

1 MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING
2 APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY
3 ADMINISTRATION BUILDING IN THE GOVERNMENT CENTER AT PARHAM
4 AND HUNGARY SPRING ROADS, ON THURSDAY JUNE 23, 2016 AT 9:00
5 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-
6 DISPATCH JUNE 6, 2016, AND JUNE 13, 2016.
7

Members Present: Gentry Bell, Chairman
Greg Baka, Vice Chairman
Dennis J. Berman
Helen E. Harris
William M. Mackey, Jr.

Also Present: Jean M. Moore, Assistant Director of Planning
Benjamin Blankinship, Secretary
Paul Gidley, County Planner
R. Miguel Madrigal, County Planner
Sally Ferrell, Account Clerk

8
9 Mr. Bell - Welcome to the June 23rd meeting of the Henrico
10 County Board of Zoning Appeals. I ask you to please stand and join me in
11 pledging allegiance to the flag of our country.
12

13 Thank you. Mr. Blankinship, please read our rules.
14

15 Mr. Blankinship - Good morning, Mr. Chair, members of the Board,
16 ladies and gentlemen. The rules for this meeting are as follows: Acting as
17 secretary, I'll announce each. As I'm speaking, everyone who intends to speak to
18 that case should move down toward the podium. We will then ask everyone who
19 intends to speak to that case to stand and be sworn in. Then a member of the
20 staff will give a brief introduction to the case, and then the applicant will have
21 their opportunity to speak. After the applicant has spoken, anybody else who
22 wishes to speak on each case will be allowed to speak. After everyone has had a
23 chance to speak, the applicant will have an opportunity for rebuttal. After the
24 Board has heard everybody's comments and asked any questions they may
25 have, they will take that matter under advisement and proceed to the next
26 hearing. They will render all of their decisions at the end of the meeting. So if you
27 wish to hear their decision on a specific case, you can stay until the end of the
28 meeting, or you can check the Planning Department website—we usually get it
29 updated within the hour of the end of the meeting—or you can call the Planning
30 Department this afternoon.
31

32 This meeting is being recorded, so we'll ask everyone who speaks to speak
33 directly into the microphone on the podium there, state your name, and please
34 spell your last name just to make sure we get it correctly in the record.
35

36 We have all five members, and I don't think that we have any requests for
37 deferral or withdrawal that I've been made aware.

38
39 Mr. Bell - I'm not aware of any.

40
41 Mr. Blankinship - All right.

42
43 Mr. Bell - Let's begin.

44
45 **APL2016-00002 STEELHOUSE TAVERN** appeals a decision of the
46 director of planning pursuant to Section 24-116(a) of the County Code regarding
47 the property at 400 W Williamsburg Road (Parcel 824-716-7935) zoned Business
48 District (B-3) (Varina).

49
50 Mr. Blankinship - Would everyone who intends to speak to this case
51 please stand and be sworn in. All raise your right hands, please. Do you swear
52 the testimony you're about to give is the truth, the whole truth, and nothing but
53 the truth so help you God? Thank you. Mr. Gilbody will begin for the County.

54
55 Mr. Gilbody - With the agreement of counsel—. And let me hand
56 you some exhibits that I'm going to talk through. I have people who can testify to
57 the underlying facts of these documents, as I'll explain to the Board.

58
59 Ladies and gentlemen, members of the Board, Mr. Chairman, thank you. My
60 name is John Gilbody. I'm with the County Attorney's Office, and I'm here today
61 to present the case of the director in this appeal. I have some handouts. May I
62 approach?

63
64 Mr. Bell - Yes sir.

65
66 Mr. Gilbody - Thank you, Mr. Chairman. Just so I can frame the
67 issue for the Board, a new business opened up on March of this year on
68 Williamsburg Road in Sandston called the Steelhouse Tavern. It is a
69 restaurant/bar. It has two pool tables, and it has a number of different rooms—I
70 think three. In the back room, it's a game room. There are two pool tables.

71
72 At issue here is how one looks at 24-64(h), which is the relevant ordinance. What
73 the ordinance provides for is that a business that provides pool tables in a B-3
74 zoning district must close at midnight, absent a PUP. Now the position that
75 Steelhouse Tavern is taking is that they simply take the balls off the pool tables,
76 and then the pool tables are not provided, and therefore they can remain open.

77
78 Now, that's not the position of the director. The director's position is with plain
79 words, they say what they say, and they mean what they say, which is to say if
80 you have pool tables in your establishment, those pool tables are clearly
81 provided, and therefore you have to close at midnight.

82
83 And there are good reasons, good commonsense reasons for that interpretation,
84 not the least of which is enforcement. As a practical matter, if they're sitting right
85 there, how do you possibly police that on a day-to-day basis? But moreover,
86 what Steelhouse Tavern is asking this Board to do is add terms to the ordinance,
87 namely they want this Board to say oh well—write in if pool balls are provided on
88 the table such that they can be used as a pool table. That's not what it says. It's
89 simply not.

90
91 The director is applying the plain meaning. As I've indicated in the letter that I've
92 provided to this Board, he is charged with enforcement. It is uniformly and always
93 has been enforced in this manner. And I'm asking you to uphold the rule, the
94 Notice of Violation that was issued to the Steelhouse Tavern and uphold the
95 director's interpretation of 24-64(h).

96
97 The documents that I've provided you are primarily in response to counsel's
98 letter, counsel on behalf of Steelhouse Tavern's letter to this Board where it was
99 suggested that this was all sprung upon Steelhouse Tavern at the last moment
100 and that somehow the County was acting in bad faith. I'm just going to walk very
101 briefly and very quickly through these documents. They are chronological, more
102 or less.

103
104 The first document, exhibit 1, there's a Mr. Gorman who owns the property and I
105 understand works with Mr. Wayne Phaup, who is the operator of the Steelhouse
106 Tavern. In this document, Mr. Gorman is indicating that they won't be installing
107 pool tables. Well, that was back in November. What we have, then, is the next
108 document, exhibit 2, where you have a Preliminary Review Request form where
109 they're asking for pool tables, quite specifically. And interestingly, the date is
110 10/29/15. So clearly they had anticipated and thought of having pool tables from
111 the very beginning.

112
113 Exhibit 3 I think really speaks to the issue—and if you turn to the last page, I think
114 it's very important. While there is no date on the document itself, the fax cover
115 page indicates that this document was faxed to Mr. Phaup on November 4, 2015,
116 and there were discussions between Planning and Mr. Phaup. Very clearly—if
117 you look at the last full sentence in the first paragraph, it says, "Here are the
118 options for you to provide pool tables at your restaurant moving forward. Two
119 pool tables max, but must close the restaurant between midnight and 6 a.m." He
120 was told that, and Steelhouse Tavern was unquestionably aware of that fact back
121 in November. Keep in mind, they didn't open until March, about four and a half
122 months later.

123
124 What they did, understanding that they would need a PUP, they filed for a PUP.
125 And the date on that is 11/19/2015. You can see when you look at this document
126 that there is some other information. The memo that is attached to exhibit 3
127 actually provides information for Mr. Phaup because Mr. Moffett, who is here

128 today, provided some information to help him fill out this form, to help him
129 through this process. It became clear along the way to whomever that a deferral
130 would be a good way to go, and the Steelhouse Tavern has deferred the PUP
131 request. That's going to be before the Planning Commission I believe next
132 month. Counsel can correct me if I'm wrong. That document is #5. So this will be
133 taken up by the Planning Commission as a PUP in the future.

134
135 The next document, exhibit 6, is a staff report written by Mr. Moffett, and it
136 outlined the concerns that both fire and police had regarding this. And it also
137 included some suggestions and encouraged the owner and operator to reach out
138 to police and to County agencies to try to establish a track record. And indeed, if
139 you go back to exhibit 5, you'll see—what was the point of the deferment? To
140 establish a track record with the surrounding community and County agencies.

141
142 So there we are. That's what's happening.

143
144 Then comes opening time for Steelhouse in March 2016. Now, Steelhouse
145 knows it cannot—according to the County, cannot stay open past midnight. So
146 on or about the same day that they open, they apply for a business license, 2016
147 exhibit 7. You look at the back page, the last page in that—well actually, look at
148 the second to the last page first. It says do you have video games, billiard tables,
149 or similar amusements. Yes. Golf games and Buck Hunter, which I assume is a
150 video game where you pretend to shoot deer. Now it doesn't mention anything
151 about billiard tables.

152
153 The next page. Hours. It just has 7 to 12. It doesn't mention anything about
154 staying open past midnight at all. In fact, from the very beginning, Steelhouse
155 has taken the position that they can stay open as long as they want, that they
156 can stay open until 2 a.m., and the County's interpretation is wrong. But keep in
157 mind, they've said that the County sprung this on them, when the evidence is
158 quite clear that they knew for months that that was the County's position. They
159 never challenged it before.

160
161 And then they filled a document in the business license in what can only be
162 characterized as a misleading manner. Exhibit 8 is the actual Notice of Violation.
163 This document lays out the violation and it was issued by Mr. Phelps (Zoning
164 Inspector). You can barely see his name written. I think he wrote it in light blue.
165 He is here as well, if anyone on the Board would like to hear from him. He's the
166 gentleman on the third row who just waved at you.

167
168 Then you have the appeal, which is number 9, which was filled out by
169 presumably counsel or Mr. Phaup, along with a letter from counsel. I'm sure
170 you've had an opportunity to look at that material.

171
172 The final two tabs here are—I received a number of e-mails from residents, two
173 of which I put in. They're clipped together because I just received them

174 yesterday, late afternoon, after this packet had already been printed out. But you
175 have something from Donna Dowdy. I spoke to Ms. Dowdy briefly, and I asked
176 her to just put what she had to say in writing because I didn't feel comfortable
177 explaining her words to this Board. And she did. The problem she has is she has
178 people urinating essentially hundreds of feet from her house where she and her
179 husband and her grandchildren can actually see them. That's simply—it's
180 unacceptable.

181
182 Likewise, you can read Ms. Peters' e-mail. It talks about the loud noise, the
183 yelling and the cursing that is occurring late at night. Likewise, you have multiple
184 e-mails from Winnie McClanahan. I don't need to explain those to you; you can
185 read them for yourself.

186
187 And finally you have an e-mail from Lisa Brown who lives right—and I'm going to
188 show you very briefly a couple of pictures, if I may, to give you a clear picture of
189 where this all is.

190
191 But when you look at the documents that are provided, that were inserted, and
192 you pull them out, at the end there are a couple of pictures. In those pictures, you
193 can see by the back door to the game room outside is a table or tables, and it
194 looks like maybe almost a dozen chairs that apparently, according to Ms. Peters,
195 are used as a gathering area for people who smoke. Leave the game room and
196 smoke outside, right outside her house, within a couple hundred feet. That's what
197 she has to deal with every night. And on Thursdays, Fridays, and Saturdays
198 when the business is open until 2 a.m., you can imagine. That door being open
199 with blaring music and people smoke and drinking . . . that doesn't exactly make
200 for a nice residential experience for her, to say the very least.

201
202 I just received those pictures—as you can tell from the document—at 5:00 last
203 night. After I got those documents, I wanted to provide—because they show
204 what's going on at the restaurant, but they don't provide enough context. And
205 again, if I may approach, I have a couple of pictures that I want to show the
206 Board.

207
208 These were printed off of Google Maps, as indicated. That's Jackson Avenue.
209 And I wrote July 2015 because on the Google Maps application, it says that's
210 when the picture was taken. I printed these two off. And I printed them off so you
211 can get a sense. When you look at the first picture, you can see the area. On the
212 first picture to the left is where that table and chairs are. Next to that, that is I
213 believe Ms. Dowdy's home, although don't quote me on that. You can see there's
214 a residence right there. And that gives you a clear idea of how close that table is
215 to where the people are congregating and smoking and drinking and hanging out
216 on the weekend is to a residence. And also, as she has put it, they are
217 urinating—not in public because that's private land, but in plain view of the public.

219 And then the next picture, you can see Ms. Dowdy's house. That provides
220 perspective. That opens up into a whole neighborhood. There's a neighborhood
221 right there. Those are residents of this County who have to deal with a restaurant
222 that allows people to come out the back door and smoke and drink and urinate
223 and let loud music play through the open door. And they have to deal with that
224 three days a week.

225
226 This is why I put in my letter that the zoning ordinance in question regarding
227 billiard tables should be interpreted the way the director has interpreted it. This is
228 leading to exactly the type of situation that the zoning ordinance of this County
229 was designed to prevent.

230
231 That's all I have. Thank you.

232
233 Mr. Bell - Questions?

234
235 Ms. Harris - Mr. Gilbody, will you be furnishing us with information
236 on police reports?

237
238 Mr. Gilbody - I'll be happy to. There have been police reports
239 relative to this property. I have Sergeant Beadles here. There have been a
240 number of calls relative to this matter. Sergeant Beadles and I went over them
241 last night.

242
243 There was an initial complaint on March 15th. There was I think a soft opening of
244 the restaurant or something along those lines. But in any case, on March 15th,
245 Planning received a complaint, and that's what led to their investigation and the
246 Notice of Violation. There was a noise complaint on the fifteenth. It related to
247 dumping trash at 2 a.m. in the morning. There was another complaint that arose
248 from the restaurant. Apparently, a theft took place inside the restaurant. That was
249 March 31st. On April 8th, there was a loud noise complaint. Three units
250 responded to that. On April 10th, after midnight, there was an argument in the
251 parking lot. The police were called, but the subjects had already driven away by
252 the time the police arrived. And then actually on April 22nd at about ten till two,
253 1:50 a.m., there was a fight in the parking lot. Seven units were called, and
254 apparently a patron had to be removed by Steelhouse Tavern security and then
255 subsequently arrested. Whether or not that individual was actually convicted, I
256 have no idea, so I'm not going to represent that he broke any law. But it did
257 require a response by seven different units of Henrico Police.

258
259 Ms. Harris - Thank you.

260
261 Mr. Gilbody - Yes ma'am.

263 Mr. Berman - Mr. Gilbody, can you help me understand where the
264 County's thoughts are with regards to a connection of having a pool table and
265 needing to close at midnight?

266
267 Mr. Gilbody - Yes sir. As part of this process, I learned a little bit
268 about the history of the making of the sausage, as it were, you know, the
269 underlying ordinance. That was done back in 1992. My understanding is that at
270 that point in time, the code was readjusted such that—and so you'll understand.
271 The reason that two and four pool tables matter is that with two pool tables in a
272 B-3 district, you can stay open until midnight with no—you don't need a PUP.
273 You need nothing, because B-3 is the most permissive of the zoning schemes.
274 But if you have more than two, then you're considered a billiard hall or a pool
275 hall, in which case you have—there's a whole separate section under Chapter 4
276 that addresses how to do that. And that requires approval on the front end. You
277 have to get a PUP or some type of variance to operate a pool hall. That explains
278 why the number of pool tables is an issue.

279
280 As it relates to why they feel the need to have them close at midnight, it's
281 primarily because over time the police have looked at—and this is part of what
282 was looked at back in the early '90s—where are calls being generated from and
283 why, what type of establishment generates calls. They made the determination
284 that pool halls generate lots of calls, and so therefore it was in the public interest
285 for the health and safety of the citizens of Henrico to require that they close at
286 midnight. But if businesses operate in a proper manner and they show they are
287 good partners in the community, they can ask for PUP. But they have to come
288 and ask. The determination was really driven by crime. Although to be fair, it
289 does mention billiard tables, pool tables, and bagatelle tables. And I don't think
290 there's ever been a problem with a bagatelle table Henrico County that I'm aware
291 of.

292
293 Mr. Berman - Okay, thank you.

294
295 Mr. Bell - Since the ordinance in '90, '92, we've enforced this
296 code the way we are suggesting to enforce it today.

297
298 Mr. Gilbody - Yes sir.

299
300 Mr. Bell - All right. Thank you.

301
302 Mr. Gilbody - Uniformly and in every case. I have to attest to that on
303 information and belief, because I haven't been with the County since that time.
304 But I have asked that question on numerous occasions, and the answer has
305 always been in the affirmative.

306
307 Mr. Baka - I have a couple questions, sir. Why was the PUP
308 deferred to the following month? Why wasn't that heard prior to the BZA case?

309 Mr. Gilbody - Because the deferment request that they filed—I
310 believe it's exhibit 6—5 or 6—that's included in the—yes, it's exhibit 5, the
311 application for a deferral. I understand it was deferred at that point for six months,
312 so it's actually going to be heard in July. That's my understanding.
313

314 Mr. Baka - Okay.
315

316 Mr. Gilbody - And counsel will let me know if I'm incorrect.
317

318 Mr. Baka - All right. So just to clarify. This case is merely for the
319 appeal. The applicant has stated that they disagree with the interpretation of the
320 director of just 24-64(h). You've talked about a lot of information about the
321 business and related activity at different hours of the night. But this is merely
322 whether a business that has pool tables inside of it must close at 12:00 midnight.
323 So my question is there's a lot of noise and other things going on. If these pool
324 tables are indeed removed, can they stay open until 2 a.m. then?
325

326 Mr. Gilbody - That would be my understanding. I can't speak to any
327 other new activity that they might do or they might engage in that might otherwise
328 be considered an accessory use. But all things being equal, if they remove the
329 pool tables, they can stay open until 2 a.m. in a B-3 district.
330

331 Mr. Baka - Okay.
332

333 Mr. Gilbody - And to address your larger point, there was a lot of
334 sound and fury, as it were, about—and this really is a very narrow issue in many
335 ways. But some of the background issues were raised by counsel. And I just
336 wanted to be clear to this Board—it wasn't as if this was sprung upon Steelhouse
337 Tavern at the last moment. Throughout the process, Planning has worked with
338 the individuals involved with this business, and I wanted to make that very clear.
339 And I also think that in looking at the documents before you and how this matter's
340 been handled, it strongly suggests why the enforcement mechanism or the lack
341 of the ability to enforce this arbitrary "well we'll take the pool balls out of the pool
342 table," shows why we can't do that. When you're dealing with businesses that in
343 some cases provide documents that aren't necessary forthcoming.
344

345 Mr. Baka - Thank you. Thank you, Mr. Chairman.
346

347 Mr. Berman - Has the establishment stayed open beyond midnight
348 since opening?
349

350 Mr. Gilbody - Oh, yes sir.
351

352 Mr. Berman - With pool tables inside.
353
354

355 Mr. Gilbody - The pool tables are inside. There are a lot facts
356 swirling around, and you might as well hear this from me as well. The pool room
357 is a room that's off the side. If you want to look at the general layout of the
358 restaurant, if you go to exhibit 4, there is a layout sheet that is provided with the
359 PUP. That's the second page of exhibit 4. You can see how the restaurant and
360 bar are laid out, and you can see there are principally three rooms. It is what it is.
361 The room to the left sort of near the bottom is the pool room or game room. What
362 they had suggested at one point—"they" being the owners and operators of
363 Steelhouse—was to simply lock off that room at midnight. Unfortunately, that's a
364 violation of building and/or fire codes. And I cannot cite to this Board chapter and
365 verse on that, but sufficient it to say that would not be acceptable under
366 statewide building code. So that's just not an option. And the County has no
367 control over that whatsoever. It just can't be done. They had proffered that as a
368 way of addressing this issue. If they're going to make this room available to the
369 public, it has to remain open, and therefore the pool tables have to remain
370 available. There's simply no way around it.

371
372 Mr. Berman - Thank you.

373
374 Mr. Mackey - Mr. Chairman, I have a question. Mr. Gilbody, on the
375 previous picture I think we saw Thursday, Friday, and Saturday they were staying
376 open to 2 a.m.?

377
378 Mr. Gilbody - Yes sir.

379
380 Mr. Mackey - And you say to remedy this probably they were not
381 making the balls available on the pool tables?

382
383 Mr. Gilbody - Well that's what they're doing now. Allegedly.

384
385 Mr. Mackey - Okay.

386
387 Mr. Gilbody - I have some information that that hasn't been adhered
388 to, but that's a factual matter. I don't want to throw scuttlebutt, necessarily, as I
389 throw scuttlebutt. It's my understanding that what they're doing now—the position
390 that they're taking is that at midnight they pull the pool balls off.

391
392 Mr. Mackey - They close the pool tables at midnight but—

393
394 Mr. Gilbody - Right. But they remain open. And they have remained
395 open until 2 a.m. on Thursday, Friday, and Saturday since they've opened, as far
396 as I understand. I recall seeing a Facebook post saying they would close at 1
397 a.m. or something. So certainly after midnight. I can't speak exactly to 2 a.m. And
398 then I imagine they might close early if no one's there.

399
400 Mr. Mackey - All right. Thank you.

401
402 Mr. Gilbody - Yes sir.
403
404 Mr. Berman - Question. Are violations of Henrico's interpretation of
405 these regulations by the establishment putting their ABC license at risk?
406 Including noise ordinances.
407
408 Mr. Gilbody - That I can't speak to. I can certainly reach out to ABC
409 and find out, but so far—I think I indicated this in my first BZA matter. I'd like to
410 say that was conversant and understood, the interplay between ABC law and
411 zoning ordinances, but I don't.
412
413 Mr. Berman - Okay. That's fair.
414
415 Ms. Harris - Mr. Gilbody, in your handout that you gave us, behind
416 guide 3 is says the fax transmittal, and then the note says "Please see attached."
417 Did you give us copies of the attached fax?
418
419 Mr. Blankinship - Ms. Harris, mine seem to have been bound
420 incorrectly, and the attachment is actually after number 4.
421
422 Ms. Harris - Okay. All right.
423
424 Mr. Blankinship - It's the fax.
425
426 Mr. Gilbody - If I may approach and see what you have, that might
427 be the easiest way. Is that all right?
428
429 Ms. Harris - I see the fax under guide 4 from Bill Moffett. Yes.
430
431 Mr. Gilbody - There should be four total pages, ma'am. Do you
432 have four pages?
433
434 Ms. Harris - Behind guide 3?
435
436 Mr. Gilbody - Yes ma'am.
437
438 Ms. Harris - Two. We have two.
439
440 Mr. Gilbody - Okay. Well then someone made a copying error. I can
441 get you a copy.
442
443 Ms. Harris - That would be great. I have this, but I want the
444 attachment. The attachment is behind guide 4. So we have this.
445
446 Mr. Baka - I have the whole fax.

447
 448 Mr. Mackey - Yes, I have the whole thing.
 449
 450 Mr. Gilbody - If anyone has behind 3 anything other than four
 451 pages, I have copies here that have all four pages.
 452
 453 Ms. Harris - Mr. Gilbody, I see what was done. They just placed
 454 those faxes in section 4 instead of section 3. Yes, so we have those.
 455
 456 Mr. Gilbody - Oh, I understand. They were placed in the wrong
 457 place. Okay. All right.
 458
 459 Mr. Bell - Anything else, Helen?
 460
 461 Ms. Harris - No, that's all. Thank you.
 462
 463 Mr. Gilbody - Sorry about that, ma'am.
 464
 465 Ms. Harris - No problem.
 466
 467 Mr. Bell - Thank you.
 468
 469 Mr. Gilbody - Yes sir. Thank you, Mr. Chairman.
 470
 471 Mr. Tluchak - Good morning ladies and gentlemen of the Board. My
 472 name is Sean Tluchak. Last name is T-l-u-c-h-a-k. I'm here on behalf of
 473 Steelhouse Tavern.
 474
 475 For the record, I believe we are the applicant and probably would have preferred
 476 if we had gone first. I would like for this to be considered as our rebuttal that
 477 would close out the hearing on our behalf, if that's permissible.
 478
 479 Mr. Bell - Any objections?
 480
 481 Mr. Berman - Does the public get an opportunity to speak?
 482
 483 Mr. Tluchak - I think Board member Mr. Baka has clarified the point.
 484 We're not here to basically issue a referendum on Steelhouse Tavern; we're here
 485 to discuss the statute. I think what you've seen today is the reason why the
 486 County wants to interpret the statute the way they want to interpret it.
 487 Unfortunately, as a governing body, we can't do that. We have to read the statute
 488 literally. And what the statute says is when you're providing pool tables, after
 489 midnight you have to close. This tavern does not do that. If the statute had read,
 490 "If pool tables are present in the restaurant then you have to close at 12," it would
 491 be something different. The reason for that is clear. And Mr. Berman hit it on the
 492 head: Why did they pass this act? Why did they want you closed at 12 if you

493 have pool tables? We all know the answer to that. The answer is they don't want
494 guys out there gambling with sticks and pool balls creating a dangerous
495 environment. The Steelhouse Tavern is preventing that.

496
497 The question here is what makes a pool table a pool table? Is it the green felt or
498 the holes? No. It's the ability to play pool on the table. When you remove the
499 sticks and you remove the balls, it's no longer providing a pool table for use. We
500 all know that. And if that's not the case, if they're not providing a pool table, then
501 they should be able to stay open the extra hour and a half. That's all they're
502 asking for, the extra four and a half hours a week.

503
504 The other argument here is enforceability. How can we possibly enforce this? I
505 think in his argument he stated they'd have to hire extra inspectors for the hours
506 they stay open. I would urge you to look at any PUP you've issued over the last
507 few years or that's been issued by the County of Henrico. They all require that
508 kind of governance. You can't have music outside. You can't serve alcohol here.
509 Have to close at that time. To say that to enforce this would be impossible is
510 simply not true. And in fact, they were able to enforce it within the first week or
511 two of opening. So the enforceability goes out the window.

512
513 The other thing they discussed is the uniformity of the enforcement. I've been
514 informed that there are several, several restaurants in your County that have pool
515 tables that are open past midnight that do not have a PUP. I went through the
516 PUPs that I could find online to search to see if I could find a matchup of
517 restaurants that I've been informed are open past 12 with pool tables and wasn't
518 able to find those. Now that was a cursory review, and perhaps more needs to be
519 looked into. But I have serious questions about the uniformity.

520
521 The other things that were brought to the forefront were the complaints. I would
522 suggest to you that Ms. Dowdy, it would have been a shock to me if she hadn't
523 complained. She lives literally within about 150 feet of this tavern. I would expect
524 her to complain. It's unfortunate. I'm not sure if she moved into that house 15
525 years ago when the Sandstonian was there. It was a restaurant for 15 years. It's
526 7,000 square feet. I'm sure that if I was there with my wife, the first night they
527 opened, she would have complained too. I probably would as well. But that's not
528 a statement on the Steelhouse Tavern. That's just a fact of life that she was
529 there, they opened, reopened. She probably thought they were closed for good.
530 But instead, what Mr. Phaup did was take this 7,000 square feet of vacant space
531 in Henrico, renovated it completely, and now has a nice tax revenue source for
532 the County, and was willing to take extra efforts, in his opinion, to make sure that
533 it was in compliance.

534
535 Now I would urge you to look at the statute. The first statement in that statute is,
536 "Not more than two billiard, pool or bagatelle tables operated incidental to the
537 principal business use shall be permitted in any single business establishment." If
538 I read that, and I'm Mr. Phaup, and I'm trying to open up a business, and I'm

539 thinking I only have two, this isn't going to bother me, this isn't going fall on me—
540 if you look at the PUP that he filed, it was for more than two. He was trying to get
541 more than two tables in there. He had the room for them. So when he only put
542 two, he was thinking he was good.

543
544 I understand there's a fax out there. The fax is a little bit—well to me it's
545 questionable as a lawyer, and maybe it's not to you. But I see a fax confirmation
546 on two other pages. I don't see any fax heading on top of the fax. So I really don't
547 know whether or not that got there or not or if when he got it he said you know,
548 this is their interpretation of the code, but I'm reading it like this. And I know that's
549 how it came to me. He was surprised that he was being told he couldn't stay
550 open past 12 if he only had two pool tables and he was shutting them down so
551 no one could play pool. Those are the facts as they were related to me.

552
553 Now I think that's your duty today. I mean I think really you have to look at that
554 statute. You have to read it literally. And when you read it literally, to me it says
555 any business open to the public when—again not if—billiards are provided shall
556 close between the hours of 12 and 2. Why is that there? To not have pool being
557 played between 12 and 2. The Steelhouse Tavern is not having pool being
558 played between 12 and 2.

559
560 The other thing I'd like to hit on is the fact that there was the police call to the
561 establishment a couple of times. I have to drive by Bailey's Restaurant in Henrico
562 every Friday around 1:30 a.m. and 3:30 a.m. every night because I go visit
563 somebody. I have seen police at that establishment probably three out of every
564 four weekends I have been by there. That's not to say Bailey's is doing anything
565 wrong. They probably aren't. I've visited the place on occasion myself. It seems
566 to be run very well. So the fact that the police showed up a few times at a bar, at
567 a restaurant, at a tavern, is not stating that the restaurant or tavern isn't doing
568 anything right. It's that every once in a while you have some patrons who don't
569 behave very well. And in fact, it seems to me that in the last four months, there
570 has only been one arrest, so a lot of it was just noise complaints.

571
572 I just got these today, so I haven't had a chance to review them. But it seems to
573 be one particular e-mailer who provides some very long and descriptive e-mails.
574 And I don't think that is a commentary in and of itself on the establishment. I think
575 what you have is a particular individual that has taken it upon herself to make
576 some complaints. And I'm sure in your history you've seen that quite frequently.
577 So I think it would be unfair to wrap all of that into a decision on this statute. I
578 would urge you to look at it and see how you would interpret it if you were a
579 business owner. And I would urge you to think about how it would be interpreted
580 in the past and why they put it there. I think when you do, you're going to say
581 look, if there are no pool tables being used in this establishment after 12, then
582 the statute shouldn't apply.

583
584 Thank you. Any questions?

585
586 Mr. Berman - Yes, I have a question, counselor. Why did the
587 establishment not comply with Henrico's request and simply close at midnight
588 until the PUP was either approved or the zoning was changed?
589
590 Mr. Tluchak - I'll let Mr. Phaup speak to that, but let me first say this.
591 There were a lot of oral conversations with respect to the pool tables. And the
592 understanding was if he closed them up—that was his understanding. If he
593 wasn't offering those pool tables after 12, then that should be fine. That was his
594 understanding. He's reading the code literally like I am, like I think the Board
595 should. And so he's thinking, "I'm in compliance if I'm doing that." Originally, I
596 think he was looking at it as if I had more than two that's when it would have
597 come into effect.
598
599 Mr. Berman - But Henrico responded back and said, "No, our
600 interpretation stands." And they're the governing body. They are the ones that
601 are responsible for interpretation, not everybody else. I'll give you an example.
602 Let's say you went to the airport today, and you know that TSA does not take
603 kindly to having firearms on your person. Right?
604
605 Mr. Tluchak - Yes.
606
607 Mr. Berman - Let's say that you interpreted that as saying a useable
608 firearm, and you say to the officer there, "I don't have any bullets on me. I can't
609 use this gun. Why am I in violation? That's my interpretation. I have a right to
610 carry a gun through the airport." No, you don't.
611
612 Mr. Tluchak - Right. I would agree with you in that sense. I think
613 you're assuming that all that was made perfectly clear. You're assuming that Mr.
614 Phaup read this fax as literally as you are, because we're all sitting here and
615 we're saying all right, we're going to decide this issue. So we're all looking at it
616 like that. I think at that point what Mr. Phaup may tell you is that he thought that
617 was the County's interpretation at that time, not necessarily the governing body,
618 but this one individual. Wayne, did you want to speak to that? Would you like to
619 restate your question?
620
621 Mr. Berman - My question was, why didn't the establishment simply
622 comply with the interpretation of Henrico until such time that the zoning was
623 changed or the verbiage was changed?
624
625 Mr. Phaup - My interpretation was if I had two or less and none
626 were operational, then that was okay. A lot of other establishments stay open
627 later and blah, blah, blah. So that was my interpretation until I got the citation,
628 and then we filed this to find out really what the interpretation is of the code.
629
630 Mr. Berman - I'm sorry, I didn't catch your name.

631
632 Mr. Phaup - Wayne Phaup. P-h-a-u-p.
633
634 Mr. Berman - Your relationship to the establishment?
635
636 Mr. Phaup - Operator.
637
638 Mr. Berman - But you received the citation and you still stayed open
639 even though you knew that Henrico interpreted it as you need to close down at
640 midnight.
641
642 Mr. Tluchak - If I could speak to that. The appeal of the citation
643 stays any action on that. And I confirmed that with the Board that we can
644 continue operating past 2 because that stays the appeal.
645
646 Mr. Berman - So while the appeal is—
647
648 Mr. Tluchak - I didn't mean confirm with the Board, with the County.
649
650 Female - You mean past 12.
651
652 Mr. Tluchak - Yes.
653
654 Mr. Berman - So the appeal allows you to not change any of your
655 activities until such time as the appeal is ruled on?
656
657 Mr. Tluchak - Correct.
658
659 Mr. Berman - Okay. Thank you.
660
661 Mr. Tluchak - Any other questions?
662
663 Ms. Harris - Yes. Did you see the exhibit 11, the questions for
664 Steelhouse Tavern?
665
666 Mr. Tluchak - Ma'am, I'm seeing all of these exhibits for the first
667 time today.
668
669 Ms. Harris - Okay. Look at the one that is behind tab 11.
670
671 Mr. Tluchak - Okay.
672
673 Ms. Harris - Can we address those? There are eight questions.
674
675 Mr. Tluchak - Do you want me to read them and then answer them
676 from my knowledge? It's something that probably would be better to respond to

in writing instead of trying to go through each of these. I would have to confer with my client. I'm happy to try to do so.

Ms. Harris - Okay. If you could answer some of them, it would be great. Unless we defer the case, we do plan to vote on it today.

Mr. Tluchak - The first question, to state for the record, is "Have you reached out to any County agencies to address the issues raised in the January 16, 2016 staff report?" I'm not sure what the staff report is. Is that in here as well?

Ms. Harris - Yes.

Mr. Tluchak - What exhibit is that? You'll have to bear with me. This is the first time I'm seeing this.

Ms. Harris - Yes.

Female - It would be exhibit 5. Six.

Mr. Bell - Six.

Mr. Tluchak - I personally reached out to several members of the County to discuss it with them. I reached out to the gentleman that was on the actual Notice of Violation, and Mr. Blankinship. Yes, Mr. Phelps and Mr. Blankinship. I know you talked to several people. Mr. Phaup also spoke to Mr. Blankinship.

The second question is, "Have you reached out to the Henrico County Police Department to address the issues raised in that report?" This is the report in response to the PUP.

Mr. Blankinship - Yes, page 4, I think, at the top of tab #7. Tab #6. The top of page 4, Comments from Police.

Mr. Tluchak - I'll note for the record, if you look at the top, it does say review the application about four pool tables. So I think it was an implication that because he was denied, he should have known he couldn't do it. Again, he was applying for four at that time, not just the two that he has now. But the question is, when you received this, did you reach out to the police? Have you had any conversations with police officers, since regarding the calls and the crime reports that they have?

Mr. Phaup - No. I mean, we have quite a few that come in and eat all the time. Like I said, you have a lot of stuff up and down the road. I mean just because you have pool tables, you have the police go to all different establishments all the time. Besides that, we try to keep it pretty clean.

723

724 Mr. Tluchak - Did you discuss the issues—did you talk to the police
725 officers about the fact that you had pool tables?

726

727 Mr. Phaup - Yes. And what I did, I put a camera in that room that
728 you all are showing with the pool tables, and a TV outside so we can see what's
729 going on back there if we're not back there all the time. There is a camera. I
730 mean it's a big screen TV on the other side of that wall where we can see this
731 room when we're walking around in the other part of the establishment to see
732 what's going on to try to make it—that was one of the police officer's
733 suggestions, and we did that for them. So you don't have to actually go back
734 there.

735

736 Mr. Tluchak - And the next question is, why did you tell the
737 Department of Planning—.

738

739 Mr. Phaup - Okay.

740

741 Mr. Tluchak - Okay. There was a discussion about not installing
742 pool tables in November of 2015. Do you remember that?

743

744 Mr. Phaup - I was up in the air at the time.

745

746 Mr. Tluchak - This says you were notified in November 2015 you
747 could not stay open past midnight with pool tables. I know you've already been
748 asked and answered that.

749

750 Mr. Baka - That was the fax that was received.

751

752 Mr. Mackey - That's from Mr. Gorman?

753

754 Mr. Baka - Yes, that was the fax in exhibit 3.

755

756 Mr. Phaup - Well at that time they were—we have a lot of pool
757 leagues to play around—APA pool leagues. And everybody suggested that we
758 get pool tables to play APA pool leagues because it's a better environment for
759 everybody. So that's the reason we were getting pool tables because almost
760 every establishment that has them has an APA league, which is good for
761 everybody. It doesn't bring those bad people; it brings mostly good people. So
762 that's one of the reasons that we did that, to try to get APA leagues in there to
763 play.

764

765 Mr. Tluchak - And this kind of begs the question, but I'll ask it
766 anyways. If you thought—well why did you apply for the permit if you believed
767 that you could stay open past midnight? Frankly, I can answer that one.
768 Obviously, it's better to ask and be granted permission than to challenge the

wording of the statute. That's just common sense. It's just like you said, better off not taking that gun in the airport. Bad idea. And if you can ask for permission to bring that gun on, then that's what you do. And if they say no, then of course you have the right, constitutionally, to challenge the statute, if you think it's being interpreted by the enforcers of that statute incorrectly, which of course we do.

It says, "In your appeal of April 22nd, you state that it was made known to the inspectors that the restaurant would only have two pool tables." And I presume that's because they saw the two pool tables installed when they came by for the final inspection.

Mr. Phaup - Correct.

Mr. Tluchak - And that was discussed.

Mr. Phaup - Well I read the interpretation two or more, so I didn't have two at the—I had some more. We took them out. We tried to fit with the statute. That's what we were trying to do. So like I said, I applied for the provisional use permit three months before we even opened, and they flat turned me down. Told me I didn't have a—wasn't open, didn't have a record to see anything. But I don't understand why they just didn't grant it. They could always pull it back if something was wrong. That was my question.

Mr. Tluchak - In your appeal letter of April 22nd, you stated shortly before opening, Steelhouse was advised it couldn't have the pool tables after midnight. In fact, is it not that on November 4, 2015—again, same question. I think it's been asked and answered. Do you have any evidence indicating how much revenue you would lose if you're required to comply with the midnight closing time?

Mr. Phaup - You lose a lot of revenue because you have people that get off at 11:00. You have all your people that work in other restaurants that close at 11. You have people that work in all the hotels up there that like to come by and get a drink and shoot a game of pool. Believe it or not. It's a lot of people between 12 and 1, 1:20, 1:30 that come in there after they get off work that would like to do something before they go home.

Mr. Baka - Which the provisional use permit would provide assistance on.

Mr. Phaup - Just four hours a week.

Ms. Harris - You mentioned something about the history of Steelhouse when it reopened. When was it open before?

814 Mr. Tluchak - My understanding is it was for about 15 years. It was
815 the Sandstonian.

816
817 Mr. Phaup - Correct, it was the Sandstonian Restaurant for 15
818 years.

819
820 Mr. Tluchak - And it closed I guess about 18 months ago. Candidly,
821 I think that was probably more of a family-oriented restaurant. It closed, I think,
822 earlier. And so, like I said, it doesn't surprise me that the nearest neighbor
823 complained.

824
825 Mr. Phaup - Plus they all live right across from the airport. The
826 planes fly in and out and rattle the windows all hours of the night all the time. I
827 mean so people that live in this area, 99 percent of them love to have us there.

828
829 Mr. Tluchak - Well I think that's an excellent point because I think
830 Mr. Gilbody said it's the most permissive zoning we have. It is on Williamsburg
831 Road. It is less than half a mile from the airport. I mean all of those things tell
832 me—well specifically with respect to the interpretation of the statute, which is
833 what we have to get back to. If we're interpreting this statute in a B-3 zoning, it
834 should be interpreted more opening than it might be if it was in a residential
835 district.

836
837 Mr. Bell - But from March 16th to April, you've have five
838 complaints and several visits by the police department. Do you feel that what is
839 expected in the B-3? As a County, I wouldn't expect that.

840
841 Mr. Tluchak - Well, I don't know; I don't have the stats. I think the
842 original complaint is an outlier and shouldn't be addressed. I think it should be
843 disregarded. I think that the e-mail that you got last night, which I haven't had a
844 chance to review, tells me it's somebody that saw the name in the paper. Oh, I'd
845 love a chance to blast that place just because it's the Steelhouse Tavern. So
846 those aren't necessary complaints that somebody said oh, this happened and I'm
847 going to complain about it. It was hey, this was put in front of me, so yeah, I'm
848 going to go ahead and respond. I think that's much different.

849
850 And I think the police being called on those few occasions—I think one,
851 Mr. Phaup will tell you, yeah, the guy got rowdy in the bar, and we asked him to
852 leave, and he wouldn't. We called the police. I don't think that's unusual at all in
853 an establishment that serves alcohol. I really don't.

854
855 Mr. Bell - Well calling the police isn't unusual, but being outside
856 drinking is. That's against County regulations.

857
858 Mr. Tluchak - I didn't hear that in the evidence.

859

860 Mr. Mackey - Mr. Chairman, if I may. Mr. Phaup, I had the pleasure
861 earlier this week to speak to some of the residents on Jackson Street.
862
863 Mr. Phaup - Yes sir.
864
865 Mr. Mackey - And none of them approached me. They didn't know
866 who I was. I approached them. I just saw some people outside working in their
867 yards. And I asked them some questions. I can't speak and say that 99 percent
868 of the people are glad that the restaurant/bar is there, but I didn't hear any fond
869 things about the restaurant from the people I spoke to. They complained a lot
870 about a lot of loud noise, people outside the restaurant, and leaving hastily, when
871 they leave late at night, squealing tires and loud motorcycles and everything. And
872 it just doesn't appear that it's a friendly atmosphere to the residents.
873
874 Mr. Phaup - Well sir, you have all the other establishments up the
875 street the same way, sir. And you have Sportsman—
876
877 Mr. Mackey - They didn't speak about the other establishment, they
878 were speaking specifically about this one.
879
880 Mr. Phaup - I know. You're going to have remarks from anybody, I
881 don't care what you put there. Do you know what I'm saying? Most of the people
882 that come here say it's close for them to go, the food is good, and the
883 atmosphere is good. There's not a bunch of stuff going on in there. Anywhere
884 you go, you're going to have people that say something about something.
885
886 Mr. Tluchak - I think that the Steelhouse is willing to try to address
887 those concerns, and that's certainly what will be done in the application for the
888 PUP next month, depending on the Board's decision here. It's a feeling out
889 process in any new business. You have to figure out how to close the gaps, plug
890 the holes.
891
892 Mr. Bell - Any other questions?
893
894 Ms. Harris - Yes. We received more than just one complaint. We
895 have numerous complaints. It's not just that one lady who lives behind the facility;
896 there are quite a few complaints. I think when you had the family restaurant
897 there, you didn't have those complaints because it was a different situation.
898
899 But getting back to the code, I think the code is very specific. We can't rewrite the
900 code on this Board. But the code is very specific when it says—and I'm reading
901 from the code that we're dealing with, 24-64(h): "Any business open to the public
902 when billiards, pool, or bagatelle tables are provided, shall close between the
903 hours of 12 a.m. midnight and 6 a.m." Then we talk about provisional use
904 permits. But to me it's very specific. We say that if they are provided. We didn't
905 say if we take the sticks away or we take the balls away. We say that if they are

provided, they shall close between those hours. So I don't see how we can very well rewrite that code on this Board. Maybe some other governing body in Henrico County can change the code.

Mr. Tluchak - Granted, if you're reading it like that, which I think is incorrect, then you're right. But I think if you read it literally, when provided means when provided. I think if you took out—I want you to line through “when” and put “if.”

Mr. Baka - I'd suggest not lining through the code.

Mr. Bell - That's lining through the code.

Mr. Tluchak - No, no, no. What I'm saying is when someone writes a statute, they take a long time in deciding what words are used. So you cannot take “when” and “provided” and just throw them out and use alternative definitions. “When” is very important. It doesn't say “if,” it says “when they are provided,” not “if they are present.” And those are very important terms, very important terms.

What does “provided” mean? If a kid walks in a 7-Eleven and because cigarettes are behind the counter, are they provided to him? Of course not. If you go in the 7-Eleven after midnight and there's alcohol in the cabinet, is it being provided to you because it's physically there? Of course not. You have to be able to use those things in the manner they were intended to be provided. These pool tables are not being provided when the prohibited time period is relevant. The statute was written to not have people play pool between midnight and 2 a.m. I think we all know that. I think we really deep down all know that. I think it's your duty to interpret the statute not the way you want to to keep this bar from not being open Thursday, Friday, and Saturday an extra hour and a half, but how it was written.

That's my argument. I understand that they'll so no, we decided to interpret it another way for all this time, and we've selectively enforced it, we want to selectively enforce it today against Steelhouse Tavern. You can continue to do that. I think as a matter of law, you can't.

Ms. Harris - If it's ever questioned again or rewritten, maybe you should get them to change to “if” instead of “when.” As it stands, to me they are provided. We are looking at the tables that are provided.

Mr. Berman - Exactly.

Ms. Harris - So I don't see how we can very well get around the fact that they are not provided.

951 Mr. Baka - Mr. Harris, I would concur with your comments
952 overall. The statute, as you said, reads: "Any business open to the public when
953 billiards, pool, or bagatelle tables are provided." When it's referencing "provided,"
954 it has that use on site. There are no limits that are set on the code that further
955 limit the word "provided." So if the pool table is present in any capacity, it is a
956 business when pool tables are provided. "When" preceding the word "billiard,
957 pool tables," does not necessarily connote a time frame. "When" in that instance
958 and that use of the word clearly does not demand that the Board focus only on
959 that timeframe from 12 to 6:00.

960
961 I understand the nexus and the crux of your argument rests on the word "when"
962 and to be able to keep—if we can remove the balls from the tables, if we can
963 remove the sticks from the tables, therefore the proprietor is no longer providing
964 such use. But I do not see that as clear. I guess my question to you is, is there
965 any other part of the statute that you take issue with other than that?

966
967 Mr. Tluchak - That's it.

968
969 Mr. Baka - That's it? Okay. If that's it—if I may, Mr. Chairman, we
970 talked about a large number of related issues. If that's it for the appellant's
971 argument—or discussion points—we talked about a core number of issues, and
972 neither the County nor the applicant mentioned Section 24-116(a), in that the
973 Board has the following powers and duties to hear appeals—to hear and decide
974 appeals from any order, etc. I'm going to skip one sentence here and go to the
975 next sentence. It says the decision on such appeal shall be based on the Board's
976 judgment or whether the administrative officer was correct. And as we read this
977 and I see this, I can infer that indeed the administrative officer was correct to
978 make the statement. It was not necessarily erroneous.

979
980 The next sentence even goes further, which almost refutes the argument that the
981 appellant just made. It says, "The Board shall consider the purpose and intent.
982 The Board shall consider the purpose and intent of any applicable ordinances
983 and laws and regulations in making its decision."

984
985 I realize we haven't even had the opportunity here from the public, sir, and we're
986 an hour into this discussion. But I do feel we've had a large number of related or
987 external issues. Regardless of how this case turns out in a vote, there will still be
988 issues related to noise at 10:00 at night or 11:00 at night or 11:30 at night. But on
989 this specific issue of 24-64(h)—and I'd like to hear from the public, but I've heard
990 quite a bit.

991
992 Mr. Bell - Any other questions or statements? Thank you.

993
994 Mr. Tluchak - Thank you.

996 Mr. Bell - Any rebuttal? Wait a minute. Let's go to the public
 997 first.
 998
 999 Mr. Tluchak - With all due respect, the things we discussed, sir, that
 1000 was my rebuttal.
 1001
 1002 Mr. Baka - The public always has an opportunity to speak.
 1003
 1004 Mr. Bell - Is there anyone in here who would like to speak to
 1005 this issue who hasn't spoken to it already? Seeing none, thank you. Rebuttal on
 1006 the County's part.
 1007
 1008 Mr. Gilbody - This is not so much rebuttal as it's clarification for the
 1009 Board. Counsel and Mr. Phaup have talked about other establishments and
 1010 suggested that they are somehow allowed to do something that the Steelhouse is
 1011 not. If you'll recall earlier on, I pointed out that there was a complaint that led to
 1012 the investigation. Planning doesn't just go out willy-nilly investigating businesses.
 1013 They are complaint-driven.
 1014
 1015 That said, he specifically mentioned—the business that he did mention
 1016 specifically was the Sportsman. You asked me earlier about that, the sort of
 1017 history of everything. I can say with a lot of confidence after having read all that
 1018 there is that the Sportsman has been there so long they're actually grandfathered
 1019 in. So whatever rules are applicable to them are derived from the fact that they've
 1020 been there since apparently when I graduated college—or before. So they've
 1021 been there very, very long. That would explain why there might be different rules
 1022 relating to the Sportsman. I just wanted to be clear, because counsel indicted
 1023 that Planning was selectively enforcing this and that's what we wanted to do. In
 1024 fact, that's not at all what we do. Planning is complaint-driven, and the code
 1025 applies to everyone equally. If we don't get someone, it's because a complaint
 1026 hasn't been raised. That's just the way the system works. Thank you.
 1027
 1028 Mr. Bell - Thank you.
 1029
 1030 Mr. Blankinship - Mr. Chairman, let me just amplify a little bit on that.
 1031 There were two businesses that I have been asked about leading up to this. One
 1032 was the Sportsman and the other is Breakers. Mr. Gilbody stated accurately my
 1033 conclusion on the Sportsman in that it was operating prior to the 1992 change to
 1034 the code. And Breakers has a provisional use permit. It's B-2 zoning, so the
 1035 wording of the code is a little different there, and they do have a provisional use
 1036 permit for the extended hours there.
 1037
 1038 So we have been asked to look into two cases. We would be happy to look into
 1039 any others that anybody is aware of. But to the best of my knowledge, we have
 1040 applied this consistently since 1992.
 1041

1042 Mr. Bell - Thank you. If there's no one else, that ends the first
 1043 case, the appeals case.
 1044
 1045 **[After the conclusion of the public hearings, the Board discussed the case**
 1046 **and made its decision. This portion of the transcript is included here for**
 1047 **convenience of reference.]**
 1048
 1049 Mr. Bell - Do I hear a motion on this one?
 1050
 1051 Mr. Mackey - Yes, Mr. Chairman. I recommend that the Board
 1052 accept the director's interpretation of the County Code, 24-64(h) and require that
 1053 the Steelhouse Tavern close at midnight.
 1054
 1055 Mr. Baka - Would that motion also include denial of that case?
 1056
 1057 Mr. Mackey - Yes sir, denial of the case.
 1058
 1059 Mr. Bell - Would it be denial or acceptance?
 1060
 1061 Mr. Blankinship - We'll say that the decision was affirmed, the director's
 1062 decision was affirmed.
 1063
 1064 Mr. Bell - Okay. All right. Is there a second?
 1065
 1066 Mr. Berman - I second that we deny the appeal.
 1067
 1068 Mr. Bell - Is there any discussion?
 1069
 1070 Mr. Baka - We discussed the issues thoroughly on that.
 1071
 1072 Ms. Harris - Yes we did.
 1073
 1074 Mr. Bell - I agree with you. Hearing none, all in favor say aye.
 1075 All opposed say no. The ayes have it; the motion passes.
 1076
 1077 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
 1078 Mr. Berman, the Board **affirmed** the decision of the director of planning and
 1079 **denied** application **APL2016-00002, STEELHOUSE TAVERN's** appeal of a
 1080 decision of the director of planning pursuant to Section 24-116(a) of the County
 1081 Code regarding the property at 400 W Williamsburg Road (Parcel 824-716-7935)
 1082 zoned Business District (B-3) (Varina).
 1083
 1084
 1085 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
 1086 Negative: 0
 1087 Absent: 0

1088
1089 [At this point, the transcript continues with the public hearing on the next
1090 case.]
1091

1092 **CUP2016-00010** **MARQUISHA WHITE** requests a conditional use
1093 permit pursuant to Section 24-12(g) of the County Code to operate a family day
1094 home with employees at 4908 Cedar Park Road (CEDAR RUN) (Parcel 812-729-
1095 9105) zoned One-Family Residence District (R-3C) (Fairfield).
1096

1097 Mr. Blankinship - Would everyone who intends to speak to this case
1098 please stand and be sworn in. Would you raise your right hand please? Do you
1099 swear the testimony you're about to give is the truth, the whole truth, and nothing
1100 but the truth so help you God? Thank you. Ms. White, you can have a seat.
1101 Mr. Gidley, if you would begin.
1102

1103 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr.
1104 Chairman, members of the Board.
1105

1106 The subject property is 4908 Cedar Park Road, which is located in the Cedar
1107 Run subdivision. The applicant wishes to operate a large family day home for up
1108 to 12 children between the hours of 6 a.m. and 6 p.m. This is a permitted
1109 accessory use in the R-3 district. The applicant, however, would like to have an
1110 outside employee, and it's this outside employee that requires the conditional use
1111 permit application.
1112

1113 This is the applicant's dwelling. The property is zoned R-3C, One-Family
1114 Residence District. And it's designated Suburban Residential 2 on the
1115 Comprehensive Plan. Use of the property as a one-family dwelling is consistent
1116 with both the zoning and the Comprehensive Plan designation.
1117

1118 The additional use of a large family day home would also be consistent, so long
1119 as there are no significant impacts on the surrounding properties. That leads us
1120 to our second question, would the request result in a substantial detrimental
1121 impact on nearby property. The applicant's home is on a quiet residential street.
1122 It contains a large paved driveway, and you can see it better on this picture. The
1123 applicant's home is to the right. But as you can see, the applicant's driveway
1124 could accommodate her vehicle, a vehicle of an employee, and still have room
1125 for additional person or two to drop off their children. So assuming all the children
1126 do not arrive and depart at the exact same time, there should be no substantial
1127 detrimental impact on nearby property.
1128

1129 The applicant's home in this picture is to the left. As you can see, the backyard is
1130 level and it's grassed. It is also open with little to contain the children on the
1131 property. As a result, if a large number of children were to be playing outside, it
1132 could make it difficult to keep them on the applicant's property. As a result, if she

1133 has large numbers of children playing outside at the same time, staff would
1134 recommend fencing the rear yard for safety purposes.

1135
1136 In conclusion, large family day homes operating between the hours of 6 a.m. and
1137 6 p.m. are a permitted use by right in the R-3 zoning district. The only reason for
1138 this use permit is because the applicant would like to have an outside employee
1139 working there as well. Other than having an additional vehicle parked at the
1140 home, staff does not anticipate any negative impact from having this additional
1141 employee. In fact, having an additional adult to assist would help the applicant to
1142 better manage and care for the children that she's responsible for. As a result,
1143 staff can recommend approval of this request subject to the conditions found in
1144 the staff report.

1145
1146 This concludes my presentation. I'll be happy to answer any questions you may
1147 have.

1148
1149 Mr. Bell - Are there any questions?

1150
1151 Mr. Mackey - Mr. Gidley, do you know if there is any precedent or
1152 requirement that would have us add the fence enclosure to the conditions?

1153
1154 Mr. Gidley - Typically when we've gone out to sites where they're
1155 having child care, most of the yards, from my experience, at least in the rear
1156 have been fenced at least partially to help contain the children. In this case, I
1157 walked out there. And as you can see here, it is rather wide open. I said if they
1158 do have a large number of children out there, knowing children, it would be easy
1159 for them to kind of run off and get out of sight real quick. That impacted me from
1160 visiting the site and caused the concern. This may not be a case where there are
1161 a large number of children out there at the same time. If they're infants, obviously
1162 they're not going to go outside. So this may not even be relevant. It would
1163 depend upon what the applicant envisions as far as age and numbers of children
1164 out there.

1165
1166 Mr. Blankinship - Mr. Berman, if I can add to that. When Mr. Gidley and
1167 I were discussing the report before it was finalized, we discussed that question a
1168 little bit. We tend to err on the side of putting stuff in the report and letting you
1169 take it out rather than leaving stuff out of the report that might not be thought of
1170 during the hearing.

1171
1172 Mr. Berman - But is there a requirement or precedent that a fence
1173 must be present? Note this would be a moot point if the owner is agreeable to
1174 this condition.

1175
1176 Mr. Blankinship - There is no requirement. There may be a precedent. I
1177 seem to recall a case in Tuckahoe. We actually asked a property owner to move
1178 a fence. There was a tree line on one side of the property. I can't remember the

1179 details, but I remember there was something about a somewhat similar condition.
1180 But they will be taken case-by-case. And it's certainly an unusual condition for us
1181 to recommend.

1182
1183 Mr. Berman - Thank you.

1184
1185 Mr. Baka - In situations where the site conditions may warrant a
1186 fence, I think the Board has previously looked for the need for a fence on a case-
1187 by-case basis. And such evaluation would need to take place here.

1188
1189 Mr. Berman - Thank you. There's no denying it would improve the
1190 safety aspect.

1191
1192 Mr. Blankinship - Right.

1193
1194 Mr. Berman - I was just asking because it is expensive.

1195
1196 Mr. Blankinship - Yes, yes. And we are aware of that concern.

1197
1198 Mr. Berman - Thank you.

1199
1200 Mr. Blankinship - Ma'am?

1201
1202 Ms. White - Marquisha White. Speaking on the backyard, I don't
1203 have any infants right now, but there would be two of us watching them in the
1204 backyard. So I don't think they will get out of our site, because the yard is pretty
1205 open where we can both keep eyes on them.

1206
1207 I think that's it, that's all I have.

1208
1209 Ms. Harris - Mr. Chairman?

1210
1211 Mr. Bell - Have you read the conditions in your report?

1212
1213 Ms. White - Yes.

1214
1215 Mr. Bell - Are you willing to—what you're saying is—I'm a little
1216 bit confused, because one of the conditions does say that you will go ahead and
1217 provide the fence that's required.

1218
1219 Ms. White - It says that I will provide the fence?

1220
1221 Mr. Blankinship - That's one of the conditions that staff has
1222 recommended.

1223
1224 Ms. White - Yes, if I have to.

1225
1226 Mr. Blankinship - And the Board wants to know how you feel about that
1227 condition.
1228
1229 Ms. White - If I have to, yes I will.
1230
1231 Mr. Blankinship - But if you were not required to, it's not something that
1232 you had in mind to do.
1233
1234 Ms. White - No.
1235
1236 Mr. Blankinship - Okay.
1237
1238 Ms. Harris - Ms. White? Mr. Chairman, I have a question.
1239 Ms. White, are there other children in the home?
1240
1241 Ms. White - Do I have kids?
1242
1243 Ms. Harris - Yes.
1244
1245 Ms. White - Yes.
1246
1247 Ms. Harris - Okay. How many do you have?
1248
1249 Ms. White - I have eight.
1250
1251 Ms. Harris - No, I'm saying your personal kids.
1252
1253 Ms. White - Oh, my kids are grown.
1254
1255 Ms. Harris - Oh, okay. I thought you were saying you had eight
1256 children.
1257
1258 Mr. Blankinship - If you have eight and you're going to keep twelve . . .
1259
1260 Ms. White - My kids are grown.
1261
1262 Ms. Harris - I was going to say you wear it very well. I did drive by.
1263 It's a very neat area. But I also noticed there were no fences at all in the
1264 neighborhood. There might have been a few on the other block, but I got lost, so
1265 I just got a chance to see your neighborhood. I was kind of glad to see that you
1266 had agreed to have a fence, because I think it's a safety net for children. They
1267 can just wander off in a flash. We can just bat our eyes almost and they can
1268 quickly move off. I don't know what you will decide to do about the fence, but I'm
1269 strongly in favor of you having it, although I know that it's an expense. Hopefully

1270 if you get it, you'll get some guidelines about how tall it should be and all that. I
1271 think we have five feet here in the report? Did you get a copy of the report?

1272
1273 Mr. Berman - At least five feet.

1274
1275 Ms. Harris - Okay, at least five feet.

1276
1277 Mr. Mackey - Number 4.

1278
1279 Ms. Harris - My question then—and this is not necessarily for you,
1280 Ms. White, this is probably for Mr. Blankinship. If the fence is in the rear of the
1281 yard, do we still go by the six feet, no taller than six feet in the back or the rear?
1282 One time we had one dimension for the fencing on the side, and for the rear it
1283 would be taller.

1284
1285 Mr. Blankinship - Yes ma'am. In the rear yard it would be allowed up to
1286 seven feet.

1287
1288 Ms. Harris - Okay. So if you do the fencing, you need the
1289 guidelines. That's all I wanted to say.

1290
1291 Mr. Berman - Ms. White, are you aware of any restrictions from your
1292 homeowners' association regarding fences in the rear yard?

1293
1294 Ms. White - Only that it can't be a private fence or a gate fence.

1295
1296 Mr. Berman - I'm sorry; I didn't hear you.

1297
1298 Ms. White - It can't be a private fence.

1299
1300 Mr. Bell - Privacy?

1301
1302 Ms. White - Yes.

1303
1304 Mr. Baka - A board-on-board fence would be a privacy fence. But
1305 it could be a chain link fence?

1306
1307 Ms. White - I can't be chain link.

1308
1309 Mr. Baka - It cannot be chain link.

1310
1311 Mr. Berman - What does that leave?

1312
1313 Mr. Bell - Picket.

1314
1315 Ms. White - Yes.

1316
1317 Mr. Berman - So that you can see through?
1318
1319 Ms. White - Yes.
1320
1321 Mr. Bell - Like the white picket fences they're putting up
1322 everywhere.
1323
1324 Ms. White - Yes.
1325
1326 Mr. Blankinship - Oh, okay.
1327
1328 Mr. Baka - Interesting.
1329
1330 Mr. Berman - Thank you.
1331
1332 Mr. Bell - Any other questions? If none, thank you. Is there
1333 anyone else who would like to speak to this issue? Then let's go on with the next
1334 case, please.
1335
1336 **[After the conclusion of the public hearings, the Board discussed the case**
1337 **and made its decision. This portion of the transcript is included here for**
1338 **convenience of reference.]**
1339
1340 Mr. Bell - Do I hear a motion?
1341
1342 Ms. Harris - Yes. I move to approve this conditional use permit
1343 and make the condition that deals with the fencing optional.
1344
1345 Mr. Blankinship - Optional?
1346
1347 Ms. Harris - To the applicant.
1348
1349 Mr. Blankinship - Did you say make it optional, ma'am?
1350
1351 Ms. Harris - Yes.
1352
1353 Mr. Blankinship - Thank you.
1354
1355 Mr. Bell - Do I hear a second to this motion?
1356
1357 Mr. Berman - I second the motion, including the revision to the
1358 conditions for approval.
1359
1360 Mr. Bell - Is there any discussion?
1361

Ms. Harris - I think we discussed it as we asked the questions,
pretty much.

Mr. Bell - Hearing none, all in favor say aye. All opposed say
no. The ayes have it; the motion passes.

After an advertised public hearing and on a motion by Ms. Harris, seconded by
Mr. Berman, the Board **approved** application **CUP2016-00010, MARQUISHA
WHITE's** request for a conditional use permit pursuant to Section 24-12(g) of the
County Code to operate a family day home with employees at 4908 Cedar Park
Road (CEDAR RUN) (Parcel 812-729-9105) zoned One-Family Residence
District (R-3C) (Fairfield). The Board approved the conditional use permit subject
to the following conditions:

1. This conditional use permit applies only to the operation of a family day home
with one employee from outside the home between the hours of 6:00 am and
6:00 pm. All other applicable regulations of the County Code shall remain in
force.

2. No more than twelve children, exclusive of the provider's own children, may
receive daycare services at any one time.

3. Vehicles associated with the family day home, including vehicles used by the
operator and her employee, shall be parked on-site, outside of the public street
right-of-way.

4. The applicant may enclose the rear yard with a fence at least five feet in
height.

5. There shall be no more than one sign, not exceeding one square foot in area,
advertising the family day home. The sign shall not be illuminated.

| | | |
|--------------|------------------------------------|---|
| Affirmative: | Baka, Bell, Berman, Harris, Mackey | 5 |
| Negative: | | 0 |
| Absent: | | 0 |

**[At this point, the transcript continues with the public hearing on the next
case.]**

CUP2016-00011 **WEST END ASSEMBLY OF GOD** requests a
conditional use permit pursuant to Section 24-116(d)(1) of the County Code to
allow a tent at 401 N Parham Road (Parcel 753-736-0655) zoned One-Family
Residence District (R-1) (Tuckahoe).

1408 Mr. Blankinship - Would everyone who intends to speak to this case
1409 please stand and be sworn in. Raise your right hands. Do you swear the
1410 testimony you're about to give is the truth, the whole truth, and nothing but the
1411 truth so help you God?
1412

1412

1413 Male - I do.

1414

1415 Mr. Blankinship - Thank you. Mr. Madrigal?

1416

1417 Mr. Madrigal - Mr. Chair, members of the Board, good morning.
1418 Before you is a request to allow the placement of a temporary tent at a place of
1419 worship in association with special events. The applicant produces two major
1420 theatrical performances each year to celebrate Easter and Christmas. These
1421 productions have been occurring since 2005 and have included the installation of
1422 a 900-square-foot tent to store stage, set pieces, and equipment. The tent is
1423 approximately 30'-by-30' in size.
1424

1424

1425 The applicant's request is to allow the continuation of this practice for the
1426 performances to occur during Christmas 2016 and 17, and for Easter 2017 and
1427 18.
1428

1428

1429 The site is zoned R-1 and is designated as Semi-Public in the Land Use Plan.
1430 Staff has found the proposed use to be consistent with the church use, the
1431 Zoning Ordinance, and the Comprehensive Plan.
1432

1432

1433 The proposed tent will be placed behind the church building in the parking area
1434 adjacent to the loading area. The tent will not impede parking or traffic circulation
1435 and will not be visible from the public right-of-way. Although the tent will be
1436 visible from a few homes adjacent to the rear of the site, the view will be
1437 obscured by way of existing privacy fencing and trees located along the rear
1438 property line. Here you can see the homes, basically the back of the homes face
1439 the area where the tent will be placed.
1440

1440

1441 Staff is not aware of any complaints from previous years and does not anticipate
1442 any substantial detrimental impacts from the temporary use.
1443

1443

1444 In conclusion, the proposed tent is consistent with the Zoning Ordinance and the
1445 Comprehensive Plan and should not pose any substantial detrimental impacts to
1446 nearby property. Staff recommends approval of the conditional use permit
1447 subject to conditions.
1448

1448

1449 This concludes my staff report. If you have any questions, I'll be happy to answer
1450 them.
1451

1451

1452 Mr. Bell - Any questions?

1453

1454 Ms. Harris - Yes. Mr. Madrigal, do you know how many years
1455 West End Assembly of God has requested this permit for the tent?

1456
1457 Mr. Madrigal - Since 2005.

1458
1459 Ms. Harris - Okay. We said no exterior lighting is required. Where
1460 is the existing lighting?

1461
1462 Mr. Madrigal - I'm not sure if there are wall packs on the back of the
1463 building, but they've essentially said that they don't require any kind of lighting
1464 underneath the tent for the equipment or the set pieces.

1465
1466 Mr. Blankinship - This is essentially just storage. They don't have
1467 people in and out of the tent after dark.

1468
1469 Ms. Harris - Okay. Thank you.

1470
1471 Mr. Berman - Are there items left in the tent overnight unsecured?

1472
1473 Mr. Madrigal - I believe so. Perhaps the applicant can answer that.
1474 We did have a picture from 2014, and I forgot to insert it into the presentation,
1475 that showed the tent. From what I've seen from the picture, they've had a forklift
1476 in there, and they've had basically stage pieces under there, maybe other
1477 equipment.

1478
1479 Mr. Berman - I've been attending that with my family for the better
1480 part of a decade, the Christmas one, and we love it. I can say that I don't ever
1481 remember seeing the tent. So it's pretty well hidden.

1482
1483 Mr. Madrigal - It's well hidden.

1484
1485 Mr. Berman - Yes.

1486
1487 Mr. Bell - Any other questions?

1488
1489 Mr. Bragg - To answer the question, there are some lighting
1490 packs on the building that do provide some lighting outside.

1491
1492 Mr. Blankinship - Tell us your name, please?

1493
1494 Mr. Bragg - Pat Bragg. B-r-a-g-g.

1495
1496 Mr. Bell - Give us a brief overview.

1497
1498 Mr. Bragg - As has been stated, we've been presenting this
1499 production for a number of years, a production at Easter and at Christmas. The

1500 tent is required for additional storage of any set pieces, both when we bring them
1501 from our warehouse to the Parham Road location for storage before production,
1502 and then during the production. And it's equipment such as a forklift or some
1503 construction equipment such as saws and things like that that we use for
1504 fabrication of these things.

1505
1506 Mr. Bell - Have there been any complaints about the tent being
1507 there that you're aware of?

1508
1509 Mr. Bragg - Not to our knowledge, no sir.

1510
1511 Mr. Bell - Have there been any injuries caused by the tent being
1512 there or people working in it?

1513
1514 Mr. Bragg - No sir. None.

1515
1516 Mr. Berman - When I've been there, I've noticed there's also a
1517 trailer. Is that permanent or is that just brought on for—spoiler alert—storage of
1518 animals?

1519
1520 Mr. Bragg - Now you gave it all away. Yes, there's a trailer that is
1521 for our camel. That is there—I'm not sure that it's there overnight. I'm not positive
1522 about that. I believe they bring the animal in each day. The trailer is there then for
1523 whenever the animal is not being used during the performance. It makes an
1524 appearance, comes through, and then goes back to the trailer.

1525
1526 Mr. Berman - Now you really spoiled it. But the trailer isn't there for
1527 the whole nine months; it's just there for the performance.

1528
1529 Mr. Bragg - Oh, no. No sir.

1530
1531 Mr. Berman - Okay. So just the tent.

1532
1533 Mr. Bragg - And that trailer would only be there during the run of
1534 the production. And I don't believe it's even the whole time. It goes away each
1535 evening.

1536
1537 Mr. Berman - Thank you.

1538
1539 Ms. Harris - Mr. Bragg, what are the dimensions of the tent, do
1540 you know?

1541
1542 Mr. Bragg - I'm sorry?

1543
1544 Ms. Harris - The dimensions, the size of the tent.

1545

1546 Mr. Bragg - It is 30'-by-30', 900 square feet.
1547
1548 Ms. Harris - Okay. Do you know if the church has ever considered
1549 erecting a facility, a building? I know the tent has been used for 11 years, but do
1550 you know if the church has ever considered erecting a building?
1551
1552 Mr. Bragg - We've had conversations, but they've never gone
1553 past that point. We will certainly be continuing those conversations, and it would
1554 be for something larger than that size if we did something on a permanent basis.
1555
1556 Ms. Harris - And I'd like to commend the West End Assembly. I,
1557 too, attend the Christmas celebration. And it's quite a quality event. We look
1558 forward to it.
1559
1560 Mr. Bragg - Thank you. We do our best, ma'am.
1561
1562 Mr. Bell - Any other questions?
1563
1564 Mr. Blankinship - I just have one point to make, which is that on the
1565 application you had listed two Christmases and one Easter, this coming-up
1566 Easter. And in the conditions, the staff added next Easter as well. If anyone
1567 noticed the discrepancy between the request and the condition, we just took the
1568 liberty of looking up Easter of 2018, since it's now June, assuming that you won't
1569 get back to us until June of 2018.
1570
1571 Mr. Bragg - So that has been added?
1572
1573 Mr. Blankinship - Yes sir.
1574
1575 Mr. Bragg - Great. Wonderful. Thank you, sir.
1576
1577 Mr. Berman - Just remind me. The conditional use permit is good
1578 for only two years, and that's why they have to reappear?
1579
1580 Mr. Blankinship - Right.
1581
1582 Mr. Berman - Okay.
1583
1584 Mr. Bell - Okay. No more questions? Thank you. Is there
1585 anyone else who would like to speak to this issue? All right, we'll move on.
1586
1587 **[After the conclusion of the public hearings, the Board discussed the case**
1588 **and made its decision. This portion of the transcript is included here for**
1589 **convenience of reference.]**
1590
1591 Mr. Bell - Do I hear a motion on this?

1592
1593 Mr. Berman - I move that we approve the conditional use permit as
1594 written.

1595
1596 Ms. Harris - Second the motion.

1597
1598 Mr. Bell - Is there any discussion? Hearing none, all in favor say
1599 aye. All opposed say no. The ayes have it; the motion passes.

1600
1601 Mr. Baka - Abstain. One abstention. Thanks.

1602
1603 After an advertised public hearing and on a motion by Mr. Berman, seconded by
1604 Ms. Harris, the Board **approved** application **CUP2016-00011, WEST END**
1605 **ASSEMBLY OF GOD's** request for a conditional use permit pursuant to Section
1606 24-116(d)(1) of the County Code to allow a tent at 401 N Parham Road (Parcel
1607 753-736-0655) zoned One-Family Residence District (R-1) (Tuckahoe). The
1608 Board approved the conditional use permit subject to the following conditions:

1609
1610 1. One 900-square-foot tent, as shown on the plot plan filed with the application,
1611 may be installed pursuant to this approval. Any additional improvements shall
1612 comply with the applicable regulations of the County Code. Any substantial
1613 changes or additions to the design or location of the improvements shall require
1614 a new conditional use permit.

1615
1616 2. The tent shall be installed no earlier, and removed no later than the following
1617 dates: October 1, 2016 to January 31, 2017; March 23 to May 5, 2017; October
1618 1, 2017 to January 31, 2018; and March 9 to April 20, 2018.

1619
1620 3. The applicant shall obtain all necessary building permits.

1621
1622 4. No exterior lighting is authorized by this conditional use permit.

1623
1624 5. Fire lanes shall be marked and maintained in accordance with the Fire
1625 Prevention Code.

1626
1627
1628 Affirmative: Bell, Berman, Harris, Mackey 4
1629 Negative: 0
1630 Absent: 0
1631 Abstain: Baka 1

1632
1633
1634 **[At this point, the transcript continues with the public hearing on the next**
1635 **case.]**
1636

1637 **CUP2016-00012** **SHANIESHA PEGRAM** requests a conditional use
1638 permit pursuant to Section 24-12(g) of the County Code to operate a family day
1639 home with employees at 624 Wilmer Avenue (VILLAGE OF AZALEA) (Parcel
1640 789-745-0299) zoned General Residence District (R-5) (Fairfield).

1641
1642 Mr. Blankinship - Would everyone who intends to speak to this
1643 application please stand and be sworn in? Raise your right hands please. Do you
1644 swear the testimony you're about to give is the truth, the whole truth, and nothing
1645 but the truth so help you God? Thank you. Mr. Madrigal.

1646
1647 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the
1648 Board, the request before you is to allow a large family day home with employees
1649 from outside the home. The applicant is in the process of establishing a family
1650 day home for up to eight children, and she would like to hire two outside
1651 employees to assist her with the business, one full time and one part time
1652 employee. Large family day homes are a permitted accessory use in the R-5
1653 district. Because the applicant is hiring two employees from outside the home,
1654 the code requires a conditional use permit for this activity.

1655
1656 The property is zoned R-5 and is designated SR-2 on the Land Use Plan. The
1657 existing one-family dwelling is consistent with both the Comprehensive Plan and
1658 Zoning Ordinance. Here you can see the home. Because the proposed use is a
1659 permitted accessory use, it is also consistent so long as there are no significant
1660 impacts on neighboring properties.

1661
1662 Because of the property's placement next to a corner lot, it allows for easy drop-
1663 off and pickup of the children. And the existing driveway is large enough to
1664 accommodate at least four vehicles. As such, staff does not anticipate any
1665 negative impacts on local traffic.

1666
1667 The introduction of up to eight children to the property does have the potential to
1668 bring unwanted noise. This potentially negative impact is offset by the
1669 convenience of having a childcare option available in the immediate
1670 neighborhood. Additionally, the proposed hours of operation should help to
1671 mitigate any potential complaints, which basically are 7 a.m. to 6 p.m. Beyond
1672 this, staff is not aware of any other detrimental impacts anticipated from this
1673 request.

1674
1675 In conclusion, the proposed use is consistent with both the Zoning Ordinance
1676 and the Comprehensive Plan. Staff does not anticipate any substantial
1677 detrimental impacts on nearby property as a result of allowing two employees
1678 from outside the home for the family day home. Thus, staff recommends
1679 approval of the applicant's request subject to conditions of approval.

1680
1681 Mr. Bell - Are there any questions?
1682

1683 Mr. Berman - I'll address the applicant.
1684
1685 Mr. Bell - Thank you.
1686
1687 Ms. Pegram - Good morning. My name is Shaniesha Pegram. P-e-
1688 g-r-a-m.
1689
1690 Mr. Blankinship - Can you tell us a little bit about your proposed
1691 business?
1692
1693 Ms. Pegram - Since March 2nd of last year, I've been running a
1694 family day home. And effective May 13th, I have passed my inspection and I'm
1695 officially licensed. At first I was voluntarily registered, so I just had five children.
1696 And I'm looking to increase, so currently I have six children, one of them being
1697 part time. They only come Monday through Wednesday. And I'm looking to hire
1698 an employee to help with the increase to eight children.
1699
1700 Mr. Bell - Any questions?
1701
1702 Ms. Harris - Mr. Chairman, I have a few questions. I notice that
1703 you do have fencing of your rear yard.
1704
1705 Ms. Pegram - Yes ma'am.
1706
1707 Ms. Harris - Do the children play outside in the yard?
1708
1709 Ms. Pegram - Yes ma'am.
1710
1711 Ms. Harris - They do. Okay. I notice that in the parking spaces you
1712 had about four cars. How many parking spaces are actually available to your
1713 patrons when they come?
1714
1715 Ms. Pegram - The white Altima that's in the picture actually moves
1716 during the day. That's my boyfriend's car, so he goes to work. So I would say at
1717 least two, possibly three could fit in the driveway.
1718
1719 Ms. Harris - Okay. How many children do you have residing in
1720 your home outside of the daycare?
1721
1722 Ms. Pegram - Two children, but they aren't there. They come every
1723 other week. He gets the children every other week in the month.
1724
1725 Ms. Harris - Do you have any children yourself is what I'm asking.
1726
1727 Ms. Pegram - No ma'am.
1728

1729 Ms. Harris - All right. Thank you. Those are my questions. Thank
1730 you.

1731
1732 Mr. Bell - Any other questions? Thank you.

1733
1734 Ms. Pegram - Thank you.

1735
1736 Mr. Bell - Is there anyone else who would like to speak to this
1737 issue?

1738
1739 Mr. Dickerson - First of all my name is Desmond Dickerson. This is
1740 my girlfriend, Shaniesha Pegram. I just wanted to come and support her,
1741 obviously.

1742
1743 Mr. Blankinship - So you're in favor of this application.

1744
1745 Mr. Dickerson - Thank you. I appreciate it.

1746
1747 Ms. Harris - How do you spell your last name?

1748
1749 Mr. Dickerson - D-i-c-k-e-r-s-o-n.

1750
1751 Ms. Harris - Dickerson. Okay. Thank you.

1752
1753 Mr. Dickerson - Yes ma'am. Thank you.

1754
1755 Mr. Bell - Thank you. Anyone else? Seeing none, we'll go to the
1756 next one.

1757
1758 **[After the conclusion of the public hearings, the Board discussed the case**
1759 **and made its decision. This portion of the transcript is included here for**
1760 **convenience of reference.]**

1761
1762 Mr. Bell - Do I hear a motion?

1763
1764 Ms. Harris - I move that we approve this conditional use permit for
1765 the daycare.

1766
1767 Mr. Bell - Do I hear a second? I'll second it. Is there any
1768 discussion?

1769
1770 Ms. Harris - I feel that we probably don't have enough quality
1771 daycare facilities. And they are going to be in residential neighborhoods. So I
1772 applaud the young lady for trying to carry out this type of business.

1773

Mr. Bell - All in favor say aye. All opposed say no. The ayes have it; the motion passes.

After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr. Bell, the Board **approved** application **CUP2016-00012, SHANIESHA PEGRAM's** request for a conditional use permit pursuant to Section 24-12(g) of the County Code to operate a family day home with employees at 624 Wilmer Avenue (VILLAGE OF AZALEA) (Parcel 789-745-0299) zoned General Residence District (R-5) (Fairfield). The Board approved the conditional use permit subject to the following conditions:

1. This conditional use permit applies only to the operation of a family day home with two employees from outside the home. All other applicable regulations of the County Code shall remain in force.

2. No more than twelve children, exclusive of the provider's own children, may receive daycare services at any one time.

3. The hours of operation shall be limited to 7:00 am to 6:00 pm.

4. Vehicles associated with the family day home, including vehicles used by the operator and employees, shall be parked on-site, outside of the public street right-of-way.

5. There shall be no more than one sign, not exceeding one square foot in area, advertising the family day home. The sign shall not be illuminated.

| | | |
|--------------|------------------------------------|---|
| Affirmative: | Baka, Bell, Berman, Harris, Mackey | 5 |
| Negative: | | 0 |
| Absent: | | 0 |

[At this point, the transcript continues with the public hearing on the next case.]

Mr. Blankinship - That completes the conditional use permits. We'll now begin the two variances.

VAR2016-00009 **KAREN EMERY** requests a variance from Section 24-95(b)(6) of the County Code to build a one-family dwelling at 10 S Fern Avenue (HIGHLAND SPRINGS) (Parcel 822-724-1176) zoned One-Family Residence District (R-4) (Varina). The total lot area requirement is not met. The applicant proposes 5,000 square feet lot area, where the Code requires 6,000 square feet lot area. The applicant requests a variance of 1,000 square feet lot area.

1820
1821 Mr. Blankinship - Would everyone who intends to speak to this case
1822 please stand and be sworn in. Raise your right hand please. Do you swear the
1823 testimony you're about to give is the truth, the whole truth, and nothing but the
1824 truth so help you God? And you do as well? All right. Thank you. Mr. Gidley.

1825
1826 Mr. Gidley - Thank you, Mr. Secretary. This is a request for a lot
1827 area variance to allow for the construction of a one-family dwelling. The subject
1828 property is Lot 12, Block E, Section 6 of the Highland Springs subdivision.

1829
1830 The lot shown here in yellow was first created in 1895 with the recordation of the
1831 subdivision. This lot and the three lots to the northeast, shown here, were under
1832 common ownership in 1937 when a home was built on the site. In 1994, lot 12
1833 was sold separately, and this is the lot subject to today's request. Since it is a lot
1834 of record prior to 1960, it is subject to the exception standards, which for the R-4
1835 district require a minimum lot area of 6,000 square feet. And since lot 12 has a lot
1836 area of 5,000 square feet, they have requested the 1,000-square-foot lot area
1837 variance.

1838
1839 You'll note the lots here, including to the north, are currently vacant. The home
1840 that was constructed in 1937 was demolished in 2013 following a house fire.
1841 That's why it's gone today.

1842
1843 The key question to consider in a variance is does the Zoning Ordinance
1844 unreasonably restrict the use of the property or would it alleviate a hardship due
1845 to a physical condition at the time of the effective date of the ordinance. Actually,
1846 I believe both of these conditions are met in this case. Since the lot was created
1847 in 1895, it predates the adoption of the Zoning Ordinance in 1933. As a result,
1848 the hardship related to the property does come down to it being created prior to
1849 the Zoning Ordinance. In addition, absence a variance, the property would not
1850 have any beneficial use, which would results in an unreasonable restriction on
1851 the use of the property.

1852
1853 Assuming you agree both of the above are met, then all five of the following
1854 conditions must be met. The property was acquired in good faith, and the
1855 hardship was not created by the applicant. As noted, the hardship is a lack of lot
1856 area, which was caused by the adoption of the Zoning Ordinance after the lot's
1857 creation in 1895. When lot 12 was sold, ideally ten feet from the adjoining lot
1858 would have been included with it. That would have allowed the lot to be a legal
1859 lot and not need a variance. The home that was still on the lot at the time would
1860 have still met the Zoning Ordinance requirements for lot area, setbacks, etc. that
1861 being said, the Virginia Supreme Court has determined the purchasing a property
1862 knowing it needed a variance is not a self-inflicted hardship and does diminish
1863 good faith. So I believe they meet this first test.

1865 Second, the granting of a variance will not be a substantial detrimental impact to
1866 adjacent or nearby property. As you can see on the aerial, there are a variety of
1867 lot widths and lot areas in this section of South Fern Avenue. The lots on this
1868 section actually range on lot width from 50 feet to 150 feet, this lot being 50 feet
1869 wide here, along with some others to the south here, and also up here. Home
1870 sizes range from 652 square feet on up to 2,044 square feet. The home
1871 proposed for this property is 980 square feet, which would be within this range.
1872 This is the proposed plot plan showing a 35-foot-by-28-foot home. There is an
1873 existing shed that is located in the back, and it would be demolished if this is
1874 approved. The front elevation of the home you can see here.

1875
1876 The foundations in the neighborhood are evenly split between brick and
1877 cinderblock. The adjacent home to the south at 12 Fern Avenue is constructed
1878 almost entirely of brick, as you can see here. As a result, staff is recommending
1879 the proposed home have at least a brick foundation.

1880
1881 Question three, the condition or situation of the property is not so generally
1882 recurring that an ordinance amendment could be adopted. The Board of
1883 Supervisors, as I mentioned, has accommodated for a variety of lot areas and lot
1884 widths on lots that were created prior to 1960. However, no one standard can
1885 accommodate all varieties or lot sizes that exist. In these cases, the BZA must
1886 review the lots on a case-by-case basis in order to determine whether or not the
1887 requested use is appropriate.

1888
1889 Four, the granting of the variance does not result in a use not otherwise
1890 permitted under the zoning classification. The proposed use is a one-family
1891 dwelling, which is a principal permitted use in the R-4 district.

1892
1893 And finally number five, a remedy is not available through a special exception, or
1894 a modification in this case.

1895
1896 To conclude, as referenced earlier, if the applicant were able to obtain ten feet
1897 from the adjacent lot to the north, a variance would not be needed, and that's still
1898 the case. This option should be considered by the applicant. That said, the
1899 applicant appears to meet the requirements for a variance under state code,
1900 especially since this lot was sold in 1994 without creating a zoning violation in
1901 regard to the home to the north. As a result, staff can recommend approval of
1902 this request subject to the conditions found in the staff report.

1903
1904 This concludes my presentation. If you have any questions, I will be happy to
1905 answer them.

1906
1907 Mr. Bell - Are there any questions? Hearing none, Paul, thank
1908 you.

1909
1910 Mr. Gidley - Thank you, Mr. Chairman.

1911

1912 Ms. Emery - I'm Karen Emery. I'm the heir to my mother's
1913 property. I don't really know what to say except that the young man who wants to
1914 build the house is my mother's nephew. She wished that the lot be sold to him.
1915 We had no idea that there was a need for a variance and that the lot was not an
1916 acceptable size when it was purchased from Ms. Hunt. That's about all I know
1917 about the issue at hand.

1918

1919 Mr. Bell - Did you know that if you just bought ten extra feet of
1920 lot width that it would put you within the lot area requirement?

1921

1922 Ms. Emery - No sir. I was probably—back in 1994, I wasn't
1923 involved in my mother's business dealings back then.

1924

1925 Mr. Bell - And your mother nor yourself has tried to buy the ten
1926 feet.

1927

1928 Ms. Emery - No sir. I didn't know that there was a need to do that
1929 until this came up.

1930

1931 Mr. Bell - Okay. Thank you.

1932

1933 Ms. Emery - Okay.

1934

1935 Mr. Bell - Any questions?

1936

1937 Ms. Harris - Yes. Do you know the owners of the lot to the north?

1938

1939 Ms. Emery - Yes ma'am. I knew them back when I was a teenager
1940 and lived in my mother's home, which is the brick rancher next to the lot. I do
1941 know that back several years ago—well, it's been many years ago. If you can
1942 see in this picture the white frame house to the left of my mother's house, that lot
1943 also did not meet the requirements for building a house. So they were granted a
1944 variance to do that also. That area of Highland Springs, as stated, has very many
1945 variable lots and standards.

1946

1947 Mr. Bell - Any other questions?

1948

1949 Mr. Mackey - Yes, Mr. Chairman. Oh, I'm sorry. Were you finished,
1950 Ms. Harris?

1951

1952 Ms. Harris - Yes. Thank you.

1953

1954 Mr. Mackey - Ms. Emery, did you say it was your nephew?

1955

1956 Ms. Emery - It's my mother's nephew, my cousin.

1957
1958 Mr. Mackey - Okay, your mother's nephew. I apologize. Is he aware
1959 of all the conditions stated by the County if it's approved?
1960
1961 Ms. Emery - Yes sir.
1962
1963 Mr. Mackey - And he has no problem with the brick foundation or
1964 anything?
1965
1966 Ms. Emery - No sir. He's the one who drew up the plans.
1967
1968 Mr. Mackey - Okay. Thank you. That's all.
1969
1970 Mr. Bell - Any other questions? Hearing none, thank you.
1971
1972 Ms. Emery - Thank you.
1973
1974 Mr. Baka - There's one more speaker.
1975
1976 Ms. Martin - Hi, I'm Angela Martin. This is my father, James W.
1977 Martin. We actually own the property to the right.
1978
1979 Mr. Blankinship - Oh, okay.
1980
1981 Ms. Martin - The three lots. We don't have a problem with this. We
1982 have the same situation they have, since the house burnt down and was
1983 removed. We have three lots that are only 50-foot-wide lots. And I think the
1984 current County ordinance is 75 feet of road frontage.
1985
1986 Mr. Blankinship - Sixty-five.
1987
1988 Ms. Martin - Is it? Okay. So we basically can only get two lots out
1989 of it instead of the three.
1990
1991 Mr. Blankinship - Right.
1992
1993 Ms. Martin - So we would say if they are granted the 50 feet, then
1994 we would propose the same, that we get the same variance.
1995
1996 Mr. Blankinship - Each case would have to be considered on its own
1997 merits. As was pointed out in the report, they have no other option other than
1998 buying property from you. If they're not allowed to develop one house on that 50-
1999 foot-wide lot, they have no reasonable use of it at all.
2000
2001 Ms. Martin - Right.
2002

2003 Mr. Blankinship - It would be a very different question to say you have
2004 enough room for two houses, but you'd like to build three houses. Is it
2005 unreasonable to say you can have two but you can't have three? That's a very
2006 different question. And of course that question is not before the Board this
2007 morning.

2008
2009 Ms. Martin - Correct. We just wanted to bring forward that we
2010 hoped we could get the same consideration or we might be willing, if we were
2011 approached, to provide additional acreage for them.

2012
2013 Mr. Blankinship - Right.

2014
2015 Ms. Martin - If that could be agreeable. But we haven't been
2016 approached. We just wanted to get on record that we currently are being held
2017 back from selling the property because everybody looks at as well it's three lots,
2018 but I can't build but two. So we get into that when trying to do something to turn
2019 the property over.

2020
2021 Mr. Blankinship - Right.

2022
2023 Ms. Martin - And we have the same constrictions. These lots were
2024 put down when Highland Springs was designed a hundred years ago. And we
2025 bought it with an existing house, but we thought the third lot was viable when we
2026 bought it that way, and come to find out it wasn't. It's kind of like the house was
2027 there, we did what we could do, and now it's gone. And we're kind of tied
2028 because nobody wants to buy it.

2029
2030 Mr. Baka - I do have a question about the three lots. Our plat in
2031 the package is showing that it's one parcel, I believe.

2032
2033 Mr. Blankinship - Yes.

2034
2035 Ms. Martin - The one that used to have the house was kind of like
2036 one, and then when we bought it, we bought the second one as a separate plot.

2037
2038 Mr. Blankinship - It's one parcel for tax purposes.

2039
2040 Ms. Martin - Yes.

2041
2042 Mr. Blankinship - On the subdivision plat of Highland Springs, it does
2043 show as three lots.

2044
2045 Mr. Baka - So they're combined for tax purposes. But the GIS tax
2046 map still only shows one parcel.

2047

2048 Mr. Blankinship - We've showed the combined layer not the subdivision
 2049 layer. They are legally three separate lots.
 2050
 2051 Mr. Baka - So there are legally three separate lots from prior to
 2052 1933.
 2053
 2054 Ms. Martin - Maybe this will help you. It'll show you.
 2055
 2056 Mr. Gidley - They are all under common ownership.
 2057
 2058 Mr. Blankinship - Yes.
 2059
 2060 Mr. Baka - So that would be a different situation altogether.
 2061 Thank you.
 2062
 2063 Mr. Blankinship - The question of three versus two is a very different
 2064 question from you can build a house or you can do nothing with your land.
 2065
 2066 Ms. Martin - Right. But the 50 feet versus the 75 feet does come—
 2067 or 65 feet, excuse me, does come into play. So.
 2068
 2069 Mr. Baka - The approval or denial of this case, one or the other,
 2070 would not necessarily lend a great deal of credence to creating three lots where
 2071 two homes could be built. I just wanted to be somewhat clear.
 2072
 2073 Ms. Martin - We know we could probably get the variance to split
 2074 the lots to get the two, but we would prefer the three. Like anybody else, we
 2075 would like to take best advantage of the property. And since they were originally
 2076 mapped out as 50-foot lots, we'd like to take advantage of that, like anybody
 2077 else.
 2078
 2079 Mr. Baka - Okay.
 2080
 2081 Mr. Gidley - You currently have the ability to build two homes on
 2082 those lots without a variance.
 2083
 2084 Ms. Martin - Maybe, but we're just trying to take advantage of the
 2085 best we can. Thank you.
 2086
 2087 Mr. Bell - Thank you.
 2088
 2089 Ms. Emery - May I ask a question?
 2090
 2091 Mr. Bell - Certainly. Come back up.
 2092

2093 Ms. Emery - So my understanding is that I need to purchase ten
2094 feet of land from the Martins?

2095
2096 Mr. Blankinship - Either you need to do that or the Board needs to
2097 approve the variance. If the Board approves the variance this morning, then there
2098 is no need for you to buy additional land.

2099
2100 Ms. Emery - Okay.

2101
2102 Mr. Blankinship - But if you had bought additional land prior to this
2103 hearing, you would not need the variance.

2104
2105 Ms. Emery - All right.

2106
2107 Mr. Blankinship - But you're here now, so.

2108
2109 Ms. Emery - All right. Thank you so much. I just needed the
2110 clarification.

2111
2112 Mr. Blankinship - All right, let's move on.

2113
2114 **[After the conclusion of the public hearings, the Board discussed the case**
2115 **and made its decision. This portion of the transcript is included here for**
2116 **convenience of reference.]**

2117
2118 Mr. Bell - Do I hear a motion?

2119
2120 Mr. Mackey - Yes, Mr. Chairman. I move that we accept the
2121 variance as written with the County's recommendations.

2122
2123 Mr. Bell - Do I hear a second?

2124
2125 Mr. Baka - Second.

2126
2127 Mr. Bell - Is there any discussion?

2128
2129 Ms. Harris - Yes. I think that it was pointed out that without the
2130 variance as it stands, a new house could not be erected here. So we do need the
2131 variance, based on the information the lot owner provided for us.

2132
2133 Mr. Bell - Okay. All in favor say aye. All opposed say no. The
2134 ayes have it; the motion passes.

2135
2136 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
2137 Mr. Baka, the Board **approved** application **VAR2016-00009, KAREN EMERY's**
2138 request for a variance from Section 24-95(b)(6) of the County Code to build a

one-family dwelling at 10 S Fern Avenue (HIGHLAND SPRINGS) (Parcel 822-724-1176) zoned One-Family Residence District (R-4) (Varina). The Board approved the variance subject to the following conditions:

1. This variance applies only to the lot area requirement for one dwelling only. All other applicable regulations of the County Code shall remain in force.

2. Only the improvements shown on the plot plan and building design filed with the application may be constructed pursuant to this approval. Any additional improvements shall 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 variance.

3. Before beginning any clearing, grading, or other land disturbing activity, the applicant shall submit an environmental compliance plan to the Department of Public Works.

4. Any dwelling on the property shall be served by public water and sewer.

5. The home shall be built over a crawl space with a brick foundation.

| | | |
|--------------|------------------------------------|---|
| Affirmative: | Baka, Bell, Berman, Harris, Mackey | 5 |
| Negative: | | 0 |
| Absent: | | 0 |

[At this point, the transcript continues with the public hearing on the next case.]

VAR2016-00010 **EVELYN JOHNSON HALLADAY** requests a variance from Section 24-94 of the County Code to build a one-family dwelling at 4314 Creighton Road (Parcel 815-733-5637) zoned Agricultural District (A-1) (Fairfield). The lot width requirement is not met. The applicant proposes 85 feet lot width, where the Code requires 150 feet lot width. The applicant requests a variance of 65 feet lot width.

Mr. Blankinship - Will everyone who intends to speak to this case please stand and be sworn in. Would you raise your right hand, please? Do you swear the testimony you're about to give is the truth, the whole truth, and nothing but the truth so help you God? Thank you. Ma'am, if you'll step aside and let Mr. Gidley do his report, we'll be right with you.

Ms. Halladay - Oh, I'm sorry.

Mr. Gidley - Thank you, Mr. Secretary, members of the Board. This is a request for a lot width variance to allow an existing non-conforming dwelling to be torn down and replaced. The subject property is located at 4314 Creighton Road. It contains 7.93 acres of lot area. Based upon a survey received yesterday afternoon, there is approximately 85 feet of lot width. The Zoning Ordinance requires 150 feet of lot width, so the variance request is actually going to be for 65 feet of lot width.

Some history of the site. In 1943, Charles A. Smith purchased a 227-acre parcel. In 1947, this was subdivided into 23 lots, one of which was lot 4. And lot 4 contained 10 acres and 270 feet of frontage along Creighton Road. This lot was sold and a home built on it two years later in 1949, which is the home that's subject to today's request. In 1956, this lot was conveyed to T. T. and Mona Johnson, along with adjacent lot 5, which is over in this area.

This is the home that was constructed back in 1949. And in the aerial you can see the original lot has undergone three divisions since it was first purchased. There was a sale of 1.17 acres with 150 feet of road frontage in 1960. That's down here at 4316 Creighton Road. The second division occurred in 1971 where the remainder of lot 4 east of this lot—and it came down like this, so it was really this section here, along with the adjacent lot that was also sold off. That was 4318 Creighton. And finally up here, this square parcel here contains roughly one acre of land, and it was sold in 1989. It's known as 4280 Creighton Road. Since it lacked public street frontage, it obtained a variance to enable a home to be constructed on it.

The three divisions have reduced the property from its original 10 acres down to its current 7.93 acres and leaves it with approximately 85 feet of lot width. The original dwelling remains; however, it does not meet the needs of the new owners who would like to demolish it and replace it with a new dwelling. Because the lot width is not met at the 50-foot front yard setback, which is required under the current Zoning Ordinance, the dwelling is considered non-conforming with regard to lot width.

The key question in considering a variance is does the Zoning Ordinance unreasonably restrict the use of the property or would the variance alleviate a hardship due to a physical condition related to the property at the effective date of the ordinance. The currently Zoning Ordinance provides that non-conforming dwellings may be enlarged or structurally altered, but not reconstructed or substituted. As a result, while the existing home can be enlarged or maintained, a new home may not be built. In other words, they can't tear it down and build a brand new home there. Such a restriction on the property, which is over seven acres in lot area, is arguably an unreasonable restriction on the use of the property since the only alternative would be an agricultural use. If the dwelling has deteriorated to the point where it cannot be renovated, the only reasonable

use of the property may be to allow construction of a new dwelling, as is the request today.

Assuming these facts are met, the five subtests include the following. Was the property acquired in good faith and the hardship not created by the applicant. The original lot 4 with 270 feet of frontage along Creighton Road complied with today's requirements. Since then, that's been divided off three times. However, the property was inherited by three siblings, none of whom was responsible for the three previous divisions. As a result, their acquisition of the property was in good faith.

Two, the granting of the variance will not be a substantial detrimental impact to nearby property. Tearing down an older home and building a new home there should not be detrimental to adjacent property, assuming setbacks are met and the design of the home proposed is complementary to these adjacent homes. You can see here in this picture, this is a porch on the home in question, and this is the adjacent home to the northeast. The setback is actually not met independent of the porch. From the corner of the house over here to this home here, the A-1 setback is short roughly two feet. So it is important if a new home is built there that it does meet setbacks.

As far as the dwelling itself that's proposed for the site, the only information that we have at this time is that it will be 1,000 square feet in floor area. Both of the adjacent homes are one story and contain approximately 1,700 square feet of floor area. So we hope to perhaps have some more detail as to the type of home that would be constructed on the property.

Three, the condition of the property is not so general and reoccurring where an ordinance amendment would be applicable. The Board occasionally will hear requests like this where you have an older home on a piece of property that has deteriorated and people would like to build a new home on the property, but don't meet code requirements for the existing lot or home. So it's not unusual for the Board to hear a case like this. But the situations that caused this are so wide and variable on a lot-by-lot basis, it's really difficult to tailor an ordinance that would address all of those under one fell swoop.

Four, the granting of the variance does not result in a use that's not otherwise permitted. In this case, you'd just substitute one single-family dwelling for another single-family dwelling, so that's not an issue.

Finally, the remedy sought by the variance is not available through a special exception or a modification.

In conclusion, staff believes the applicant meets the initial test regarding an unreasonable restriction on the use of the property. The application also meets the five subtests, so long as assurances can be provided the proposed dwelling

2275 will blend in well with the surrounding residences. Accordingly, we recommend
2276 approval of this request subject to the conditions found in the staff report.

2277
2278 This concludes my presentation. And I'll be happy to answer any questions you
2279 have.

2280
2281 Mr. Bell - Any questions?

2282
2283 Ms. Harris - Yes. Mr. Gidley, is the home inhabited now?

2284
2285 Mr. Gidley - No ma'am, it is not now.

2286
2287 Ms. Harris - I was looking at the picture and drove by there. I really
2288 couldn't tell whether it was inhabited or not. They keep up a good front. Okay.

2289
2290 Mr. Gidley - My understanding is that one of the siblings that
2291 inherited it would like to move in there.

2292
2293 Ms. Harris - If we look at the area map, this piece of property, can
2294 you point out where the property is located? And do we know if they're going to
2295 place the new home in the same position?

2296
2297 Mr. Gidley - The overall parcel boundary is highlighted in yellow.
2298 The home in question is right here where the cursor is. And I can zoom in on it.
2299 The home is right here. And they've indicated they want to put it in roughly the
2300 same spot. Since we received the survey yesterday showing there is a setback
2301 violation, I wanted to make it clear that when they do come in for a building
2302 permit application, they need to move it over slightly so they do meet setbacks.
2303 There's plenty of room to meet setbacks, but the current dwelling does not.

2304
2305 Ms. Harris - All right. Thank you.

2306
2307 Mr. Gidley - You're quite welcome.

2308
2309 Mr. Bell - I believe you mentioned, and the report also, that you
2310 need the house plans. Have they been provided?

2311
2312 Mr. Gidley - No sir. The only information we have is the proposed
2313 home will be 1,000 square feet in floor area. But as far as a design or anything
2314 like that and how it would fit in with adjacent properties, we have no information.

2315
2316 Mr. Berman - Is there a plan that could be created that would
2317 negate the need for a variance, given the 1,000 square feet?
2318

2319 Mr. Gidley - The variance is for lack of lot width, and that's not
2320 really related to the size of the home other than if it gets a variance, the home
2321 needs to not have a detrimental impact on the neighbors.
2322
2323 Mr. Berman - What I'm not understanding is, isn't the lot width met
2324 further back?
2325
2326 Mr. Gidley - Under the old Zoning Ordinance, you could measure
2327 lot width at the actual front building line. So if your lot was wider as you went
2328 back, as is the case here, you could build a home and meet lot width
2329 requirements. That's been changed. Under the current Zoning Ordinance, you
2330 have to meet it at the front yard setback. So under the A-1 district, the front yard
2331 setback is 50 feet. So when you go back roughly 50 feet from Creighton Road,
2332 you need to obtain the lot width at that point. That lot width is roughly 85 feet
2333 whereas 150 is needed.
2334
2335 Mr. Berman - Thanks.
2336
2337 Mr. Gidley - You're welcome.
2338
2339 Mr. Baka - Following up on the discussion, Paul, the only way to
2340 avoid the need for a variance would be to acquire that entire lot next door, which
2341 was sold off previously. But that already has a house on it, correct?
2342
2343 Mr. Gidley - Yes sir, that's correct.
2344
2345 Mr. Baka - So that creates a need for the variance, as you
2346 recommended in the staff report. And often before granting variances, we just
2347 look to see if there are any other options available. That's why I asked about that.
2348 And now kind of a related question. There are a number of large rural parcels
2349 fronting on Creighton Road that are zoned Agricultural, but on the Master Plan
2350 are shown as Suburban Residential. Are there any plans before the Planning
2351 Department right now for any residential development of those other parcels
2352 nearby? Any plans that you're aware of at all?
2353
2354 Mr. Gidley - Not that I'm aware of as far as immediate plans. As
2355 you can see, to the west, some parcels were acquired and a new subdivision
2356 was built. So that certainly could occur further to the east.
2357
2358 Mr. Blankinship - You don't go very far to the east before you get into
2359 the floodplain.
2360
2361 Mr. Gidley - Exactly.
2362
2363 Mr. Baka - Okay. Thank you.
2364

2365 Mr. Bell - Any other questions? Thank you, Paul.
 2366
 2367 Mr. Gidley - Thank you, Mr. Chair.
 2368
 2369 Mr. Bell - All right. Ms. Halladay?
 2370
 2371 Ms. Halladay - Hello, I'm Evelyn Halladay, and I'm here to request a
 2372 variance on Creighton Road so that I can build with family. They will be there to
 2373 help me if I need help. The home I am presently living in is too much upkeep for
 2374 me since my husband passed. That's all I have to say.
 2375
 2376 Mr. Bell - Any questions?
 2377
 2378 Ms. Harris - Ms. Halladay, where are you living now?
 2379
 2380 Ms. Halladay - Where am I living now? I'm living in Mechanicsville,
 2381 9244 Shannon Road.
 2382
 2383 Ms. Harris - When you were saying you wanted someone near
 2384 you, I was thinking that you were in this vicinity, that your residence was in this
 2385 vicinity, but it's not.
 2386
 2387 Ms. Halladay - No.
 2388
 2389 Ms. Harris - Okay.
 2390
 2391 Mr. Bell - Any other questions? Hearing none, thank you. Is
 2392 there anyone else who would like to speak to this issue?
 2393
 2394 Mr. Johnson - I really can't add anything to it because I didn't hear
 2395 what was said. And I humbly apologize for that. I know that this house has been
 2396 in our family for 68 years. Larry Johnson. J-o-h-n-s-o-n. My sister is 81, and she
 2397 wants to move out to be near the family so that we can help when it's time to take
 2398 care of her. So if I can answer any questions, I'd be happy to, if you can speak
 2399 loud enough for me to hear them.
 2400
 2401 Mr. Bell - Any questions?
 2402
 2403 Ms. Harris - Mr. Johnson, where do you live now? Where do you
 2404 live?
 2405
 2406 Ms. Johnson - Where do you live, Larry?
 2407
 2408 Mr. Johnson - Where do I live? I live at 4322 Creighton Road, which
 2409 is about 300 to 400 feet from the house.
 2410

2411 Ms. Harris - Thank you.
 2412
 2413 Mr. Johnson - It's all family right in that general area right there.
 2414
 2415 Ms. Harris - Thank you.
 2416
 2417 Mr. Bell - Any other questions? Thank you.
 2418
 2419 Mr. Johnson - Thank you.
 2420
 2421 Mr. Bell - We've been going for almost two hours. We'll move
 2422 on to voting for the cases we've heard.
 2423
 2424 **[After the conclusion of the public hearings, the Board discussed the case**
 2425 **and made its decision. This portion of the transcript is included here for**
 2426 **convenience of reference.]**
 2427
 2428 Mr. Bell - Do I hear a motion?
 2429
 2430 Ms. Harris - I move that we approve this variance. In accordance
 2431 with what the staff report revealed, this is an unbuildable lot. No other use for it
 2432 except for agriculture. So my motion is that we approve this variance.
 2433
 2434 Mr. Baka - I second the motion.
 2435
 2436 Mr. Bell - Is there any other discussion? Hearing none, all in
 2437 favor say aye. All opposed say no. The ayes have it; the motion passes.
 2438
 2439 After an advertised public hearing and on a motion by Ms. Harris, seconded by
 2440 Mr. Baka, the Board **approved** application **VAR2016-00010, EVELYN**
 2441 **JOHNSON HALLADAY's** request for a variance from Section 24-94 of the
 2442 County Code to build a one-family dwelling at 4314 Creighton Road (Parcel 815-
 2443 733-5637) zoned Agricultural District (A-1) (Fairfield). The Board approved the
 2444 variance subject to the following conditions:
 2445
 2446 1. This variance applies only to the lot width requirement for one dwelling only.
 2447 All other applicable regulations of the County Code shall remain in force.
 2448
 2449 2. The applicant shall obtain a demolition permit to demolish the existing home.
 2450 The existing home shall be demolished prior to the approval of a building permit
 2451 for a replacement dwelling.
 2452
 2453 3. The new dwelling shall contain at least 1,000 square feet of finished floor
 2454 area. The front building line of the home shall be no more than 25 feet in front of
 2455 or behind the existing front building line of the home at 4316 Creighton Road.
 2456

2457 4. The new dwelling shall comply with the setback requirements of Section 24-
2458 94 of the zoning ordinance.

2459
2460 5. Approval of this request does not imply that a building permit will be issued.
2461 Building permit approval is contingent on Health Department requirements,
2462 including, but not limited to, soil evaluation for a septic drainfield and reserve
2463 area, and approval of a well location.

2464
2465 6. Before beginning any clearing, grading, or other land disturbing activity, the
2466 applicant shall submit an environmental compliance plan to the Department of
2467 Public Works.

2468
2469
2470 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
2471 Negative: 0
2472 Absent: 0

2473
2474
2475 Mr. Bell - Let's go ahead and vote on approval of the May 26th
2476 minutes. Do I hear a motion on the minutes?

2477
2478 Mr. Berman - I move that we waive the reading of the May 26th
2479 minutes and accept them into the record as is.

2480
2481 Mr. Bell - Do I hear a second?

2482
2483 Mr. Baka - Second.

2484
2485 Mr. Bell - Is there any discussion? Hearing none, all in favor say
2486 aye. All opposed say no. The ayes have it; the motion passes.

2487
2488 On a motion by Mr. Berman, seconded by Mr. Baka, the Board **approved as**
2489 **submitted the Minutes of the May 26, 2016**, Henrico County Board of Zoning
2490 Appeals meeting.

2491
2492
2493 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
2494 Negative: 0
2495 Absent: 0

2496
2497
2498 Mr. Bell - Do we have any old business or any new business?

2499
2500 Ms. Harris - I need to say I attended the Land Use Planning
2501 session. The information that I received I will share with you. I think I've already

2502 spoken to Mr. Blankinship. Some new legislation will be very informative to our
2503 Board. So we will try to share that with you.

2504
2505 Mr. Blankinship - Which particular legislation were you referring to?
2506

2507 Ms. Harris - There is a group, you know, unreasonable proffer.
2508 There is a group that they single out that we probably need just for informational
2509 purposes that would help us to know.
2510

2511 Mr. Mackey - Mr. Chairman, I'd like to thank Ms. Harris for sharing
2512 information with me, helping me come along a little more rapidly. I appreciate
2513 that.
2514

2515 Mr. Bell - Is there anything else we want to discuss? If not, let's
2516 go ahead and vote on adjournment. Do I hear a motion we adjourn?
2517

2518 Mr. Baka - So moved.
2519

2520 Mr. Bell - Do I hear a second?
2521

2522 Mr. Mackey - Second.
2523

2524 Mr. Baka - All in favor say aye. All opposed say no. The ayes
2525 have it; the motion passes.
2526

2527
2528 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
2529 Negative: 0
2530 Absent: 0
2531

2532
2533 We are adjourned.
2534

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2547



Gentry Bell
Chairman



Benjamin Blankinship, AICP
Secretary