

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **GOVERNMENT CENTER AT PARHAM AND HUNGARY SPRING ROADS, ON**
4 **THURSDAY MARCH 24, 2022 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN**
5 **THE *RICHMOND TIMES-DISPATCH* MARCH 7, 2022 AND MARCH 14, 2022.**
6
7

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

14 **Also Present:** Jean M. Moore, Assistant Director
15 Benjamin Blankinship, Secretary
16 Paul M. Gidley, County Planner
17 R. Miguel Madrigal, County Planner
18 Livingston Lewis, County Planner
19 Lisa Blankinship, County Planner
20 Kuronda Powell, Account Clerk
21
22

23 [Recitation of the Pledge of Allegiance]
24

25 **Mr. Green -** Thank you. Mr. Blankinship will now read our rules.
26

27 **Mr. Blankinship -** Good morning, Mr. Chair, members of the Board. Good
28 morning to those of you who are in the room with us today. And I'd also like to welcome
29 everyone who is joining us remotely on Webex. If you wish to observe the meeting, but
30 you do not intend to speak, welcome and thank you for joining us. For those of you on
31 Webex who wish to speak, we need to know that in advance so we can connect you at
32 the appropriate time.
33

34 So if you are an applicant or if you have questions or comments on one of the cases,
35 please press the chat button now. It's located in the bottom-right corner of the Webex
36 screen. And when the chat window opens, please select Livingston Lewis from the list of
37 participants and let him know your name and which case you're interested in. The chat
38 feature is only being used to identify speakers, so please do not type questions or
39 comments into a chat, but please send a chat to Livingston Lewis now.
40

41 So acting as secretary I will call each case and then we will ask everyone in the room
42 who is interested in speaking to that case to stand and be sworn in. For the conditional
43 use permits and variances, a member of the Planning Department will then give a brief
44 presentation and then the applicant will speak and then anyone else who wishes to speak
45 will be given the opportunity. We'll hear from citizens in the room first and then from those
46 on Webex.

47
48 After everyone has had a chance to speak, the applicant and only the applicant will have
49 an opportunity for rebuttal.

50
51 There's also one appeal on the agenda this morning and for that case an assistant County
52 attorney will speak on behalf of the Planning Director and then the appellant will present
53 their case and each side will have a limit of 10 minutes and then anyone else who wishes
54 to speak will be given the opportunity with a time limit of 3 minutes. We hear from citizens
55 in the room first, and then from those on Webex.

56
57 This meeting is being recorded so for those in the room, we will ask you to speak into the
58 microphone on the lectern in the back of the room there. Please spell your name -- state
59 your name and please spell your last name so that we get it correctly in the record and
60 once your case is over, the case you're interested in is over, you are free to leave the
61 room. You do not have to stay for the rest of the meeting.

62
63 We are one member short still. The Code of Virginia requires that for the Board to rule in
64 favor of an applicant or an appellant, there must be three affirmative votes. If one member
65 remains absent, then that decreases your possibility of having three affirmative votes. So
66 if anyone wishes to defer their case until next month, please let the Board know that. But
67 we do expect Mr. Pollard any moment now. I'm sure he's just stuck in traffic, so that
68 should not really be an issue.

69
70 And, finally, Mr. Chair, there is one withdrawal from this morning's agenda. Conditional
71 Use Permit 2022 number 11, Rachel Haines Gonner.

72
73 **CUP2022-00011 RACHEL HAINES GONNER** requests a conditional use permit
74 pursuant to Section 24-4404.A.1 of the County Code to build a detached garage in the
75 side yard at 7518 Oakmont Drive (OAKMONT HILLS) (Parcel 775-753-8105) zoned One-
76 Family Residence District (R-3) (Brookland).

77
78 Mr. Blankinship - That case has been withdrawn, so if you're here for that this
79 morning, there's no need to remain. With that, go right ahead.

80
81 Mr. Green - Thank you. Can you please call our first request?

82
83 Mr. Blankinship - There are three conditional use permits on this morning's
84 agenda. The first is Conditional Use Permit 2022, number 12, Steven R. Yaeger.

85
86 **CUP2022-00012 STEVEN R. YAEGER** requests a conditional use permit pursuant to
87 Section 24-4406 of the County Code to allow an accessory dwelling unit at 8311
88 Lansdowne Road (FORDSON ACRES) (Parcel 757-750-6058) zoned One-Family
89 Residence District (R-3) (Three Chopt).

90
91 Mr. Blankinship - Would everyone who intends to speak to this case, please
92 stand and be sworn in? Raise your right hands, please. Do you swear the testimony

93 you're about to give is the truth, the whole truth, and nothing but the truth so help you
94 God?

95
96 Mr. Yaeger - I do.

97
98 Mr. Blankinship - Thank you. You can be seated and, Mr. Madrigal, you can
99 begin.

100
101 Mr. Madrigal - Thank you, Mr. Secretary, Mr. Chair, members of the Board.
102 Good morning. Before you is a request to allow an accessory dwelling unit in an R-3
103 District. The subject property is in the Fordson Acres Subdivision and consists of two
104 100-foot-wide lots that total over an acre in area.

105
106 The parcel is improved with a 1-story, 2,300-square-foot home with a 2,600-square-foot
107 basement constructed in 1963. County records indicate that 2,100 square feet of the
108 basement is finished and the remaining square footage is unfinished in the basement
109 area.

110
111 The home is set back 100 feet from the right-of-way and it has a 24-foot-wide driveway
112 and that driveway leads to a large parking pad adjacent to the home. You can see that
113 here.

114
115 The applicant purchased the property in September of 2020 and the following month he
116 applied for a building permit to add a second bedroom and expand a wet bar in the
117 basement. After completing this project, the finished basement consists of two bedrooms,
118 an office, a full bathroom, a half-bath, and a kitchenette with a center island facing a great
119 room.

120
121 The applicant would now like to convert a portion of the basement into an accessory
122 dwelling unit which is allowed by way of a conditional use permit and subject to
123 requirements outlined in code. The ordinance does limit the size of the accessory
124 dwelling unit to 35 percent of the finished floor area of the home and -- or 800 square feet.
125 Whichever's less. In this case, the 800-square-foot limit applies.

126
127 The applicant's proposal does not physically separate the accessory dwelling unit from
128 the rest of the basement. If approved the accessory dwelling unit will have to be an
129 independent and physically separate space from the rest of the basement, not exceeding
130 800 square feet, to meet the intent of code.

131
132 With respect to the evaluation of this request, the existing and proposed use is consistent
133 with both the zoning and comprehensive plan designations on the property. The
134 proposed accessory dwelling unit will have to comply with the requirements outlined in
135 code, including the size limit and that it be a physically separate space from the rest of
136 the basement. Because the proposed accessory dwelling will be located within the
137 basement level of the home, it should be indis -- indisting -- indistinguishable -- I can't
138 speak today -- from the existing dwelling.

139
140 This will result in it being consistent with the general character of the neighborhood and
141 keeping in scale and intensity. The large size of the lot, the deep setbacks and large
142 parking area adjacent to the home will facilitate the proposed use and it should not result
143 in any detrimental impacts.

144
145 Based on these facts, staff recommends approval subject to the conditions attached in
146 the report. We have not received any letters or phone calls in opposition. And that
147 concludes my presentation.

148
149 Mr. Green - Are there any questions from the Board to staff? Hearing
150 none. We'll hear from the applicant.

151
152 Mr. Yaeger - Good morning. My name is Steven Yaeger. Yaeger is spelled
153 Y-a-e-g-e-r. All right. Well, first off, thank you very much for hearing my case. Thank
154 you to Mr. Madrigal for the time spent analyzing it and to the Board members and
155 everyone involved. I greatly appreciate it.

156
157 Family is not an important thing. It's everything. This quote by Michael J. Fox summarizes
158 why my wife and I would like to be able to designate 760 square feet of our home as an
159 accessory dwelling unit.

160
161 Sadly, our family has experienced trauma, and currently medical reports indicate the need
162 for us to care closely for family members in many years to come. My wife and I would
163 like to create a home environment where we can closely care for a family member, but
164 also provide them spaces for independent living.

165
166 The plan for caring for our family starts with my brother now and extends to my wife's
167 mother in coming years. Really, we just want to give the area that my brother already
168 exists in an oven. Given the revised zoning ordinance that was underway in 2020 and
169 then was being reviewed in several drafts, finally approved in September of 2021, was
170 likely to include this provision for an accessory dwelling unit. My wife and I applied for
171 and were approved for the oven -- for the wire for an oven -- but not for the oven itself.

172
173 The code does allow for an application for accessory dwelling units, and we greatly
174 appreciate the time again.

175
176 The analyst's report recommends the conditional use permit with a series of conditions.
177 We would like to designate this area presented as an accessory dwelling unit with little to
178 no additional modifications. We have already spent close to \$15,000 to create those
179 spaces. Additional modifications would be costly, could appear arbitrary, and would
180 impede our ability to care for family members occupying the proposed accessory dwelling
181 unit. We believe we have created a well-defined independent living space that is separate
182 and represents our proposed accessory dwelling unit.

184 As a former banking regulator and now an internal credit review leader for over 17 years,
185 I know all too well the importance of rules and regulations. Ensuring the consistency is
186 upheld between different situations is an -- is an important part of the process so that
187 leaders and public constituents know that a fair process is in place.

188
189 Sorry. My notes are all out of order.

190
191 Definitions and written rules, especially the ones recently revised, are key parts of that
192 fair process. The ordinance notes that an accessory dwelling unit must provide a
193 bathroom, a kitchen, and a living space separate from the primary dwelling. Separate but
194 not physically separate is what's mentioned within the ordinance.

195
196 Our plans and the actual uses of that space reflect that and are consistent with how the
197 ordinance is written. The key aspect of our situation is that we have created well-defined
198 space and that the documentation supports this request. And specifically the pillars
199 surrounding the kitchen space do help define that space as a separate part of that room.
200 Which, if you think about appraisals, if you think about different situations, there are
201 different spaces that are considered separate even though they are not fully enclosed.

202
203 My brother has gone through some difficult times with the loss of his wife. And the path
204 to getting him back on his feet is looking promising right now. In September of 2021 he
205 fainted and fell, hitting his head and causing significant bleeding. He's fine now, but had
206 to see a neurologist, and it's something being monitored closely. If he were in a separate
207 house or a fully walled off living space, then he might not have been discovered before it
208 was too late.

209
210 It's very sad but rational to envision similar situations happening in the future with our
211 family members. Namely my mother-in-law. Assuming that my brother hopefully moves
212 out in the coming years.

213
214 Keeping some of those well-defined spaces not fully walled off allows us to provide the
215 best care for our family members. The written ordinance supports our well-defined --
216 proposed accessory dwelling unit, and the aspects of it being well defined creates
217 separation and those conditions could be applied to future applicants.

218
219 Also speaking to the intents of the ordinance, I have found language online from when
220 the original bill, House Bill 151 that turned into the ordinance was submitted. It notes that
221 locality shall regulate the size and design of accessory dwelling units through an approval
222 process as well as regulate fees, parking, other requirements provided that the
223 regulations are not so arbitrary, excessive, or burdensome individually or cumulatively to
224 unreasonably restrict the ability of property owners to utilize or create accessory dwelling
225 units.

226
227 We could construct walls and hallways around all these separate areas. They constitute
228 the accessory dwelling unit however I believe this would create actually more of a duplex
229 setup and create a bit of an oddity for the house's layout itself.

230
231 The current setup provides an avenue for us to check on and interact with family members
232 without significant construction costs that could approach \$10,000 and further doors and
233 hallways that would be more difficult to navigate if the person is handicapped. The code
234 finalized in September 2021 does speak to allowing accessory dwelling units within
235 primary dwellings. But it does not include language requiring that physical surrounds
236 surround it. It notes it should be separate. Definition of separate is forming or viewed as
237 a unit apart from itself.

238
239 The -- this occurs in zoning all the time when tracts of land are subdivided and they are
240 designated as being a unit apart or by themselves, but they do not necessarily have
241 physical walls surrounding them.

242
243 I am concerned also about the condition of being physically separated with walls around
244 it. Because from what I can see, there are no specifications in the building code that list
245 out how an accessory dwelling unit within a home must be physically separated so there
246 would be more arbitrary decisions coming down that path and some ambiguity for just me
247 as a homeowner. We're trying to figure out what is going to be permissible.

248
249 As I noted at the beginning, our family is everything to us. I'm very thankful for the time
250 spent on this application and this hearing today. It means the world to my family. You've
251 taken the time to hear the details of our application and how it could more deeply and
252 effectively lead us to caring for our family in years to come. Thank you.

253
254 Mr. Green - Are there any questions from the Board to Mr. Yaeger in
255 reference to his request? Are there any --

256
257 Mr. Johnson - You mentioned that you had House Bill -- what number was
258 that?

259
260 Mr. Yaeger - It was House Bill 151.

261
262 Mr. Johnson - And what was your reason for iterating that one? You said
263 what about it?

264
265 Mr. Yaeger - It was the part of the bill when it was proposed that spoke to,
266 like, the arbitrary aspects of the regulations that can be provided. And the reason I
267 brought that up is I'm concerned that the physical separation, that being a condition -- it's
268 noted as condition number 3 in the analysts' report -- that the word physical being added
269 in but not actually being part of the ordinance is an arbitrary piece that's being added in
270 and there would be a lot of ambiguity around that for myself and for future applicants.

271
272 Mr. Green - Okay. Thank you. Are there any more questions from the
273 Board to the applicant? Do we have anybody on -- in the audience or -- and or Webex
274 who would like to speak for or against this application?

276 Mr. Johnson - No.

277

278 Mr. Lewis - There is no one on Webex to speak to this case.

279

280 Mr. Green - Okay. We'll hear -- we'll listen to -- I think Mrs. Yaeger would

281 lie to speak, too.

282

283 Ms. Yaeger - Thank you.

284

285 Mr. Green - I presume.

286

287 Ms. Yaeger - Good morning. My name is Bera Yaeger, and that's B-e-r-a,

288 last name Y-a-e-g-e-r. I grew up in a multi-generational home. It's something that is

289 common and valued in my culture. I enjoy the benefits of having extended family and a

290 home growing up that I -- and I want my children to have the same experience. I'm lucky

291 to have a husband that shares my views and values and value set.

292

293 One thing that this pandemic has taught both of us is that we would not want to put our

294 parent in a retirement home and we would want them to have an option to, one of them,

295 to live with us when the time comes. We bought this big house in the middle of a

296 pandemic with that in mind. My -- our -- the main reason we bought this house was

297 because it was perfect for us to have a family member living with us and also have the

298 ability to have a space of an -- of our own.

299

300 My brother-in-law is currently living with us and our kids love it. All we want is to provide

301 him with a space for him to make his own meals without having to share a stove with us.

302

303 We like having the space and we can all gather in the basement and watch a game or

304 play pool. Enclosing the basement will not only be very expensive for us, but it will also

305 ruin the layout of our house. It would defeat the purpose for us actually helping our

306 parents and -- because we wouldn't have access straight through the house.

307

308 With prices of everything going up, with aging parents, disabled stepfather, and college-

309 aged siblings and working from home changes we know that our house will be a place

310 where a senior family member can live with for years to come. Thank you.

311

312 Mr. Green - Thank you, Ms. Yaeger. The individual on Webex.

313

314 Mr. Blankinship - I think she said there was no one on Webex.

315

316 Mr. Green - Oh. Okay. I'm sorry. I thought she said there was. Are there

317 any discussions among the Board once again to staff and or the applicant? Okay.

318

319 Mr. Reid - I have a question. Is it possible to -- has this been done in the

320 past where the condition has been removed so that they can achieve what they want to

321 without the physical -- creating a physically separate?

322
323 Mr. Madrigal - No, sir. That has not. This is a new section of the code. Prior
324 to September 1 this option was not available to folks. So this is a brand-new section.
325 And, you know, when you look at the intent of the code, the intent of the code is essentially
326 to create a physically separate unit limited to 800 square feet. And that can be attached
327 or detached. In this case it is attached.

328
329 If you look at the proposed plan now, if it remains the same, you're essentially violating
330 that 800-square-foot-limit, because you end up with a 21 -- or you got about 2,100-square-
331 foot duplex or, you know, unit downstairs. You know. There's no physical separation,
332 and you can see the photos here. This is the kitchen area with an island on the -- and
333 this is what they call the Great Room. So, you know, how do you achieve that 800-
334 square-foot limit?

335
336 Mr. Reid - Is that statewide?

337
338 Mr. Blankinship - That's for our code.

339
340 Mr. Blankinship - No. That's just our code. Yes, sir. And you do have the
341 authority to remove that condition if you decide that it is separate enough just to have the
342 pillars there. As the applicant pointed out, there is nothing in the code that clearly states
343 it has to be enclosed by walls. But that's the interpretation we put on it. Because
344 otherwise how do you say what size it is if you -- if it's not clear where it begins and ends.

345
346 Mr. Reid - Thank you.

347
348 Mr. Madrigal - Now we do have a definition in the code for a dwelling unit
349 and I'll read that to you. Basically, it says within the dwelling one or more rooms
350 connected together and constituting a single housekeeping unit with independent
351 cooking, bathroom, and sleeping facilities designed or used for occupancy by a single-
352 family or housekeeping unit for owner occupancy or rental for periods of three consecutive
353 days or more and separate from any other dwelling units or rooms in the same building.

354
355 Mr. Pollard - As staff sees it, condition three makes the -- makes approval
356 more possible from --

357
358 Mr. Madrigal - I'm sorry. One more time.

359
360 Mr. Pollard - As staff sees it, condition 3 makes approving it more possible.
361 Makes you -- makes us able to approve it versus if the -- we remove that condition, then
362 we will be violating the code.

363
364 Mr. Blankinship - I wouldn't say violating the code. But it calls into question the
365 meaning of the code. I think, you know, the Board is charged with interpreting the code
366 as well. So it is the -- a decision I think that is within your purview. Our recommendation

367 is that it should -- there should be a clear physical separation indicating where the 800
368 square feet begins and ends.

369
370 Mr. Pollard - To avoid the confusion of where it begins and ends.

371
372 Mr. Blankinship - Yes, sir.

373
374 Mr. Pollard - Okay.

375
376 Mr. Green - Mr. Yaeger, the staff has done a thorough review and
377 recommended approval with the conditions. Are you -- would you accept the conditions?

378
379 Mr. Yaeger - So I think I agree. Like, it does need to be separate. It needs
380 to be a single housekeeping unit that is separate and I do believe what I proposed with it
381 being a well-defined unit with a lease substantiating this space that is permissible for a
382 use and that defines that same outlined area and the way it is actually used by the people
383 that live within it. Define that as a separate unit.

384
385 The pillars I do believe create an actual architectural distinction for what separates it from
386 the rest of the room. And similar, as you can see, it's kind of quartered off by pillars there
387 and even the ceiling creates it at some separation. The code -- the ordinance does not
388 say physically separated and that was something that was added in in the analyst's report.

389
390 I do agree that separation is important and that my case and future cases would be very
391 difficult to navigate if an area was not well defined. And that it was not separate. I do
392 think we have provided documentation and assurances that it is separate. So I would
393 appreciate condition 3 being stricken as part of the approval process.

394
395 Mr. Green - Discussion among the Board as to the applicant's request to
396 strike condition 3.

397
398 Mr. Yaeger - And I could further clarify that by just striking the word
399 physically and leaving the word separate. Because that would be consistent with how the
400 ordinance is written and, I believe, the documentation we've supported help created a
401 well-defined unit that is consistent with that ordinance.

402
403 Mr. Green - So you would agree with the conditions of approval all six with
404 the exception of removing physically from number three.

405
406 Mr. Yaeger - Yes, sir. Yeah. The elements about, like, the spotlights.
407 Making sure they're shielded and the other things that were noted and then getting the
408 Certificate of Occupancy. You know. We would go through all those courses and, you
409 know, we want to comply with the ordinance and with the -- and with the rules and set this
410 up appropriately.

412 Mr. Green - Mr. Madrigal, what would you think of that?
 413
 414 Mr. Madrigal - I'm sorry, sir.
 415
 416 Mr. Green - What are your thoughts on that request to remove that word,
 417 physically.
 418
 419 Mr. Madrigal - If that's the will of the Board, then that's quite fine. You know.
 420 It just becomes an -- for the future it ends up being a management issue. If this property
 421 sells and there's an inspection and we get a, you know, a person that's doing an
 422 evaluation on it, is it two units and what do, you know, is it a 2,300-square-foot-unit
 423 upstairs and a 2,100-square-foot unit downstairs? How is that managed? You know. If
 424 the -- if the conditions is a separate area, is it by floor or is it 800 square feet, and then
 425 how do you define that 800 square feet in the basement level?
 426
 427 Mr. Green - Right. Do you agree with us keeping the word physically in?
 428
 429 Mr. Yaeger - Well, no. Just because it's not part of the ordinance and I think
 430 it creates an added ambiguity because there is nothing in the building code that defines
 431 what needs to be -- how that physical separation needs to occur for an accessory dwelling
 432 unit.
 433
 434 You know. Real -- we really just want to use this for our family. And I -- what happens
 435 after we sell it, we don't really care about. So if, you know, if conditions are possible as
 436 part of this process, we would be fine with the condition that it's only applicable for us, as
 437 we're the owners of the home, if that's something that can be added in. You know.
 438 Whatever can make it flexible so that it's not boxing, you know, boxing the County in so
 439 that it's something that they don't want to be put into.
 440
 441 But I think with the way the ordinance is written, it speaks to separation but not physical
 442 separation. And there's a lot of ambiguity that, you know, thinking of future decisions that
 443 would come with how that's defined in different codes.
 444
 445 Mr. Green - Mr. Blankinship, do you have any comment on that?
 446
 447 Mr. Blankinship - I mean, we could try to draft a condition that would limit to, you
 448 know, while the occupant is a member of the family. But then you're just really expanding
 449 the challenge of administering this. We're not notified when people sell homes. We don't
 450 do inspections when people sell homes.
 451
 452 Mr. Green - Right.
 453
 454 Mr. Blankinship - We like for permits to run with the land rather than with the
 455 owner, because then you get into equal protection problems. It's a possible solution. It's
 456 not one that I would favor.
 457

458 Mr. Green - Yes, sir.
 459
 460 Ms. Moore - I would add, if you don't mind, it's a little bit -- I would say it's
 461 unique. I think this is our first one.
 462
 463 Mr. Blankinship - Yes.
 464
 465 Ms. Moore - I would add that, you know, you have to draw the line
 466 somewhere. But looking at it, we do see the dilemma. It's not like they have an extra
 467 bedroom structured out where it's another occupancy. It is an open space. I don't know
 468 by defining that 800 what you really gain from that except wasted space. So that's just
 469 my -- it's a dilemma. I can see that.
 470
 471 Mr. Johnson - And also, another question, is on the screen you just had up
 472 there. Could you go back to the -- yep. Not that one
 473
 474 Mr. Blankinship - The other one.
 475
 476 Mr. Johnson - Yes. Looking back to the -- there's an opening in the -- how
 477 far is that -- how many feet is that from that pole over to the wall that we can't see?
 478
 479 Mr. Yaeger - The wall that's behind where I took the picture?
 480
 481 Mr. Johnson - Yes. You see -- then you can see a little table in the back, but
 482 it's --
 483
 484 Mr. Yaeger - From there to there.
 485
 486 Mr. Johnson - From there over to the --
 487
 488 Mr. Yaeger - It's probably about, like, 16 feet, I would say. Something
 489 around there. It's a pretty big room which makes it difficult because when we were --
 490 when we went down this construction path, there was not this square-foot limitation in the
 491 proposed ordinance at that time.
 492
 493 And I can -- I can tell you that that is how my family uses it. The kids don't really stray
 494 into that zone. They know that's Uncle Dave's zone. And their stuff is strewn all over the
 495 other parts of, you know, their scooters and games and endless balls and trinkets are all
 496 over the other part of the basement.
 497
 498 Mr. Madrigal - If it helps the Board any, here's the rear façade of the house
 499 so you can see the basement level stretches from one -- from this wall all the way to the
 500 wall way back here. And here's the side entrances. There's two entrances into the
 501 basement level. Woops. Let's see here. So here you can see the parking pad and the
 502 side of the house and there's the two entrances. So it's a really big space. It's basically
 503 spans the entire width of the house. And, you know, from front to back.

504
505 Mr. Pollard - I think being the time that it is, when we're struggling like this,
506 might need your reaction to just return to being -- making it clear from a physical -- for a
507 physical (indiscernible) end. That's my two cents.

508
509 Mr. Green - Yes.

510
511 Mr. Reid - I'm just concerned if we -- they were setting a precedent where
512 we're going to box in ourselves moving forward if we strike condition 3 or strike physically.
513 You know. What are we going to do in the future cases? We can't predict what we're
514 going to be seeing the next few years.

515
516 Mr. Johnson - So physical -- three would still be in the regulations as well.
517 You know. So we want to be able to -- that we can make some adjustments. We
518 understand your situation. You know.

519
520 Mr. Yaeger - I guess from a citizen's perspective, I'm concerned with the
521 word physical being in three just because it's not in the ordinance and from a building
522 construction I'm not sure how to comply with that. Like, we could talk about how much
523 needs to be walled off. Like, can there be doors to the interior. That there couldn't be
524 doors, like, it creates more of an atmosphere where it's hard to care for family. Which is
525 kind of, like, the whole point of this in-law suite if we have to walk around the outside of
526 the entrance or if they have to walk up stairs to get into the houses. Right now there are
527 no stairs involved with who would live there.

528
529 Mr. Johnson - I was just concern -- Yeah. I was just thinking about just
530 having a temporary role that just come in in that location and maybe they can --

531
532 Mr. Madrigal - I'll read to -- I'll read to the Board the item here for the
533 accessory dwelling unit. There's several items, basically A through I, that need to be met.
534 Item E of the code basically says the floor area of an accessory dwelling unit must not
535 exceed the lesser of 800 square feet or 35 percent of the finished floor area of the principal
536 dwelling excluding carports, garages, and unfinished basements. So that's where the
537 code sets a definite size limitation on these things.

538
539 Mr. Green - Thank you.

540
541 Mr. Yaeger - That is -- that is one element of -- that I've seen before. And
542 I think one thing we could do to -- do to address that is to provide separate flooring,
543 separate and distinct flooring for that area. With adding laminate floor for that area if, you
544 know, throughout -- our flooring isn't that great to begin with. So that's just the whole
545 laminate tile right now.

546
547 Mr. Blankinship - Would that be separate if it had a different floor?

549 Mr. Green - The thing -- the thing -- it appears that we kept physically in
550 you'll have a strong chance of getting this thing approved. If we take it out, I don't think
551 that it's not going to make it. So would you reconsider keeping physically in so you can
552 approve? Because this is my district and I would -- I am moving to approve this. But
553 hearing the concerns of my fellow Board members if -- I don't know if I'm -- if I move to
554 approve, I would have the necessary votes if you take out the physically. And so I would
555 ask you to strongly reconsider the word physically and look at the conditions of approval
556 and accept them. If you accept them, then I think we have a good shot at this thing.

557
558 Mr. Yaeger - Well I appreciate that. And, you know, we definitely do want
559 it to be approved and appreciate the time taken to talk about this. And I know we're
560 probably over time here. I guess with the word physically, I'm not sure how to meet those
561 definitions based on what is actually in the ordinance and what is in other codes. And,
562 you know, we would like it to be accessible that we could, you know, have -- if it was
563 physically quartered off, like, is that half-walls? Is that doors? Is that, you know, is it just
564 completely a great wall of China type situation around this whole thing?

565
566 Mr. Blankinship - That could all be determined at the time of building permit.
567 Condition 6 requires you to submit a building permit application. So we -- we'll review
568 that with you and determine at that time what it means. And if you, you know, you can't
569 come to an agreement with staff over that, then we'll be back here again.

570
571 Mr. Yaeger - All right. I guess with -- will there be some discussion of, you
572 know, what constitutes an accessory dwelling unit. Because this would be a bit of, like,
573 groundbreaking discussion for a unit within a -- within a home.

574
575 Mr. Blankinship - Yeah. We'll work all that out at building.

576
577 Mr. Yaeger - Okay. Thank you.

578
579 Mr. Green - So would you accept us leaving physically in?

580
581 Mr. Yaeger - I guess, reluctantly, yes, sir.

582
583 Mr. Blankinship - If the choice is deny. Okay.

584
585 Mr. Yaeger - Yes, sir. Probably. Yes.

586
587 Mr. Green - Okay. All right. Based on that, as the Three Chopt
588 Representative District, I recommend that we approve this conditional use permit. I move
589 that we approve subject to conditions recommended by staff. It is consistent with
590 comprehensive plan and zoning ordinance. This is intended for family member. It will
591 not increase the intensity and use of the property. And I agree with staff that the 800-foot
592 -- square-foot-area should be enclosed. Is there a second?

593
594 Mr. Pollard - I second the motion.

Mr. Green - The motion has been moved by myself, Mr. Green, seconded by Mr. Pollard. All in favor say aye. All those opposed like sign. Approved.

On motion by Mr. Green, seconded by Mr. Pollard, the Board **approved case CUP2022-00012 STEVEN R. YAEGER's** request for a conditional use permit pursuant to Section 24-4406 of the County Code to allow an accessory dwelling unit at 8311 Lansdowne Road (FORDSON ACRES) (Parcel 757-750-6058) zoned One-Family Residence District (R-3) (Three Chopt). The Board approved the request subject to the following conditions:

1. This conditional use permit authorizes an accessory dwelling unit within the basement of a one-family dwelling. All other applicable regulations of the County Code remain in force.

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

3. The applicant must modify the proposed floor plan to create an independent accessory dwelling unit, not exceeding 800 square feet, physically separate from the finished basement of the home.

4. The applicant must adhere to the requirements of Sec. 24-4406, Accessory Dwelling Unit.

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

6. A building permit must be obtained for the proposed accessory dwelling unit by March 25, 2024, or this conditional use permit will expire. If the building permit is cancelled or revoked after that date due to failure to diligently pursue construction, this conditional use permit will expire at that time.

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

Mr. Yaeger - Thank you very much for your time.

Mr. Blankinship - All right. Next case is Conditional Use Permit 2022, number 14.

CUP2022-00014 COMMONWEALTH CATHOLIC CHARITIES requests a conditional use permit pursuant to Section 24-4205 of the County Code to allow a children's

residential facility at 1307 Lakeside Avenue (Parcel 784-751-0555) zoned One-Family Residence District (R-4) (Fairfield).

Mr. Blankinship - Would everyone who intends to speak to this case please stand and be sworn in? Raise your right hands, 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. You can be seated. Mr. Madrigal.

Mr. Madrigal - Thank you Mr. Secretary, Mr. Chair, members of the Board. Before you is a request to allow a children's residential care facility in an R-4 District. The subject property was acquired in 1955 by the Camboni Missionary Sisters and since then has been -- or I'm sorry. Since 1965 has been used as their convent campus.

Site improvements include the convent that you can see here, the chapel, the school building, and then the dormitory building, which is back here, which is the subject of this conditional use permit. Commonwealth Catholic Charities has purchased the property and they would like to operate a children's residential facility similar to their existing operation on Pump Road.

The population they serve is unaccompanied minors who are waiting to be reunited with family members. The children would live in the vacant dormitory building and attend school in the classroom building. The Camboni Sisters would continue to live in the convent and use the on-site chapel. The dormitory building is approximately 12,000-square-feet in area, and contains 14 bedrooms as well as a kitchen, dining room, recreation room, and an office.

The applicant does not intend to build any new buildings or make any significant changes to the existing improvements. A children's residential facility is defined as any facility, childcaring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for fulltime care, maintenance, protection, and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care.

These facilities are licensed and supervised by the Virginia Department of Social Services. The site and proposed use are consistent with both the zoning and comprehensive plan designations on the property.

This location has been used as a convent for over 50 years. It is large enough to accommodate the proposed use. In addition to the active convent, the dormitory building is currently not in use. The proposed children residential facility would be compatible with the existing religious use.

With respect to the surrounding uses, there are one-family dwellings to the north of the site across Lakeside Avenue that may be affected by this proposal. Beyond that, there should be no adverse impacts to the adjacent properties or the surrounding

neighborhood. The 6-acre site is large and spacious and has all the facilities necessary for the proposed operation.

Additionally, the applicant has experience operating a similar facility within the County. As long as the proposed use is operated in accordance with state regulations, it should have little to no affect on the neighborhood.

In conclusion, the property has been used as a convent for over 50 years. It has more space than it currently needs. And the applicant has applied to use the vacant building for a children's residential facility.

The proposed use is a semi-public use consistent with the Comprehensive Plan Designation and the R-4 District. Based on these findings, staff recommends approval subject to conditions.

Mr. Blankinship - I should have mentioned, Mr. Chair, there is one email that was left at -- on the table for you this morning in support of this application. And we received one other this morning that just hasn't been printed yet.

Mr. Green - Are there any questions from staff? I mean, from the Board to staff in reference to this conditional use permit. Hearing none, we'll now hear from the applicant.

Mr. Brown - Thank you, Mr. Secretary, Mr. Chair, and members of the Board. I'm Jay Brown with Commonwealth Catholic Charities. With me is Ms. Toosdhi Jackson. I'm Jay Brown, B-r-o-w-n, like the color, and Jackson is J-a-c-k-s-o-n.

Commonwealth Catholic Charities is headquartered here in Henrico County and provides quality and compassionate services for individuals, families, and children in eastern, central, and southwest Virginia. We were founded and continue to be primarily an organization dedicated to providing for the welfare of children and are here before you to request a conditional use permit to operate a licensed children's residential facility at 1307 Lakeside Avenue. A property that we do intend to purchase from the Camboni Missionary Sisters. Ms. Jackson is here to provide additional background on our application and our proposed use.
?

Mr. Madrigal - Children's residential facility is a tongue twister.

Ms. Jackson - It is. Good morning. We are proposing to operate a 16-bed children's residential facility for both boys and girls. Which includes siblings. Our children will be aged 5 to 17 years old and they are waiting to be released to their families. The primary goal of our program is to reunify children with their families. The placement is short-term and the average length of stay is 20 to 30 days. Our CCC staff of Commonwealth Catholic Charities will be on site 24 hours a day, 7 days a week, to provide on-site supervision.

734
735 The services include efforts towards family reunification, counseling, recreation,
736 coordination of medical needs, and our children will be educated on site.
737
738 We believe that our proposed use is compatible with the current use type, as we plan to
739 utilize the larger dormitory-style building and the small building while the Camboni
740 Missionary Sisters will be welcome to continue to occupy the independent single home
741 on the premises. All right.
742
743 Mr. Green - Are there any questions from the Board to the applicant?
744
745 Mr. Johnson - The ages, will you have, will they go up to 18 or something?
746
747 Ms. Jackson - Seventeen.
748
749 Mr. Johnson - Seventeen?
750
751 Ms. Jackson - Mm-hmm.
752
753 Mr. Johnson - Okay.
754
755 Mr. Green - Are there any other questions from the Board to the applicant?
756 Is there anyone on Webex?
757
758 Mr. Blankinship - There was one other person in the room who wanted to speak.
759
760 Mr. Green - Okay. I'm sorry.
761
762 Ms. Mayo - My name is Cheryl Mayo, M-a-y-o, and I'm a resident of the
763 Fairfield District. I'm Catholic. A member of Our Lady of Lourdes Parish and a friend of
764 the Camboni Missionary Sisters. And I just wanted to speak out in support of this project.
765 I'm really happy to learn that this will be the use of the property. The Camboni Missionary
766 Sisters are a life-affirming, community-building, group of women. And I'm sure that there
767 will be an army of volunteers who will want to help provide comfort and care for the
768 children that will be housed here. Thank you.
769
770 Mr. Green - Thank you. Is there anyone on Webex to speak for or against
771 this conditional use permit?
772
773 Ms. Blankinship - There is no one on Webex to speak to this item.
774
775 Mr. Green - Hearing none, are there any other questions or concerns from
776 the Board to staff and or the applicant? Hearing none, I'd like to entertain a motion.
777
778 Mr. Pollard - I move that we approve the conditional use permit subject to
779 condition -- the conditions recommended by staff. It is consistent with the comprehensive

plan and the zoning ordinance. The Community needs this service. The applicant has experience providing it. There is plenty of room on the site to accommodate this use.

Mr. Johnson - I second it.

Mr. Green - Motion was moved by Mr. Pollard, seconded by Mr. Johnson. Any discussion? Hearing no discussion, all in favor of approving the conditional use permit say aye.

The Commission - Aye.

Mr. Green - All those opposed, like sign. Approved.

On motion by Mr. Pollard, seconded by Mr. Johnson, the Board **approved case CUP2022-00014 COMMONWEALTH CATHOLIC CHARITIES** request for a conditional use permit pursuant to Section 24-4205 of the County Code to allow a human care facility at 1307 Lakeside Avenue (Parcel 784-751-0555) zoned One-Family Residence District (R-4) (Fairfield). The Board approved the request subject to the following conditions:

1. This conditional use permit authorizes the use of the property for a children's residential facility. All other applicable regulations of the County Code remain in force.

2. This conditional use permit applies only to the existing improvements on the property. Any additional improvements must comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements will require a new conditional use permit.

3. This approval is subject to the licensing and inspection requirements of the Virginia Department of Social Services. Any violation of those requirements may be grounds for revocation of this conditional use permit.

4. Any school or preschool operated on the property will serve only children enrolled in a program or service operated by Commonwealth Catholic Charities and licensed by the Department of Social Services.

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

Mr. Blankinship - All right. The last conditional use permit on this morning's agenda is conditional use permit 2022, number 18, Yolanda Allen.

CUP2022-00017 YOLANDA ALLEN requests a conditional use permit pursuant to Section 24-4430.A.1 of the County Code to allow short-term rental of a dwelling at 4813 Annlyn Drive (SANBURN PARK) (Parcel 819-715-5449) zoned One-Family Residence District (R-3) (Varina).

827
828 Mr. Blankinship - Would everyone who intends to speak to this case, please
829 stand and be sworn in? Raise your right hands, please. Do you swear the testimony
830 you're about to give is the truth, the whole truth, and nothing but the truth so help you
831 God? Thank you. Mr. Gidley.

832
833 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr. Chair,
834 members of the Board. The subject property is located in the Sanburne Park Subdivision
835 which is between Interstate 64 and Williamsburg Road just west of Airport Drive. The
836 property contains a 3-bedroom, 2-bath house that is located on roughly 1/3 of an acre of
837 land.

838
839 The applicant would like to offer the home for short-term rentals and this requires a
840 conditional use permit for two reasons. First, these will be unhosted stays, so the
841 applicant will not be there during the rental. Second, she is requesting permission to rent
842 for over 60 days a year.

843
844 This is a view of the applicant's home here. In evaluating this request, the use of the
845 property for a one-family dwelling is consistent with the R-3 zoning and the Suburban
846 Residential 2 designation on the comprehensive plan. The neighborhood is fairly
847 spacious as you can see here. And the nearest home is located over 70 feet away. There
848 is also adequate parking on the property.

849
850 As noted, the applicant is asking permission for unhosted stays where the clients are
851 present but not the property owners. Now these types of stays are more likely to have
852 noise and other impacts on neighbors as compared to hosted stays when the owner is
853 actually present. As a result, having unhosted stays for more than 60 days is a concern.

854
855 Finally, staff did notice two inoperative vehicles on the property that had expired tags.
856 These will need to be resolved along with the building materials that were stored outside.

857
858 In conclusion, the applicant is requesting permission for hosted stays for more than 60
859 days a year. Since the nearest neighbor is over 70 feet away and there is adequate
860 parking on the site, staff believes the site is appropriate for a short-term rental. As noted,
861 we do have concerns about the more than 60 days a year, as this would increase the
862 likelihood of negative impacts on neighbors.

863
864 In the future, if the applicant were to operate this successfully without complaints from the
865 neighbors and, in fact, there's demand for more than 60 days a year, she's free to come
866 back in the future and say, Hey, I've successfully run this for less than 60. How about
867 considering more. So that's an option for her.

868
869 So staff's recommendation is to approve this for the unhosted stays, but to deny the more
870 than 60 days at this point. That concludes my recommendation and report here. If you
871 have any questions, I'll be happy to answer them. Thank you.

873 Mr. Green - How do you enforce if someone decides that we're going to
874 give them 60 days, but they're going to extend it to 70 days. Another 10 days. How do
875 we really going to enforce that?
876

877 Mr. Blankinship - Let me answer. We have a service that we pay for -- the
878 County subscribes to -- that scrapes all of the different websites, Airbnb, Vrbo, and about
879 50 more on a regular basis and they track that. They don't have an exact number, but
880 they can tell. They might not know whether it's 60 or 61, but they'd know if it was 60 or
881 80. So they report that to us.
882

883 Mr. Green - So they're basically looking for an Airbnb?
884

885 Mr. Blankinship - Yes.
886

887 Mr. Green - Okay. Are there any other questions from the staff -- from the
888 Board to the staff? Then I will --
889

890 Mr. Johnson - You all answered the question that I was going to ask.
891

892 Mr. Green - Hearing none, we'll hear from the applicant.
893

894 Ms. Allen - Good morning. My name is Yolanda Allen. I asked for the
895 application so I could run the Airbnb business and I will be available to the vacationers at
896 the home for any concerns. And I am prepared to go by any rules and regulations. And
897 it will only be rented during the months of June, July, and August.
898

899 Mr. Blankinship - Oh, okay.
900

901 Ms. Allen - And it'd give people a place to come stay when they come to
902 Virginia. A three-bedroom home with a hot tub, a jacuzzi, and a back deck.
903

904 Mr. Johnson - Yeah. You answered the question I was going to ask you
905 about.
906

907 Mr. Gidley - I don't think she said she's going to actually be there. She
908 said that she'd be available.
909

910 Mr. Green - Right.
911

912 Mr. Gidley - There's a difference between being there physically and --
913 someone is required to be nearby to be available to respond, but that's not a hosted stay.
914 That needs to be clear.
915

916 Mr. Green - Right. But you understand that you have to at least stay there
917 180 days.
918

919 Ms. Allen - Yeah. It would only be available to them during June, July,
 920 and August. During the summer months when the kids are out of school.
 921
 922 Mr. Green - Right. Any questions from the Board to the applicant?
 923
 924 Mr. Reid - How close will you be to the property?
 925
 926 Ms. Allen - Right off of Lakeside.
 927
 928 Mr. Johnson - And, also, do you have a --
 929
 930 Ms. Allen - I have cameras and everything in there.
 931
 932 Mr. Green - No. We're concerned about where you will be.
 933
 934 Ms. Allen - Oh. With my mom.
 935
 936 Mr. Johnson - And also, how many do you have at a time in the facility? How
 937 many can it hold?
 938
 939 Ms. Allen - So it can sleep up to four.
 940
 941 Mr. Johnson - Okay. And I noticed it has driveways on both sides of the
 942 home as well.
 943
 944 Ms. Allen - Yes. And I will be removing the vehicles.
 945
 946 Mr. Johnson - Okay.
 947
 948 Mr. Green - Are there any other questions from staff to the applicant?
 949 Those in the audience -- I thank you. Thank you. You can sit down. Is anyone in the
 950 audience to speak for or against this proposal?
 951
 952 Ms. Leftwich - Good morning. I am Alice Regina Leftwich and I reside on
 953 Subrenda. And my property is adjacent albeit that diagonally to the property on Annlyn.
 954
 955 My concern, and I had called when I received the notification of the property, as to what
 956 type of short-term rental would this property be. I will say this, I have been a resident of
 957 Subrenda Drive for -- it would be 5 years later this year. However, I have been visiting
 958 this area for over 20 years. As a matter of fact, one of the residents along Subrenda told
 959 me about a house --- in that sense why I bought it.
 960
 961 I'm going to be honest with you. I'm really not feeling the Airbnb on the property. For one
 962 of the reasons because Subrenda and Annlyn are only two blocks wide -- I mean two
 963 blocks -- and there's only one way in and one way out. The neighborhood is basically --
 964 it consists of a lot of children. We have a bus stop at Colleen and Subrenda and we have

elderly residents, people who are disabled. I'm just not feeling the transient nature of this, particularly since we're so close to Williamsburg Road, which there are a lot of hotels and a lot of transients. And for that reason I am against it.

Mr. Green - Okay.

Mr. Throckmorton - Good morning, gentleman. My name is Thurman Throckmorton. I live on Subrenda Drive right there. Been living in Sanburne Park since 1956. I was the paperboy there when I was a young man. I pretty much knew everybody in that subdivision pretty much my whole entire life. I still live there in Sanburne Park. It's a good neighborhood. It's had some very nice people live there.

From time to time, as anything, you have bad people move in and you get the bad people in, it's hard to get the bad people out. And that is why I am against it. I don't want people coming in there living for 3 days, 2 days, a week, a month or two. You know, them people going to be doing things they shouldn't be doing. And now we got more problems. And once you get them people in these places, you can't get them out. It takes a lot to get these people out.

Like I say, I've been there all my life pretty much. I'm 76 years old. It's been a very quiet, very nice neighborhood. People living in the neighborhood still keep their houses up very nicely and I'd like to see our community stay the same way it is right now. Therefore, I speak against people coming in and out and in and out, in and out. You cannot control it. And I'm against it. Thank you for my time.

Mr. Green - I'd like to address this issue before we, you know, move forward. You know. I have really never been a big fan of Airbnbs either, but the reality of it is, we are seeing more and more of them come through the County, cities, and localities.

And there are processes by which the various owners will utilize Airbnb and other services to screen out individuals. And I remember we had a case -- I've never rented an Airbnb. But there was an applicant here that wanted us to approve it, and because I had never rented an Airbnb, I wouldn't have qualified to rent her Airbnb, because her rules were so stringent and strict.

And just this past weekend my fraternity had a regional provincial meeting, and what I saw was I visited some of my fraternity brothers in Richmond in a very closed area on Clay Street, a row house. They had rented an Airbnb. And I was observing. I was watching. There was a large number of individuals coming and going. But I didn't hear any complaints. I didn't see any police. And it seemed to work.

So I think there are those of us that have got to recognize that the County allows Airbnbs unless you are in a restricted area where the covenants prohibit that. And I do think that we can't disparage the type of individuals that are going to be renting these type of properties. We can't assume they're going to be the worst of the worst. They're just

1011 looking for alternatives to hotels. They're price shopping. And they're doing an array of
1012 things. So I am warming up to them. You know.

1013
1014 I also have to recognize that this is the new reality of what we're beginning to deal with.

1015
1016 And if the applicant stated that she's met that condition, the applicant stated that she
1017 would be typically in the house 180 days or more. So that tells you that she's going to be
1018 there more than the three months that she will potentially rent it out. And then I think
1019 sometimes you have to trust and just look at -- follow some of the processes.

1020
1021 And if they didn't allow it, then the County should, you know, restrict all Airbnbs. But
1022 until we get some complaints or some additional concerns, I just wanted to, you know,
1023 share those concerns. So I understand what you're saying. But the reality is that we're
1024 expanding in the County and allowing these Airbnbs to occur.

1025
1026 Are there any other questions? Any other concerns from members of the Board? Or
1027 questions?

1028
1029 Mr. Pollard - One question.

1030
1031 Mr. Green - Yeah go ahead.

1032
1033 Mr. Pollard - I keep asking this question every time we have one of these
1034 cases. If approved, how long does it last?

1035
1036 Mr. Blankinship - The Board can put a limit on it, if you wish. I think staff's
1037 perspective on this case was that by limiting it to 60 days per year, we were already
1038 constraining it, and that if she wants to expand the business, she would have to come
1039 back to change that condition. But if the Board wants to put a period of years on it, you
1040 can.

1041
1042 Mr. Pollard - Thank you.

1043
1044 Mr. Green - Which we have not done in the past.

1045
1046 Mr. Blankinship - Not up to this point. No, sir.

1047
1048 Mr. Green - Right. I think I would recommend that before we even think
1049 about doing that, we do it independent of this one and just do it as a general rule. And
1050 not -- that way we're not looking like we're picking on any particular applicant.

1051
1052 Mr. Pollard - Right. I wasn't leaning towards limiting. I just wanted to
1053 understand, if approved, would there be a predetermined time limit.

1055 Mr. Green - Yeah. The other question I have is how do we judge the
 1056 complaints that we get from the County as it relates to the proliferation of Airbnbs? Who
 1057 monitors that?
 1058
 1059 Mr. Blankinship - The Department of Community Revitalization has the Division
 1060 of Community Maintenance. They are responsible for following up on the complaints.
 1061
 1062 Mr. Green - And do we get a lot of complaints?
 1063
 1064 Mr. Blankinship - Very few. There are about 200 active Airbnbs in the County
 1065 and it varies from day to day depending on, you know, who's listing their house and who's
 1066 not. We've had complaints on, I would say, between 5 and 10. So the vast majority of
 1067 them we haven't had any complaints. And the complaints that we have had for the most
 1068 part we've been able to resolve pretty promptly. Most people who rent out their house
 1069 don't want it to be used for parties.
 1070
 1071 Mr. Green - Right.
 1072
 1073 Mr. Blankinship - So, you know, we do not allow people, as you pointed out,
 1074 with the -- we required them to live there 185 days. We do not allow people to buy a
 1075 house and operate it as an Airbnb and have that be the sole use of the house. That tends
 1076 to cause problems. And so Henrico does not allow it.
 1077
 1078 Mr. Green - Right.
 1079
 1080 Mr. Gidley - If you have to be there 180 days, you tend to want --
 1081
 1082 Mr. Blankinship - It has to be your home.
 1083
 1084 Mr. Gidley - Right. Take care of it while they're there.
 1085
 1086 Mr. Green - And I noticed that the Airbnb that I saw this past weekend, I
 1087 mean, they had a lot of personal affects in there. Pictures, you know, artifacts, trinkets.
 1088 While it was respected, you know, I was surprised that it didn't -- it didn't look sterile. It
 1089 looked like a home.
 1090
 1091 Mr. Pollard - Someone else's home.
 1092
 1093 Mr. Green - Yeah. Johnson.
 1094
 1095 Mr. Johnson - Ms. Allen, one more question.
 1096
 1097 Ms. Allen - Yeah.
 1098
 1099 Mr. Johnson - You said you would be having at least three stays for the
 1100 Airbnb. How often would you be there?

1101
1102 Ms. Allen - I would be there during the rest of the months. It's only for
1103 June, July, and August. So I would be there the rest of the year.
1104
1105 Mr. Johnson - You would be in between those time periods.
1106
1107 Ms. Allen - Yeah. That's my home. Right.
1108
1109 Mr. Johnson - Okay. I thought you said you would be staying someplace
1110 else. Okay.
1111
1112 Mr. Blankinship - When it's rented, she'd be staying with --
1113
1114 Ms. Allen - Yeah.
1115
1116 Mr. Johnson - That clears what I was saying.
1117
1118 Mr. Green - And we can't assume that it's going to be rented the entire
1119 time.
1120
1121 Ms. Allen - Right.
1122
1123 Mr. Green - So if it's not rented in July, you might be there in July.
1124
1125 Ms. Allen - Exactly.
1126
1127 Mr. Green - So.
1128
1129 Mr. Johnson - That answered the question I wanted.
1130
1131 Ms. Allen - It depends on if it's booked.
1132
1133 Mr. Pollard - Right. And one more question. This is to the Board and staff.
1134 If this is approved and the existing limit is 60 days, -- let's say it's approved, the neighbors
1135 are happy, don't have any complaints, and realize that, you know, there's a good situation.
1136 How long would she have to wait to come back and request the additional 30 days?
1137
1138 Mr. Blankinship - There is a limit of one year to bring back substantially the
1139 same request if it's been denied. I'm not sure if that would kick in here, because it would
1140 really be a different request substantially. But given what she's stated, I would think she
1141 would make it through this year, see how things go, and then come back next year if what
1142 she's interested in is doing just the summer months.
1143
1144 Mr. Green - Most folks that we hear will come in and ask for just an Airbnb.
1145 It seems like you put a specific timeframe from June to August. Is that your intent to just
1146 keep it that way or if it gets more successful, you're going to increase it?

1147
1148 Ms. Allen - It depends. For now it's just, like, the summer months. It's a
1149 home with, you know, jacuzzi. So to me it's just going to be for the summer months.
1150
1151 Mr. Green- Okay. Any other questions from the Board to the applicant?
1152
1153 Mr. Johnson - And also you'll be monitoring the persons there as well.
1154
1155 Ms. Allen - Yes. Because I don't want my home to be, you know, torn to
1156 pieces. I redid that home.
1157
1158 Mr. Johnson - And I also noticed that the County had also put a circle in the
1159 driveway next to you. Is that right?
1160
1161 Ms. Allen - They put a what now?
1162
1163 Mr. Johnson - Just the next block over they got --
1164
1165 Ms. Allen - Oh in the middle of the street?
1166
1167 Mr. Johnson - Yes. In the middle of the street. Yes.
1168
1169 Ms. Allen - Yes.
1170
1171 Mr. Johnson - Is that to alleviate some of the speed on it --
1172
1173 Ms. Allen - I'm not sure. I was wondering the same thing. I just saw it
1174 when it came on.
1175
1176 Mr. Johnson - Okay.
1177
1178 Unknown Speaker - (indiscernible)
1179
1180 Mr. Blankinship - Please do. Whoever's --
1181
1182 Unknown Speaker - Well it's 45-mile-an-hour speed in the neighborhood.
1183 (indiscernible).
1184
1185 Mr. Green - Yeah.
1186
1187 Unknown Speaker - (indiscernible) 45-miles-an hour (indiscernible) and also
1188 (indiscernible) up (indiscernible) put up.
1189
1190 Mr. Blankinship - No that's all right. It's not really testimony on this case.
1191 Someone was asking you to step to the microphone, but what you're saying is not really
1192 testimony on this case. So it's fine. It's a traffic calming device is the short answer.

1193
1194 Mr. Johnson - Okay.
1195
1196 Mr. Green - So there's no one on Webex?
1197
1198 Mr. Blankinship - Oh. Let's ask. Is there anyone on Webex for Case 17?
1199
1200 Ms. Blankinship - No, sir. There's no one on Webex for this case.
1201
1202 Mr. Green - Hearing that, I will entertain a motion.
1203
1204 Mr. Johnson - I move that we approve the condition use permit subject to the
1205 conditions recommended by staff and that is consistent with the comprehensive plan and
1206 the zoning ordinance. And there is ample room for parking. And the house is near the
1207 airport. And also short-term rental should be popular. Now I'll agree with the staff that
1208 we should start with 60 days, that's per year, and if it goes well, we should apply to
1209 increase it.
1210
1211 Mr. Green - No that's for her to decide to apply. Not us.
1212
1213 Mr. Johnson - Oh. Okay. But I'm recommending it to her.
1214
1215 Mr. Pollard - I second that.
1216
1217 Ms. Allen - Okay. Thank you. I appreciate it.
1218
1219 Mr. Green - So the motion was moved by Mr. Johnson, seconded by Mr.
1220 Pollard. Any discussion? Hearing no discussion, all in favor say aye. All those opposed
1221 like sign. Thank you.
1222
1223 On a motion by Mr. Johnson, seconded by Mr. Pollard, the Board **approved case**
1224 **CUP2022-00017 YOLANDA ALLEN's** request for a conditional use permit pursuant to
1225 Section 24-4430.A.1 of the County Code to allow short-term rental of a dwelling at 4813
1226 Annlyn Drive (SANBURNE PARK) (Parcel 819-715-5449) zoned One-Family Residence
1227 District (R-3) (Varina). The Board approved the request subject to the following
1228 conditions:
1229
1230 1. This conditional use permit authorizes the short-term rental of the existing dwelling,
1231 including unhosted stays, for no more than 60 days per year. Rental may include no more
1232 than six guests at a time. All other applicable regulations of the County Code remain in
1233 force.
1234
1235 2. This approval is subject to the County noise ordinance (Sec. 10-67 through 10-69),
1236 registry ordinance (Sec. 20-280 through 20-282), and short-term rental development
1237 standards (Sec. 24-4430).
1238

3. All short-term renters must park on-site, not on the public right-of-way. The secondary gravel driveway shall have an additional layer of gravel installed to allow the accommodation of at least two vehicles.

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

5. The applicant must remove any inoperable vehicles from the property no later than May 24, 2022.

6. Before listing the property for short-term rental, the applicant must obtain approval from the Department of Building Construction and Inspections to change the use of the building to a short-term rental. This must be accomplished no later than March 25, 2024, or this conditional use permit will expire. If the building permit is cancelled or revoked after that date due to failure to diligently pursue corrections, this conditional use permit will expire at that time.

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

Mr. Blankinship - All right. That completes the conditional use permits for this morning. There are also two variances on this --

Mr. Green - Oh. We're going to take a 5-minute break.

Mr. Blankinship - Oh. Excuse me.

[Break in audio]

Mr. Green - -- Board of Zoning Appeals meeting back to order. We're going to now move to variances. Mr. Blankinship.

Mr. Blankinship - The first is Variance 2022, number 2. Liberty Homes of Virginia, Incorporated.

VAR2022-00002 LIBERTY HOMES OF VIRGINIA, INC. requests a variance from Section 24-3105.G.1 of the County Code to build a one-family dwelling at 5605 Bloomingdale Avenue (BLOOMINGDALE) (Parcel 782-746-4001) zoned One-Family Residence District (R-4) (Fairfield). The front yard setback is not met. The applicant proposes 25 feet front yard setback, where the Code requires 35 feet front yard setback. The applicant requests a variance of 10 feet front yard setback.

1284 Mr. Blankinship - Would everyone who intends to speak to this case, please
1285 stand and be sworn in? Do you swear the testimony you're about to give is the truth, the
1286 whole truth, and nothing but the truth so help you God? Thank you. Mr. Madrigal.
1287

1288 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair. Members of the Board.
1289 Before you is a variance request for reduced front and side yard setbacks to build a one-
1290 family dwelling. The subject property is located in Lakeside and is part of the
1291 Bloomingdale subdivision, which was established in 1907. The parcel consists of three
1292 50-foot-wide lots of varying depth that back onto a creek. The parcel slopes down towards
1293 the creek at an 8 to 10 percent rate. Approximately 37 percent of the property is
1294 designated to be in the flood zone and most, if not all, the parcel is in the Chesapeake
1295 Bay Resource Protection Area.
1296

1297 A sewer line bisects the property at the northern end, and a sewer main runs along the
1298 rear of the parcel. The property is currently vacant and overgrown with weeds and
1299 vegetation. Because a subdivision was recorded prior to 1960, the Zoning Ordinance
1300 requires a minimum lot width of 50 feet and a minimum lot area of 6,000 square feet
1301 exclusive of the flood zone in the R-4 District.
1302

1303 The property has 150 feet of lot width and approximately 7,800-square-feet of lot area
1304 outside the flood zone. The property was purchased by Linnwood for Tyler Garret in
1305 1981. That same year he obtained a variance to build two homes on the property which
1306 never came to fruition and the permit expired. Mr. Garret passed away in 2004 and his
1307 children have entered into a purchase agreement with Liberty Homes subject to the
1308 approval of a variance for a new home on the property.
1309

1310 Liberty would like to construct a two-story, 1,400-square-foot home on the property.
1311 Because the topography and shape of the property, the limitations imposed by the
1312 floodplain and the sewer line, and encroachment into the resource protection area, they
1313 have requested reduced front and side yard setbacks to accommodate the proposed
1314 home.
1315

1316 In September of 2020, they did apply for the Chesapeake Bay RPA exception. That case
1317 can't move forward to the Planning Commission unless the Board approves this variance
1318 request.
1319

1320 With respect to the threshold test, the applicant meets two of the three criteria. Relative
1321 to the 5 subtests, all 5 items are met as outlined in the staff report. Staff has found that if
1322 a variance were to be approved and the proposed home is built, it would not result in a
1323 detrimental impact, since the home would be consistent with the character and existing
1324 development pattern in the neighborhood.
1325

1326 In conclusion, the proposed home is consistent with the zoning and comprehensive plan
1327 designations on the property. A single-family dwelling would be the highest and best use
1328 of the property, as long as the applicant can overcome the development limitations related

1329 to the flood zone, the RPA, the topography, and the other physical conditions related to
1330 the site.

1331
1332 A new home would be consistent with the character, use, and development pattern of this
1333 neighborhood. Absent of variance, the property will continue to sit as vacant, unused
1334 land, negatively impacting adjacent properties in the neighborhood.

1335
1336 Based on the facts of the case, staff recommends approval of this request subject to
1337 conditions. Staff has not received any correspondence for or against the request. This
1338 concludes my presentation. I'll be happy to answer any questions.

1339
1340 Mr. Green - Are there any questions from Board members to staff?
1341 Hearing none, we'll now hear from the applicant.

1342
1343 Mr. Rempe - Good morning, Mr. Chairman, Board members, and staff. My
1344 name is Mark Rempe. I'm here to speak on behalf of the applicant. We appreciate staff's
1345 time on this application. We concur with staff's findings that the variance should be
1346 approved, the tests have been met. We request that the Board move in favor of the
1347 application. I will point out that we still have to go through a long process with going
1348 through the RPA exemption and then also going through the building permit process.
1349 Henrico's Department of Public Works will take a hard look at this. The Building
1350 Department will take a hard look at it. Zoning will take another look at it.

1351
1352 There'll be plans to build a beautiful house for a first-time homebuyer and there's not --
1353 with the market being so hot right now, there's not many homes right now for affordable
1354 housing.

1355
1356 Mr. Green - Are there any questions from the Board to the applicant?
1357 Hearing none. Are there any individuals in the audience to speak for or against this
1358 variance? Hearing none. Are there any individuals on Webex to speak for or against this
1359 variance?

1360
1361 Mr. Blankinship - There is no one on Webex to speak to this item.

1362
1363 Mr. Green - Hearing none. Hearing no concerns from the Board. Is there
1364 a motion?

1365
1366 Mr. Pollard - I move that we approve the variance subject to the conditions
1367 recommended by the staff. It meets the threshold test because there is no other
1368 reasonable use for the property. It was a buildable lot before the code was changed. The
1369 lot is big and overgrown. A new home would be an improvement to the neighborhood.
1370 This situation is unique because the floodplain comes so close to the street. Other tests
1371 are met, as stated in the staff report.

1372
1373 Mr. Green - Is there a second?
1374

Mr. Bell - Second.

Mr. Green - The motion was made by Mr. Pollard, seconded by Mr. Bell.
All those in favor say aye. All those opposed like sign. Variance is approved.

On a motion by Mr. Pollard, seconded by Mr. Bell, the Board **approved case VAR2022-00002 LIBERTY HOMES OF VIRGINIA, INC.** requests a variance from Section 24-3105.G.1 of the County Code to build a one-family dwelling at 5605 Bloomingdale Avenue (BLOOMINGDALE) (Parcel 782-746-4001) zoned One-Family Residence District (R-4) (Fairfield). The Board approved the request subject to the following conditions:

1. This variance applies only to the front and side yard setback requirements for one dwelling only. All other applicable regulations of the County Code remain in force.

2. This variance applies only to the improvements shown on the plot plan and building design filed with the application. The front yard setback must be no less than 25 feet and the interior side yard setback must be no less than 10 feet. The front façade of the proposed home must be consistent with elevation E. Any additional improvements must comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements will require a new variance.

3. Any dwelling on the property must be served by public water and sewer.

4. Before beginning any clearing, grading, or land disturbing activity, the applicant must obtain an exception to the Chesapeake Bay Resource Protection Area, approval of an environmental compliance plan from the Department of Public Works, and any required approvals from the Corps of Engineers or Department of Environmental Quality.

5. Before applying for a building permit, the applicant must obtain approval of and record either a minor subdivision or final plat, as determined by the Planning Director, to consolidate lots 4, 5, and 6 as one lot.

6. The applicant must obtain a building permit for the proposed home by March 25, 2024, or this variance will expire. After that date, if the building permit is cancelled or revoked due to failure to diligently pursue construction, this variance will expire at that time.

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

Mr. Blankinship - All right. The other variance this morning is Variance 2022, number 3, Kristina Calhoun.

VAR2022-00003 KRISTINA CALHOUN requests a variance from Sections 24-4306.E.1 and 24-6402.A.2 of the County Code to build a one-family dwelling at 20 Kambis Drive

(Parcels 836-690-1480 and 836-690-3359) zoned Agricultural District (A-1) (Varina). The public street frontage requirement and lot width requirement are not met. The applicant proposes 0 feet public street frontage and 100 feet lot width, where the Code requires 50 feet public street frontage and 150 feet lot width. The applicant requests a variance of 50 feet public street frontage and 50 feet lot width.

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

Mr. Gidley - Thank you, Mr. Secretary. The subject property is located northeast of the intersection of Yahley Mill Road and Darbytown Road. It's also at the southern terminus of Kambis Drive. It's right here. Two variances were previously approved out here for this lot right here. Both of these expired because no action was taken as follow up.

This Board may recall back in 2019 a third request was heard, but this was withdrawn by the applicant following significant opposition from the neighbors. As noted, the previous requests were for this one-acre lot right here and this is at the southern terminus of Kambis. And the lot also fronts on Yester Oaks Lane. This is a private road, Yester Oaks Lane, right here. And then this picture here, this is Kambis. You can see way down here Yester Oaks Lane and then the access would come in off of Kambis. The driveway would cross here over to the properties right in this area.

In addition to this one-acre lot, today's request also involves a 1.87-acre parcel located to the southeast. The applicant has purchased both of these parcels and wishes to build a home on the back parcel. As you can see here. Although they have direct access to Kambis Drive, frontage on the terminus of the public street does not count towards the public street frontage requirement. Thus the need for the variance along with the fact the lot width down here by the street is not met.

In reviewing this request, as you're aware for a variance to be granted one of three threshold tests need to be met. Staff believes one, even two, are met in this case. Absent of variance the property would not have any reasonable beneficial use. In addition, when the smaller lot was created in 1950, there was no public street frontage. That was adopted 10 years later in 1960. So there was a change in code that put that lot in violation. Although the 150-foot lot width requirement -- that was in effect.

So although one, perhaps two, of the threshold tests are met, the applicant must also meet all five of the subtests as well. Staff is concerned the second subtest dealing with detrimental impact on nearby property is not met.

During the 2019 hearing on the variance for the smaller 1-acre lot up here, several of the neighbors expressed concern about the impact of developing the property on their homes and property from flooding and also well water quality. This is because you have a natural

1468 drainage area that comes back through here. Because this is much lower back through
1469 here. There's also drainage that comes off Kambis and flows through this lot here.

1470
1471 At the time, staff supported the variance request, but had a recommended condition that
1472 the back 100 feet of the lot he maintained in its natural state. You know, again, helping
1473 to slow down and to absorb water that's flowing through there. And that was our position
1474 at the time.

1475
1476 The proposal before you today, however, is quite different from the previous ones. This
1477 is because the second larger parcel has been added and this is, again, located within the
1478 drainage area. There would be substantial clearing not only for a driveway and a well,
1479 but also for the home and its surrounding yard and the primary and secondary drainfield.
1480 So a lot of this lot would be cleared. And I actually have a map here.

1481
1482 You can see right here this is the lot. You'd have the well where the driveway would come
1483 in off Kambis. You'd have the well area here. You'd have the home and the surrounding
1484 yard. And most of this back portion here would be for the drainage area. The septic and
1485 primary and reserve fields and the engineers are requiring a positive slope off of that, so
1486 it would drain off of this area onto the surrounding land.

1487
1488 So that's obviously a concern for staff. The applicant after the reports went out did send
1489 in a drainage map. Let's see. Here's this. Yes. This is theirs. This evidently was
1490 provided by the same engineer that did her septic system and it basically shows the center
1491 of the drainage area here coming down and then trying to make a point that it drains off
1492 the lots to the west that you see right here.

1493
1494 Staff did our own topo map. It's similar but shows things a little more clearly. This is the
1495 140 elevation, so the area surrounding it's higher. The red line here is kind of the lowest
1496 area where the water goes now. As you can see, it goes right behind these properties
1497 here and also down here. And there's a drainage off of Kambis that cuts through here.

1498
1499 So to the extent you start clearing this land, water's going to flow through faster and, you
1500 know, when you raise up this land for your home and for the septic fields going from here
1501 to here is feet --

1502
1503 Mr. Green - Mr. Gidley, you're talking, but what you're showing us we don't
1504 see.

1505
1506 Mr. Blankinship - They don't see it.

1507
1508 Mr. Gidley - Oh. I'm sorry.

1509
1510 Mr. Blankinship - Funny. You can see it on these displays, but you can't see it
1511 on our desktop displays. I just noticed that.

1513 Mr. Gidley - I was wondering why everyone was looking here. Okay.
1514 Basically the land slopes greater from west to east to the low part. On the east side it
1515 rises a little bit, but not much. And the drainage right now goes right behind a couple
1516 houses there. So to the extent more water gets pushed that way, some of it's probably
1517 going to start to encroach more to the east where those houses are. And it already flows
1518 right behind the houses. So there's not a lot of room for error and there's going to be
1519 substantial clearing. In fact, most of this 1.87-acre parcel is going to be cleared.

1520
1521 So bottom line for staff is we supported the earlier request with the understanding that the
1522 back portion would be left natural. We felt that was a good compromise between trying
1523 to get the reasonable use for the property owner and protecting the neighbors. Adding
1524 now a 1.87-acre parcel right in the middle of the drainage area, that's going to be mostly
1525 cleared. Staff does share the neighbor's concerns that that could impact, you know,
1526 flooding on their property and perhaps even well water quality.

1527
1528 Particularly when it comes to flooding on the homes to the east. So because of that we
1529 don't believe the lack of a substantial detrimental impact is met. Because that second
1530 subtest is not met, unlike the first three cases, in this case we're going to recommend
1531 denial of the variance for that reason.

1532
1533 Sorry you don't have the pictures up there.

1534
1535 Mr. Blankinship - We can see the image, we just can't see the mouse move.

1536
1537 Mr. Green - Right. Yeah.

1538
1539 Mr. Gidley - Oh. Okay.

1540
1541 Mr. Green - So if they were to keep more trees on the lot, you'd be in favor
1542 of supporting it?

1543
1544 Mr. Gidley - I would say no, sir. Not right off hand. The original 1-acre
1545 parcel we wanted the back kept clear. Now you're talking a larger lot. And they're going
1546 to have to clear a lot of it, because they need the reserve and the primary drainfields.
1547 Which, again, you can see a copy of the back. 40 percent of this lot's hashed here, and
1548 that's going to be their drainfield. They're going to need a site for their home and the area
1549 for their well and their driveway.

1550
1551 Mr. Green - So is there anything that you've taught them about that they
1552 could do to build it?

1553
1554 Mr. Gidley - They would need --

1555
1556 Mr. Green - That would satisfy the conditions and satisfy the neighbors?

1557
1558 Mr. Gidley - I question whether they could. We did contact the applicant

1559 early on to say, Hey, we know we supported the earlier request. This is a different request
1560 here. Because of that, we wanted to give you a heads up that we're not going to support
1561 it this time. It's in your interest to go ahead and try to address some of these questions.
1562

1563 The applicant did send this in from their -- again, the person that did their well work and
1564 their septic drainfield work, but she expressed concern about the cost of having an all-out
1565 study that would look at the impact of everything on all the neighbors. So unless there
1566 was a study that clearly showed it was not going to have negative impacts on the
1567 neighbors, staff's not in a position to recommend approval.
1568

1569 Mr. Blankinship - If they could build a house on the front 150 or 200 feet of the
1570 smaller lot without clearing any of the back land, then I think we would support it. And
1571 that's what we've seen twice before and what we have supported. But, apparently, it's not
1572 possible to do that. Apparently in order to build a house there, they have to clear the back
1573 of the land for the septic system. And that's what's creating the detrimental impact.
1574

1575 And there's no County sewer available in this area so they have to come up with some
1576 kind of a septic system. And once they clear the land for the septic system, especially
1577 here, apparently because of the soil, they have to actually build up the septic system. It's
1578 not in the ground like it would be in good soil. And all of that combined is creating the
1579 detrimental impact on the neighbors.
1580

1581 Mr. Green - Would it be to their advantage to defer this to further talk to
1582 you and see if in fact something else could really be worked out or have you exhausted
1583 that?
1584

1585 Mr. Gidley - At this stage -- and this was discussed with the applicant, they
1586 would need to get some sort of drainage study that was detailed and they expressed
1587 concern about the cost of that. Because that's not going to come cheap. But we'd want
1588 to be assured that there's not a situation where people are going to start having water go
1589 into their homes and what have you. And as far as us sitting down with the neighbors
1590 now, given the opposition from the neighbors in the past and from what I've heard on this
1591 case, I don't think they're going to casually accept something less.
1592

1593 Mr. Johnson - And also, I noticed when I was out there that even at the circle
1594 they are -- there are several underground -- where going into each one of the houses,
1595 running into that right on the same side and there's three different crossovers that water
1596 runs through. I mean there I was noticing that too, as well. And also there's water
1597 standing in some of the areas.
1598

1599 Mr. Gidley - I trooped it. As you get back there, there's a lot of vines, as
1600 well as thorns and brambles. And it's quite muddy. So. Yeah.
1601

1602 Mr. Johnson - This is right at that circle as well, you know.
1603

1604 Mr. Green - Okay. Any other questions from the Board to staff? Hearing
1605 none. We'll now hear from the applicant.

1606
1607 Mr. Calhoun - Good morning. My name's Sandy Ray Calhoun. That's my
1608 wife Kristina. And obviously we were here to apply for the variance for the driveway when
1609 this situation with the water drainage came up.

1610
1611 As he stated, we did have concern with paying a substantial amount of money with having
1612 these studies done. You know. Not knowing whether or not this would be approved as
1613 we've already put a substantial amount of money into this project. Nearly \$30,000 as it
1614 stands.

1615
1616 We initially put this variance in because we were planning to build this house on this lot.
1617 Which is family land. The back 1.9 acres.

1618
1619 As you can see, the 7741 Yester Oaks Lane that is my wife's mother's property. She is
1620 disabled and we are building this property because we recently had a child and we live
1621 an hour away. So it's becoming more difficult to help her day-to-day. And while also
1622 raising a newborn.

1623
1624 As far as the water runoff goes, there is a drainage ditch that goes around the outside of
1625 the property on the, I believe, north and eastern line of the property. You can't see it from
1626 the satellite images, but I believe her name was Michelle Peace sent in an email with
1627 photographs from around the property. And you can see images of the drainage ditch on
1628 the property or going around the property, I should say.

1629
1630 And the property to the west on Yester Oaks, that property as it sits you can see in the
1631 pictures it does not drain onto our property. It is standing water. Our property raises a
1632 little bit right there before it comes onto our property.

1633
1634 Mr. Blankinship - The Michelle Peace email was left on the table for you this
1635 morning.

1636
1637 Mr. Green - Okay.

1638
1639 Mr. Calhoun - But if there's any questions or concerns that you all have, I will
1640 be happy to answer them.

1641
1642 Mr. Green - Are there any questions from the Board to the applicant?

1643
1644 Mr. Johnson - Your entrance -- are you going to be going in from that circle
1645 there?

1646
1647 Mr. Calhoun - Yes, sir. There's actually already a culvert put in place. So
1648 there will be minimal disruption to the road itself. This literally would just be laying down
1649 gravel. There's already a culvert to drive onto the land actually. Yes. Right there where

1650 the mouse is. So, honestly, it would affect drainage less if we come off of Kambis Drive,
1651 because there's already a culvert and that leads into that drainage area that I was talking
1652 about that leads down beside the property.

1653
1654 Mr. Johnson - But then where would that water go to -- I noticed that there's
1655 also power lines out coming cross there at that entrance too.

1656
1657 Mr. Calhoun - Right. So all that -- all the water drains down through that
1658 culvert and then from the picture you're looking at right now, it would go off to the left or
1659 on the map it would drain east following along the property line as it does.

1660
1661 Mr. Blankinship - Go back to the aerial, Mr. Gidley. And so you would see it
1662 would come down that eastern property line and you can see that the two houses just
1663 above and to the left of the title block there -- or, I'm sorry, it's one house with a garage.
1664 All the water would head in the direction of that property. And then there's another house
1665 under the title block there. That drainage ditch continues on to their property. That's our
1666 concern. That additional water is going to flow down that channel and affect the neighbors
1667 downstream.

1668
1669 Mr. Green - Okay. Are there any other questions from the Board to the
1670 applicant?

1671
1672 Mr. Johnson - It's a nice neighborhood out there. Like I said, I noticed the
1673 drainage as well as how it's soaking out there as well.

1674
1675 There's no other entrance -- no other way to get there without --

1676
1677 Mr. Calhoun - No, sir. Not from the back side of the lot. We actually bought
1678 that one acre specifically to put a driveway in.

1679
1680 Mr. Green - Any other questions from members of the Board to the
1681 applicant? Hearing none. We'll hear from those opposed and in favor of the application.
1682 Thank you. Is there anyone in the audience opposed or in favor of this application? Sir.

1683
1684 Mr. Blankinship - And there's one on Webex who wishes to speak now.

1685
1686 Mr. King - Good morning. Thank you for hearing me. My name is
1687 Stephen King, with a p-h. And my wife and I are the owners of the property right to the
1688 east. That piece of property right there.

1689
1690 There is a drainage line that runs all the way down the property line and then cuts across
1691 the back of my property and continues on. I've lived there for 20 years and most of the
1692 water that comes through that area from the north down to me comes through that ditch.
1693 There's a culvert right there that the water flows through and runs through the ditch.

1695 I'm not a civil engineer, but I can give you 20 years of anecdotal things, and I spend a lot
1696 of time trying to keep that ditch open from everything that runs into it. This past winter,
1697 my wife and I spent \$4,000 having someone come through. He cleaned it all out so that
1698 it would continue to flow. That was three months ago and there are already several places
1699 in the ditch that have become clogged again and I'm getting to the point in my life and
1700 health that I can't spend a lot of time cleaning it out myself.
1701

1702 I did bring images in case anybody wanted to see them. Just what it looks like from this
1703 morning after the rain yesterday.
1704

1705 Mr. Green - Yeah. I'd like to see what it looks again.
1706

1707 Mr. King - It constantly overflows.
1708

1709 Mr. Green - Okay.
1710

1711 Mr. Blankinship - Oh. It's on his iPad.
1712

1713 Mr. King - Yeah. I'm sorry about that. I didn't know how else to bring it.
1714

1715 Mr. Blankinship - Ideally, we'd be able to project that, but we don't have that
1716 capability right now.
1717

1718 Mr. King - That's --
1719

1720 Mr. Madrigal - We're keeping that iPad! Right?
1721

1722 Mr. Blankinship - Yeah. Right.
1723

1724 Mr. King - Yeah just keep that.
1725

1726 Mr. Blankinship - It's evidence now! So.
1727

1728 Mr. King - But that's just one image from this morning. I actually built a
1729 bridge across the drainage field so that I can get back to the area on the back of my
1730 property which raises up. Which is where my septic field is. So my concern, of course,
1731 is if we clear that piece of property off, erosion, more water draining into the ditch that
1732 can't handle what it's designed for now. It was my understanding that my property was
1733 originally the main contractor when they built the subdivision and he took care of that
1734 drain line and everything, too, because of it.
1735

1736 So that would be my major concern. Even though I'm a supporter of people's property
1737 rights and when they own the property, they should be able to do much of what they would
1738 like as long as it doesn't tremendously and adversely affect people surrounding them.
1739 And my opinion is without a complete study by a civil engineering firm that says, This is

1740 what's going to happen and this is what we need to be done to mitigate it and so forth,
1741 I'm just concerned that it would be an increasing problem. Thank you.

1742
1743 Mr. Green - Okay. We have someone on Webex who would like to speak
1744 in opposition.

1745
1746 Mr. King - Thank you.

1747
1748 Mr. Green - Can the person weigh in please?

1749
1750 Ms. Blankinship - Yes, sir. Ms. Wilson, you are now unmuted.

1751
1752 Ms. Wilson - Hi. My name is Carolina Wilson. My husband and I, who's
1753 also attending live at 773 Yester Oak Lane. We have been to multiple variances from
1754 2017, 2019. We bought our house in 2014 so we were not at that variance. So you can
1755 kind of see how long we have been fighting it.

1756
1757 I have a few concerns. Obviously the most important, drainage. If you look at where the
1758 driveway is located, it would be very close to our drainfield. And if that's approved, what's
1759 going to happen is water's going to dump right back onto our drainfield causing additional
1760 problems to our septic system. We should not have more water on this drainfield area.

1761
1762 In addition, what happens when their driveway floods? They cannot be using Yester Oaks
1763 to come down, since this is a private road. So how are they going to get to their home
1764 when the driveway floods?

1765
1766 In addition, the draining, how it's sloped down, if they have to get back up onto their
1767 property behind our property, what's going to happen is it's going to dump water back
1768 onto the back end of our property.

1769
1770 I'd also like to point out that Sandy and Kristina Calhoun were aware of these drainage
1771 issues prior to purchasing said lot, because Debbie Hacker was in attendance at the other
1772 variance meetings and was actually against building on the lot on Kambis Drive.

1773
1774 So I'm very frustrated that we have to keep coming back to this. Especially when we're
1775 concerned that our properties are going to be affected by the decision. That's really all I
1776 have to provide at this time.

1777
1778 I know Dr. Peace has also provided some photos with a map, and you can see that this
1779 was taken two weeks ago. It rained one day. Not even a full day. And you can see -- I
1780 think at that time the weather said it was only one inch of rain and you can see how much
1781 flooding is occurring in this area. And it would have detrimental impact to our properties.
1782 And that's all I have to state on this variance.

1783
1784 Mr. Green - Yes.

1786 Mr. Blankinship - Are there any questions for Ms. Wilson?
1787
1788 Mr. Green - Are there any questions for Ms. Wilson from the Board? You
1789 all have an opportunity to rebut, to be heard.
1790
1791 Mr. Calhoun - One of the issues that Caroline brought up was, honestly, I
1792 believe has nothing to do with this variance. Which was talking about how we're going to
1793 get onto our property when our driveway floods.
1794
1795 I think one of her biggest issues and why she's against this, is because she believes that
1796 we'll be coming up the private drive to get to our property. And, honestly, we bought that
1797 piece of land specifically so we didn't have to come up to the private drive to get to our
1798 property.
1799
1800 And as far as the, like I said, the water running to her property, she is on the west side of
1801 the property line. Everything drains east. Her lot actually doesn't drain east. It sits
1802 stagnate, as you can see on the pictures from this piece. I sent in some pictures. So I
1803 don't believe anything that we would do would cause more water to go onto her property
1804 as it's uphill from ours.
1805
1806 Mr. Green - Are there any questions from the Board to the applicant? The
1807 drainage is one of the important things there with this project. On the surrounding
1808 properties around it. Have we looked at anything else that we could do with the drainage?
1809
1810 Mr. Calhoun - I'm sorry. Say that again.
1811
1812 Mr. Green - That would not encroach on any other properties or
1813 something.
1814
1815 Mr. Calhoun - So far everyone we've spoken to has indicated that it would
1816 not cause an issue with anyone else's property. And -- sorry. What was that?
1817
1818 Ms. Calhoun - I was just saying -- I'm sorry -- I'm sorry. So we spoke to, the
1819 site engineer who drew the septic plans, John Ritter. John Harper who do the topo map.
1820 He was the soil evaluator and the surveyors. And all of them are saying that this is not
1821 going to impact them. You know. As they mentioned, we just spent a lot of money and
1822 it would be a lot more to have a study done when everyone that we're speaking to that
1823 has a professional interest in it is saying that based on their expertise it's not going to be
1824 an issue.
1825
1826 I did also want to mention that the lot was there -- my family owned this lot prior to all of
1827 the surrounding dwellings. So, like, when we owned the lot, Yahley Mill Estates didn't
1828 exist. So all of the homes in that subdivision were not there to drain on my lot. That make
1829 sense? I inherited this lot. So it's not something that we pursued, you know, as she was
1830 saying, like, we purchased this lot.
1831

1832 I inherited this lot. We just had to purchase road access to the lot because they won't
1833 allow us to come down the private drive. They're refusing that. And so there was -- it
1834 was the only way to access it. So then we bought that and now we're still not able to
1835 access it. But it's been in my family for over 40 or 50 years. Many, many years ago.

1836
1837 Mr. Green - Also, one more question, do you have public water service, or
1838 do you have wells out there?

1839
1840 Ms. Calhoun - It's wells until you go a couple streets over. So on Kambis
1841 Drive its wells and then the same on Yester Oaks.

1842
1843 Mr. Pollard - I think this is already answered, but just to be sure -- and I
1844 understand that it's been a lot of resources put into it so far. There is not another location
1845 for the home or the driveway that would kind of avoid the drainage issue?

1846
1847 Ms. Calhoun - So the driveway we can put wherever the County sees fit. The
1848 home, I mean, we don't mind shifting it. But from the plans that were drawn I think that's
1849 where it needed to be. Because we have to have an alternative septic to build there.
1850 Which is also an additional cost. It's, you know, your average is going to be, like, \$10,000.
1851 And they're saying ours is going to be \$30,000. So it's very expensive and complicated,
1852 unfortunately, to try and avoid the issues that, you know, are a concern.

1853
1854 Now I will say, we lived on Kambis Drive, the 20 Kambis that actually touches that cul-de-
1855 sac there. And what we were required to do to avoid the water issue was have a French
1856 drain. And we were told that -- or, I'm sorry, when we looked into it, it said that the
1857 Common Law in Virginia is that water is a common enemy and so we have the right to
1858 improve upon our land. And if it impacts, you know, water as long as it's not negligent it's
1859 truly just improving upon our land and that. Then the other property owner has the ability
1860 to improve upon their land to improve themselves such as a French drain or a berm. But
1861 it's not our responsibility for surface water from Virginia Common Law from what I could
1862 find.

1863
1864 But we don't mind doing anything that you guys see fit in order to make it happen. This
1865 is what we've been given so far.

1866
1867 Mr. Pollard - I think the issues is have is another set of experts that are very
1868 concerned about the drainage. And I think you have to figure out something where those
1869 experts can agree that this location, where the driveway is. And I understand what you're
1870 saying as far as the inheritance and I'm sensitive to the predicament you're in. But if
1871 French drains would help, then you would need to get with your neighbors and have them
1872 agree to that. But I think you have to kind of go back to the drawing board and figure out
1873 a way where you can put the house that it'd kind of get everybody on the same page in
1874 terms of those concerns.

1875
1876 Ms. Calhoun - And I think you guys mentioned before, I tried to write it down
1877 so I'd remember correctly. You said that we could have a study done. So if we have a

1878 study done and it shows in favor, would we then be approved or, like, could we defer it?
1879 So I found out three weeks ago and I just had a really hard time trying to get anyone to
1880 do much of anything. I had one person that was able to send me the topo map, but other
1881 than that, they were like, Hey, it's really busy right now. And they -- that was pretty much
1882 the best I could do. I had a builder that was trying to get more information for me, but
1883 they just hadn't gotten it to us.

1884
1885 Mr. Blankinship - Are you asking if you can defer the case and ask somebody
1886 to do a study for more information?

1887
1888 Ms. Calhoun - Yeah. If we spend the money to have the study done and it
1889 shows that it's not going to impact them, you know, as they're saying. Then would it be
1890 approved? We just don't want to, you know, from what we understand, it's going to be,
1891 like, 5 or so more thousand to do that. We just don't want to put another 5 on top of the
1892 over 30,000, you know, and then it still not be approved is kind of our concern.

1893
1894 Mr. Blankinship - Well. It's difficult to answer that question until we see the
1895 study.

1896
1897 Mr. Green - Right.

1898
1899 Mr. Pollard - Question for the staff. The study, would that evaluate the
1900 plans as is? Or does that evaluate where the best place to go?

1901
1902 Mr. Blankinship - I would think an engineer would make recommendations as
1903 to where, you know, what sort of provisions to put in place. It looks to me like you're going
1904 to need a pipe or at least, you know, an improved drainage channel. And they're probably
1905 going to need to work with Mr. King because the drainage is going to go on to his property
1906 one way or the other. So they'll at least need to discuss with him. Ideally, they could
1907 come up with a joint solution that would handle the water. But we would expect an
1908 engineer to make recommendations as to what needs to be done to solve the problem.

1909
1910 Mr. Johnson - And I think that's a good idea to have them to look at it to come
1911 up with something. Because what you have now impacts other neighbors as well. You
1912 know. So if you can -- I would suggest that you do that.

1913
1914 Ms. Calhoun - Okay.

1915
1916 Mr. Green - So, basically, what he's saying is you might want to defer this
1917 case and get with the staff, get with your neighbors, and see if something can be worked
1918 out. Because there's a possibility that this thing could be denied and at least under a
1919 deferral you may have an opportunity that, you know, you may have to spend some
1920 money, but --

1921
1922 Mr. Johnson - As the chairman mentioned that it would take you longer to go
1923 back through the process again than just to be better to do that.

1924
1925 Ms. Calhoun - Yeah. I think we would like to defer.
1926
1927 Mr. Johnson - Okay.
1928
1929 Ms. Calhoun - If that's okay.
1930
1931 Mr. Blankinship - Do you have a sense of how long? I know you said everybody
1932 told you they're busy. Which I can certainly confirm every engineering firm is very busy
1933 right now. Do you want to call it three months and then see if you can be ready by then?
1934
1935 Ms. Calhoun - That sounds good.
1936
1937 Mr. Blankinship - That would be June the 23rd, Mr. Johnson, if you wanted to
1938 make a motion to that affect.
1939
1940 Mr. Johnson - Yes. If you're okay with that, I would refer to defer it because
1941 if we deny it, it'll be a whole lot longer.
1942
1943 Mr. Pollard - I think we're just waiting on the vote.
1944
1945 Mr. Johnson - Yes.
1946
1947 Ms. Calhoun - Yeah.
1948
1949 Mr. Pollard - Make a motion to defer.
1950
1951 Mr. Johnson - Now I make a motion to the staff that we defer and move it to
1952 June 23rd. There needs to be additional information and also to address the neighbor's
1953 concerns. That'll be on June 23rd.
1954
1955 Mr. Pollard - Second the motion.
1956
1957 Mr. Green - The motion was made by Mr. Johnson. Seconded by Mr.
1958 Pollard. Is there any discussion among the members of the Board? Hearing none. All
1959 in favor say aye. Opposed like sign. The motion is deferred.
1960
1961 On a motion by Mr. Johnson, seconded by Mr. Pollard, the Board **deferred case**
1962 **VAR2022-00003 KRISTINA CALHOUN's** request for a variance until the June 23, 2022
1963 public hearing.
1964
1965
1966 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5
1967 **Negative:** 0
1968 **Absent:** 0
1969

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Ms. Calhoun - Thank you.

Mr. Blankinship - Well that completes the variances. There is one appeal on this morning's agenda. That is Appeal 2022, number 1. Jonathan Ralston.

APL2022-00001 JOHNATHAN RALSTON appeals a decision of the director of planning pursuant to Section 24-2320 of the County Code regarding the property at 10506 Thames Drive (CANTERBURY) (Parcel 741-745-8739) zoned One-Family Residence District (R-2) (Tuckahoe).

Mr. Blankinship - Would everyone who intends to speak to this matter, please stand and be sworn in? Raise your right hands, 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?

Mr. Murphy - Yes.

Mr. Blankinship - All right. Thank you. Mr. Murphy. As I mentioned in the beginning, there'll be 10 minutes for the County attorney, 10 minutes for the appellant, and 3 minutes for anyone else who wishes to speak.

Mr. Murphy - Sorry. Is there a slide up here?

Mr. Blankinship - Oh. Yeah. Fred could --

Mr. Murphy - That's not it. This one. Good morning. May it please the Board. My name's Ryan Murphy. I'm the Assistant County Attorney with Henrico County Attorney's office. My office is representing the Director in this appeal brought by Mr. Ralston regarding the property at 10506 Thames Drive.

The question presented in this appeal is did the Planning Director correctly determine that the appellant's shipping container is subject to the standard's for portable storage in County Code section 24-4511(D) which prohibits storage containers from being located on property within a residential district for more than one period not exceeding 10 consecutive days in any 6-month period.

My office contends that the answer to that question is yes. The shipping container is subject to the standards and county Code section 24-4511(D) and those standards prohibit the appellant from keeping the shipping container on his property for more than one period not exceeding 10 consecutive days in any 6-month period.

For the standard review that is applicable to these appeals is found in Virginia Code section 15.2.2309, subsection 1, and Henrico County Code section 24-2320, subsection D. The Director's determination is presumed to be correct. It is the appellant's burden to rebut that presumption and prove the determination was incorrect.

2016
2017 There's five key points in the presentation of this appeal. First, the appellant's property is
2018 zoned R-2. That's a One-family Residence District. Second, portable storage is permitted
2019 only as a temporary use in the R-2 District under the County Zoning Ordinance subject to
2020 the standards that are in 24-4511(D) which prohibit the keeping of the storage container
2021 for more than one period of up to 10 consecutive days in any 6-month period.

2022
2023 Third, the appellant has kept the shipping container on his property for at least 90
2024 consecutive days. Fourth, the definition of portable storage specifically includes shipping
2025 containers. And, finally, a shipping container is not customarily accessory to a residence.
2026 Therefore, under the Henrico County Zoning Ordinance it cannot be an accessory use or
2027 structure.

2028
2029 This is a picture of the property and also the shipping container, which you can see in the
2030 side yard by the driveway. A little background, the case began on or about December 9,
2031 2021 when a County Code Compliance Inspector went to the property to investigate
2032 complaints that have been received by the County. She left her contact information for
2033 the appellant and after some communications with the appellant she returned to the
2034 property on January 20th, issued an NOV citing Section 24-4511(D) and giving a
2035 compliance deadline of February 22, 2022.

2036
2037 It is my understanding that the shipping container continues to be on the property as of
2038 today.

2039
2040 As I mentioned, portable storage is permitted only as a temporary use in the R-2 District.
2041 This is an excerpt of Table 4502. If you go across the rows and columns and you see
2042 that portable storage is permitted in the R-2 District, but it is subject to the standards that
2043 are in 24-4511. I'll move to that section.

2044
2045 The applicable subsection is subsection D and that section states that except for storage
2046 containers located on construction sites, which is not applicable here, storage containers
2047 must not be located on an individual parcel or site for more than one period exceeding 10
2048 consecutive days in a 6-month period in a residential district.

2049
2050 Now there is no dispute that this is a residential district. Property is located in the R-2
2051 district. And there's no dispute that the shipping container has been located on the
2052 property for a period that exceeds that 10-day allotment. So appellant's argument seems
2053 to center on the definition of portable storage. The definition of portable storage expressly
2054 includes shipping containers that can be transported by mounting on a chassis and
2055 PODS, or smart-box type boxes that can be transported on a flat bed or a truck. You can
2056 see that it also specifically distinguishes these types of containers from prefabricated
2057 sheds.

2058
2059 Now the appellant seems to contend that because he intends to keep it on his property
2060 permanently that it should be treated as an accessory use or a structure. The problem
2061 with the appellant's argument is that the County Zoning Ordinance provides general

standards for all accessory uses and structures under Section 24-4403. And there it states that accessory uses and structures must be customarily accessory. And what that means is it needs to be commonly used here on a residential property. And shipping containers are quite simply not commonly used on residential properties in the Henrico Community.

If we assume, however, just for the sake of argument, that what the appellant is proposing to do is some sort of unlisted use. Then the Zoning Administrator, the Director, had the authority to evaluate unlisted uses and structures to determine the most similar use type or use category including whether the unlisted use may be permitted or treated as an allowable accessory use or structure.

And for it to be treated as an allowable accessory use or structure, you look to the standards and the criteria that are in County Code 24-8407(C). And when you consider these criteria, despite appellant's arguments, you see that a shipping container is not like the permitted uses for structures that are accessory to single-family dwellings in the R-2 District.

So, as I mentioned earlier, a shipping container is not customary, it's not commonly found on residential property. It's not commonly used like a shed or other outbuilding like a garage. And it's not consistent with the example accessory uses in the Household Living Category that's an applicable category here. Some of those examples are garages, greenhouses, and homes. Something along those lines.

The industrial commercial nature of the shipping container is quite evident just from the appearance. It has slats for a forklift's tines to lift a shipping container. They also come equipped with corner casings so a crane can lift the shipping container, put it onto a flatbed truck or a boat or a train. But they're plainly designed not to be permanently affixed to property, but to transport goods, other materials, for industry or commercial uses. And you can see here that the criteria are conjunctive. My office contends it doesn't meet any of those criteria, but if it doesn't meet any single one of them, it cannot be treated as an allowable accessory use under the County Zoning Ordinance.

So my office contends that it is most similar to portable storage and that the Zoning Administrator, the Director, was correct in treating it as such. So to return to the question that I presented earlier. My office contends that the answer to that question is, "Yes". It is subject to the standards for portable storage found in County Code, section 24-4511. And the appellant may not keep the shipping container on his property for more than one period not exceeding 10 consecutive days in a 6-month period. And, for those reasons, I ask that the Board make the following motion.

For the reason presented by the County attorney, the Board finds that the Director correctly determined the appellant's shipping container is subject to the standards in Section 24-4511 of the County Code. Because the appellant has kept the shipping container on his property in the R-2 District for over 10 consecutive days, he is in violation

2107 of Section 24-4511(D). Accordingly, we ask that the Board affirm and uphold the
2108 Director's decision.

2109
2110 Thank you. And I'm happy to answer any questions.

2111
2112 Mr. Green - Yes. Are there any questions from the Board to the attorney?
2113 Hearing none, we'll move to the applicant. You can pull that up.

2114
2115 Mr. Ralston - Okay. There we go. My name is Jonathan Ralston, R-a-l-s-
2116 t-o-n. Thank you this morning for the opportunity to meet before the Board. My wife and
2117 I, we purchased a decommissioned shipping container on November 5 to use as a shed.
2118 During the last 4 months we have been waiting to locate the container in our backyard to
2119 meet all required setbacks, paint the container, and landscape around it. We are excited
2120 to move forward with these plans after this meeting.

2121
2122 The Director seems to have two major concerns with us repurposing our container for a
2123 shed. The first revolves around the definition of portable storage. Although the words,
2124 Shipping container are listed in the definition, a shipping container is not in and of itself
2125 the definition of portable storage. Instead, a shipping container is an example of
2126 something allowable by the County to be used as temporary portable storage.

2127
2128 The definition in Article 8, Division 5 reads, A container that is designed and rented or
2129 leased for the temporary storage of commercial, industrial, or residential household
2130 goods. The language is clear, this only applies to containers that are rented or leased for
2131 temporary storage.

2132
2133 The assumption cannot be made that this applies to all containers, or it should be written
2134 as such. Our container is owned. It is not rented or leased. I have a copy here of the
2135 invoice. There's some other pictures also that will be coming up.

2136
2137 Additionally, we are not using the container for temporary storage, but instead for
2138 permanent storage like any other shed. Finally, our container is not portable storage.
2139 Although it came on the back of a truck, like any other shed would, we are not using it to
2140 transport our storage from one location to another. It is also inaccurate to state that
2141 because the words, Shipping Container, are listed under portable storage, that a shipping
2142 container can serve no other purpose. The County has already set precedent by allowing
2143 and permitting properties to use shipping containers for uses other than temporary
2144 portable storage. And those are some of the pictures there.

2145
2146 2400 Mechanicsville Turnpike uses a shipping container as part of their restaurant. And
2147 3025 Hilliard Road uses shipping containers as a home. I am also aware of 2300
2148 Anniston Street, and 1600 Crump Street that use shipping containers as permanent
2149 storage.

2150
2151 The other concern is that a shipping container is not customarily accessory. This is no
2152 more than an incorrect opinion. The definition for accessory structure in Article 8, Division

5, states a use or structure subordinate to the principal use or structure on the same lot and serving a purpose customarily incidental there, too.

This is not a question of whether a shipping container has a customary appearance or design as other sheds. The definition states, a customary purpose. The purpose for the container is for storage, which is the exact customary purpose of a shed.

The County -- nowhere in the code is there a definition or specifications on what is or is not a shed. My container has four walls, a roof, doors, and is made of metal like hundreds of other sheds in the County and complies with all 9 requirements of accessory structures listed in Section 24-4403(B).

The other picture there is a shed near my house on Midway Road. As you can see, if you look at a picture of my shipping container which currently is still red, but, like I said, we want to move it in the back and paint it and make it pretty. It kind of looks just like a shipping container with a gable roof on it. And the picture that I provided. And then, also, just some anecdotal things. The company I bought the shipping container from, they're a local company, they sell over 300 containers a year locally in the Richmond area. They sell these mainly for storage buildings.

And, you know, any internet search will show all of the countless ways people are repurposing shipping containers. Anything from, you know, homes, offices, sheds, gazebos. I mean, anything you can think of. That's all I have to say. Thank you.

Mr. Green - Mr. Ralston, what is the purpose of your shipping container?
What will you use it for?

Mr. Ralston - Well, I want to use it for storage. We had moved here almost four years ago. We've had a storage unit since then and, you know, they just keep raising the prices every month and so, you know, I figured that actually purchasing this over, you know, just two years would, you know, be equivalent in price. So really just to store, you know, whether it's my tools or, you know, gardening equipment, things like that. You know. It's just another accessory use. Another shed.

Mr. Green - And, I guess, not trying to be too intrusive. But you live in such a beautiful neighborhood. Why wouldn't you just build a shed? Put a shed up? A normal-style shed that would fit the neighborhood?

Mr. Ralston - Right. Well. I mean. I think, you know, I mean, I agree with you. I'm sure people think that, you know, doesn't look good. But, you know, the house I showed you that the County allowed to be built, in my opinion, is an ugly house. Right? But it's their home and it's their property. You know. Yes. I could buy a shed that would at least be twice the cost. And, you know, where I plan to put it in this picture, it kind of has to fit between two trees. And, really, that skinny long shape of the shipping container would be the best use to fit in my yard. There's not another place to build a large shed. So it's just best for our family and for, you know, just as far as cost.

2199
2200 Mr. Green - That shed that we just saw, is that in your yard now?
2201
2202 Mr. Ralston - Yes, sir.
2203
2204 Mr. Green - So you already have a shed?
2205
2206 Mr. Ralston - Yes, sir.
2207
2208 Mr. Green - So you would keep that shed as well?
2209
2210 Mr. Ralston - That's correct.
2211
2212 Mr. Green - So you would have two sheds?
2213
2214 Mr. Ralston - That's what I'm hoping for. Yes. I don't think that is in
2215 contradiction to any of the codes or anything.
2216
2217 Mr. Johnson - Are both of them the same -- look the same?
2218
2219 Mr. Ralston - No. The shipping container won't quite look like that. But we,
2220 like I said, we do plan to paint it and, you know, make it a little prettier and get it out of the
2221 end of our driveway. We've just been waiting -- as is stated in the report we're, you know,
2222 the guidance was not to do that. Because every step along the way, you know, every
2223 time the County's told me to do something, You need to get a building permit. And I did
2224 that. And, you know, You need to do this. And I did -- every time they keep trying to
2225 block me from having this and then at the end of the road they just said, Look, you're
2226 never going to be able to have this. Don't waste your time moving it into your backyard
2227 or painting it. You know. So.
2228
2229 Mr. Pollard - So these conversations were before you got this shipping
2230 container?
2231
2232 Mr. Ralston - No. And that's another thing is glancing through the code, I
2233 mean, I would not assume to look in temporary portable storage because I'm not using
2234 this for temporary portable storage. If you're going to get a POD or a Rat Pack or one of
2235 those things, that's temporary portable storage.
2236
2237 I bought this to use as a shed. So when you look under accessory use structures, I mean,
2238 the 9 points in no way, you know, prohibit me from having something just because it's
2239 ugly or, you know, in someone's opinion looks industrial. So, you know, I bought it and
2240 now I'm kind of at this hardship of, you know, I own it. I just want to keep it on my property.
2241 And it's, you know, the county's kind of just been trying to tell me not to. I just think
2242 because they think it's ugly. And, you know.
2243
2244 Mr. Pollard - But the County became aware of it because of complaints.

2245
 2246 Mr. Blankinship - Yes.
 2247
 2248 Mr. Ralston - That's what I understand. Yes.
 2249
 2250 Mr. Bell - Real quickly --
 2251
 2252 Mr. Johnson - Go ahead.
 2253
 2254 Mr. Bell - Real quickly. What does a shed look like to you?
 2255
 2256 Mr. Ralston - Well, I think a shed is something you can store things in.
 2257 That's another thing. I sent an email to Ms. Jennifer Sale on January 13 before they cited
 2258 me the violation, you know, outlining basically the same argument I just had. And I
 2259 specifically asked that there are no architectural, aesthetic, or design guidelines anywhere
 2260 in the Henrico Code. And I asked what it is that would constitute a shed and what I would
 2261 need to do to have the County accept this as a shed. Because, you know, a shed is not
 2262 defined. And if you're going to ask me, it's --
 2263
 2264 Mr. Bell - You're making the assumption you don't know what a shed
 2265 looks like.
 2266
 2267 Mr. Ralston - Well I think -- I know what a shed is used for. So I don't know
 2268 if what it looks like is really, you know, important.
 2269
 2270 Mr. Green - But you keep referring to this as the -- as a shipping container.
 2271 Its primary use is as a shipping container. Correct?
 2272
 2273 Mr. Ralston - Well, but it cannot be used for that. I mean, they get
 2274 decommissioned. I can't take that and fill it with items and put it on a cargo ship and send
 2275 it to China. You know. That's what it was built as, but that's not its purpose and that's
 2276 not what I'm using it for, nor am I using it for temporary portable storage. So it just comes
 2277 down to, you know, what are you using it for. If you're going to use it for temporary
 2278 portable storage, the reason why that is in the code is so that way people only have 10
 2279 days or outside of residential districts have 30 days.
 2280
 2281 Mr. Pollard - Is there a process to repurpose shipping containers, for lack
 2282 of another example? Like, I'm trying to figure out how we're -- how was a, like, two or
 2283 three shipping containers able to create a house out of that. Are you able to use a
 2284 shipping container as your home?
 2285
 2286 Mr. Blankinship - They went through a building permit to be able to do that. I
 2287 know that.
 2288
 2289 Mr. Ralston - And that's if I may because that's something that, you know,
 2290 it's another difference is Virginia Building Code, there are specifications on what is a

2291 home, what can be a bedroom, egress, you know, all these things that you need to be a
2292 home. But there is nothing for a shed.

2293
2294 And actually in the Virginia Building Code, which was revised last year as the building
2295 inspector of, you know, let me know, that in section 102.311, which is the exemptions of
2296 the code, it specifically states that if you're going to keep a shipping container on your
2297 property for storage, it is exempt from the code. Which makes sense, because there's
2298 no way for an inspector to come and say, Oh, you know, these welds aren't tight enough
2299 or, you know, anything like that. I mean, if you're going to use it as a storage building
2300 then, you know, the building inspectors aren't concerned.

2301
2302 Mr. Blankinship - And it is customary to use them that way in industrial areas.

2303
2304 Mr. Ralston - Yeah. I mean, definitely, but I don't think only industrial areas.
2305 Just because it's frowned upon in Henrico County, I mean, maybe there would be more
2306 available if the County didn't prohibit it. You know. So in Richmond City and Hanover, I
2307 mean, there are plenty of other surrounding counties that people use them. You know.

2308
2309 Mr. Johnson - And also the ones that you would use in showing the
2310 examples prior they also look like the house. They also had roofs and -- like that. So it
2311 wasn't looking totally like something you were just bringing in to use to take away.

2312
2313 Mr. Ralston - Right. And, once again, I mean, I stated that we will paint it.
2314 I mean, I've even discussed with my wife painting, you know, fake windows on it and
2315 really making it look like a shed. But I think it just comes down to that nowhere in the
2316 code does it dictate, Well, yes you can keep it once it has a gabled roof. Because I can
2317 build a shed that same size out of metal with a flat roof, with no windows. I mean, I can
2318 make that into a shed. And this has been going on a long time, like I said.

2319
2320 It wasn't just I got cited one day and here we are. I mean, I got the building permit and,
2321 you know, I've been talking with Planning and Building and all of this. And, you know,
2322 one person admitted to me, I said, Well what if I just took a torch and cut it all apart and
2323 got an engineer to put drawings together of me welding it back together and I built it,
2324 would it then be a shed? And, you know, so it just kind of comes down to these, you
2325 know, what is a shed and all of this. And --

2326
2327 Mr. Pollard - Two more questions. So did you anticipate your neighbor's
2328 reaction?

2329
2330 Mr. Ralston - No. It's unfortunate. No one in the community has come and
2331 spoken with us directly. And so I don't know, I mean, I guess we'll hear from them. I don't
2332 know exactly what their thoughts are but, you know, I mean, every time I drive around
2333 with my wife I have to hear about, you know, I wouldn't have planted that there or I
2334 wouldn't paint my door that color.

2336 So, I mean, these are all just opinions that, you know, really, you know, don't have validity
2337 I guess on what someone's shed looks like on their property if it's not up to the standards.
2338 That's the reason why I don't live in an HOA. And I suppose if they want that kind of, you
2339 know, architectural control, maybe, you know, they should live in an HOA. Because there
2340 are plenty of neighborhoods right around us that have HOA guidelines.

2341
2342 Mr. Pollard - I was going to ask you that. It didn't seem like an HOA existed,
2343 but I just wanted to ask.

2344
2345 My last comment is, I think you make some great arguments. I think that's something you
2346 should make before you purchased the container and put it outside your house.

2347
2348 Mr. Ralston - Yeah. You're not the first one to tell me that. When I applied
2349 for the permit they said, Oh, well you're thinking about buying it, well you can't. I said,
2350 Well, no. It's in my driveway right now. So I was told to get a permit.

2351
2352 Mr. Green - Okay. All right. Thank you.

2353
2354 Mr. Ralston - Okay.

2355
2356 Mr. Green - Is there any opposition to this --

2357
2358 Mr. Blankinship - Appeal.

2359
2360 Mr. Green - -- appeal. I'm sorry.

2361
2362 Mr. Green - Would you spell your name, please?

2363
2364 Mr. Kistler - Hi. My name is Grant Kistler. I live on Thames Drive, two
2365 houses down. I'll just keep this short and sweet. Two things in my opinion. This is a
2366 commercial, industrial structure intended to be placed in the middle of a beautiful
2367 residential neighborhood. I've had multiple people, visitors to my home, see the shipping
2368 container and ask, What's the deal with the shipping container? Not, What's the deal with
2369 the shed?

2370
2371 And just something one of the Board members brought up in regards to asking neighbors
2372 what they thought about this before the purchase of it. I've lived in the neighborhood for
2373 3 1/2 years. I built a privacy fence on our property. I called the County. Made sure of
2374 what I could and couldn't do.

2375
2376 I went to all of my surrounding neighbors before I purchased any of the materials and I
2377 let them know that I intended to build a fence. Just to see what their reaction was. If they
2378 were okay with it. If they weren't okay with it. And that has not happened in this -- in this
2379 case. But, in conclusion, in my opinion as a homeowner in this neighborhood that is not
2380 a shed.

2381

2382 Mr. Green - Are there any other individuals
 2383
 2384 Mr. Lawson - Thank you Chairperson and Board members and staff. My
 2385 name is Joe Lawson. I live on 1510 Monmouth Drive, and I'm very near the vicinity to
 2386 this -- to this home and this container.
 2387
 2388 First off, I'd like to draw attention to a petition I believe you have in your possession. That
 2389 petition was signed by owners of 26 homes surrounding this property and I'll tell you in
 2390 conversations with many of those homeowners they feel similar as I do that this is a, you
 2391 know, an industrial, ocean-going shipping container and it should not be repurposed as
 2392 an accessory structure. It's completely out of character for the neighborhood and, you
 2393 know, even if you were to paint it or paint some windows on it, you're still putting lipstick
 2394 on a pig. And so, you know, I am opposed to it, and I hope that you deny the appeal.
 2395 Thank you.
 2396
 2397 Mr. Green - Thank you. Are there any other individuals going to speak in
 2398 opposition? Anyone out there to speak in support? Is there anyone on Webex to speak
 2399 in support or opposition to this?
 2400
 2401 Mr. Lewis - There's no one on Webex to speak to this item.
 2402
 2403 Mr. Green - He can rebut that. Right?
 2404
 2405 Mr. Blankinship - No. Not for appeals.
 2406
 2407 Mr. Green - Okay. What is the wish of the Board?
 2408
 2409 Mr. Reid - After hearing both the arguments and with all due respect to
 2410 the property owner, I move that we affirm the Director's decision and uphold the notice of
 2411 violation for the reasons presented by the County Attorney. I think the Director correctly
 2412 determined that the shipping container is subject to the standards in Section 24-4511(D)
 2413 of the County code. Because the shipping container has been on the property for over
 2414 10 days, it is in violation of section 24-4511(D).
 2415
 2416 Mr. Green - Is there a second?
 2417
 2418 Mr. Pollard - I'll second.
 2419
 2420 Mr. Johnson - Second.
 2421
 2422 Mr. Green - The motion was made by Mr. Reid. Seconded by Mr. Pollard.
 2423 Is there any discussion? The discussion I have is once we vote and if we uphold the
 2424 Director's decision, when will this thing have to be removed?
 2425
 2426 Mr. Blankinship - I believe it would be 30 days. But I'd have to discuss that with
 2427 Community Maintenance. That's a separate process from yours.

2428

2429 Mr. Green - But are you all understand that if we vote to uphold the appeal,

2430 that it would be removed within 30 days. We're still in discussion.

2431

2432 Mr. Johnson - My discussion would be if that was -- with a roof on it -- just

2433 forget it.

2434

2435 Mr. Green - Motion to --

2436

2437 Mr. Pollard - It's up there. I would add something, probably along the lines

2438 of Mr. Johnson. You just want to talk to your neighbors first. In so many cases you find

2439 out if the neighbors had talked a little bit, it's tweaks people could have made and it still

2440 might have, you know, one guy said it's lipstick on a pig. So you might not have convinced

2441 them, but it could have saved you this process at a minimum. Or you could have kind of

2442 shared your intent. So I think it's one of those ask for forgiveness instead of permission

2443 situations.

2444

2445 Mr. Green - The motion has been made and seconded. All in favor of

2446 upholding the Director's decision say aye. Opposed like sign. It shall be removed within

2447 30 days.

2448

2449 On a motion by Mr. Reid, seconded by Mr. Pollard, **the Board affirmed the decision of**

2450 **the director of planning and denied the appeal.**

2451

2452

2453 Affirmative:	Bell, Green, Johnson, Pollard, Reid	5
2454 Negative:		0
2455 Absent:		0

2456

2457

2458 Mr. Blankinship - Minutes from February?

2459

2460 Mr. Green - Has everyone had an opportunity to review the minutes from

2461 February? Is there a motion to approve?

2462

2463 Mr. Reid - So moved.

2464

2465 Mr. Johnson - I motion. Second.

2466

2467 Mr. Green - All in favor say aye. All opposed like sign. Minutes been

2468 approved.

2469

2470 On a motion by Mr. Reid, seconded by Mr. Johnson, the Board **approved the minutes**

2471 **of the February 27, 2022 Board of Zoning Appeals meeting.**

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

Mr. Blankinship - Mr. Chair, I listed on the agenda a request for reconsideration. We did not receive a request. I had spoken to the person so I put it on the agenda as a placeholder, but they did not come in with a request. I would like to trespass on your valuable time for just another moment, though, just to say that this is in appreciation of and recognition for continuous and loyal service. We present this certificate to Paul M. Gidley for 25 years of service on the 4th day of September.

Mr. Johnson - Congratulations, Paul.

Mr. Gidley - Thanks.

Mr. Pollard - Congratulations.

Mr. Blankinship - Make a very short speech.

Mr. Gidley - It's been a long day but thank you. I appreciate it. I came to the County as an inspector, so I know the work they do and appreciate that and always try to be helpful to them as I worked my way up. And I have great coworkers who I enjoy working with. Thank you very much and thank you to the Board for, you know, the service you give as well.

Mr. Green - Thank you. Congratulations. So, you're going to work another, what, 25 years?

Mr. Gidley - I want to go somewhere warm.

Mr. Johnson - Yes.

Mr. Green - Like Omaha! Turn the mic's off. All you all going to turn the mics off?

Mr. Pollard - Do we need a motion to adjourn?

Mr. Green - Is there a motion to adjourn?

Mr. Bell - So moved.

Mr. Johnson - Second.

Mr. Green - Second. All in favor. Aye.

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Affirmative:
Negative:
Absent:

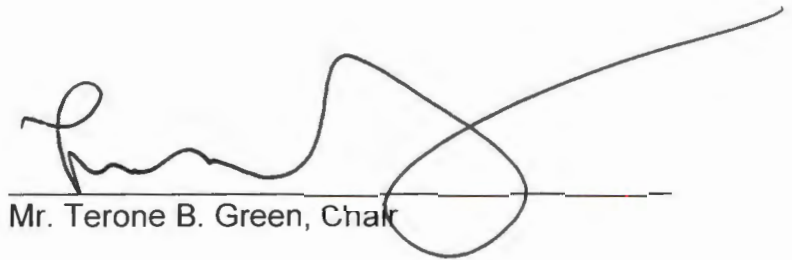
Bell, Green, Johnson, Pollard, Reid

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The mic is still on.

Mr. Blankinship -

Thank you for your awareness.



Mr. Terone B. Green, Chair



Mr. Benjamin W. Blankinship, Secretary