, what's going on?

1454

1455 Ms. Rozmus- You won't need to vote on the second case if the first case is  
 1456 denied. It's just a moot point, everything is fine. We are good to go.

1457

1458 Mr. Pollard- The only case we have to really worry about is this one.  
 1459 Because after we worry about this one, everything just kind of takes care of itself.

1460



1461 Mr. Blankinship- Because if you don't sell lot nine separately, or use lot nine  
1462 separately, there's enough land on nine, 10, and 11 to meet the requirements. It's only if  
1463 lot nine is developed separately that 10 and 11 fall short.

1464  
1465 Ms. Rozmus- Yes. It was... I'm sorry I interrupted you.

1466  
1467 Mr. Green- Go ahead.

1468  
1469 Ms. Rozmus- It was previously, in 2022, not an issue because the floodplain  
1470 did not come up this high. I don't mean to be nit-picky, but the house has been outside  
1471 the floodplain in the past. When it was built in 1940, it was essentially outside the  
1472 floodplain, but as the floodplain changes, now it's inside the floodplain.

1473  
1474 Ms. Pollard- In my mind, in this case, we can only worry about lot nine. And  
1475 figure out, because that's what we worried about in 2022.

1476  
1477 Ms. Rozmus- Yes.

1478  
1479 Mr. Pollard- The question for me is did we make the right decision in 2022  
1480 or are we changing the decision made in 2022 because the floodplain changing is  
1481 something the applicant didn't do.

1482  
1483 Mr. Green- Well, the floodplain doesn't impact it.

1484  
1485 Ms. Rozmus- It doesn't impact that...

1486  
1487 Mr. Blankinship- It does. They have a variance now that says they can build on  
1488 a lot of only 26,000 square feet. But now they have a lot of only 25,000 square feet,  
1489 because 1,000 square feet was taken away by FEMA.

1490  
1491 Ms. Rozmus- Right, for the lot area. But as far as the floodplain touching the  
1492 proposed house, it doesn't.

1493  
1494 Mr. Lawrence- Can I make a comment, Mr. Chairman? I think there's been  
1495 an extensive tightening of regulations by FEMA in the past couple of years. I'm very  
1496 familiar with this because my wife has a cousin with a cottage down in Hilton Head, and  
1497 they are severely restricted now on how they can extend their porch because of new  
1498 regulations. We're going to see more cases like this because the floodplains, you know,  
1499 continue to get bigger and bigger. Historically that's been the case.

1500  
1501 Mr. Blankinship- And more complicated. I was told yesterday that we have a  
1502 case where they want to add an air handler on the roof of a building that's located in the  
1503 floodplain, and they're required by FEMA to do a "No Rise Certificate" saying that adding  
1504 something on the roof of the building is not going to make the floodplain any taller. Which  
1505 seems fairly obvious to everybody else, but the regulations have gotten...

1507 Mr. Lawrence- And the other one's a question, I guess. But we received a  
1508 briefing by staff during the last couple months about new Court of Appeals decisions and  
1509 how they've affected how we look at variances. Does that have a bearing on this case?  
1510

1511 Mr. Blankinship- Well, it could. Our position is that lot nine has been a separate  
1512 parcel of real estate for 100 years. Lot nine has no other reasonable use. So, our position  
1513 two years ago, and our position today, is that lot nine taken by itself meets the stricter  
1514 Cochran Standard. So, the relaxed standard by the Court of Appeals, you know, certainly  
1515 doesn't make it any stricter. But, in terms of the legal requirements, you know, we believe  
1516 that this case meets the legal requirements for a variance. The question is whether the  
1517 detrimental impact outweighs that. And that's the question that staff doesn't answer, that  
1518 the Board answers.  
1519

1520 Mr. Lawrence- Thank you.  
1521

1522 Mr. Johnson- You had something else?  
1523

1524 Mr. Pollard- In 2022, why was a variance needed?  
1525

1526 Mr. Blankinship- A variance was needed in 2022 because prior to that even  
1527 though the lot was a separate parcel of real estate it had always been used together with  
1528 lots 10 and 11. And it does not meet the lot width requirement or the lot area requirement  
1529 standing by itself. So, when they came in to build a new house on an existing lot, they  
1530 weren't creating a new lot, but they were using a lot that did not meet the zoning standards  
1531 for minimum lot area and lot width.  
1532

1533 Mr. Pollard- But with the zoning, if a house goes there, it will still be in line  
1534 with adjoining lots.  
1535

1536 Mr. Blankinship- Yes. It's the same size as the lot to the north. The lot north of  
1537 that has actually been divided front and back, but there's only one house on it. And then  
1538 the one just north of that, I think, is a little wider but still does not meet the requirement.  
1539 Today's requirement.  
1540

1541 Mr. Pollard- Okay.  
1542

1543 Mr. Lawrence- I have another question, Mr. Blankinship. The staff report  
1544 refers to a Family Subdivision. I know in Henrico if you have a large parcel of land, it can  
1545 be subdivided. I don't know what the exact rules are, but once or twice for family  
1546 members. Does that have a bearing on this case?  
1547

1548 Mr. Blankinship- It sort of does. It's just an additional level of complication. But  
1549 since you brought it up, I'll go ahead and explain it. When this case came before us in  
1550 2022, we always check whenever we have requests like this, we check the maps to make  
1551 sure it has public street frontage as well. So, we check the GIS and we checked the  
1552 Department of Public Works inventory and they both reported Osborne Landing as a



1553 public street. So, we did not put the public street frontage variance on the request at that  
1554 time. Come to find out both the GIS and the inventory were wrong. Osborne Landing was  
1555 not a public street. So, when they came in to build the house, they were told the only way  
1556 you can do this on a private street is through a family subdivision. That was consistent  
1557 with their plans anyway because they intended this home to go to a family member. And  
1558 they had no problem with keeping it within the family for five years. So, the family  
1559 subdivision was one of two ways to work around the lack of public street frontage. But  
1560 this time, as you see, we did also advertise the variance for public street frontage. Now  
1561 that it's shown on the maps as a private road, we picked that up on the variance as well.  
1562 So, they will have two ways of resolving that issue.

1563  
1564 Mr. Lawrence- Is there any of Osborne Landing that is public, or is it all  
1565 private?  
1566

1567 Mr. Blankinship- It is all private. You see at the very north end of the image on  
1568 your screen there is where Osborne Landing ties into, it's sort of... It's Osborne Turnpike  
1569 going north and it's Kingsland Road going east from this corner. And all of that is 30-foot-  
1570 wide right-of-way that was never accepted by the County as a public street. I think in  
1571 2022, when the error was realized they had to actually go out and change the street sign  
1572 from the green sign that indicates a county road to the white sign that indicates a private  
1573 road. Because we even had the wrong color sign up. That's, you know, how consistently  
1574 the situation was misunderstood. But there is a written maintenance agreement that binds  
1575 all of the property owners on this street to participate in the maintenance of the street.  
1576 And it does run with the land. It goes to heirs and assigns. So, the Himelspachs are now  
1577 subject to that variance, sorry, that agreement. And if a new house is built on lot nine,  
1578 then the occupant/owner of that house will also be bound by that agreement. It runs with  
1579 the land like a covenant on a deed. We have confirmed with the County Attorney's office  
1580 that they will be bound by that.

1581  
1582 Mr. Lawrence- Do you know how many houses are located on Osborne  
1583 Landing? Approximately.  
1584

1585 Mr. Blankinship- It's seven, eight. Somewhere in that number. Did you say  
1586 there's one more... Do you have the expanded aerial? No, that is the expanded aerial.  
1587

1588 Ms. Rozmus- Yeah, this is the expanded.  
1589

1590 Mr. Blankinship- Okay. Let me switch maps and I'll tell you.  
1591

1592 Mr. Green- The question I have also, and we've dealt with it before. A new  
1593 house, if it's built on kind of the end of the corner, doesn't impact the change of address.  
1594 It looks like this house will impact the change of address for all of the neighbors.  
1595

1596 Mr. Blankinship- No, sir. Ms. Marshall's house is 9740. This house would be  
1597 9750, and the existing house is 9770.  
1598



1599 Mr. Green- Okay.  
1600

1601 Mr. Blankinship- So, there are enough numbers already in between, and we've  
1602 already assigned a temporary address that does not require any readdressing.  
1603

1604 Mr. Lawrence- That was good planning.  
1605

1606 Mr. Blankinship- Sometimes we do that.  
1607

1608 Mr. Green- And then the other question I have... I remember this now.  
1609 When we first heard about this house, the applicant was building it for his sister. I'm not  
1610 hearing that now.  
1611

1612 Ms. Rozmus- He still is.  
1613

1614 Mr. Green- Okay. Well, now then the sister will be free to sell to anybody.  
1615

1616 Mr. Blankinship- After five years, if they complete the family subdivision  
1617 process. One of the requirements of that process is that it has to be maintained by that  
1618 family member for five years.  
1619

1620 Mr. Pollard- Are there any other persons in the audience to speak for or  
1621 against this before we hear from the applicant again?  
1622

1623 Mr. Blankinship- There is no one on Webex.  
1624

1625 Mr. Pollard- Okay.  
1626

1627 Mr. Blankinship- And it looks to me like there are three houses south of the  
1628 existing dwelling on Osborne Landing. There are three north of the existing dwelling on  
1629 the west side of Osborne Landing. And there's one on the east side that also fronts on  
1630 what would be Kingsland Road at that point, I guess. So, there's a total of seven houses  
1631 that could use Osborne Landing.  
1632

1633 Mr. Lawrence- Thank you.  
1634

1635 Mr. Pollard- Sir, would you like to respond?  
1636

1637 Mr. Himelspace- Yes, I would like to respond. The biggest thing is I do have a  
1638 good relationship with the neighbor. And I hope that throughout that this process we can  
1639 say we have a difference of opinion on this one matter, but I don't think that should soil  
1640 the relationship. The biggest thing, we are not looking to build in the floodplain. We are  
1641 looking to build. The new building will be outside the floodplain. No new buildings will  
1642 occur in the floodplain. To answer the question about the family, yes. It is my sister-in-  
1643 law. That deed requirement for the five years of transfer will be in that deed. To conclude,  
1644 if it does transfer at all, it will transfer back to the family. The intent is to keep this property

1645 within the family, not only in the five-year period but beyond. Lastly, talking about the  
1646 variance on the existing house, that is, and I'm probably going to take heat for saying this,  
1647 but that is an administrative thing. Because we are not moving that house. We are not  
1648 building on that house. To deny the variance on that point would be essentially saying  
1649 that because there's a new FEMA map, we now would have to vacate our house because  
1650 of the floodplain changes. Which I think is a precedence I don't know that Henrico County  
1651 wants to set. As FEMA changes floodplains we are now going to force people to vacate  
1652 houses that are preexisting.

1653  
1654 Mr. Pollard- No, I don't think so.

1655  
1656 Mr. Himelspach- That is all, unless there's any further questions about the  
1657 rebuttal. This is no change from what we previously had talked about. We've actually  
1658 considered, put in considerable, in the tune of 30,000 plus, in complying with the previous  
1659 variances, in good faith. We just want to continue with what the Board has already  
1660 approved. Thank you for your consideration and time.

1661  
1662 Mr. Blankinship- Let's close the hearing.

1663  
1664 Mr. Pollard- Alright, we will now close the public hearing. Is there a  
1665 motion?

1666  
1667 Mr. Johnson- Yes. On 1257?

1668  
1669 Mr. Blankinship- Yes, sir.

1670  
1671 Mr. Johnson- Okay, I motion that we approve the first one.

1672  
1673 Mr. Green- No, the first one is the new house. The second one is his  
1674 existing house.

1675  
1676 Mr. Johnson- No.

1677  
1678 Mr. Green- Right?

1679  
1680 Ms. Rozmus- Yes.

1681  
1682 Mr. Blankinship- The first one is the new house.

1683  
1684 Mr. Johnson- Okay.

1685  
1686 Ms. News- Mr. Blankinship, they're acting on 1257 first, correct?

1687  
1688 Mr. Blankinship- Yes.

1689  
1690 Mr. Green- And point of clarification, 1257 is to build the new house.

1691  
 1692 Mr. Blankinship- Where they want to build the new house, right.  
 1693  
 1694 Mr. Johnson- I got turned around here. Okay. With that one, okay, that's  
 1695 what ... With that, I move that we deny the variance. The property already has a  
 1696 reasonable use as additional yard area for the existing house. And according to the new  
 1697 floodplain lot nine, 10, 11 must be combined to provide enough lot area for the existing  
 1698 dwelling.  
 1699  
 1700 Mr. Green- Second.  
 1701  
 1702 Mr. Pollard- Motion has been made and properly seconded. Any further  
 1703 discussion? Hearing none, all in favor say, Aye.  
 1704  
 1705 Board- Aye.  
 1706  
 1707 Mr. Pollard- Are there any opposed? The Ayes have it.  
 1708  
 1709 On motion by Mr. Johnson, seconded by Mr. Green, the Board **denied** case **VAR-2024-**  
 1710 **101257**.  
 1711  
 1712  
 1713 **Affirmative:** **Broadway, Green, Johnson, Lawrence, Pollard** **5**  
 1714 **Negative:** **0**  
 1715 **Absent:** **0**  
 1716  
 1717  
 1718 Mr. Green- Now, do we have to vote on the next one?  
 1719  
 1720 Mr. Pollard- No?  
 1721  
 1722 Mr. Blankinship- It's on the agenda so you... It really is moot now, because if  
 1723 lot nine cannot be...  
 1724  
 1725 Mr. Pollard- We can make a motion...  
 1726  
 1727 Mr. Blankinship- Yeah, we might as well go ahead and vote on it. It's on the  
 1728 agenda and has been advertised and noticed. Well, hold on.  
 1729  
 1730 Mr. Green- I thought we didn't have to vote on that.  
 1731  
 1732 Mr. Blankinship- Hold on just a minute. If you did vote on that and you approved  
 1733 it, you'd basically be contradicting the decision you just made because you'd be saying  
 1734 that that lot can stand on only 17,000 square feet outside the lot area. If you do not take  
 1735 any motion, the existing dwelling will remain on all the property. You're not taking anything  
 1736 away in those terms.



1737  
1738 Mr. Pollard- Can we defer it indefinitely or ...  
1739  
1740 Mr. Blankinship- If you deny this, then you would say...  
1741  
1742 Mr. Green- We're pushing him out of his house.  
1743  
1744 Mr. Blankinship- No. You would just be saying his house cannot stand on  
1745 17,000 square feet. The only thing that's on the table is the lot area requirement. Which  
1746 it would currently meet.  
1747  
1748 Mr. Pollard- Quick question off topic. Would they be able to reapply?  
1749  
1750 Mr. Blankinship- Yes, they can reapply after one year. You cannot submit  
1751 substantially the same request within one year. So, they could reapply a year from now.  
1752  
1753 Mr. Pollard- Okay.  
1754  
1755 Mr. Green- So, what do we do?  
1756  
1757 Mr. Blankinship- I would recommend, to be consistent with your previous  
1758 decision, I would recommend that you deny 1288.  
1759  
1760 Mr. Johnson- 1288.  
1761  
1762 Mr. Blankinship- Do you agree with that Ms. News?  
1763  
1764 Mr. Pollard- It's just a little redundant, that's all.  
1765  
1766 Mr. Green- So denying it would not force him out of the home?  
1767  
1768 Mr. Blankinship- That is correct.  
1769  
1770 Mr. Johnson- That's what I'm hearing.  
1771  
1772 Mr. Pollard- It's just reinforcing that it's one whole lot.  
1773  
1774 Mr. Blankinship- If the first one was approved, the second one almost had to  
1775 be approved. But if the first one is denied, it doesn't, I'm not sure that it really matters, but  
1776 I think probably the most correct thing to do is to deny it.  
1777  
1778 Ms. News- Would the applicant be willing to withdraw at this point? If they  
1779 don't want an action on this at this point.  
1780  
1781 Mr. Pollard- Is deferring indefinitely a thing?  
1782

1783 Mr. Green- No. Could we withdraw, get a legal opinion to make sure that  
 1784 if it's challenged that we're on solid legal ground? Because right now we're back and forth.  
 1785  
 1786 Mr. Blankinship- That might be a good idea. I apologize. I should have been  
 1787 better prepared for that question. And I thought that I was, but I realize now that I'm not.  
 1788  
 1789 Mr. Green- I'd like to defer it and speak to legal.  
 1790  
 1791 Mr. Blankinship- Is that a motion?  
 1792  
 1793 Mr. Green- Defer it until we get a legal opinion?  
 1794  
 1795 Mr. Johnson- Yes.  
 1796  
 1797 Mr. Pollard- So, do you want to defer it just until next month?  
 1798  
 1799 Mr. Johnson- So, we'll defer this until next month.  
 1800  
 1801 Mr. Green- You need to retract...  
 1802  
 1803 Mr. Pollard- What's the case number?  
 1804  
 1805 Mr. Blankinship- 288.  
 1806  
 1807 Mr. Johnson- 288.  
 1808  
 1809 Mr. Pollard- So, you're deferring 1288. So, we need a motion to defer  
 1810 1288.  
 1811  
 1812 Mr. Johnson- Right.  
 1813  
 1814 Mr. Pollard- From you.  
 1815  
 1816 Mr. Johnson- Motion to defer 1288.  
 1817  
 1818 Mr. Pollard- Subject to a second.  
 1819  
 1820 Mr. Green- I second it subject to an opinion from legal counsel to make  
 1821 sure that we're on solid ground. Because if this is appealed then we need to make sure  
 1822 we're covered and we don't look wishy washy.  
 1823  
 1824 Mr. Blankinship- I apologize. I thought that was clear in my head. But now that  
 1825 I look at it harder, I'm just not 100 percent.  
 1826  
 1827 Mr. Pollard- Motion to defer has been made and properly seconded. Any  
 1828 further discussion? Hearing none, all those in favor say, Aye.

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Board- Aye.

Mr. Pollard- Are there any opposed? The Ayes have it.

On a motion by Mr. Johnson, seconded by Mr. Green, the Board **deferred** case **VAR-2024-101288** to obtain an opinion from the County Attorney's Office.

<b>Affirmative:</b>	<b>Broadway, Green, Johnson, Lawrence, Pollard</b>	<b>5</b>
<b>Negative:</b>		<b>0</b>
<b>Absent:</b>		<b>0</b>

Mr. Blankinship- Alright, then the next item on the agenda is the approval of minutes from the June meeting. I think you all received Mr. Lawrence's edits late last night. There were two that were substantive. One was the word jurisprudence was broken into two words, and it could conceivably have a different meaning. The other is a quotation, and because we just received this last night, we haven't had a chance to check the recording yet. But there is one quotation that I think what Mr. Lawrence was saying is for those in the audience, or for those in the room with us, or something along those lines.

Mr. Lawrence- I think you're right. I didn't articulate very well.

Mr. Blankinship- But we can go back and make sure we get it word for word. If you'll trust us with that. And we do need a motion.

Mr. Green- So moved.

Mr. Broadway- I second.

Mr. Pollard- A motion is made and properly seconded. Any discussion? All those in favor say, Aye.

Board- Aye.

Mr. Pollard- Any opposed? The Ayes have it.

On a motion by Mr. Green, seconded by Mr. Broadway, the Board **approved the minutes as corrected** for the **June 27, 2024** Board of Zoning Appeals meeting.

<b>Affirmative:</b>	<b>Broadway, Green, Johnson, Lawrence, Pollard</b>	<b>5</b>
<b>Negative:</b>		<b>0</b>
<b>Absent:</b>		<b>0</b>



1875  
1876 Mr. Blankinship- And the last thing on the agenda is the 2025 Calendar of  
1877 meeting dates and application deadlines. Not sure exactly what the motion is because  
1878 these just follow the rules. The rules dictate the dates, and we just provide them to you.  
1879 But we usually have a motion to receive, or to accept.  
1880  
1881 Mr. Green- So moved.  
1882  
1883 Mr. Pollard- Is there a second to accept the dates?  
1884  
1885 Mr. Lawrence- Second.  
1886  
1887 Mr. Pollard- Any discussion? All those in favor say, Aye.  
1888  
1889 Board- Aye.  
1890  
1891 Mr. Pollard- The Ayes have it.  
1892  
1893 On a motion by Mr. Green, seconded by Mr. Lawrence, the Board **accepted the 2025**  
1894 **Calendar of meeting dates.**  
1895  
1896  
1897 **Affirmative:** **Broadway, Green, Johnson, Lawrence, Pollard** **5**  
1898 **Negative:** **0**  
1899 **Absent:** **0**  
1900  
1901  
1902 Mr. Pollard- Did we vote on our minutes?  
1903  
1904 Mr. Blankinship- Yes.  
1905  
1906 Mr. Pollard- Is there anything else on the agenda? Is there a motion to  
1907 adjourn?  
1908  
1909 Mr. Johnson- So moved.  
1910  
1911 Mr. Broadway- Second.  
1912  
1913 Mr. Lawrence- Third.  
1914  
1915 Mr. Pollard- All those in favor say, Aye.  
1916  
1917 Board- Aye.  
1918  
1919 Mr. Pollard- Any opposed, just sit right there.  
1920

1921 Mr. Pollard- Motion carried.  
1922  
1923 On a motion by Mr. Johnson, seconded by Mr. Broadway, **the Board adjourned.**  
1924  
1925  
1926 **Affirmative:** Broadway, Green, Johnson, Lawrence, Pollard 5  
1927 **Negative:** 0  
1928 **Absent:** 0  
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Mr. Walter L. Johnson, Jr. Chair

  
Mr. Benjamin W. Blankinship Secretary