

1 MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF
2 HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE
3 GOVERNMENT CENTER AT PARHAM AND HUNGARY SPRING ROADS, ON
4 THURSDAY DECEMBER 20, 2018 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED
5 IN THE *RICHMOND TIMES-DISPATCH* DECEMBER 3, 2018 AND DECEMBER 10,
6 2018.
7
8

9 Members Present: Helen E. Harris, Chairman
10 Gentry Bell, Vice Chairman
11 Walter L. Johnson, Jr.
12 James W. Reid
13 Terone B. Green
14

15 Also Present: Jean M. Moore, Assistant Director of Planning
16 Benjamin Blankinship, Secretary
17 Paul M. Gidley, County Planner
18 R. Miguel Madrigal, County Planner
19 Kuronda Powell, Account Clerk
20
21

22 Ms. Harris - Good Morning and welcome to the December 13, 2018
23 meeting of the Board of Zoning Appeals. Would you stand with us as we recite the Pledge
24 of Allegiance?
25

26 ...THE PLEDGE OF ALLEGIANCE IS RECITED...
27

28 Ms. Harris - At this time, we're going to ask Mr. Blankinship, our Secretary,
29 to read the rules that govern this meeting.
30

31 Mr. Blankinship - Good Morning, Madam Chair, members of the Board, ladies
32 and gentlemen. The rules for this meeting will be as follows: Acting as secretary I'll
33 announce each case and then we will ask everyone who will speak to that case to stand
34 and be sworn in. Then a member of the staff will give a brief introduction to the case, then
35 the applicant will present their case. After the applicant, anyone who wants to speak in
36 favor will be given a chance, then anyone who wants to speak in opposition will be given
37 a chance. After everyone's had a chance to speak, the applicant and only the applicant
38 will have an opportunity for rebuttal. After that ... after each hearing is concluded, the
39 Board will proceed to the hearing on the next case. They will render all of their decisions
40 at the end of the meeting. So, if you wish to hear their decision on a specific case, you
41 can either stay until the end of the meeting, or you can check the Department of
42 Planning's website. We usually get it updated within an hour of when the meeting ends,
43 or you can call the Planning Department this afternoon.
44

45 This meeting is being recorded, so we'll ask everyone who speaks to speak directly into
46 the microphone on the podium, and to state your name, and please spell your last name
47 so that we get it correct in the record.

48
49 We do not have any request for deferral or withdrawal that I am aware of. So, I think we
50 are ready to proceed.

51
52 Ms. Harris - Please call the first case.

53
54 Mr. Blankinship - CUP2018-00038, Amanda Horne.

55
56 **CUP2018-00038** **AMANDA HORNE** requests a conditional use permit pursuant
57 to Section 24-95(i)(4) of the County Code to build a detached garage in the side yard
58 setback at 11504 Swanson Mill Way (Parcel 768-774-4492) zoned One-Family
59 Residence District (R-1AC) (Brookland).

60
61 Mr. Blankinship - Would everyone who intends to speak to this case please
62 stand and be sworn in. Raise your right hands, please. Do you swear the testimony you're
63 about to give is the truth, the whole truth, and nothing but the truth so help you God?

64
65 Mr. Gidley - I do.

66
67 Mr. Blankinship - Mr. Gidley?

68
69 Mr. Gidley - Thank you, Mr. Secretary. Good morning Madam Chair,
70 members of the Board. You should have at your desk a note of support for this case.
71 That came from Talmadge Harris, who lives across the road at 11531 Mill Road, which is
72 located right here. The subject property itself, here in yellow, contains a home that was
73 built in 1971. It also contains two accessory structures in the back. Previously, access to
74 the property came off Mill Road, via a driveway. However, in 2014 the subdivision plat for
75 Swanson Mill Run subdivision was approved and this included plans for Swanson Mill
76 Way, which was constructed along the side of this property. Once that was constructed,
77 this property became a corner lot and what was known as a reverse corner lot because it
78 rears upon the side line of the property to the rear.

79
80 Under the zoning ordinance, accessory structures on such lots are required to be set back
81 65 feet from the street side, here; and because these structures were not, they are
82 considered legal nonconforming because they pre-dated the ordinance.

83
84 The applicant would like to replace these two accessory structures; and you can see them
85 right here. He would like to replace these with a new 2,000 sq. feet three-car garage in
86 roughly the same location.

87
88 Although nonconforming structures can remain, they are not allowed to be replaced. As
89 a result, a Conditional Use Permit is needed for the applicant to replace these buildings
90 in this location. And it's kind of faint here, but you can see a view of the proposed building
91 right here. I would note that the total amount of floor area for accessory structures on this
92 lot is limited to 1,687 sq. feet So, the applicant would need to reduce the size of the
93 proposed building in order to comply with this limit.

94
95 In evaluating this request, both the residential dwelling (their home) along with the two
96 buildings here and the proposed building are consistent with the R-1A zoning of the
97 property, and its designation on the Future Land Use Plan is Rural Residential.
98

99 The purpose of the additional setback is essentially to avoid having somebody's
100 outbuilding, adjacent to what's typically the front yard of the property to their rear.
101 Obviously, they don't allow accessory structures in the front yard and the same principle
102 applies here. In this case, however, due to the size of this lot these structures are at least
103 150 feet from the adjacent residence. So, staff doesn't see any particular negative impact
104 on the adjacent residence from this request. In addition, the proposed garage will be
105 constructed with a brick front façade and vinyl siding on the remaining three sides, which
106 would be an improvement over the existing buildings here and would bring the new
107 building more in line with the construction materials used in the subdivision.
108

109 In conclusion, although the proposed building is rather large, it would be at least 150 feet
110 from the nearest dwelling. In addition, the design would be an improvement over the
111 existing storage buildings. As a result, assuming the applicant reduces the size of the
112 proposed structure, down to the 1,687 sq. feet limit, staff recommends approval of this
113 request subject to the conditions in the staff report. If you have any further questions, I
114 would be happy to answer those. Thank you.
115

116 Ms. Harris - Thank you, Mr. Gidley. I do have a question about the
117 easements. The report indicated there were easements, one by the county and one
118 imposed by the subdivision. Are you familiar with where those easements are?
119

120 Mr. Gidley - There's a ... let me get the plat. My understanding, Ms. Harris,
121 is that there is a landscape easement that runs along the street side, here; and that's why
122 you see you see some of the shrubbery here and then extending down here. I believe
123 those are part of that landscape easement that is along the entryway into the subdivision.
124

125 Ms. Harris - Thank you, Mr. Gidley.
126

127 Mr. Gidley - Thank you.
128

129 Ms. Harris - Are there any more questions from the Board? Would the
130 applicant please come forward and state your case. Please give us your name and spell
131 your last name.
132

133 Ms. Amanda Horne - Yes, Ma'am. My name is Amanda Horne; last name is spelled
134 H-o-r-n-e.
135

136 Ms. Horne - I did submit an application for a Conditional Use Permit for a
137 three-car attached garage. We would like to make it more updated, that building. One
138 of the buildings is from the 1930's used for my grandfather's Model-T car, and the other

139 one is quite dated as well. We just want to update it and make it look better for our property
140 and for the neighborhood.

141
142 I do have a question. When we did submit the application, we were told that it could be
143 2,050 sq. feet which is why our plans were submitted at 2,000 feet So, I just want to know
144 why it was reduced. Because we're going to have to get the drawings redone all over
145 again. But that's what we were told, and I do have the email. And I have also called
146 several times and been given the same information.

147
148 Ms. Harris - May we see that email, please?

149
150 Ms. Horne - Yes, Ma'am.

151
152 Mr. Blankinship - I think the answer to your question is that whoever answered
153 that email just misread the zoning map. If the zoning was R-1, you'd be allowed 2,050
154 sq. feet, but it's R-1A.

155
156 Ms. Horne: Ok.

157
158 Mr. Blankinship - There are only two locations in the county that are zoned R-
159 1A. So, I guess they just weren't aware that this was one of the two.

160
161 Ms. Horne - Ok.

162
163 Mr. Blankinship - I apologize for that.

164
165 Ms. Harris - Do you have a problem with the reduction?

166
167 Ms. Horne - No. We are just going to have to get the drawings redone and
168 that's just going to put us back a little bit. I've just ... I've called several times and gotten
169 the same answer from several different people and I was just ... we're just wondering.
170 We're not on Public Utilities, which was stated it would give us a larger building to build
171 which he came up with, the 2,050 sq. feet I was wondering why. You know, you did
172 explain why it was reduced, but we had been told this information in an email and by
173 several other representatives we'd been calling. The same information.

174
175 Ms. Harris - I'm sorry for that misinformation. Are there any questions from
176 Board members of Ms. Horne?

177
178 Mr. Bell - Just one. Have you read the conditions of approval? There
179 are only three of them.

180
181 Ms. Horne - Three of them?

182
183 Mr. Bell - Yes, that deals with what you have to do.

184

185 Ms. Horne - Yes, I do have that.
186
187 Mr. Bell - Do you agree with all three?
188
189 Ms. Horne - Yes, I have read all three.
190
191 Mr. Bell - Once again, I will reiterate, we're sorry for the confusion. This
192 item, right here, does cover the 1,667 sq. feet Just want to make sure you understand
193 that. Thank you.
194
195 Ms. Horne: - Thank you.
196
197 Ms. Harris - Are there any other questions from Board members? Thank
198 you, Ms. Horne. Anyone else who wishes to speak to this case?
199
200 Mr. Henry Horne - Yes, I will.
201
202 Ms. Harris - Ok, state your name.
203
204 Mr. Horne - My name is Henry. Last name is Horne, H-o-r-n-e. And, you
205 know, by being downsized, I don't know what 10 foot's going to hurt, you know? Ten-foot-
206 long, a garage ... I mean ... the houses back there are four times bigger than mine. I don't
207 know if my house don't fit in the neighborhood or the neighborhood don't fit my house. I
208 don't know if 10 feet is going to hurt anybody. Just trying to make it look better. Trying to
209 get all that stuff from the garage, you know ... go from a three-car garage to a two-car
210 garage ... build my 40' x 40' or something.
211
212 Ms. Harris - I can understand your concern. We have a situation where a
213 person is five feet, three feet over the limit. So, they do pose a problem.
214
215 Mr. Horne - You know, like I say, we could have built it five years ago.
216 Then y'all done put the road beside my garage, there wouldn't have been a history at all.
217 My neighbor's pool was like 17 feet off the road. I mean, I just don't see why we can't
218 have a 40' x 50' or 50' x 40' garage.
219
220 Ms. Harris - We're just trying to abide by the Code. What are those other
221 structures that you have in your backyard, your rear yard?
222
223 Mr. Horne - Oh, I've got a dog pen.
224
225 Ms. Harris - What did you say?
226
227 Mr. Horne - It's just a dog pen.
228
229 Ms. Harris - Ok. Any questions from Board members of Mr. Horne?
30 Thank you very much.

231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276

Mr. Horne - Thank you.

Ms. Harris - Does anyone else wish to speak to this case? Anyone who opposes, this application? Thank you, Mr. Horne.

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

Mr. Bell - I move that we approve Mrs. Horne's attached garage. I don't see anything that detrimental to the area.

Ms. Harris - Is there a second?

Mr. Johnson - Second.

Ms. Harris - Would you care to state your reason why? ... Ok, we don't have to. Ok, it's been moved and properly seconded that this conditional use permit be approved. Are there any questions? All in favor, say aye. Opposed, say no. The ayes have it and this case has been approved.

After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Bell, the Board **approved** application **CUP2018-00038, AMANDA HORNE's** request for a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to build a detached garage in the side yard setback at 11504 Swanson Mill Way (Parcel 768-774-4492) zoned One-Family Residence District (R-1AC) (Brookland).The Board approved this request subject to the following conditions:

1. Only the garage shown on the plot plan and building design filed with the application (as amended by these conditions) may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements shall require a new conditional use permit.
2. The total lot coverage of all accessory structures on the property shall not exceed 2,025 square feet.
3. The garage shall not be used for business purposes.
4. All exterior lighting shall be shielded to direct light away from adjacent property and streets.

Affirmative:	Bell, Green, Harris, Johnson, Reid	5
Negative:		0

277 Absent: 0

278

279

280 Ms. Harris - Please call the next case.

281

282 Mr. Blankinship - CUP2018-00039, Brenda T. Gitman.

283

284 **CUP2018-00039** **BRENDA T. GITMAN** requests a conditional use permit
285 pursuant to Section 24-95(i)(4) of the County Code to build a detached carport in the front
286 yard at 1707 Broadwater Bluff Court (BROADWATER BLUFF) (Parcel 832-722-5396)
287 zoned One-Family Residence District (R-2AC) (Varina).

288

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

292

293 Mr. Madrigal - I do.

294

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

296

297 Mr. Madrigal - Thank Mr. Secretary, Madam Chairman, Members of the
298 Board, Good Morning. Before you is a request to allow a detach carport in the front yard
299 of a residential lot. The subject property is in the Broadwater Bluffs subdivision. The lot is
300 2.25 acres in area and is improved with a 2-story, 1600 sq. feet residence with open
301 parking constructed in 1954.

302

303 The front of the lot is relatively flat, but it does slope down from the back of the home,
304 towards the other lot at 16% grade, which is pretty substantial. There is a retaining wall
305 on the north side of the home that helps maintain the relatively flat area of the front yard.
306 Here you can see the retaining wall, looking from the backyard towards the front.

307

308 The applicant purchased the property in May of 2018. She would like to construct a 400
309 sq. feet metal carport on the north side of the front yard. Three to four feet from the side
310 property line and 70 feet distant from the front property line. Here you can see that they've
311 already set a location and built a couple of stem walls for the proposed carport.

312

313 The proposed carport would measure 20 feet wide by 20 feet deep and will be oriented
314 towards the south. The applicant intends to extend the gravel driveway across the front
315 of the house towards the proposed carport. Here you can see a picture of the front yard.
316 The driveway will be roughly in this area right here. Because the carport will be placed in
317 the front yard, Code requires approval of a Conditional Use Permit.

318

319 The property is zoned R-2A Conditional and is designated Suburban Residential 1 on the
320 2026 Future Land Use Map. A one-family dwelling is a principally permitted use in this
321 district and is consistent with the Comprehensive Plan designation.

322

323 The subject property is on the west side of a curving street that ends in a cul-de-sac. It
324 is the largest lot in the subdivision, but due to its slope, it is difficult to place an accessory
325 structure in the rear yard. The front yard is relative deep, moderately wooded and gently
326 slopes toward the southwest.

327
328 The proposed carport location is approximately 70 feet distant from the street; and, it
329 would be screened from view by vegetation resulting in minimal impact on the
330 streetscape. The adjacent northern neighbor would be most impacted by having a clear
331 view of the proposed structure. Staff has proposed a condition that shrubs be planted on
332 the north side of the carport to minimize the visual impact on the northern neighbor. It
333 would essentially be in this area here. No other substantial, detrimental, impacts are
334 anticipated if the applicant's request is approved. There are four other properties along
335 Broadwater Bluff Court, that have carports in the front and side yards that are in full view.
336 In this case, the proposed carport will be partially screened with existing vegetation.

337
338 In conclusion, the proposed carport is consistent with the zoning and Comprehensive
339 Plan designations on the property. There are four other properties along the street that
340 have carports. Although the proposed carport will be in the front yard, the large size of
341 the lot, distances between homes and existing landscaping should limit its impact on the
342 streetscape and neighbors. Strategic placement of additional landscaping along the
343 northern edge of the carport should lessen its impact on the applicant's northern neighbor.
344 Staff does not anticipate any substantial detrimental impacts if the applicant's request is
345 approved. Based on these facts, staff recommends approval. That concludes my
346 presentation and I'd be happy to answer any of your questions.

347
348 Ms. Harris - Thank you, Mr. Madrigal. Did you say that the other carports
349 in the neighborhood are also in the front yard?

350
351 Mr. Madrigal - There are a few in the front yard, partially front yard, side yard.
352 Some are in the back, the rear yard, but can be seen from the street. So, there is a variety
353 of things going on with them. Yes.

354
355 Ms. Harris - And you are saying that on this 2.25-acre lot that there's only
356 one place they can place this carport?

357
358 Mr. Madrigal - That would be the best location, based on the applicant and
359 what they're telling me. We had asked about maybe placing it on the south side of the
360 driveway here, but they basically described that that would entail them moving trees. They
361 don't want to get rid of trees. So that would be the best location for them.

362
363 Ms. Harris - Are there any other questions from Board members?

364
365 Mr. Johnson - Yes. On the slope, behind the house, is that right at the very
366 back of the house where it starts sloping like that?

367

368 Mr. Madrigal - Yes, if you refer to this plot plan here, you see this line ... it
369 represents the retaining wall. And then from the back of the house, the lot slopes back at
370 a 16 percent grade. So, it's pretty substantial. If I go here, I'm standing partially in the
371 back yard and this is that retaining wall on that north side. So, it's a pretty substantial
372 drop. Also, if I remember correctly, the septic system is also in the backyard. So, that's
373 another factor as well. Although the lot is rather large, predominantly, it's the slope that
374 affects it. It would be hard to place an accessory structure back there.
375

376 Mr. Johnson - And on the opposite side where the driveway's at, is it close
377 to the next resident there?
378

379 Mr. Madrigal - Here ...
380

381 Mr. Johnson - Does that impact ...
382

383 Mr. Madrigal - The carport's going to roughly be right in this location. So, you
384 can see the distance between the location of the carport and the northern neighbor. It's
385 pretty substantial. Additionally, the northern neighbor's drive is on the north side of the
386 lot, too. So those two factors and the distance, you know, although they will be able to
387 see it, we're proposing that they put shrubs here to help lessen its impact. The other big
388 factor is that, as compared to the other lots where the carports are visible from the street,
389 this will be partially visible really when you're standing in the cul-du-sac in this area.
390 Otherwise, all this vegetation on the front will block its view.
391

392 Mr. Johnson - Yes, I noticed when I was out there, the trees and the tree line
393 covers a whole lot of it.
394

395 Mr. Madrigal - Yes.
396

397 Mr. Johnson - Especially during the summer.
398

399 Mr. Madrigal - Here you can see the home at the driveway point. So, you can
400 see all that vegetation there. You can barely see the home. This is the existing residence
401 that's there now; and then, this is the neighbor to the north.
402

403 Mr. Johnson - Ok, thank you.
404

405 Ms. Harris - Are there any other questions from Board members? Mr.
406 Madrigal, do we know the height of the garage? We know its 20' x 20'. But, do you know
407 how tall this building's going to be?
408

409 Mr. Madrigal - I can't recall at the moment. Maybe the applicant can shed
410 some light on that.
411

412 Ms. Harris - That's fine. Thank you so very much.
413

414 Mr. Madrigal - Yes, Ma'am.
415
416 Ms. Harris - We'd like to hear from the applicant now, please?
417
418 Ms. Brenda Gitman - Good morning. My name is Brenda Gitman. That's G-I-T-M-
419 A-N. And, it should be about 8 feet, eight feet tall.
420
421 Mr. Blankinship - Eight feet like in a ceiling height, and a pitched roof going up
422 from there?
423
424 Ms. Gitman - Yes, sir.
425
426 Ms. Harris - Would you state your request?
427
428 Ms. Gitman - My request is that we can put the carport in front yard,
429 basically, with that conditional permit. He's pretty much gone over everything. He took
430 care of all of the questions I wanted to ask you. Yes, so I'm here if you guys have any
431 other questions.
432
433 Ms. Harris - Do you have plans for all that acreage?
434
435 Ms. Gitman - Do I have plans for all that?
436
437 Ms. Harris - Yes.
438
439 Ms. Gitman - Umm, I don't know. Maybe in the future.
440
441 Ms. Harris - Ok. Questions from Board members?
442
443 Mr. Johnson - Also with this carport, would you be screening it in?
444
445 Ms. Gitman - If ... there's a lot of woods and all around, except there's a
446 little spot, like he said, that I'd be glad to put some screening.
447
448 Ms. Harris - Have you seen the conditions from the report?
449
450 Ms. Gitman - Yes, Ma'am.
451
452 Ms. Harris - And you agree to those?
453
454 Ms. Gitman - Yes, Ma'am.
455
456 Mr. Johnson - Yes.
457
458 Ms. Harris - Any other questions? Thank you.
459

460 Ms. Gitman - Thank you.
461
462 Ms. Harris - Is there anyone else who wishes to speak to this case? Is
463 there anyone who opposes?
464
465 Ms. Virginia Crumpler - Yes.
466
467 Ms. Harris - You need to come forward and give us your name.
468
469 Ms. Crumpler - Good Morning. My name is Virginia Crumpler, C-r-u-m-p-l-e-
470 r. Now, why I'm against it? The house itself does not fit in, in that cul-de-sac, having been
471 built many years earlier. The vegetation part, some of it has already been moved, which
472 should have been. But I don't know the future, as far as leaving that which is there, is it
473 going to remain to block that view? As far as the other houses having carports, these are
474 all portable siting either to the side or in the rear of the house, they're not in the front yard.
475 There is one that does have a second carport, if you would call it that. It's very small. It
476 could also be one of those things that you could use for a party just to shade yourself
477 from the sun. It is not what I would have called a normal carport, even though that is
478 what's used for. But, because it doesn't blend already, and then being in the front yard,
479 that's the reason why I would be against it.
480
481 Ms. Harris - Ok. What is your address Ms. Crumpler?
482
483 Ms. Crumpler - 1700 Broadwater.
484
485 Mr. Blankinship - Is that all the way to the end of the cul-de-sac?
486
487 Ms. Crumpler - It's a little to the right. It's not the center house.
488
489 Mr. Blankinship - At the end and to the right.
490
491 Ms. Harris - So you are not the adjacent neighbor?
492
493 Ms. Crumpler - No. The property next to me is.
494
495 Ms. Harris - Are there questions from Board members?
496
497 Mr. Green - Yes. You made a reference to the house that it does not
498 blend.
499
500 Ms. Crumpler - Because it was built in the 50's and I think all the rest were
501 built about in the 90's, '92, along in there.
502
503 Mr. Green - So could one make the assumption that the other houses
504 don't blend with that one? That house was there first.
505

506 Ms. Crumpler - You could say that, but typically you go with the majority.
507
508 Mr. Green - But that one house was there first.
509
510 Ms. Crumpler - But it was sold and then subdivided. I think when the original
511 owners lived there and passed away, I think their heirs sold and it was subdivided.
512
513 Mr. Green - So what solution do you want? You want them to tear the
514 house down and build another one?
515
516 Ms. Crumpler - That's not for me to say, though I would have a real opinion
517 on that. But, just keeping it as well as it can be without adding to a negative factor.
518
519 Mr. Green - Ok.
520
521 Ms. Harris - Any other questions from Board members?
522
523 Mr. Johnson - Yes, are there any other ... The other houses there, do they
524 have parked cars in the front yard? Without a building?
525
526 Ms. Crumpler - I'm thinking ... I don't ... The very first one "may" because
527 there is more than one car there and they don't have a carport. They typically pull to the
528 side but, like when they have company, one might pull in the front because there is no
529 space there, not so much. But other than that, they are all on the side.
530
531 Mr. Harris - Are there other questions? Mr. Johnson, are you done?
532
533 Mr. Johnson - Yes.
534
535 Ms. Harris - Thank you, Ms. Crumpler. Is there anyone else who opposes
536 to this application? If so, come forward. Alright, that concludes the case. Let's move on
537 to the next case.
538
539 Mr. Blankinship - Ma'am, did you have any rebuttal?
540
541 Ms. Gitman - No.
542
543 **[After the conclusion of the public hearings, the Board discussed the case and**
544 **made its decision. This portion of the transcript is included here for convenience**
545 **of reference.]**
546
547 Mr. Johnson - Because of the cul-de-sac and the drop off from the rear of
548 the property, which is about 16 percent slope, and also having access to the structure in
549 the rear would be a hardship and due to that slope ... make it difficult to put something
550 there. Putting it in the front of the house would be better off. I recommend approval,
551 subject to the conditions for approval.

552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597

Ms. Harris - Is there a second to this motion?

Mr. Reid - Second.

Ms. Harris - It has been properly seconded that we approve conditional Use Permit 40. Any discussion on the motion?

Mr. Blankinship - No, this is 39.

Mr. Bell? - 39.

Ms. Harris - I'm sorry. It's 39. Any discussion on this motion?

All in favor, say aye. All opposed, say no. The ayes have it.

After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr. Reid, the Board **approved** application **CUP2018-00039, BRENDA T. GITMAN's** request for a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to build a detached carport in the front yard at 1707 Broadwater Bluff Court (BROADWATER BLUFF) (Parcel 832-722-5396) zoned One-Family Residence District (R-2AC) (Varina). The Board approved this request, subject to the following conditions:

- 1. This conditional use permit applies only to the placement of a carport in the front yard. All other applicable regulations of the County Code shall remain in force.
- 2. Only the improvements shown on the plot plan and building design filed with the application may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements shall require a new conditional use permit.
- 3. Before beginning any clearing, grading, or other land disturbing activity, the applicant shall obtain approval of an environmental compliance plan from the Department of Public Works.
- 4. Prior to occupancy of the building, the applicant shall plant 5-gallon evergreen shrubs along the northern edge of the carport spaced four feet on center to provide a solid hedge.
- 5. All exterior lighting shall be shielded to direct light away from adjacent property and streets.

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

598
599
600 **CUP2018-00040 MIREILLE BAKER** requests a conditional use permit
601 pursuant to Section 24-95(i)(4) of the County Code to allow an accessory structure in the
602 side yard at 8218 Rocky Branch Lane (Parcel 777-754-4182) zoned One-Family
603 Residence District (R-2) (Fairfield).
604

605 Mr. Blankinship - For everyone who intends to speak to this case please stand
606 and be sworn in. All raise your right hands, please. Do you swear the testimony you're
607 about to give is the truth, the whole truth, and nothing but the truth so help you God?
608

609 Mr. Madrigal - I do.
610

611 Mr. Blankinship - Mr. Madrigal?
612

613 Mr. Madrigal - Thank you Mr. Secretary, Madam Chair.
614

615 Mr. Blankinship - Before he begins, Madam Chair, this was a case that I
616 reviewed, and I made two mistakes. There are a couple of points in the staff report where
617 I put the wrong description in. I'd been doing some other work on Woodman Road and I
618 accidentally typed Woodman Road where I should have put Mountain Road. So, in a couple
619 places in the staff report, I'm sure you all noticed that.
620

621 The other is not really a mistake but, after discussing the case further with the Director, I
622 recommended a slightly different condition. On the original draft condition, I had
623 suggested specific plantings to screen the building from view. After speaking with the
624 Director, he suggested that we should change that to just requiring the applicant to submit
625 a plan and work with us on the landscaping, rather than trying to decide it here this
626 morning. We should take the time to review a plan and work out the best way to screen
627 the building.
628

629 With that, Mr. Madrigal?
630

631 Mr. Madrigal - Thank you, sir.
632

633 Ms. Harris - And we should have all that information in our packet.
634

635 Ms. Blankinship - Yes Ma'am. That was distributed to you this morning.
636

637 Ms. Harris - This morning. Ok, thank you. Mr. Madrigal?
638

639 Mr. Madrigal - Madam Chair, Members of the Board. The request before you
640 is to allow an accessory structure in the side yard of a residential lot. The subject property
641 is improved with an existing dwelling built in 1950. The property was acquired by the
642 applicant in 2001 and she became the sole owner in 2010.
643

644 Over the years, the property has seen an accumulation of outside storage, ranging from
645 vehicles to outdoor furniture and gardening supplies. There are also several accessory
646 structures on the lot. The applicant was contacted by Community Maintenance in regard
647 to cleaning up the property after receiving several complaints. The applicant then began
648 constructing a detached storage shed to consolidate some of the existing structures and
649 the outdoor storage items.

650
651 Here, you are standing on Rocky Branch Lane and you can see kind of from a southward
652 direction, the accessory structure in the front yard area there. The subject lot is shaped
653 like a triangle, bounded on the west by Woodman Road and on the east by Rocky Branch
654 Lane.

655
656 So, here, you can see Rocky Branch Road and Woodman Road on the western side
657 there. It is over 28,000 sq. feet in area and is considerably larger than the 18,000 square
658 feet required by the R-2 zoning. However, due to the shape, the buildable area is limited
659 on this property.

660
661 By definition, it is a corner lot fronting on Rocky Branch Lane and Woodman Road being
662 a street-side lot. Because of its triangular shape, there rear lot line is actually a point at
663 the southwest corner of the property. Back here.

664
665 Code allows detached accessory buildings in the rear yard, which in this case is between
666 the dwelling and the southwest corner of the property. The applicant decided to build the
667 storage shed on the north side of the home due to there being ample space, a flatter
668 surface, better access, and would require less removal of trees and vegetation on the
669 property.

670
671 The property is zoned R-2 and is designated Suburban Residential 1 on the 2026 Future
672 Land Use Map. Both the dwelling and proposed shed are consistent with both
673 designations. Because the shed is in the side yard, it requires the approval of a
674 Conditional Use Permit. In this case, the rear yard of the property is not level, sloping
675 down approximately 10 feet from the rear of the home towards the rear of the corner lot.
676 For this reason, the proposed location may be a more appropriate place for the shed than
677 the rear yard. The primary impact of the building will be its effect on the Woodman Road
678 streetscape.

679
680 And, here you can see the property from Woodman Road.

681
682 The property is directly across the street from Our Lady of Lourdes Church and the only
683 other dwelling that fronts on the east side of Woodman is an attractive and well-kept 1.5
684 story home at 8103 Woodman Road.

685
686 The appearance of the subject property from Woodman Road has led to several
687 complaints, primarily due to the outdoor storage. The addition of a storage building to
688 consolidate the other structures and outdoor storage items should improve the situation.
689 Additionally, the shed should be screened from view. Staff recommends a continuous

690 row of shrubs planted along the property line at least 50 feet in each direction from the
691 northwestern corner of the building.

692
693 And, essentially, that would be in this area here.

694
695 In conclusion, the proposed shed should improve the function and appearance of the
696 property and help abate the conditions that have led to complaints. Due to the lot's
697 existing topography and landscaping, the proposed location of the building may be more
698 appropriate than the rear yard. Because the building may have a detrimental impact on
699 the view from Woodman Road, staff recommends screening it with a row of shrubs.

700
701 Based on the facts of the case, staff recommends approval subject to conditions. That
702 concludes my presentation. I do believe you have a copy of the revised conditions.

703
704 Ms. Harris - Mr. Madrigal, the incomplete structure that's there, is that the
705 subject of this CUP?

706
707 Mr. Madrigal - Yes.

708
709 Ms. Harris - It's extremely tall, is it not?

710
711 Mr. Madrigal - Yes, I have other pictures here as well, so you can see it.
712 That's the northern view and you can see the other accessory structure, temporary in
713 nature, but they are using it for storage of items and some materials. Here, there's a
714 gazebo there and then you can see the structure behind that. There's the one with the
715 closer view. Here, you can see a greenhouse behind the home. That structure is on this
716 side of the screen.

717
718 Mr. Green - What's the square footage of that structure?

719
720 Mr. Madrigal - Let's see.

721
722 Mr. Blankinship - 480, I believe. Isn't it 20 x 24?

723
724 Mr. Madrigal - I believe so, 20' x 24', yes.

725
726 Mr. Green - Comparable to a small house.

727
728 Mr. Madrigal - Yes.

729
730 Mr. Green - What's the height?

731
732 Mr. Blankinship - Seventeen and a half ('17.5) feet according to the plans.

733
734 Mr. Green - Ok.

735

736 Ms. Harris - Any other questions of Mr. Madrigal? Thank you.
737
738 Mr. Madrigal - Thank you.
739
740 Ms. Harris - Would the applicant please come forth and state your case.
741
742 Mr. Green - Ms. Harris, Mr. Johnson had a question.
743
744 Ms. Harris - I'm sorry. You had a question?
745
746 Mr. Johnson - No.
747
748 Ms. Mireille Baker - Good morning. The purpose of this ...
749
750 Ms. Harris - Excuse me, we need your name and want you to spell your
751 last name.
752
753 Ms. Baker - My first name is Mireille. My last name is Baker, B-a-k-e-r.
754 And the purpose for this building is to allow for storage and also to allow for a workshop
755 which my husband has done before.
756
757 There is an upstairs and I would use some of that for my hobby, which is artwork, and
758 storage. We're agreeable to planting of a screen. However, I wonder if the committee is
759 aware of an existing naturalized shrub and tree planting on that side of ... the Woodman
760 Road side? This is County land, however, I don't know if the county wants to remove
761 those, because it would overshadow any new plantings.
762
763 The new construction, once completed, will definitely not be an eyesore. It's a basic
764 building, with shingle roof, vinyl siding, vinyl windows and doors, and enough landscaping
765 to blend it in. This is very much in keeping with neighboring buildings. I don't know what
766 would be objectionable about its looks, that it should be hidden from view. Now, if the
767 churchgoers object to it, I'd take that into consideration, but ... Any other questions?
768
769 Ms. Harris - Yes, did you get a building permit to initiate building that
770 structure?
771
772 Ms. Baker - The Building Permit is pending. The builder, the young man
773 that's helping us with this building, got either misinformation or had a misunderstanding.
774 Originally, my husband wanted a 20 x 30 building. The builder called and reported back
775 to us that under a certain square footage, we would not need a permit. Therefore, it was
776 decided to reduce the size of the total square footage. We decided to put two buildings
777 side-by-side. He did not understand, or was not told... I'm not sure which, that there had
778 to be a separation between the two buildings in order to avoid getting a permit.
779
780 Ms. Harris - Why did you halt construction?
781

782 Ms. Baker - Because, supposedly, there was a complaint which generated
783 a visit from county personnel, and there was no choice. That's why it is an eyesore now
784 with a tarp over it to try to preserve what has been done. So, we are starting all over again
785 with the application for a permit as soon as possible; but zoning has to be approved first.
786

787 Ms. Harris - Ok, are there questions from Board members?
788

789 Mr. Johnson - In the rear, are there RV's in the yard? And also, what about
790 the adjacent ... the building next to it, on the other property?
791

792 Ms. Baker - There is no RV. The RV and the van that were there in early
793 spring was sold. The new owners took their time moving them out. They were sold as
794 is. They were not road-worthy. It was a project which my husband was going to undertake
795 but, health issues had to take priority. So, they were sold in early spring. They are no
796 longer on the property.
797

798 Mr. Johnson - Thank you.
799

800 Ms. Harris - What is the exterior of the structure?
801

802 Ms. Baker - It will be vinyl siding.
803

804 Ms. Harris - Are there any other questions from Board members? Thank
805 you so very much. Are there any other persons who wish to speak in favor of this
806 application? Please come forth. Give us your name and spell your last name.
807

808 Ms. Brenda Harview - Good morning, I'm Brenda Harview, H-a-r-v-i-e-w. I live
809 directly across the road, at 8205 Rocky Branch Lane. I've there for about twenty years.
810

811 They've been great neighbors. This will be an improvement, as someone else said. They
812 have had storage issues ... and with her hobbies and his hobbies. And with the vehicles
813 that have been removed and with this new building, it will considerably be a better
814 situation and I see no problem with it. The vinyl siding is ... my house is from 1942, so
815 its brick but, the newer houses that have been built about 13 years ago and one about
816 five years ago, they are all vinyl siding. And so, they will blend well. And they've been ...
817 she's very active in her yard. She's improved it with flowers and trees and plantings. They
818 love gardening, and so we share a lot of that too. So, I really have no problem with it,
819 and I think it would be a great addition. Thank you.
820

821 Ms. Harris - Are there any questions from Board members? Thank you so
822 very much.
823

824 Ms. Harview - You are welcome.
825

826 Ms. Harris - Now we will have the opposition. Anyone who opposes this
827 application, please come forth. Please state your name and spell your last name.

828
829 We ask that, since several people stood, we ask that you not repeat any point that's made.
830 We ask that you not repeat it again.

831
832 Mr. Al Azzarone - Good morning Madam Chairman and members of the Board.
833 My name is Al Azzarone, A-z-z-a-r-o-n-e. My wife Karen and I live at 8080 Rocky Branch
834 Lane. We moved there 16 years ago and really enjoy living in this older Henrico
835 neighborhood. The Baker property at 8218 Rocky Branch Lane is a main entry into our
836 neighborhood. Rocky Branch Lane is a very old county road and it's the original alignment
837 of Woodman Road. All the properties on the west side of Rocky Branch Lane have unique
838 backyards that slope down towards Woodman Road into the tributary of Upper Brook, at
839 the bottom. To live on the west side of Rocky Branch Lane, you have to be creative and
840 build into the slope and topography. And every house on the west side of Rocky Branch
841 Lane, and most of the east side as well, reflect that.

842
843 This unpermitted 2-story structure, at 8218 Rocky Branch Lane looms on this corner
844 whether it's seen from Rocky Branch Lane or from Woodman Road. The utility shed is
845 on higher land than the home and appears to almost match the roof line in height. With
846 the home, this non-permitted utility building is actually more noticeable and more
847 prominent than the home.

848
849 The near flat, Mansard or a Gambrel roof, I can't quite tell. It's unlike anything else in the
850 neighborhood and it's not really compatible with the neighboring architecture. It looks
851 more like something that would look very nice in a more rural area. The structure with a
852 more compatible roof could fit more into the rear yard and the neighboring property and
853 not diminish the streetscape on Rocky Branch Road nor Woodman Road. Yes, it would
854 require some removal of trees and it would require a real foundation rather than
855 something that's built upon posts. That foundation like other buildings in the neighborhood
856 has to reflect that slopping topography to get a flat building. That's exactly what other
857 homes and utility buildings in the neighborhood have had to contend with, to deal with,
858 because of that land that slopes down to the street. The Kendall residence across the
859 street and the Talley residence around the corner on Buckeye and Spider, both have
860 recent examples of 1 ½ to 1-story utility buildings, garages that are in the rear yard that
861 are built into sloping terrain, so they have real foundations that are built up much higher
862 on the back side than the front. Those are examples of well-sighted buildings in rear yards
863 that are compatible with the architecture and the roof lines. Allowing this non-permitted
864 2-story structure to be completed in its present location and design, is not satisfactory
865 and a little buffered landscaping isn't going to really make that better. Perhaps if it were
866 only one-story and a different line, I could see it in the side yard but, not this large open
867 dominant building at such a prominent location, at the entrance to our neighborhood. It is
868 a black eye to Rocky Branch Lane and the Woodman Road streetscape, in my opinion.
869 Personally, I would almost rather see the temporary structures in the side yard than this
870 building that's going to be there, this permanent building that we all have to see every
871 day. There is no easy fix for this structure, I understand that. It's being sited without a
872 permit. I strongly oppose to allowing its construction in the side yard; and, it diminishes

873 the neighborhood and the streetscape of Rocky Branch Road and Woodman Road.
874 Thank you.

875
876 Ms. Harris - Thank you. Any questions from Board Members? If there is
877 anyone else who opposes this application, please come forward. State your name and
878 spell your last name.

879
880 Mr. Paul Kimball - Good morning. My name is Paul Kimball, K-i-m-b-a-l-l. I have
881 been a property owner in this county for approximately 13 years, as well as an employee.
882 I teach at Highland Springs. I live directly across the street from ... this is my property
883 right here ... If I could show you a few pictures.

884
885 Ms. Harris - Sure.

886
887 Mr. Kimball - The second paragraph, in the background, states that over
888 the years the property has seen an accumulation of outside storage, ranging from
889 vehicles and trailers to outdoor furniture and gardening supplies. Also, several accessory
890 structures are on the lot. This is not the only lot. This is what over a period of time what
891 the other lots look like; that is my side yard. That is what I see every day.

892
893 Mr. Blankinship - That's not relevant to this case though.

894
895 Mr. Kimball - It is relevant in that it shows their history of being able to
896 maintain the property. This picture here, it shows my garage right here. I had to follow
897 the building permits, dig into the slope. ... and ... let's see ...

898
899 Ms. Harris - Mr. Kimball, the first picture that you showed, is this your view
900 of the subject property from your house?

901
902 Mr. Kimball - Yes.

903
904 Mr. Blankinship - Of a different property.

905
906 Mr. Kimball - Yes, of the other property.

907
908 Mr. Blankinship - Not the property that's the subject of this morning.

909
910 Mr. Kimdall - Right.

911
912 Ms. Harris - It's not really relevant then.

913
914 Mr. Kimball - Well, what I'm showing is that they have a history. This is their
915 track record, sir.

916
917 Mr. Blankinship - We're not going to discuss a history or track record. We have
918 an application before us to review.

919
920 Mr. Kimball - And making the decision of what is the best future path. I think
921 that is important. It also states that the primary impact is on Woodman Road. We look
922 at it every day. You've seen the pictures. It's in our front yard. And, lastly, the 4-foot
923 shrubs that now apparently we're only talking about on the Woodman side, at a height of
924 maturity of at least 48" going to do absolutely nothing.

925
926 Mr. Blankinship - Yes, we have recommended a revised condition on there that
927 we ...

928
929 Ms. Harris - Any questions? Are there any questions from Board
930 members? Thank you, Mr. Kimball.

931
932 Mr. Kimball - Thank you.

933
934 Ms. Harris - Is there anyone else who opposes the application who would
935 like to speak now? Please come forth and give us your last name.

936
937 Mr. Gary Gaskins - Good morning. My name is Gary Gaskins, G-a-s-k-i-n-s. And
938 I pretty much agree with what the last two speakers said. I have a couple pictures that do
939 show there is ample room in the back yard to build this structure, instead of on our road.
940 This is a total eyesore when we drive in and out of our neighborhood. It is a behemoth
941 building that is so tall that ... it's like, what are they building, another house? There is
942 ample room in their backyard, if they clean up some areas in their backyard. There is
943 already a shed in their backyard, down at the bottom of the hill that they don't use because
944 it's overgrown. I mean, they've added all these structures to put stuff in. Well, everything's
945 still sitting outside. I mean the structures were put there to hide cars and things like that.
946 Ever since they moved there from there from their other house, which is a super eyesore,
947 this has become a bigger and bigger eyesore; and, I don't think putting a shed on the side
948 yard is going to change any of that, but I don't want to see the shed on the side yard. I
949 don't mind it being in the back yard where I don't have to look at it. They can access it
950 through their illegal driveway that they put to Woodman Road. Anyway, that's what I have
951 to say.

952
953 Ms. Harris - Ok. Any questions of Mr. Gaskins? Thank you so very much.

954
955 Mr. Gaskins - Ok.

956
957 Ms. Harris - Do we have anyone else who opposes this application?

958
959 Mr. Roger Pullin - My name is Roger Pullin, P-u-l-l-i-n. And it's not really just a
960 neighborhood thing. Woodman Road, it's a pretty major road. I live within sight of it and
961 it's travelled a lot. And really just a couple of weeks ago I left my house and I forgot
962 something. So, once I get on Woodman Road, the best way for me to get back to my
963 house is to go down Rocky Branch Lane. Well, that's when I saw the sign. I called about
964 the sign and I couldn't even believe that you guys were considering even letting them

965 have this thing. I thought you would make them tear it down. Anyhow, I guess
966 everybody's has his right to come here and fight, and that's fine. But this fellow here says
967 the primary structure would be on Woodman Road. I called and said why don't you put
968 the sign on Woodman Road? Because I guarantee, you put the sign on Woodman Road,
969 there would be more people here. Anyhow, I don't think it should be built. I mean clean
970 up your stuff first. Then I'd ask to put a shed somewhere. We don't break the rules so we
971 can help somebody break the rules. It's too much stuff in this guy's yard. Get rid of it,
972 then try to do something. You can't change the spots on a leopard. Because really, I
973 don't see any right that you've got to allow this thing to happen without putting the sign
974 on Woodman Road and getting more attention. Because Woodman Road is Henrico
975 County. It's not just Ballentine Hills, Rocky Branch Lane, it is Woodman Road. And that's
976 an eyesore. That's all I got to say.

977
978 Ms. Harris - Any questions for Mr. Pullin? We usually put the signs in the
979 front of the yard?

980
981 Mr. Blankinship - Yes.

982
983 Ms. Harris - Since this fronts on Rocky Branch Lane, the sign would go on
984 Rocky Branch Lane. That's done throughout the cases, always on the front. We
985 appreciate your opinion.

986
987 Mr. Pullin - I understand what you are saying, but in this particular case
988 since the property fronts on Woodman Road and Rocky Branch. You could have put two
989 signs up. It's just my opinion. I called and suggested somebody put two signs up. It never
990 happened. Now we did get the snow, we did get a lot of other things happening but, this
991 seems like this all came up real quick. Usually, City Hall seems to go along real slow, but
992 this really did seem to come to the forefront fast.

993
994 Ms. Harris - Thank you so very much.

995
996 Mr. Pullin - Thank you.

997
998 Ms. Harris - Is there anyone else who opposes the application?

999
1000 Ms. Sandy Gaskins - Good morning. My name is Sandy Gaskins, G-a-s-k-i-n-s. I
1001 live at 8101 Rocky Branch Lane. I agree with all of the opposing parties. My main concern
1002 as a neighbor, out of respect for my neighbors, I try to keep our yard, our house in some
1003 ... keep it clean, picked up and in good repair. Mr. and Mrs. Baker are a lovely couple. It
1004 sounds though like this storage building that is supposed to house all the accessory things
1005 in their yard is going to be more of a hobby shop, from what I just heard. I really wonder
1006 how it's going to be used for storage. Where are they going to put it, if they are going to
1007 be pursuing their hobbies?

1008

1009 Mr. Blankinship - One of the conditions that we've recommended, is that if the
1010 building is approved, once it's completed, there will be no more outdoor storage on the
1011 property.
1012

1013 Ms. Gaskins - And that would be wonderful if that actually occurs. I don't
1014 want to beat a dead horse but, I do think you have to take in their history and how they
1015 maintain their property. They have one huge eyesore already and this is becoming the
1016 other neighborhood eyesore. I just don't want to see that happen. It really is the entrance
1017 to my neighborhood. I don't want to have to look at that every day. Thank you.
1018

1019 Ms. Harris - Ok, thank you Ms. Gaskins. Any questions from Board
1020 members?
1021

1022 Mr. Green - I have a question for staff.
1023

1024 Mr. Blankinship - Yes.
1025

1026 Mr. Green - I've noticed that a lot of times when we approve things ... and
1027 sometimes, as you know, we go out and look at it and then sometimes you can go back
1028 out and then some things we've approved, and I've ridden by them and I don't see any
1029 changes. I know they have some time to change it but, I guess in this situation ... if in fact
1030 this is approved and they have to remove those buildings, how will you know and how
1031 much time will they have? Because when I first got on this Board, I remember approving
1032 something and I ride by it every day and I haven't see any improvements to what we
1033 granted. So, how will you know when those buildings will be torn down in a timely fashion?
1034

1035 Mr. Blankinship - It depends on how the conditions are worded. In this case,
1036 we did put specific dates on three specific milestones, if you will; the date for the building
1037 permit to be acquired, the date for the building to be completed, and the date for the
1038 cleanup. So, then those would be our three individual dates that we will then track. We'll
1039 send an inspector out on those three dates. Now if we approve something ... in this case,
1040 the building is half way finished, so it's a little different. But let's say the previous case
1041 where you approve, I'm sorry, if you were to approve a carport to be built ... that doesn't
1042 require the property owner to then build the carport. If they change their mind, they don't
1043 have to build it just because it was approved. But, if you approve it in a specific location,
1044 then they have to build it in that location. They can't just build it somewhere else. So, we
1045 do follow along and checkup after these. But there are cases where the Board approves
1046 an improvement and then the property owner changes their mind ... or as you know,
1047 they'll come back five years later and say, well I had death in the family ... my permit
1048 expired, and I would like a new approval of that same requirement.
1049

1050 Ms. Harris - And I would like to think that, sometimes, we are complaint-
1051 driven. If the neighbors see something that they feel is in violation, you know we have a
1052 number where they call and we have to revisit that and see if they have, in fact, violated
1053 the ordinance.
1054

1055 Mr. Blankinship - That is true but, in a case like this if we did have specific
1056 requirements with dates, we would inspect on those dates. We would not wait for a
1057 complaint.

1058
1059 Ms. Harris - Ok, that's good to know. Any other comments? Ok. Is there
1060 anyone else who opposes this application? Please come forth and give us your name.

1061
1062 I know it's difficult to not repeat something that has already been stated but, we do ask
1063 that you do not repeat it.

1064
1065 Ms. Carol Azzarone - Good morning. My name is Carol Azzarone. I'm Al's wife. I
1066 live on the other end of Rocky Branch, and I do landscaping for a living. I own my own
1067 business.

1068
1069 Ms. Harris - Ms. Azzarone, would you spell your last name, please?

1070
1071 Ms. Azzarone - Oh, I'm sorry. A-z-z-a-r-o-n-e ... and as I stated, I am a
1072 landscaper and I've been in business, my own business for the last 25 years here in
1073 Richmond. I've worked all over town and when I come home and see this, my heart sinks
1074 to see this. Originally, when they lived in the previous residence. Their mother lived in
1075 this particular residence and she, I guess, had some disabilities and she succumbed to
1076 smoking inhalation in this particular residence. It got rebuilt and they promptly moved in
1077 and disregarded the residence that they originally lived in. And when I first passed by
1078 their original residence, I thought oh, they were landscapers there as well. They had all
1079 these beautiful shrubs but, then as the years crept up, they never maintained any of them
1080 and so it's just difficult. And even when my daughters come with me on my jobs, they are
1081 kind of always startled when they come around the corner and look at this. Now had they
1082 gotten a permit for this structure to consolidate, they probably wouldn't have been
1083 permitted based on how this structure looks now. And I'm a little surprised. Now this is
1084 cleaned up. This property is cleaned up as you see it now because before, it was an
1085 eyesore. It was a black spot on the neighborhood, and everybody is very loving to their
1086 properties because it is an older neighborhood and we respect the houses that we live in.
1087 And I'm not sure what the remedy is but, I don't see this as the remedy for people who
1088 have no respect for their property. And in the health of these people, I don't see it as
1089 something that's generating a hobby at this point in their lives. It will make a good storage
1090 but, I think it's a little too prominent and a little too unsightly for this area of the
1091 neighborhood. I mean it's just ... I agree with everybody that just spoke.

1092
1093 Ms. Harris - Thank you very much. Any questions? Alright. We need the
1094 applicant to come back and give us your rebuttal on things that have been said.

1095
1096 Ms. Baker - Thank you for this time. Thank you for all these neighbors who
1097 could have come by in a neighborly way and asked some questions, much of that could
1098 have been cleared up. There was one mention of an illegal driveway. That is not the
1099 case. The driveway does go from Rocky Branch to Woodman Road, either that is
1100 grandfathered ... that's the way it was originally put in when the house was built. That's

1101 the way it was when my mother purchased the house. It has been improved. We have
1102 taken care of that. It has been resurfaced.

1103
1104 There was a mention of a gazebo on the property. That is not the case. It is a well house.
1105 We have maintained some of the yard tools and some undercover in that place. That's
1106 quite true. In the summertime, it is screened by plants and hanging baskets, so it is not
1107 an eyesore.

1108
1109 The building, the proposed building, I quite agree, it is an eyesore at this point. I hate
1110 looking out my dining room window and looking at it every day. It is ugly at this point. I
1111 don't think it will be ugly once completed. It is being referred to as an unpermitted
1112 structure. That is supposed to be taken care of as soon as we, hopefully, get approval for
1113 its location. We have worked with Mr. Noctor and followed his advice on the proper
1114 foundation and this would be taken care of according to county rules and procedures.
1115 I may mention that Mr. Noctor has been extremely helpful and we will continue to seek
1116 his advice.

1117
1118 We have spent much of our savings to get this project done, considering it an
1119 improvement not only on the looks but, also an addition to the property, the whole
1120 property. I really do believe it is going to be an improvement.

1121
1122 Storage is definitely a large part of the building, the reason for the building. There is going
1123 to be an area for my husband's tools which, right now, are being stored under the
1124 temporary shelters. And yes, that is part of the reason we moved into the house, as
1125 stated before by someone, after considerable time. There was a fire in that house, and I
1126 lost my mother due to that fire and many of her things are also stored in those temporary
1127 places. I know we have to part with some of them but, it's not always easy. It will be taken
1128 care of, that space of ours, and we will be using storage. It's not going to be sitting outside.
1129 We have a riding mower now, to take care of the property. It has to sit outside. We have
1130 nowhere else to put it. There is a little shed way back on the property. It's shown on the
1131 map. I think that was built the same time as the house. It's very useless. As I said, we
1132 are trying and spending a lot of money to have some improvement. Everybody is
1133 complaining about this terrible looking thing. I completely agree, it is a terrible looking
1134 thing right now. But it will not be once you get a roof on there, once you get ... We have
1135 to change the design of the roof? Ok, so maybe ... I don't see that as being so
1136 objectionable. We are working for improvement.

1137
1138 The other property has been mentioned and I don't know why it should come into
1139 consideration now but, I had worked with someone in the county about this and I have
1140 made requests and I have been promised certain things to help us and nothing has
1141 happened. I had given permission for a contractor to come and clear the backyard but,
1142 that never happened. The scheduled meeting was due in August. I remember it well
1143 because it was 97 degrees.

1144
1145 Ms. Harris - Excuse me, Ms. Baker, are we still talking about the same
1146 property?

1147
1148 Mr. Blankinship - Yes, we wandered off the topic a little bit.
1149
1150 Ms. Baker - Yes, but it was brought it up.
1151
1152 Ms. Harris - Now, I think we are going to have to keep to the subject.
1153
1154 Ms. Baker - I'd be very happy to do that. Believe me.
1155
1156 Ms. Harris - Thank you.
1157
1158 Ms. Baker - But what I was trying to do is point out that we are trying to
1159 work according to request and if we are stopped now, too bad. I don't know what else to
1160 do. While we are trying to work on a solution, if it's denied, then I don't know what else
1161 to do.
1162
1163 Ms. Harris - Then I have one question. What is the foundation there now,
1164 under that structure?
1165
1166 Ms. Baker - Ah, the builder poured an asphalt bedding. So, it is on an
1167 asphalt bed.
1168
1169 Ms. Harris - Would that be changed?
1170
1171 Ms. Baker - Yes.
1172
1173 Ms. Harris - So that means that you're going to have to tear down the
1174 structure?
1175
1176 Ms. Baker - No, it will be rolled back.
1177
1178 Ms. Harris - Ok.
1179
1180 Ms. Baker - It will be moved, and I have spoken to Mr. Noctor about it and
1181 the plans are made on how to remedy that. The builder had first assured me that with the
1182 hurricane ties, it would be safe but, apparently that does not meet approval.
1183
1184 Ms. Harris - Ok. Any questions from Board members?
1185
1186 Mr. Bell - Just one. Mrs. Baker, you mentioned a couple of times ... and
1187 I am just curious that once it's done, that will make it better but, how are you going to take
1188 care of that height. I'm a little confused there. Is it going to be maintained, 2-stories or is
1189 it going to be shortened, or what?
1190
1191 Ms. Baker - Well, in order to meet our needs, it does need to be 2-stories
1192 and 17 ½ feet, I understand it meets the approval of zoning for that area.

1193
1194 Mr. Johnson - One additional question. If there are dates to have things done
1195 can you assure us you can abide by those regulations? Dates?

1196
1197 Ms. Baker - If weather permits.

1198
1199 Mr. Johnson - If there are dates?

1200
1201 Ms. Baker - Building in wintertime is a little iffy. But I've read it and the
1202 permit, it says February 1st ... we can take care of that, no problem.

1203
1204 Mr. Johnson - Yes.

1205
1206 Ms. Baker - And, as work progresses, I don't see any reason why not.
1207 We're quite anxious.

1208
1209 Ms. Harris - Do you have other questions of Ms. Baker? Thank you so
1210 very much.

1211
1212 Ms. Baker - Thank you.

1213
1214 **[After the conclusion of the public hearings, the Board discussed the case and**
1215 **made its decision. This portion of the transcript is included here for convenience**
1216 **of reference.]**

1217
1218 Ms. Harris - I'm going to move that we deny this application. This is on
1219 Rocky Branch Lane. I did listen closely, I think, to the applicant. And they were saying
1220 that this very tall building would have to be moved because of the foundation and so it's
1221 going to be moved until they come up with a better foundation ... to me it should be
1222 moved, period; and so, it would not be so visible from Woodman Road and Our Lady of
1223 Lourdes. My motion is that we deny this application.

1224
1225 Is there a second?

1226
1227 Mr. Bell - Second.

1228
1229 Ms. Harris - Ok. It's been moved and properly seconded that we deny this
1230 Conditional Use Permit 40. Ok, any discussion on this motion? All in favor of denying it
1231 say, aye. All opposed, say no. The ayes have it and so be it.

1232
1233 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr. Bell,
1234 the Board **denied** application **CUP2018-00040, MIREILLE BAKER's** request for a
1235 conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow an
1236 accessory structure in the side yard at 8218 Rocky Branch Lane (Parcel 777-754-4182)
1237 zoned One-Family Residence District (R-2) (Fairfield).

1238

1239

1240 Affirmative: Bell, Green, Harris, Johnson, Reid 5

1241 Negative: 0

1242 Absent: 0

1243

1244

1245 Ms. Harris - Thank you, call the next case.

1246

1247 Mr. Blankinship - Alright, that completes the conditional use permits for this

1248 morning, and there are also three variances on this morning's agenda.

1249

1250

1251 **VAR2018-00024** **JAMES L. RUSSEL, SR.**, requests a variance from Section

1252 24-9 of the County Code to build a one-family dwelling at 10839 Good Oak Lane (Parcel

1253 765-769-7941) zoned Agricultural District (A-1) (Brookland). The public street frontage

1254 requirement is not met. The applicant has 0 feet public street frontage where the Code

1255 requires 50 feet public street frontage. The applicant requests a variance of 50 feet public

1256 street frontage.

1257

1258 Madam Chair, this is the case where I put the wrong street name in the report. This is

1259 the one off of Mountain Road. That one, of course, was Woodman.

1260

1261 Ms. Harris - Right.

1262

1263 Mr. Blankinship - Would everyone who intends to speak to this case please

1264 stand and be sworn in. Raise your right hands, please. Do you swear the testimony you're

1265 about to give is the truth, the whole truth, and nothing but the truth so help you God?

1266

1267 Mr. Blankinship - Thank you. Mr. Gidley.

1268

1269 Mr. Gidley - Thank you, Mr. Secretary. The subject property is located off

1270 Good Oak Lane, a private road that comes south off of Mountain Road. It is one of three

1271 lots that were created from a 4.4-acre parcel that was acquired by the Russel family back

1272 in 1935. Like today, access to this site is by way of Good Oak Lane. So, the family never

1273 had an opportunity to connect directly to a public street and you can see the road here,

1274 Good Oak Lane, and as you can tell it is paved and is in good condition for a private

1275 street.

1276

1277 The first of the two lots created from the original 4.4-acre parcel contain residences, and

1278 the lot today is vacant. And you see on the aerial here, these are the three lots here, one,

1279 two and three. The first two have the residences and this is the vacant one subject to

1280 today's request.

1281

1282 You can see on the site plan, this is Good Oak Lane up here. There is an existing 50-foot

1283 right-of-way that comes along here and serves this lot, with the existing residence. There

1284 is also a proposed 50-foot right-of-way shown that would be used to access the new

1285 home, here. This proposed right-of-way would need to be confirmed prior to the issuance
1286 of the building permit if this request were approved.

1287
1288 In evaluating this request, the property contains an acre of land that slopes gently from
1289 front to back. So, it is suitable for a dwelling but really no other practical use. It was
1290 created legally at a time when family divisions were exempt from the subdivision process;
1291 and, although it did not require public street frontage as noted, this option was never
1292 available, even back in the 1930's. Granting a variance would allow the owner to make
1293 reasonable beneficial use of his property with a home constructed on it.

1294
1295 Assuming the Board agrees this principal test is met, the five subtests also appear to be
1296 met. I would note on detrimental impact, on the positive side, the surrounding uses are
1297 residences, except for the electrical substation back here, so the use would blend in. The
1298 applicant did not submit any plans for the proposed home and so you may want to discuss
1299 that with the applicant and also since Good Oak Lane is a private street, you may also
1300 want to discuss any plans for contributing to the upkeep of that road or how they'll
1301 maintain it.

1302
1303 So, in conclusion, the property was purchased in good faith in 1935 and divided as part
1304 of a family division. It met code requirements in place at the time, other than public street
1305 frontage. The county code has been amended to resolve this problem, but this was
1306 created prior to that. Assuming the applicant can address questions to the Board's
1307 satisfaction regarding home design and street maintenance, staff recommends approval
1308 of this request subject to the conditions in the report. I thank you and I'll be happy to
1309 answer any questions you may have.

1310
1311 Ms. Harris - Thank you. Are there any questions of Mr. Gidley?

1312
1313 Mr. Bell - Were any comments made about the maintenance of Good
1314 Oak Lane by the residents that live back on these various lots?

1315
1316 Mr. Gidley - I've not heard anything. It's kind of ... we're not real familiar
1317 with what they do to maintain it and that's why I mentioned you may just want to talk to
1318 the applicant as far as anything he's heard or is aware of out there.

1319
1320 Mr. Bell - Any complaints about that piece of property being used for
1321 anything other than for building of the house?

1322
1323 Mr. Gidley - Mr. Blankinship, I think, spoke to somebody who called in
1324 about that.

1325
1326 Mr. Blankinship - Complaint about what, Mr. Bell?

1327
1328 Mr. Bell - About the lot, the way that it is.

1330 Mr. Blankinship - I have heard that there was a question ... I haven't actually
1331 spoke to them, and I hope it's one of the people who's here this morning, about the access
1332 to this lot. There does seem to be some question about how to provide access to the lot.
1333
1334 Mr. Bell - Thank you.
1335
1336 Mr. Gidley - Thank you.
1337
1338 Ms. Harris - Any other questions of Mr. Gidley? Mr. Johnson, you have a
1339 question?
1340
1341 Mr. Johnson - Yes. In addition to the access to the lot, you mentioned
1342 something about 50 feet on the side and also to the back or something. Is that part of the
1343 amendments that were approved back in 2011?
1344
1345 Mr. Gidley - No, Sir, what was approved in 2011 dealt with the process for
1346 creating lots for family division that did not have public street frontage. What I was
1347 referencing here was Good Oak Lane is the access road and we know there's a 50 feet
1348 right-of-way that comes down from the street to this property which contains a house now.
1349 The survey here shows a proposed right-of-way to provide access to the house that is
1350 subject to today's request. And obviously, we have a condition that they need to prove
1351 access, before a building permit can be issued.
1352
1353 Mr. Johnson - That right-of-way, is that part of a private property or is that
1354 part of the county's right-of-way?
1355
1356 Mr. Gidley - That would be a private right-of-way, across private property.
1357
1358 Mr. Johnson - Thank you.
1359
1360 Mr. Green - So, you are showing me that the person who has the house
1361 in front of the 50 feet feels that that's their land?
1362
1363 Mr. Blankinship - It is their land.
1364
1365 Mr. Green - It is their land.
1366
1367 Mr. Blankinship - Yes, so they would have to have an agreement with that
1368 property owner to cross their property.
1369
1370 Mr. Green - Oh.
1371
1372 Mr. Blankinship - This plat shows that it's proposed but, this plat is 12 years old.
1373 So, it may be that this agreement has been resolved already, or maybe it can be resolved
1374 in the future.
1375

1376 Mr. Green - There is no other access then?
 1377
 1378 Mr. Blankinship - No, Sir.
 1379
 1380 Ms. Harris - Ok. Any other questions?
 1381
 1382 Mr. Johnson - No. I'm satisfied.
 1383
 1384 Ms. Harris - Thank you, Mr. Gidley.
 1385
 1386 Mr. Gidley - Thank you, Ma'am.
 1387
 1388 Ms. Harris - Would the applicant please come forth and state your case?
 1389
 1390 Mr. James L. Russel, Sr. - Good morning members of the Board, Chairlady. My name is
 1391 James L. Russell, Sr. Russell is spelled R-u-s-s-e-l-l. This property was owned by my
 1392 parents, as it was stated earlier. For quite a while, the address 10841 was owned by my
 1393 mom before she passed away in 2013. Shortly after that, my brother had lived there three
 1394 years before he lost the property due to delinquent tax payments. I tried, a lot, to try and
 1395 help my brother out with that situation. He and I never came to any agreement, so it was
 1396 lost. My parents divided the parcel that's in question today to me back in 2007. But,
 1397 before they even came to build on this property, they came from Baltimore; they lived with
 1398 me and my wife in Ashland and when this, when their dwelling was developed the
 1399 roadway in question, the 50 feet easement went into my lot. All of that was done during
 1400 the development of their house. So, it was already grandfathered in naturally. Dug in,
 1401 made already. So, they already knew this was going to be my lot, as well as the neighbor
 1402 to the back of me knew because I helped them do some landscaping work at their home,
 1403 once, when they first got their home. They got their home due to my cousin, he lost his
 1404 house due to foreclosure. I got the chance to know the neighbors who bought that
 1405 particular property and I was able to help them do some landscaping work once before.
 1406 I'm only asking for a chance at the American Dream to build on my property, which as
 1407 you all already know, all of that was once Russell property, and for me not to be able to
 1408 have a chance to have my own home for the first time would really crush me. My parents
 1409 are buried on my particular part of the land and, you know, it would not do me any justice
 1410 if I couldn't be on the land where my parents are buried. So, you know, I've also ... as
 1411 far as the maintenance of the road, I'm a truck driver. So, I had ... back in '04, I had
 1412 brought several dump truck loads of gravel up on that property and one of the
 1413 homeowners in that community ... he's a construction guy ... he used my gravel to
 1414 develop the roadway that you see coming up Mountain Road, I mean Good Oak Lane.
 1415 So, you know, I've done my part to try and upgrade the community. I'm 54 years old. I'm
 1416 a God-fearing church going man. I just ask that the committee take a good look at it ...
 1417 for me to have a piece of the American Dream as to owning my own home. I'm not there
 1418 to create any problems for anyone. I just want a chance to live.
 1419
 1420 Ms. Harris - Mr. Russell, have you seen the conditions in the report?
 1421

1422 Mr. Russell - Yes, Ma'am. I read them.
1423
1424 Ms. Harris - Ok. You are agreeable with them?
1425
1426 Mr. Russell - Yes, Ma'am.
1427
1428 Ms. Harris - Any questions from Board members?
1429
1430 Mr. Green - Which house is the original house? The one in the front?
1431
1432 Mr. Russell - Yes, Sir. 10841 is where my mom used to live.
1433
1434 Mr. Green - And you say that when they divided it, they built in a 50-foot
1435 easement so you could have access to it?
1436
1437 Mr. Russell - Yes, Sir.
1438
1439 Ms. Harris - Excuse me, I was going to say I drove by there and that I was
1440 surprised that I saw speed bumps on a private road. You were getting ready to answer
1441 his question?
1442
1443 Mr. Russell - Yes. Sir, that roadway easement into the lot that's in question
1444 for me has been in there since they built the ... when they cleared off land, clearing and
1445 dredging a driveway into my lot was all part of the development. So, it was there from the
1446 beginning.
1447
1448 Mr. Green - And another question is that they said they weren't sure of
1449 what kind of house you were going to build. Do you have a picture?
1450
1451 Mr. Russell - Oh, yes sir. I was looking through my ... I do have this. In
1452 talking to Mitchell Homes, I was looking at that particular model, as well as one or two
1453 others.
1454
1455 Mr. Blankinship - Is this a 1-story house?
1456
1457 Mr. Russell - Just a rancher.
1458
1459 Mr. Blankinship - Or will it have like an attic?
1460
1461 Mr. Russell - No, sir. Just ... This is going to have cathedral ceilings, so no
1462 attic.
1463
1464 Ms. Harris - Ok, so the case for the maintenance of the road ...
1465
1466 Mr. Russell - I'm not really sure, since I don't even live up there. I don't
1467 know if the county even comes up ... I did hear that the guy that I was mentioning that

1468 owned the construction company in the community, back in there, he clears the roadways
1469 for the residents to get in and out of there during the snow time. So, but as far as
1470 maintenance to the roadways in that little community, I'm not sure who does it.

1471
1472 Mr. Green - You wouldn't have any problem contributing to the ...

1473
1474 Mr. Russell - No, indeed.

1475
1476 Ms. Harris - Any other questions for Mr. Russell from Board members?
1477 Thank you so very much for coming in.

1478
1479 Is there anyone else who supports this application? Is there anyone who opposes?
1480 Please come forth and give us your name.

1481
1482 Mr. Charlie Ayers - My name is Charlie Ayers, A-y-e-r-s. And I'm a representative
1483 and business partner of the current owner, Malcomb Thomas. In his application, he says
1484 that he didn't cause this hardship. This was divided in '07 as a family subdivision, exempt.
1485 Then all the rest of the property was lost to a tax sale because they couldn't afford to pay
1486 the taxes. I'm not sure if it's a correct statement that his family didn't cause the hardship.
1487 But we are opposed to it because the land around it is not owned by him and this proposed
1488 right-of-way will not be granted. He has no access to a good ole claim He would have
1489 to come across Mac, LLC, property to get there and that's not going to happen.

1490
1491 Mr. Blankinship - That ... the legal question of whether he has the right to cross
1492 that easement is not something this Board has any control over. If the variance is
1493 approved, then that's something that will have to be worked out among the property
1494 owners. The applicant stated that there was an easement from 2007, so that's something
1495 that would have to be sorted out privately.

1496
1497 Mr. Ayers - I think, referring to the plat, the easement he's talking about is
1498 an existing 50-foot right-of-way but, he does not have access to that.

1499
1500 Mr. Blankinship - But that's what would have to be resolved, and it would have
1501 to be resolved at the time of building permit application.

1502
1503 Mr. Ayers - Thank you.

1504
1505 Ms. Harris - Ok, any questions of Mr. Ayers?

1506
1507 Mr. Blankinship - Oh, do you know who maintains the road, if there is a written
1508 maintenance agreement?

1509
1510 Mr. Ayers - Yes, yes. Malcomb's company, Ty's Pavement and Hauling.
1511 He built the road; he paved the road. I'm now aware of the applicant giving him some
1512 gravel. But that's what he does. Basically, that and a trucking company that he does all
1513 day everyday.

1514
1515 Mr. Blankinship - Do you know if there's a recorded maintenance agreement
1516 between he and the other property owners, or does he just do it?
1517
1518 Mr. Ayers - I think he just does it.
1519
1520 Mr. Blankinship - Out of the goodness of his heart?
1521
1522 Ms. Harris - Mr. Ayers, what is your interest in this property? Are you an
1523 owner on that road or ...
1524
1525 Mr. Ayers - I'm a business partner of Malcomb Thomas and I'm
1526 representing his interest this morning ... Mac LLC, which is the land owner.
1527
1528 Ms. Harris - And, Malcomb Thomas is what type of contractor?
1529
1530 Mr. Ayers - He's a ... he does Ty's Paving and Hauling. He has about 30
1531 dump trucks. He has a fairly substantial paving business.
1532
1533 Ms. Harris - Alright, thank you.
1534
1535 Mr. Green - And does he live in that house? Does he live in that house?
1536
1537 Mr. Ayers - No, he rents that house.
1538
1539 Ms. Harris - Alright, thank you so very much for coming in. Is there anyone
1540 else who opposes this application? Please come forth.
1541
1542 Mr. Paul Gianos - Good Morning, my name is Paul Gianos. G-i-a-n-o-s. I reside
1543 at 10837 Good Oak Lane. Is it alright if I move to the aerial view?
1544
1545 Ms. Harris - That's fine.
1546
1547 Mr. Gianos - I am down in this area. We moved in in 2010 and we've made
1548 significant improvements to the property. It was in foreclosure when I took possession of
1549 it and it was in very, very, bad shape. Mr. Russell actually was part my, part of the help,
1550 definitely, with some of the landscape improvements that we made there, and I appreciate
1551 all the help he had given me there.
1552
1553 I have five concerns. The first one being there... you can see from the aerial view ... kind
1554 of hard to make out but, we have made significant improvements in the driveway itself. I
1555 put a custom concrete driveway in there with imbedded driveway lights. It's pretty
1556 elaborate and, unfortunately, you can see that it stops just short of the property line. The
1557 reason is because we have the permanent easement that runs up that side where you
1558 see the rest of the gravel driveway. And, Mr. Thomas and I have been in negotiations
1559 over the last year or so until ... I didn't realize it was time sensitive until recently here. But

1560 I'm trying to purchase that permanent right-of-way that I already have the access to so
1561 that I can actually finish my driveway. If this appeal is granted, I will have no chance to
1562 be able to permanently finish my driveway. And if I were to put a driveway in, it would
1563 now see increased traffic where the other residents would be cutting over and be utilizing
1564 that.

1565
1566 Mr. Blankinship - Why would this variance prevent you from continuing the
1567 driveway?

1568
1569 Mr. Gianos - Well, when I'm looking at the cost of continuing that same
1570 exact style all the way up there, it's a very expensive option to put in, and the last thing I
1571 would like to do, obviously, is spend all this money to finish my driveway just to have
1572 construction vehicles and all the other additional traffic coming down it and tearing it up.
1573 So, obviously, I want it to be mine. I've been maintaining it, as well as the surrounding
1574 grass area since 2010. I take care of it like its mine even though it's just temporary, it's
1575 just a permanent easement. That's my biggest objection, is that this will absolutely
1576 prohibit me from being able to finish my driveway without risk.

1577
1578 Mr. Blankinship - But it won't. This wouldn't affect that transaction, at all.

1579
1580 Mr. Gianos - But I would have to share that driveway?

1581
1582 Mr. Blankinship - Which, if he has an easement, you have to share it already.

1583
1584 Mr. Gianos - Right, but the legal ... As far as I know, when I bought my
1585 house, I'm the only one that has that easement that's available to me, it's in the permanent
1586 record, up the side.

1587
1588 Mr. Blankinship - And if that is the case, then this case would not change that.
1589 As I said to the previous speaker, that's something that would have to be resolved
1590 privately. This Board not have the authority to grant easements, revoke easements, or
1591 anything like that.

1592
1593 Mr. Gianos - Ok. So, that was just point number 1 ... that was going to
1594 prevent me from finishing improvements on my property. Point number 2 is that Good
1595 Oak Lane, is as you see from the picture, is a private single lane road; and now that Mr.
1596 Russell is basically landlocked, that will be additional traffic on that road. Obviously, we
1597 have talked about the maintenance costs and we have to find out what those details are.
1598 But it already has congestion. You would understand if you visited it. It's a little over a
1599 quarter mile long, and when there is another car coming, you have the swamp on one
1600 side and trees on the other. It's pretty bad so limiting traffic is obviously a concern on that
1601 road.

1602
1603 The house location, I heard that there is nothing proposed for a location of the residence.
1604

1605 Mr. Blankinship - We have a location, we just didn't have a design of the
1606 residence. But the location is shown.
1607

1608 Mr. Gianos - So there is a cemetery in that ... You can't exactly verify that
1609 it's in that area.
1610

1611 Mr. Blankinship - It's on the other property according to this plat.
1612

1613 Mr. Gianos - No, there's actually a cemetery in the property that we're
1614 talking about today. There are multiple marked graves with gravestones. So, it would be
1615 very difficult without relocating those to put a property in and still be able to follow
1616 setbacks.
1617

1618 Mr. Blankinship - There are legal requirements that they would have to follow.
1619

1620 Mr. Gianos - Ok, so the cemetery is obviously a concern ... and then, I
1621 believe in being a good neighbor and I really didn't even want to have to speak up. But I
1622 wanted to make a recommendation, if there is alternative access for this that does not
1623 take 50 feet away from the property owner in the front, as well as doesn't interfere with
1624 any of the other concerns that I have, there is a ... the property line that's a
1625

1626 Mr. Green - Can you go back to the plat and show us?
1627

1628 Mr. Gianos - Yeah. The aerial ... Well, it's the one that's not shown ... It's
1629 the aerial view, yes ... So, along this section here, it actually has access directly to
1630 Mountain Road, which is a large road. It has access to all the full utilities, water, sewer,
1631 everything without having to cut through an acre and a half ... actually two acres worth of
1632 property to try to get to it; and, that property currently is, from what I can tell, is abandoned.
1633 There have been trees that have fallen on that house a year ago. Nobody lives there.
1634 We've reached out to that owner and she said she had no interest in selling it and no
1635 interest in doing anything to fix it. So that you can see the direct path that if someone
1636 were to propose a dwelling here, they could very easily come out and have a right-of-way
1637 that would get them directly out into Mountain Road. And, that would take care of almost
1638 all the concerns that we have today.
1639

1640 Mrs. Harris - Other questions?
1641

1642 Mr. Gianos - That was it. I'm sorry.
1643

1644 Ms. Harris - Ok, why did you state there was construction or there would
1645 be trucks, I heard you mention that there would be other trucks using the road?
1646

1647 Mr. Gianos - Well yes, during the construction process you have building
1648 materials ...
1649

1650 Mrs. Harris - Yes, I know that, it's temporary. Any other questions from
1651 Board members? Thank you so very much for coming in. Anyone else who opposes this
1652 application? Ok, now we can have the rebuttal. Mr. Russell.
1653

1654 Mr. Russell - Yes, to Paul's question, his comment, you know ... he
1655 attempted to call me Monday night in hopes of asking me one more time would I sell my
1656 property to him. So, I guess that's the reason for some of his concerns and I see why he
1657 would want to raise any ... I told him that you know I can't sell my property. He never
1658 even mentioned to me of a different route to come in to my property, if he knew it. I never
1659 knew or thought that there was a chance to come directly in from off of Mountain Road
1660 into my lot. So, you know, if he wanted to share that information and make things more
1661 easy for this whole transition, he could have said it Monday night when he called me to
1662 ask me to buy my property and furthermore, the guy speaking on Todd's behalf, Todd just
1663 now got up there on the property when he bought it two years ago. So, he never did any
1664 maintenance to that road. The road maintenance was done by the guy down on the
1665 property that lives in this community. Todd doesn't do any maintenance up there; until
1666 probably when he got the property. I'm not sure what he's done since he's had the
1667 property, but I know that the pavement of that road was by the construction owner that
1668 lives in that same community that used my gravel to make the driveway on Good Oak
1669 Lane, coming up to the property. So, I really don't know him or ... I don't even really know
1670 Todd that well. I talked to him one time and I mentioned to him that in the event that I am
1671 able to build on my property, that I would notify you letting you know anything I was going
1672 to do so that you would have full heads up on everything, and he said everything was
1673 fine; and now he comes out saying he has a problem with ... I don't know, but... Like I
1674 said before, I'm not here to cause any trouble. You know, I've been down here twenty
1675 years from Baltimore. My parents have been paying on this land to have this land all this
1676 long time for me to come down here. I just have never been able to build on my land.
1677 Had it not been for my brother making a terrible mistake in losing the property due to
1678 delinquent tax payments, we wouldn't be having this conversation now.
1679

1680 Mr. Blankinship - Well, you would still be before this Board, but it would be on a
1681 simpler case. I just want to emphasize again; this Board is going to making a decision
1682 this morning on the zoning requirement that you can't build a house unless you have
1683 public street frontage.
1684

1685 Mr. Russell - Yes, sir.
1686

1687 Mr. Blankinship - That is a completely separate question from whether you have
1688 a legal right to cross these other people's land to get to your property; and that's
1689 something you all are going to have to resolve either way, no matter what this Board
1690 decides. That's a separate civil matter among the property owners out there that this
1691 Board has no authority on.
1692

1693 Mr. Green - I have a question. The gentleman that spoke said that there
1694 are multiple graves, you said earlier that your parents are buried on there. Are there other
1695 individuals buried there?

1696
1697 Mr. Russell - No, it's just three graves down there, my father, my mom, and
1698 my grandmother. It's all the way, from that aerial view, if you could just go to the very
1699 corner of the lot ... You got the corner? They're down in there.
1700
1701 Mr. Green - ... and without a doubt, you've considered that in the
1702 construction of your house?
1703
1704 Mr. Russell - Yes, sir. They already know and they have made their
1705 adjustments to locate the house a decent amount of footage away from the cemetery.
1706
1707 Mr. Green - ... and without a doubt, I would be very sensitive to that land
1708 if my parents were buried on it, then because if someone else buys it, then you have a
1709 problem with someone relocating graves.
1710
1711 Mr. Russell - Yes, sir. I understand.
1712
1713 Mr. Green - So, I am sympathetic. Don't apologize for your brother or your
1714 mother's situation. A lot of folks face those, so that's nothing to be apologetic about. I
1715 admire you for wanting to, at least, develop the last portion of land you can control on
1716 your family's original family land.
1717
1718 Mr. Russell - Yes, sir.
1719
1720 Mrs. Harris - Mr. Russell, have you seen the conditions? Because I think
1721 Condition #5 tells you that you need legal access to the property. Look at the conditions.
1722 So that would take care of ...
1723
1724 Mr. Blankinship - That would have to be resolved, but not by this Board.
1725
1726 Ms. Harris - Access to the property would have to be resolved. So, look
1727 at Condition #5. Under the conditions, we have five conditions here, so you'll know. Let
1728 us know if you agree with those
1729
1730 Mr. Russell - So to obtain legal access to these easements, what is that
1731 process?
1732
1733 Mr. Blankinship - Someone would have to bring us a deed showing that legal
1734 access has been obtained. You may already have that in your records.
1735
1736 Mr. Russell - The deed to my land?
1737
1738 Mr. Blankinship - Often, in the deed to your land, it would state that it includes
1739 an easement to cross the other peoples' land. It may be in the deed of the gentleman,
1740 John, who spoke because his is the one set back off of Good Oak Lane. It may be with
1741 his deed that established that right-of-way for both of you.

1742
1743 Ms. Harris - Look at that survey. I just wanted to mention that on that
1744 survey showing ... you see where it states approximate location of the cemetery. Is that
1745 the cemetery in question?
1746
1747 Mr. Blankinship - No.
1748
1749 Mr. Russell - No, what that is ... since that was land owned by us
1750 previously, that cemetery is folks that, I heard from my cousins, that owned the property
1751 before we got it in 1935.
1752
1753 Ms. Harris - So really there are two cemeteries off of this one?
1754
1755 Mr. Russell - Yes, Ma'am.
1756
1757 Ms. Harris - Alright, thank you. Any other questions?
1758
1759 Mr. Green - So, there are bodies in that cemetery?
1760
1761 Mr. Russell - Yes, Sir.
1762
1763 Mr. Green - That one.
1764
1765 Ms. Harris - Mr. Bell, what are you saying?
1766
1767 Mr. Bell - So now you cannot show any right of easement to your
1768 property. Is that true?
1769
1770 Mr. Russell - Well, looking at the plat, the existing right-of-way, 50 feet
1771 coming off of Good Oak Lane and then the proposed easements going into my lot. That's
1772 the only thing I have to show for that easement. I don't know. I guess it's up to the Board
1773 to ...
1774
1775 Mr. Blankinship - Well no, that's not up to this Board. You'll have to get a lawyer
1776 to look at those deeds with you and explain to you exactly what rights you have.
1777
1778 Mr. Russell - Ok.
1779
1780 Ms. Harris - Look at Condition #5 again. You see, the applicant should
1781 present proof with the building permit application.
1782
1783 Mr. Blankinship - You don't need to have that this morning, but you will need
1784 that when you apply for a building permit.
1785
1786 Mr. Russell - Ok.
1787

1788 Ms. Harris - Any other questions from Board members? Thank you so very
1789 much.

1790
1791 Mr. Russell - Thank you Board members.
1792

1793
1794 **[After the conclusion of the public hearings, the Board discussed the case and**
1795 **made its decision. This portion of the transcript is included here for convenience**
1796 **of reference.]**
1797

1798 So now we are into variance 24. What is the pleasure of the Board?
1799

1800 Mr. Bell - I move that we approve it.
1801

1802 Mr. Green - Second.
1803

1804 Mr. Blankinship - Can you speak to the tests on that please? Can you speak to
1805 the grounds for the variance, the various tests that would require you to make that finding?
1806

1807 Mr. Bell - I made a mistake. I was looking at the wrong document when
1808 I made the motion. So, can that be corrected?
1809

1810 Mr. Green - I've already seconded it.
1811

1812 Mr. Johnson - Document 24.
1813

1814 Ms. Harris - This is 24.
1815

1816 Mr. Green - I've already seconded it.
1817

1818 Mr. Blankinship - Well, would you care to address the required findings for a
1819 variance?
1820

1821 Mr. Green - Well, I think that... Mr. Russell... that land was in his family. I
1822 think that it's important to recognize that his mother and father, and grandmother are
1823 buried on that land. And I think that it's going to be a battle as to whether or not he can
1824 build versus not build ... and it needs to be done in the court system. I am highly offended
1825 when someone comes and stands in front of me, as a Board, and tells us what's not going
1826 to happen. Because that is not the final arbitrator of the process. And, had it not been for
1827 economic issues related to the Russell family then that land would still have been in the
1828 Russell family. And, I am very concerned with ... even if he were to sell ... I wouldn't want
1829 someone else to have control of my mother, father, or grandparents remains. And though
1830 I am going to support him building and let it be battled in court. The other thing that I am
1831 concerned about is this Ty person does not even live in the front. He rents the house out.
1832 So, he's not even living there and it's a rental situation.
1833

1834 Mr. Blankinship - If the variance were denied, would there be any reasonable
1835 use of the property?

1836
1837 The Board - No.

1838
1839 Mr. Blankinship - I asked you that the first time and you kind of assumed that I
1840 and went into the motion for examination. I just wanted to get that on the record that the
1841 Board is making a finding that if this variance were denied that there would be no
1842 reasonable use of the property. He'd have one acre of land that he would have no use.

1843
1844 Mr. Green - You know ... I'd ... We all have family that have land, and I
1845 certainly have land that my father controls and will be passed down to us and if I ever
1846 decide that I wanted to build on it, I don't want anybody telling me what I can and cannot
1847 do. I just think it unconscionable how we would not be considerate of this. You are
1848 talking about somebody who's going to make a major economic contribution to the county,
1849 and we are only talking 50 feet.

1850
1851 Ms. Harris - Ok, if I may add to what Mr. Green is saying, condition #5,
1852 states the applicant has to present proof with the building permit application that legal
1853 access to the property has been obtained so we do know that he has legal access to the
1854 property by virtual easement.

1855
1856 Mr. Green - Right.

1857
1858 Ms. Harris - That this condition will be satisfied. Also, as the staff report
1859 indicated, the staff is not aware of any detrimental impact, you know, to the community.
1860 And the mere fact that other people want to buy this property, you know, they oppose it
1861 because they want to buy it ... I think we have to be open to the motive of some things
1862 that we hear and so I think that we need to approve this variance.

1863
1864 Mr. Bell - Discussion?

1865
1866 Ms. Harris - Yes, discussion.

1867
1868 Mr. Bell - First, I want to add to what I thought was wrong. I agree with
1869 what you said, and I agree with what you said. And, I would like to add to it that there is
1870 a lot of things that came up that didn't deal with this zoning, it deals with other things. I
1871 think we have an individual who wants this property and is willing to look at the other
1872 things and work with the people to correct them so they can have property that would be
1873 his and has a history within the community.

1874
1875 Ms. Harris - What was that?

1876
1877 Mr. Green - So you ... I'm confused.

1878
1879 Mr. Blankinship - I think he's back where he was in the beginning.

1880
1881 Mr. Green - Ok, so ...
1882
1883 Mr. Blankinship - We haven't called the question yet.
1884
1885 Mr. Green - Going back to my part of the discussion, I do think Mr. Russell
1886 has talked to an attorney because one of the attorneys who deals with these kinds of
1887 issues was here.
1888
1889 Ms. Harris - Ok. Any more discussion on this particular motion? Alright, all
1890 in favor of approving this motion, say aye. Those who oppose, say no. The ayes have it
1891 and it's been approved.
1892
1893 After an advertised public hearing and on a motion by Mr. Bell, seconded by Mr. Green,
1894 the Board **approved** application **VAR2018-00024, JAMES L. RUSSEL, SR.'s** request
1895 for a variance from Section 24-9 of the County Code to build a one-family dwelling at
1896 10839 Good Oak Lane (Parcel 765-769-7941) zoned Agricultural District (A-1)
1897 (Brookland). The public street frontage requirement is not met. The Board approved this
1898 request subject to the following conditions:
1899
1900 1. This variance applies only to the public street frontage requirement for one dwelling
1901 only. All other applicable regulations of the County Code shall remain in force.
1902
1903 2. The proposed dwelling shall be located as shown on the plot plan filed with the
1904 application. Any additional improvements shall comply with the applicable regulations of
1905 the County Code. Any substantial changes or additions to the design or location of the
1906 improvements will require a new variance.
1907
1908 3. Approval of this request does not indicate that a building permit will be issued. Building
1909 permit approval is contingent on Health Department requirements, including, but not
1910 limited to, soil evaluation for a septic drainfield and reserve area, and approval of a well
1911 location.
1912
1913 4. Clearing, grading, or other land disturbing activity shall not begin until the applicant has
1914 submitted, and the Department of Public Works has approved, an environmental
1915 compliance plan.
1916
1917 5. The applicant shall present proof with the building permit application that a legal access
1918 to the property has been obtained. The driveway shall be improved with a durable asphalt
1919 or compacted gravel surface at least 10 feet wide with 12 feet of horizontal clearance and
1920 14 feet of overhead clearance to provide access for police, fire, emergency medical
1921 services, and other vehicles. The owners of the property, and their heirs or assigns, shall
1922 accept responsibility for maintaining access to the property.
1923
1924
1925 Affirmative: Bell, Green, Harris, Johnson, Reid 5

1926 Negative: 0
1927 Absent: 0
1928
1929
1930 Ms. Harris - Ok, we're ready to go onto the next case.
1931
1932 Mr. Blankinship - Wait a minute. I thought we were going to take a break.
1933
1934 Ms. Harris - I thought we were going to do that, too. Yes, we're going to
1935 take a break. Seven minutes. How about that?
1936
1937 Mr. Blankinship - That'll be fine.
1938
1939 --- BOARD TAKES A BREAK ---
1940
1941 Ms. Harris - Can we reconvene right now, please?
1942
1943 Mr. Blankinship - Ok.
1944
1945 Ms. Harris - Mr. Blankinship, will you call the next case?
1946
1947 Mr. Blankinship - VAR2018-00025, Aubrey W. Fountain, II.
1948
1949 **VAR2018-00025 AUBREY W. FOUNTAIN, II**, requests a variance from Section
1950 24-9 of the County Code to build a one-family dwelling at 615 Fountain Lane (Parcel 755-
1951 738-1177) zoned One-Family Residence District (R-3) (Tuckahoe). The public street
1952 frontage requirement is not met. The applicant has 0 feet public street frontage where
1953 the Code requires 50 feet public street frontage. The applicant requests a variance of 50
1954 feet public street frontage.
1955
1956 Mr. Blankinship - Would everyone who intends to speak to this case please
1957 stand and be sworn in. All raise your right hands, please. Do you swear the testimony
1958 you're about to give is the truth, the whole truth, and nothing but the truth so help you
1959 God?
1960
1961 Thank you.
1962
1963 Mr. Madrigal - Before you is a request to build a one-family dwelling on a
1964 residentially zoned lot. The subject property is approximately 1-acre in size and is the
1965 residual portion of a parcel of land that was originally 2.5 acres in area.
1966
1967 The lot is undeveloped, heavily wooded, and slopes down in a northerly direction at a 10
1968 percent grade. Additionally, the lot is bisected by a public sewer line running diagonally
1969 across the property.
1970

1971 Access is provided by Fountain Lane, a private road located on a 16-foot wide easement.
1972 A public water main runs along the private road and provides county water to three
1973 existing dwellings. The property has been in the Fountain family since 1909 when it
1974 consisted of 2.5 acres. In 1930, a dwelling was built at the front of the original parcel and
1975 is addressed as 8320 Ridge Road, which is a residence in here.
1976

1977 In 1949, the property was divided, and a 1-acre lot was created behind the existing
1978 residence – a second home was built on that lot in 1954 addressed as 607 Fountain Lane.
1979 This family division resulted in the remnant 1-acre parcel that is the subject of this
1980 variance request. The applicant would like a variance from the public street frontage
1981 requirement in order to have a developable lot.
1982

1983 With respect to the threshold requirement, the subject lot was created by family division
1984 in 1949, prior to the adoption of the 1960 street frontage requirement.

1985 Four other lots are served by Fountain Lane, three of which have been improved.

1986 Two of the homes were built in 1954 and 1956, before the public street frontage
1987 requirement. The third was built in 2007 by way of variance. A variance was approved for
1988 the fourth lot, but a home was never built, and that variance has expired.
1989

1990 Based on the R-3 zoning designation of the area and the existing development pattern
1991 on Fountain Lane, there is no other reasonable use for the property. Strict application of
1992 the code would unreasonably restrict the utilization of the property, creating a hardship
1993 tantamount to a confiscation.
1994

1995 Relative to the 5 subtests, Item No. 1 – good faith acquisition of the property. As
1996 mentioned before, the lot is a residual parcel derived from a tract of land that was originally
1997 2.5 acres in area. The property was acquired by the Fountain family in 1909 and has been
1998 handed down over the past 109 years. The applicant inherited the property from his aunt
1999 in December of 2017. Based on these facts it appears that the applicant acquired the
2000 property in good faith and did not create the hardship situation.
2001

2002 Item No. 2 – substantial detriment. The property has been in its current configuration for
2003 the last 69 years. Three homes have been built along Fountain Lane and one other lot is
2004 available for development. The surrounding area is zoned R-3 and the predominant
2005 development pattern consists of one-family dwellings.
2006

2007 The lots on Fountain Lane range in size from $\frac{1}{4}$ to $\frac{1}{2}$ acre, exceeding the R-3 standards.
2008 The private road is subject to a recorded easement and maintenance agreement. Based
2009 on these facts, granting the variance should not pose any substantial detriment to
2010 adjacent or nearby property.
2011

2012 Item No. 3 – general or recurring nature. Although there is one other parcel similar in size
2013 and location ... and that would be here ... to the subject property, the history and
2014 circumstances that give rise to this application are not of a general or recurring nature.
2015 Furthermore, the family division that created the subject lot predates the family division
2016 standards by 60 years.

2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062

Items No. 4 & 5 – are satisfied as outlined in the staff report.

In conclusion, the proposed use is consistent with both the zoning and comprehensive plan designations of the property. The subject property has been in the applicant’s family for over 100 years and is suitable for development, other than the lack of public street frontage.

Absent the variance, the lot would remain undeveloped and unused with no other reasonable use under the R-3 standards. The private road is maintained by the abutting property owners subject to a recorded maintenance agreement. Also, Public sewer and water are available for the proposed dwelling.

Finally, the proposed home will be consistent with the surrounding development pattern and will not have a substantial detrimental impact on adjacent or nearby property. Based on these facts, staff recommends approval subject to conditions.

This concludes my presentation, I’ll be happy to answer any questions you may have.

Ms. Harris - Are there any questions from Board members? Thank you,
Mr. Madrigal.

Mr. Madrigal - Thank you Madam Chair.

Ms. Harris - Will the applicant please come forward.

Mr. Rob Lanphear - Good morning Madam Chair and members of the Commission. My name is Rob Lanphear, L-a-n-p-h-e-a-r, and I’m here on behalf of the applicant, Aubrey Fountain. We’re super thankful for the work that staff has done on this case. They’ve done a detailed report and we would accept their recommendations and conditions with one exception.

Condition 2, I call your attention to ... it calls for a 35-foot setback for the buildable area. In addition to the 35-foot setback, it calls for a 25-foot setback for future widening of Fountain Lane. We would suggest that this be removed, because the nature of Fountain Lane says that improvements were unlikely. It is a dead-end road. Apparently, with little potential for connection to existing or future streets, and there is an existing 16-foot right-of-way access in place for that.

Secondly, the character of the adjacent parcels demonstrates a 35-foot setback from Fountain. The parcel directly to the south, 607 Fountain Lane, the dwelling has a setback of 35-feet, and then the parcel immediately across Fountain Lane has a setback of 40-feet This would also, the additional setback contemplated by the staff report of 25-feet, would push any improvement towards Westham Woods Drive in a way that would not be appropriate. So, with that said, I’d be happy to answer any questions. Again, we would accept recommendations with the change, the elimination of the 25-foot from the ...

2063 Ms. Harris - So Mr. Lanphear, you are saying that where the statement
2064 that reads the applicant show 25-feet along the western property boundary for future
2065 widening, you don't think that's necessary?
2066

2067 Mr. Lanphear - We'd like to strike that provision. We would like to retain the
2068 35-foot setback. So, right now, the way it reads would be a 60-foot total setback from
2069 Fountain Lane, then 35-feet of the buildable setback, and then 25-feet additional for the
2070 road widening.
2071

2072 Ms. Harris - And so you would retain the next sentence, but strike out the
2073 second sentence. Is what you're saying?
2074

2075 Mr. Lanphear - Correct.
2076

2077 Ms. Harris - Questions from Board members?
2078

2079 Mr. Johnson - Where is the access to that property?
2080

2081 Ms. Harris - Let's go back to ...
2082

2083 Mr. Lanphear - The access to the subject property is off of Ridge Road. It's
2084 not visible on the map that you see in front of you. There is an access to the property.
2085 This look is from Ridge Road.
2086

2087 Mr. Johnson - ... private driveway.
2088

2089 Mr. Lanphear - There is a plat ... I see Ridge Road on the southern section,
2090 right here, and the access is along this blue line ... The subject property is right here in
2091 the upper right.
2092

2093 Ms. Harris - Let's go back to the sentence you wanted us to strike. If the
2094 road were widened, would that be enough area on the opposite side to widen that road?
2095

2096 Mr. Lanphear - There's a 16-foot maintenance and access easement that's in
2097 place. Of those 16-feet, 8-feet are on that subject property, and 8-feet are on the adjacent
2098 property.
2099

2100 Mr. Blankinship - In answer to your question, Madam Chair, no, there would not
2101 be enough room. That's the purpose of the reserved strip. If a county road were built there
2102 in the future, the reserved strip would provide the needed space for that.
2103

2104 Ms. Harris - Ok.
2105

2106 Mr. Madrigal - And the property roughly to the west has that same condition.
2107

2108 Mr. Blankinship - Yes, that was taken from a variance that was approved some
2109 years ago when the property across Fountain Lane, immediately to the west of this one.
2110 The 25-foot reserved strip was required in that case and when we saw that in that
2111 approval, we thought that was a good idea and brought it forward. I'm not sure it's
2112 absolutely necessary, as the applicant pointed out. It's unlikely that Fountain Lane would
2113 be connected all the way up to Shelley Road. So, even if it were, even if a county road
2114 were built over the existing Fountain Lane, it would probably cul-du-sac at this property.
2115 But because the applicant did not submit any information about where on the property,
2116 they intend to build the house, we thought it would be better to protect the public interest
2117 by putting that condition there. I mean if we had a plat showing the proposed location
2118 that might not have been necessary.

2119
2120 Mr. Reid - Mr. Lanphear, there are three homes on Fountain Lane now,
2121 aren't there?

2122
2123 Mr. Lanphear - Four homes, I believe.

2124
2125 Mr. Reid - Are they occupied by family members or do other folks live
2126 there?

2127
2128 Mr. Lanphear - To my knowledge, three of the homes are occupied by, I think
2129 there are actually five homes on Fountain Lane, three of the homes are occupied by family
2130 members and two are not.

2131
2132 Mr. Reid - Alright.

2133
2134 Ms. Harris - So, you are telling us that five homes use this private road?

2135
2136 Mr. Lanphear - Yes, Ma'am.

2137
2138 Mr. Blankinship - But that's counting the one's that front on Ridge Road as well.
2139 They use both Ridge and Fountain.

2140
2141 Mr. Lanphear - That's correct.

2142
2143 Mr. Reid - And the whole road, the whole lane is unpaved, is it?

2144
2145 Mr. Lanphear - A portion of the lane comes up over a hill on the back side of
2146 the property. Generally, on the Jones property is exactly where it stretches out.

2147
2148 Ms. Harris - Who's responsible for the upkeep of this road? Who has been
2149 in the past?

2150
2151 Mr. Lanphear - I can't speak from personal experience but, the reported
2152 maintenance and access agreement requires that all six property owners participate in
2153 the maintenance and upkeep of the road.

2154
2155 Ms. Harris - Any other questions? Thank you so very much.
2156
2157 Mr. Lanphear - Thank you.
2158
2159 Ms. Harris - Anyone who's speaking in support of this application? Please
2160 come forth and give us your name.
2161
2162 Mr. Aubrey Fountain, II - Good morning Madam Chair and Board members. My name
2163 is Aubrey Fountain, II, F-o-u-n-t-a-i-n. And I am quoted, as stated by my representative
2164 Mr. Lanphear that I inherited the property from my aunt who passed at 105. And right
2165 now, I don't know exactly what I'm going to build on it, sell it, or what. But my main
2166 purpose is to try to get it as marketable as much as I can. So, I asked Rob to represent
2167 me because he is interested. So that's basically why I need to get the 50-feet of frontage.
2168 I need to get the variance for 50-feet so that I can be able to get as much for the property
2169 as I can.
2170
2171 Ms. Harris - Any questions for Mr. Fountain.
2172
2173 Mr. Green - You said that property has been in your family for over 100
2174 years?
2175
2176 Mr. Fountain, II - Yes. The house, I think, it's about 109.
2177
2178 Mr. Blankinship - The property's been since 1909.
2179
2180 Mr. Fountain - Everybody that lives on the property is actually a relative. It's
2181 just that the house at 607 Fountain Lane, that was my Mom's house and I have done
2182 some renovating in that so that I am now renting that out. I don't have any further use for
2183 the other properties.
2184
2185 Ms. Harris - Any other questions from Board members? Thank you, Mr.
2186 Fountain.
2187
2188 Mr. Fountain, II - Thank you.
2189
2190 Ms. Harris - Who else wants to speak in support of this application?
2191
2192 Mr. Aubrey Fountain, III - Hi, my name is Aubrey Fountain, III. I am the son of Mr.
2193 Fountain who just spoke, heir of the property. I think it was very eloquently put forth by
2194 staff, in terms of the conditions that are required here. And I think it meets all the
2195 applications for hardship to accommodate the variance. I'm also speaking in support of
2196 opposition to the condition #2 with regard to the setback requirements. I think what
2197 happens in this situation is it does end up creating a 60-foot setback from the property;
2198 and based on just the width of the property, I think it also creates a unique hardship in
2199 terms of the buildable area of the lot. And I think, again, you'd have to push property back

2200 toward the Westhampton Court and that would be more intrusive, and so we're thinking
2201 that even though that condition was imposed on the property that's across the street, it
2202 appears that it's been grandfathered in so that that property is only, I guess 40-feet,
2203 effectively, from Fountain Lane. Whereas, if we impose that same condition on the
2204 property across the street, it would effectively end up being a 60-foot setback
2205 requirement. And so, to allow for the conformity of consistency with the property across
2206 from Fountain Lane, we're thinking that the additional of 25-foot width, plus the 35-foot
2207 create a 60-foot setback will be a little bit more intrusive to the existing property. But
2208 otherwise I stand, obviously, in total support of the variance and I appreciate staff's work
2209 as well in terms of articulating the conditions for hardship in the variance.
2210

2211 Ms. Harris - Mr. Fountain, is most of that lot sloping?
2212

2213 Mr. Fountain - So from what I understand, the rear part of the lot, in the
2214 northwestern corner is very sloping; and it's going to be a very difficult area to build in as
2215 well. So, again, the more you push that off Fountain Lane, the further east you push it,
2216 and the further north you'll have a less buildable lot. So, you would be dealing with a lot
2217 less buildable lot by having the additional setback, the 25-feet
2218

2219 Ms. Harris - Thank you. Are there other questions from Board members?
2220

2221 Mr. Green - While I understand that, Mr. Fountain, it's not that you are
2222 trying to build anything right now, you just want the variance in the event you decide to
2223 do something later.
2224

2225 Mr. Fountain - Absolutely. Whereas my father articulated, it wouldn't be a
2226 marketable ... to be able to do anything with the property or even to convey it. At this
2227 point, we're mostly concerned with keeping the property within the family. We just want
2228 to make sure we obtain all of our eligible rights for the marketability and transferability of
2229 the property as well.
2230

2231 Ms. Harris - Thank you. Anyone who opposes this application? Please
2232 come forth and give us your name and spell your last name.
2233

2234 Mr. Wayne Weeks - Madam Chair and members of the Board. Thank you for
2235 allowing me to be able to speak this morning. My name is Wayne Weeks, W-e-e-k-s. I,
2236 and my wife and family live 616 Westham Woods Drive. We have lived in this property
2237 for a little over 20 years. We are basically opposed to it because we did not know the
2238 development plans and what they would do. Obviously, our concerns are of privacy and
2239 intrusiveness, as Mr. Fountain, III, addressed. We are speaking for ourselves. We are
2240 very private people. We have put a lot of time and energy into making our backyard a
2241 place of sanctuary, plus for entertainment and a place for us to escape. We have an
2242 addition on our property, a nice brick patio with improvements to the driveway, and things
2243 like this, in addition to doing our own landscaping. So, it is that special kind of place for
2244 us.
2245

2246 I also am here, a little bit, representing our neighborhood association, Westham Woods
2247 Neighborhood Association. It is an incorporated association. As you may know, the
2248 neighborhood was built in the late 70's and there are members who are still Charter-
2249 original members of our neighborhood. It's a great place. A lot of new families are
2250 transitioning in and we hope it will continue to be a special place in western Henrico.
2251

2252 There are concerns expressed by neighbors to me, once I alerted them to my notice of
2253 variance; and some of this stuff has to do with rainwater management and also my
2254 concern of continued development of Fountain Lane will exacerbate those properties in
2255 the future.
2256

2257 I also wanted to point out, for the record, that in no way do we want to disparage the
2258 Fountain family's name and good standing in the neighborhood by speaking against them.
2259 They've been, basically, great neighbors. Though we haven't met them yet, we hope in
2260 this process we'll be able to and participate a little bit in the future planning of how they
2261 want to develop. But when they did develop, the property I believe is 607 Fountain Lane,
2262 I don't know the specific facts but, one day I come home, this bulldozer is tearing down
2263 trees, grading the land out. Then everything stopped. There was an extensive period of
2264 time that for some reason construction did not continue. Of course, as a little bit of an
2265 environmentalist, I was concerned about the sediment runoff from an exposed clay soil
2266 right down into that tributary rock creek. So, I hope that whatever happens in the future
2267 maybe a little more attention and consideration could be given to some of these factors.
2268

2269 I do know that we do have a problem with the front of the driveway, and I can imagine
2270 development would only exacerbate this problem, which is the gravel driveway on heavy
2271 rainstorms ends up accumulating, since it's uphill, comes down into the intersection
2272 Westham Woods Drive and Ridge Road. I would say six, eight times a year we're calling
2273 the county to come sweep the street. Perhaps, in the future, paving that road could help
2274 mitigate the effects of that. It is, at the top of the street a school bus stop. So obviously
2275 there are a number of children in the neighborhood who would be up there having to fight
2276 the gravel. In addition to the daily cars coming in and out on Ridge Road.
2277

2278 Now that I have heard some of the issues as well regarding the setback in the front,
2279 obviously to be able to move that, if you do grant the variance and there is development,
2280 to be able to build that property closer to Fountain Lane and less close to the Westham
2281 Woods neighborhood property line. I think would be of benefit to our neighborhood. Again,
2282 as that intrusiveness and that invasion, and that kind of lost tranquility will probably
2283 happen. We hope that there will be adequate privacy barriers, both man-made and
2284 natural incorporated into any future design so that we can find that right balance where
2285 property ownership and development is encouraged but, at the same time existing
2286 residents and their needs and their concerns are addressed.
2287

2288 Ms. Harris - Mr. Weeks, what's your address again?
2289

2290 Mr. Weeks - 616 Westham Woods Drive. There are five properties. Let's
2291 look at the aerial. I am right here. I also want to point that there are a couple of other

2292 neighbors that are here in the room. I'm not sure if they wanted to speak but, I wanted to
 2293 let you know if they don't speak, they're here. But, I'm right here. I'm in the middle. So,
 2294 I'm obviously going to be impacted probably by the future plans. I did manage to get ...
 2295 but it shows the existing easements and I think a quick examination of it would show that
 2296 probably the most likely place to be building on the lot is up here; and that, obviously,
 2297 affects these properties here in addition to other concerns that some of our neighbors
 2298 may have.
 2299
 2300 Ms. Harris - Ok. We saw a picture of the house a few minutes ago. What
 2301 was that structure? Is that a brick home that was on the slide?
 2302
 2303 Mr. Johnson - At the entrance?
 2304
 2305 Ms. Harris - What is that?
 2306
 2307 Mr. Weeks - No, not 607. I apologize, I have the wrong address. Maybe it's
 2308 618.
 2309
 2310 Mr. Blankinship - 618 is the one that was built in ...
 2311
 2312 Mr. Weeks - Like in 2005
 2313
 2314 Mr. Blankinship - And this house was built in 1954.
 2315
 2316 Mr. Weeks - And my concern there was simply that it stopped and then
 2317 there was probably some environmental impact of having stopped that.
 2318
 2319 Ms. Harris - The address of this house is what?
 2320
 2321 Mr. Blankinship - This is 607.
 2322
 2323 Mr. Weeks - That's 607. That's the house that was built that I was
 2324
 2325 Mr. Blankinship - We were looking at 607. Now we're looking at 618.
 2326
 2327 Ms. Harris - Westham or is this Fountain Lane.
 2328
 2329 Mr. Weeks - That's on Fountain Lane.
 2330
 2331 Mr. Green - This house is owned by who?
 2332
 2333 Mr. Blankinship - Ah, let me look at that for you. That is owned by Gregory B.
 2334 Jones.
 2335
 2336 Mr. Green - Ok.

2338 Mr. Weeks - And I do not claim to know many of the facts around that other
2339 than the experience as a property owner with a line sight, you know, to that.
2340

2341 Mr. Reid - Is this more across the street?
2342

2343 Mr. Weeks - Yes, it will be across the street. If that lot is between this
2344 house right here and several of the neighbors here today, their property lines.
2345

2346 Mr. Blankinship - Yes, that's that home we were just looking at, is the one right
2347 there.
2348

2349 Mr. Weeks - You know, I think part of our concern now is ... I'm going to
2350 give time to other neighbors to speak ... was the experience of what happened to the
2351 Giada's house, right here. And the shock and dismay at our neighbors to find that this
2352 encroached so closely on our neighbors and we do not want that to be repeated. That
2353 was, you know, that was so frustrating and disappointing that our neighbors were
2354 impacted in such a terrible way with their privacy, and there's very little room. And though
2355 they are delightful people, it's still a permanent structure that does have lasting impact.
2356

2357 Mr. Blankinship - Is that a private home?
2358

2359 Mr. Weeks - This one here. Yes, it is. That is a private home. That's a
2360 beautiful home.
2361

2362 Mr. Green - I have a question. When you bought your house, did you take
2363 into consideration that the property that was behind you, the Fountain property, that
2364 someone owns that and at some point, folks will, can do things with that property?
2365

2366 Mr. Weeks - I respect that, totally.
2367

2368 Mr. Green- The reason I ask that is, if we may deviate, because when we
2369 had these landfill issues, you know, some of these things have already been established,
2370 and there, then all of a sudden these neighborhoods are developed, and the people don't
2371 like what's there but, then ... certain things were already there before you built and buy,
2372 you should take those kind of things into consideration and why should they acquiesce to
2373 you all. I'm just being facetious. They may have property that they may want to do
2374 something with just like you got property that you want to do something with. I can
2375 appreciate the fact that you want, that you like that privacy but,
2376

2377 Mr. Blankinship - That's somebody else's privacy. That privacy belongs to
2378 somebody.
2379

2380 Mr. Green - Yes, but it could belong to somebody else and at the same
2381 time, you need to consider that unless you own it and control it, that at some point, you
2382 have no control over them from doing things with property that they own. It just bothers
2383 me when I hear people wanting to block individuals from not being able to use property

2384 that their families have, or they've owned for a long time. Now all of a sudden, they start
2385 to do something with it ... that house across the street has nothing to do with that piece
2386 of property and to associate the two, you know, I just think that it's unfair.

2387
2388 Mr. Weeks - Well, I appreciate that. I appreciate your comments. I think it's
2389 the impact that is possible with this. I'm not saying we are opposed to the development.
2390 I think this whole process allows for a dialogue and exchange of concerns. And, there's
2391 this side and this side but, somewhere along the way in the middle I believe is a solution,
2392 a compromise in the way neighbors can get along and everyone's happy.

2393
2394 Mr. Green - I'm a fact-based person. Now you made a statement *an*
2395 *impact that is possible*. I don't know what that means, because anything is possible; that's
2396 an ambiguous statement.

2397
2398 Mr. Weeks - The development of the property where you could put a house
2399 very close to the back property line, which would change the dynamic and character that
2400 is existing there.

2401
2402 Mr. Green - But they own the land. They can do that.

2403
2404 Mr. Weeks - I understand that they can. They own the land and they can
2405 do with it as the county and the laws, you know ... and so, I agree with that. No one is
2406 fighting their development of it. It's more to express the concerns we have with the
2407 development. We didn't know what they were doing with it. Because in calling the
2408 Planner, we have no idea where the house is but, you can see that probably with the
2409 easements that exist on the lot line, that's where the house or the improvement would be.
2410 We don't know whether this is going to be a 2,000 sq. feet house, a 4,000 sq. feet house.
2411 You know, and I hope in the end it becomes the start of a process to where we as a
2412 neighborhood are engaged rather than ... well, there's no need to do that because we're
2413 the property owners and we don't ... and that's just kind of bad neighbor business. You
2414 know, and I hope we can be good and civil and decent people in the process. I don't want
2415 to do litigation, I don't have time for that.

2416
2417 Mr. Green - Do what, litigation?

2418
2419 Mr. Weeks - Litigation. I want to avoid that at all costs. I'm just trying to
2420 express my concerns this morning, you know, about the impact of continued development
2421 along Fountain Lane.

2422
2423 Mr. Blankinship - And then your objection to the 25-feet is very helpful?

2424
2425 Mr. Weeks - That would be problematic to me, too. Granting the variance,
2426 but at least eliminating the restrictions that would force the property back closer to the
2427 Westham Woods neighborhood.

2428

2429 Ms. Harris - Any other questions? Ok, Mr. Meeks, we have situations
2430 similar to this quite a bit. In where people want to determine who their neighbors are or
2431 what happens to their neighbor's property but, the solution is to buy the property. We
2432 know that if you buy the property yourself, then you don't have to worry about who's going
2433 to do something behind your house. So, we know that's not very feasible in many cases
2434 but, I think Mr. Fountain said that the property has not been sold yet so maybe some of
2435 your people may want to make an investment. Ok, any other questions from the Board?
2436 Thank you so very much for coming in.

2437
2438 Mr. Weeks - Thank you.

2439
2440 Ms. Harris - Who else wishes to speak?

2441
2442 Mr. David Walsh - Good morning. My name is Davis Walsh, W-a-l-s-h, and I am
2443 Mr. Weeks' neighbor. If we can pull up the, the plat that just shows the ... actually this
2444 one is fine. I'm where Charles Adcock is ...

2445
2446 Mr. Green - Ben, can you please pull that up. I'd like to see it. The aerial.

2447
2448 Mr. Walsh - I'm the brown house ... one up from the ... right there and join
2449 with what Mr. Weeks has said. I do want to make one point, I understand the Board's
2450 position here. But I have one concern and one point. My concern has to do with drainage.
2451 That property right now is a very steep slope and it comes to a crest where Mr. Weeks
2452 and my back yard are and then back out to the creek. With the rain that we have, that
2453 property is an important aspect to drainage; and obviously that would have to be dealt
2454 with at the building permitting stage.

2455
2456 Mr. Green - Right.

2457
2458 Mr. Walsh - But that is of concern to us because development of that land
2459 will not only impact drainage in Westham Woods, but also in University Heights ... The
2460 one point I do want to ... with all due respect, Mr. Green, I have to put back a little bit on
2461 the house on the other side of the cul-du-sac. Part of what we as residents of Henrico
2462 County you know, hope and see is that the permitting laws, the county code are abided
2463 by, and what happened ultimately with that house for whatever reason, I don't know the
2464 story, likely there was a variance granted, but that house now is very, very, close to one
2465 of our neighbor's property line. I think ultimately, I'm not a realtor, I'm a lawyer. But I
2466 think it will affect some of our neighbors' property values. And I join Mr. Weeks in wanting
2467 to avoid that outcome on his property. And so, sounds like from what I'm hearing again,
2468 and I'm not an expert, that the 25-foot setback from Fountain Lane is something that this
2469 Board should consider removing. I mean, I oppose the variance because we don't know
2470 what's going to happen. So I am opposing based on the lack of knowledge of what's going
2471 to happen next. But to the extent that that development can be pushed closer to Fountain
2472 Lane, I think it could benefit us all and avoid the situation that happened on the other side
2473 of the road. That is our point of reference right now. They are great neighbors, but

2474 unfortunately, I think it's going to impact a couple of property values and we would like to
2475 avoid the same thing here. Thank you.

2476
2477 Ms. Harris - Any questions for Mr. Walsh?

2478
2479 Mr. Green - Well, so you are in support of what the applicant is saying, get
2480 rid of the 25-foot condition piece and pushing it closer to Fountain Lane?

2481
2482 Mr. Walsh - I support that in concept. I haven't seen that in writing. I don't
2483 have the application in front of me. So, I don't ... my ... my lawyer hat has to take over
2484 at some point and not agree to anything without seeing it in writing. But I will say that in
2485 concept that makes sense. Because that is, I think ultimately that also ... I'm talking
2486 against myself here, that may help the development of the land, just from the standpoint
2487 that the back half of that property is a very steep hill and will have significant drainage
2488 issues when the building comes around. So, I think if we, if you in a sense are allowing
2489 for more building near Fountain Lane that will help avoid the situation that we had on the
2490 other side of the cul-de-sac.

2491
2492 Mr. Green - I think that's what Mr. Fountain said. It does have that
2493 problem. That's why he wanted to build closer.

2494
2495 Mr. Walsh - Absolutely, absolutely. And I come here today ... I remain in
2496 opposition simply from the fact that we don't know what's happening next. I understand
2497 what the Fountains are trying to do, and completely respect that. I think that from our
2498 perspective, if the Board is granting the variance, we would encourage the Board to
2499 remove that 25-foot requirement. But again, it's the not knowing what's happening next
2500 that is bringing the opposition and myself out, as Mr. Weeks said.

2501
2502 Ms. Harris - Mr. Welsh, you do have a legitimate concern. I just need to
2503 share something with you, if I may. Behind our house, we have a creek, Hungary Creek.
2504 ... that people worry about.

2505
2506 Mr. Walsh - Yes, Ma'am.

2507
2508 Ms. Harris - We decided, the neighbors decided to buy the property, you
2509 know like, down to .6, .4, whatever percentage of an acre ... but we all decided to buy the
2510 land from our houses, our property lines to the Creek. And then all we had to worry about
2511 was another subdivision on the other side, but it did drain into the creek. So, I know it's
2512 possible to go ahead and purchase the land, if neighbors would get together.

2513
2514 Mr. Walsh - That's very doubtful. I think right now it's just ... again, having
2515 two weeks to have thought about this situation from the day of the notice... the immediate
2516 concern I had, having walked back out there has to be with drainage. Obviously, this year,
2517 we've had a record amount of rain. But it's kind of a crest and it goes both ways. Whereas,
2518 the development of that lot needs to have an impact on the drainage for two

2519 neighborhoods. Something that we've asked the county to keep in mind should that ever
2520 move forward.

2521
2522 Ms. Harris - Ok. Any other questions?

2523
2524 Mr. Johnson - Yes.

2525
2526 Ms. Harris - Mr. Johnson?

2527
2528 Mr. Johnson - One other question referring to that drainage, is that drainage
2529 behind your house?

2530
2531 Mr. Walsh - If I can ... see, my house is right here. My neighbor's is right
2532 here. There's a creek in Mr. Weeks ... I'm literally the new person to the neighborhood.
2533 I've lived there three and a half years. There's a creek, that I believe, runs right in here.
2534 The part I can see when I go out in my backyard is right in here. The creek runs through
2535 here, and so this portion really ... I would estimate ... this neighborhood down where you
2536 have the downgrade, down towards the creek and I was, we unfortunately lost a dog last
2537 week, so I was out there and the dog was back in the creek, which was full at the time.
2538 This was two weeks. This was before the snow, but it remains pretty full down there
2539 though.

2540
2541 Mr. Johnson - So it's drainage from your property as well as the next
2542 property that drains into that area?

2543
2544 Mr. Walsh - I can't say that currently it drains through my ... My property
2545 would be adversely affected if there is development. If there is development alongside
2546 this because there is a little bit of a crest. We have significant runoff. Anything that rains
2547 in here is going to run through my house and my neighbor's house. The crest of the hill
2548 is right behind our property line.

2549
2550 Mr. Johnson - Ok.

2551
2552 Ms. Harris - Thank you so much. Anybody else who wishes to speak in
2553 opposition to this application.

2554
2555 Mr. Gerald Parr - Good morning. My name is Gerald Parr. P-a-r-r. I'm the
2556 neighbor on the other side of Mr. Weeks; and I won't keep you guys here the rest of the
2557 morning talking about things I agree with, basically, what my other two neighbors were
2558 saying. We have been at 614 Westham Woods for 32 years this week and certainly
2559 respecting the right of the Fountain family to do whatever one wants to do with their land
2560 that they own there ... they have every right to do. I guess we all don't necessarily react
2561 well to change. I greatly ... Mrs. Parr and I greatly enjoyed having that ... That lot has
2562 been a vacant lot back there. I put some leaves back there from time to time. But
2563 whatever, it's been very nice having that and they have been good neighbors, even
2564 though we don't know these folks. But I think my main concern is again, is water runoff

2565 as you go up towards Ridge as it gets higher over on that side than ... We looked back
2566 out our window this morning, it's a bit ... that vacant lot across ... we have the Jones'
2567 home directly across ... but on the other side there. And as we look, it's not too much
2568 higher than us where we are, but as you approach back towards Ridge ... I've heard
2569 neighbors express concern about more water runoff. Especially like it's been this year.
2570 Obviously, from a selfish standpoint we have enjoyed 30 years of privacy back there, but
2571 I realize that stuff does change, and people can do whatever they want to do with their
2572 property. I realize stuff change. Our concern is runoff, either during the construction
2573 period or during a heavy rain. That's basically what ... I just wanted to confirm what
2574 Wayne and Davis had said earlier. So, thank you for your time.

2575

2576 Ms. Harris - Thank you. Questions?

2577

2578 Mr. Green - Fortunately, the Fountains have said that they are not trying
2579 to put a house on it or trying to do anything with it right now. They just want the ability to
2580 have that option. So, you're still going to potentially have that privacy until, I suspect, they
2581 decide to do something with it, and then ... What could potentially be built there versus
2582 what is there now ... They are not proposing any plans, so you still have your privacy.

2583

2584 Mr. Parr - Thank you.

2585

2586 Mr. Green - And, now do you agree with the 25-foot piece that would push
2587 it closer to Fountain Lane?

2588

2589 Mr. Parr - I wish that I could ... yeah, well, I certainly rather it go that way
2590 than come our way. Yes, sir.

2591

2592 Mr. Green - So that seems to be a good compromise for your subdivision?

2593

2594 Mr. Parr - Yes.

2595

2596 Mr. Green - But if we would eliminate this, that would help you all?

2597

2598 Mr. Parr - Yes, sir.

2599

2600 Mr. Green - Thank you.

2601

2602 Ms. Harris - Anyone else who wishes to speak to this case, or actually in
2603 opposition? Keeping in mind that we have heard several people talk about the water
2604 runoff, so we don't need to hear that again. Ok, rebuttal.

2605

2606 Mr. Lanphear - Can we have an aerial ... I'm sorry, the topography shot put
2607 up? We're certainly thankful for the process, and hearing from all the neighbors as well. I
2608 do want to touch on three brief things. The first two are water; and the first one would be
2609 water from the subject property upon eventual construction. And currently ... let me use
2610 a pointer ... There is a crest right down here and if water falls in this area, it flows to the

2611 north. If water falls closer to Ridge, it flows towards Ridge. So, in speaking about the
2612 subject property, anything that would fall in the buildable area, which would be to the
2613 south of the sewer easement would flow down to the creek as mentioned.

2614
2615 Condition 4, which is in the conditions from staff addresses that. It says that clearing,
2616 grading or other land disturbing activities shall not begin until the applicant has submitted,
2617 and the Department of Public Works has approved an environmental compliance plan,
2618 which would include water runoff. So, we're happy with that condition in the staff report
2619 and we'll accept that condition.

2620
2621 The second concern about water has to do with water that falls towards Ridge Road and
2622 would impact the entrance to the property, which is seen here; and that would be a much
2623 larger issue than this case would address, in terms of water flowing down to Ridge Road
2624 towards Westham Road, towards the entrance to this property. There is also a condition
2625 in the report that staff has proposed that prior to the issuance of a C.O., the applicant
2626 shall repair any damage to Fountain Lane that resulted from the construction of the
2627 dwelling. Included with that would be the access from Ridge to the driveway, which would
2628 help alleviate some of the concerns, I believe, towards the water flow in that area.

2629
2630 Third thing I want to mention is the impact of construction on the site. I'm going to bring
2631 out this Jones house over here, just for illustration. I'm not sure what the setbacks are on
2632 that property. I suspect that maybe 12 feet from the lot line.

2633
2634 Mr. Blankinship - That's correct. That's the side yard on their property. It would
2635 be the rear yard on the subject property.

2636
2637 Mr. Lanphear - Correct. Ok. If that is the case, I want, just for illustration to
2638 show the setback from the existing home across from the property is approximately 40
2639 feet. So, you can see here that would be about a 40-foot setback, and you can contrast
2640 that with this as a 12-foot side yard setback. So, the setbacks that would be imposed on
2641 this new property are three times that of the other property. With that, are there any other
2642 questions you might have?

2643
2644 Mr. Green - Mr. Blankinship, a quick question. The individuals that
2645 oppose, do they have access to the conditions of approval that staff recommends?
2646 Because, you know ...

2647
2648 Mr. Blankinship - We don't mail them out but, I mean, they are public record if
2649 they request them.

2650
2651 Mr. Green - So, have you all seen them?

2652
2653 Mr. Blankinship - ... they're certainly welcome.

2654
2655 Ms. Harris - Usually, they are available, right?

2656

2657 Mr. Blankinship - Yes.
2658
2659 Ms. Harris - They are available here?
2660
2661 Mr. Blankinship - Right, yes.
2662
2663 Ms. Harris - Yeah, that we can see.
2664
2665 Mr. Blankinship - Yes.
2666
2667 Ms. Harris - Ok, any more questions from Board members? You said
2668 rebuttal? Mr. Fountain.
2669
2670 Mr. Fountain, III - Yes, I thank Mr. Lanphear for his comments in addressing a
2671 lot of the water issues, and I just kind of wanted in terms of my rebuttal and in terms of
2672 some of the comments we made.
2673
2674 Mr. Blankinship - To us please.
2675
2676 Mr. Fountain, III - I'm sorry. Yes. We also want to be good neighbors to our ...
2677 I think Mr. Green made a good point. I am as attorney as well and I am subject matter
2678 expert in this area as well. One of the things that's required is notice requirements. Our
2679 family has been on this property for over 109 years. And, in law, its' a term called Priority
2680 of Occupation, which means that these homeowners will, on notice, that this property was
2681 currently zoned for this purpose and could be used for this purpose when they acquired
2682 their properties, and so, we're on effective notice that construction could take place on
2683 this property within the zoning. Any proposed development obviously would meet, you
2684 know, the zoning requirements, the runoff and that sort of thing. We also loved that
2685 privacy before the subdivision was built. So, we understand. You know, we like privacy.
2686 We didn't oppose the development being built. We didn't know what kind of houses were
2687 going to be built on that property and how close they would be to our property. So, we
2688 would ask that they also respect us in our process. Thank you.
2689
2690 Ms. Harris - Ok. Thank you. Alright, that concludes this case. Variance
2691 25. What is the pleasure of the Board?
2692
2693 Mr. Reid - I've been a resident of Richmond for almost 50 years now and
2694 there has always been a Fountain Lane. I live over in that general vicinity and it's always
2695 been there. I move that we approve variance 2018-00025 to allow the future development
2696 of the property at 615 Fountain Lane and approve the changes requested in item #2 of
2697 the conditions of approval, concerning the 25feet setback.
2698
2699 Mr. Green - Second.
2700
2701 Ms. Harris - Ok, we moved and properly seconded that we approve this
2702 variance. Are there any questions on this motion? Sir, let me get ...

2703
2704 Mr. Blankinship - I just had the same question I had before. If this variance were
2705 denied, what reasonable use would they have of this property?
2706
2707 The Board - None.
2708
2709 Mr. Blankinship - I just want to make sure that's on the record.
2710
2711 Ms. Harris - And we're striking sentence 2.
2712
2713 Mr. Blankinship - Yes.
2714
2715 Ms. Harris - From the conditions ... sentence 2 of condition 2, we're
2716 striking. And if this variance were not approved, there would be absolutely no use of the
2717 property. Any more discussion on this motion? All in favor, say aye. Those opposed,
2718 say no. Ayes have it, so moved.
2719
2720 After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Green,
2721 the Board approved application **VAR2018-00025, AUBREY W. FOUNTAIN, II's** request
2722 for a variance from Section 24-9 of the County Code to build a one-family dwelling at 615
2723 Fountain Lane (Parcel 755-738-1177) zoned One-Family Residence District (R-3)
2724 (Tuckahoe). The public street frontage requirement is not met. The Board approved this
2725 request, subject to the following conditions:
2726
2727 1. This variance applies only to the street frontage requirement for one dwelling only. All
2728 other applicable regulations of the County Code shall remain in force.
2729
2730 2. The proposed dwelling shall be oriented towards Fountain Lane. The western property
2731 line shall be considered the front of the lot. The proposed dwelling shall be setback at
2732 least 35 feet.
2733
2734 3. Any dwelling on the property shall be served by public water and sewer.
2735
2736 4. Clearing, grading, or other land disturbing activity shall not begin until the applicant has
2737 submitted, and the Department of Public Works has approved, an environmental
2738 compliance plan.
2739
2740 5. The applicant shall present proof with the building permit application that a legal access
2741 to the property has been obtained. The private road shall be improved with a durable
2742 asphalt or compacted gravel surface at least 10 feet wide with 12 feet of horizontal
2743 clearance and 14 feet of overhead clearance to provide access for police, fire, emergency
2744 medical services, and other vehicles. The owners of the property, and their heirs or
2745 assigns, shall accept responsibility for maintaining access to the property as prescribed
2746 in the established maintenance agreement.
2747

2748 6. Prior to the issuance of a certificate of occupancy, the applicant shall repair any
2749 damage to Fountain Lane that resulted from the construction of the dwelling.
2750

2751
2752 Affirmative: Bell, Green, Harris, Johnson, Reid 5
2753 Negative: 0
2754 Absent: 0
2755

2756
2757 **VAR2018-00026** **JIM HENNESSEY**, requests a variance from Section 24-94 of
2758 the County Code to build a screened porch and a deck at 12288 Porsche Drive (Welwood)
2759 (Parcel 736-770-9418) zoned One-Family Residence District (R-2AC) (Three Chopt). The
2760 rear yard setback is not met. The applicant has 40 feet rear yard setback where the Code
2761 requires 45 feet rear yard setback. The applicant requests a variance of 5 feet rear yard
2762 setback.
2763

2764 Mr. Blankinship - Would everyone who intends to speak to this case please
2765 stand and be sworn in. All raise your right hands, please. Do you swear the testimony
2766 you're about to give is the truth, the whole truth, and nothing but the truth so help you
2767 God?
2768

2769 Mr. Gidley - Thank you, Mr. Secretary, members of the Board. The
2770 applicants purchased the property earlier this year and had a two-story home constructed
2771 on it. Recently, they came into the Permit Center to get permission for a deck and
2772 screened porch addition on to the rear of their property. ... And this would be the
2773 approximate location in the back of the property, right here ... Because decks are allowed
2774 to encroach up to ten feet into the rear yard setback, a deck could be constructed on the
2775 property. A screened porch, however, is required to meet the same setbacks as the
2776 home; and, there were setback issues encountered by them. Evidently, they came over
2777 from the Permit Center and met with Planning staff and asked about a variance and they
2778 were advised that it did not appear that they met the requirements for a variance.
2779

2780 Specifically, the requirements for a variance require them to show one of two items. First,
2781 there's a hardship resulting in change of Code, prior to the actual hardship itself.
2782

2783 In this case, the subdivision is new and the Code section dates back to the 1960's, so
2784 that test is not applicable. The second option is to show there's no reasonable use of the
2785 property. The applicant themselves indicated in their application, they understood the
2786 property was not unreasonably restricted. The new residence that exists, along with the
2787 ability to add a deck, provides reasonable use of the property. This is in contrast to our
2788 two previous requests, where absent a variance, the landowners would essentially end
2789 up with absolutely no use of their property at all.
2790

2791 The applicants attempt to justify their request by indicating the screened porch is part of
2792 their plans. Land to the rear contains wetlands and there are no neighbors and also that
2793 the wetlands cause mosquitos to come onto the property.

2794
2795 The Virginia Supreme Court, in its Cochran decision, I noted that however, regardless of
2796 the reasons put forth, the BZA is empowered to act when a case falls within its jurisdiction.
2797 And, in this case, that is when one of the above two conditions is met; and neither appear
2798 to be met in this case.

2799
2800 Two years ago, the Board actually heard a similar request where an applicant had an
2801 existing deck in this case and wanted to convert it into a screened porch and indicated
2802 that there were wetlands behind the property and that caused mosquitos, etc. In that case,
2803 the Board denied the request because the property had reasonable use already with the
2804 existing home.

2805
2806 I would note that when the applicants came in and met with Mr. Blankinship, since they
2807 didn't appear to meet the requirements for a variance, he was able to come up with an
2808 alternative. And you can see the rear yard here ... again, it's common area and wetlands.
2809 He suggested that they approach the developer about acquiring additional land to solve
2810 the setback concerns. And evidently, they did meet with the developer and he indicated
2811 he was open to selling them the needed land. They, nonetheless, came back in later and
2812 said because a variance was quicker, they just wanted to apply for a variance. Mr.
2813 Blankinship is the one that met with them firsthand, so I'm sure he can confirm that.

2814
2815 Mr. Blankinship - They have, so it was good you mentioned that.

2816
2817 Mr. Gidley - So, in conclusion, although the applicants' perspective is
2818 understandable, they do not appear to meet either of the two main requirements for a
2819 variance under the Code of Virginia. The existing home and the ability to add a deck
2820 provide reasonable use of the property. And secondly, since the relevant ordinance
2821 section pre-dates the subdivision, there is no hardship caused by a change in the
2822 ordinance. Because the applicant does not meet the requirements for a variance under
2823 the Code of Virginia, staff recommends denial of this request. Instead, we would urge the
2824 applicant continue to work with the developer to acquire the land necessary for their
2825 project to move forward.

2826
2827 That completes my case. I would be happy to answer any questions.

2828
2829 Ms. Harris - Are there any questions from Board members? Thank you,
2830 Mr. Gidley.

2831
2832 Mr. Gidley - Thank you, Ma'am.

2833
2834 Ms. Harris - Let us hear now from the applicant.

2835
2836 Mr. Jim Hennessey - Hi, my name is Jim, James Hennessey, H-e-n-n-e-s-s-e-y;
2837 and my wife, Linglin Hennessey. We asked for the variance ... When I retired, we moved
2838 down here from Leesburg to be near our grandchildren, and we purchased the house

2839 from the developer. Brand new house, our dream house. We love this house. And when
2840 we wanted to put the screen porch in there, we found out that we're 5 feet over.
2841

2842 Ms. Hennessey - We moved three months ago, and when we lived in Leesburg,
2843 we had a screened porch and we loved it very much and that's our retirement home, our
2844 dream home. The builders ... in the contract ... it was 10x10 deck and we told them we
2845 don't want that. We want screened porch because we're going to have grandkids over
2846 and the wetlands are behind us, there's nobody behind our lot. You can see from picture,
2847 the builder build three by eight because they know we're going to have screened porch.
2848 We were not informed of any setback rules ... so that's we started the application process
2849 ...and now ..., basically ... so anyway, we're nervous.
2850

2851 Mr. Hennessey - We're a little nervous.
2852

2853 Ms. Hennessey - Yes, we are nervous. We were told to contact the builder ... I
2854 did contact the builder. The builder said they don't own the land, its common area. They
2855 never heard of selling us the land. So, they say well since the only applies to your land
2856 you should apply for a variance. We were informed by builder it was no big deal, because
2857 behind our land is common area. We don't have a neighbor on our right side where
2858 screened porch is going to be, it's the wetlands. So, we only live there three months. Our
2859 granddaughters came over, went and played in the back yard ... they got mosquitos all
2860 over. So, that's why we come here, and we pled. I know it's a Code ... We wish we had
2861 known before we bought the house because we would not have bought the house. But
2862 since we bought the house, now we're only ... if you look at the lot, it's only a corner, 5
2863 feet at an angle on the right side, it crossed the line. So, anyway, we're not in any way
2864 going to harm anybody by building a screened porch. The neighbors, we have an email
2865 letter from two neighbors, immediate neighbors. They are totally for it and they actually
2866 have their own screened porch. And building a screened porch will give our property, will
2867 give us our dream. That's what we're here for, our dream.
2868

2869 Mr. Hennessey - We'll improve the neighborhood, we'll improve Henrico
2870 County.
2871

2872 Ms. Hennessey - We'll be good citizens. We really to build our property, be a
2873 good neighbor ... be a good, you know ... be in a good neighborhood, improve the
2874 neighborhood. And I love gardening. I have my plants all on my porch. Without a
2875 screened porch, it's going to be a lot more harder and my plants will die, too, from the
2876 sun.
2877

2878 Ms. Harris - Are there any questions from Board members?
2879

2880 Mr. Johnson - The property in the back, you said, that it is common area?
2881

2882 Ms. Hennessey - Common area, then the rest of the land is owned by the ...
2883 It's a big area. Nobody around us.
2884

2885 Mr. Hennessey - There's nobody behind us. There's nobody to the right of us.
2886 In fact, the water coming off the ... it's a hill coming down behind us, so it's a lot of wet ...
2887 you know ... from the rains and snow and stuff, and it drains right beside our house. So
2888 ...

2889
2890 Ms. Hennessey - Yes, see there's a white line so this lot is a lot bigger than our
2891 Leesburg lot. But because the lot is in an angled shape, only the right corner, at an angle,
2892 crosses the setback line. It's only a little piece. Like I said, nobody's going to see the
2893 impact. We're not harming the neighborhood, nobody.

2894
2895 Ms. Harris - Mr. Hennessey and Mrs. Hennessey, do you think that the
2896 builder could have positioned the house so that we would not have this problem?

2897
2898 Ms. Hennessey - Yes, that's what we heard ... we wish ... that's what we feel
2899 was done to us because when we did the contract, we told them ... if you liked the deck
2900 ... we say no, we don't want that, we want a screened porch. And they should have
2901 informed us ... we would not buy the house. So, this is our lifetime savings. We bought
2902 a house. We can't sell it and move it. We can't get our screened porch. So, we just come
2903 here trying to ask for reasonable ...

2904
2905 Mr. Hennessey - When we moved in there in September, we had our grandkids
2906 over, a three, a five, and now we have a six-month old, Chester. And we were out there,
2907 and then we had to go back in the house. We had so many mosquitos on us and, you
2908 know, the dangers of mosquitos today ...

2909
2910 Ms. Hennessey - That is all we have, but we are here for you.

2911
2912 Ms. Harris - Any questions from Board members?

2913
2914 Ms. Hennessey - Thank you very much for listening.

2915
2916 Mr. Hennessey - Thank you.

2917
2918 Ms. Harris - Any questions from Board members? Thank you so very
2919 much. Do we have anyone who favors this application? Come forward, please.

2920
2921 Gary Weston - Good morning. My name is Gary Weston, W-e-s-t-o-n. I don't
2922 live there or in the neighborhood. I am just the builder that's trying to do this for them.
2923 When I went there to go walk around the yard, to start off with to do the screened porch.
2924 Their yard is still wet. Even though the wetlands are up higher, their ground kind of slopes.
2925 So even in their back yard, when it's not raining, it's still more moist. They do have a lot
2926 of the mosquito things. But as far as the builder goes, I don't see another way of doing
2927 ... giving them what they really want or that is 100 percent usable. They could do a real
2928 tiny screened porch that would meet the Code, but with the amount of grandkids, their
2929 dog and them, it's not enough room for them. And in order to make it look good, even if
2930 you tried to cut corners like 45 the deck and then bring it around, it won't look right. It's

2931 either they get it, or they don't. So that's basically what I got ... It is really wet back there.
 2932 So, I can understand their reasoning. I think the wetlands on top of the hill ... when I was
 2933 out there walking trying to find the property lines and what not, it's pretty bad and I think
 2934 they are the only house in that area that has the wetlands that close to their house. And
 2935 every house in that area does have a screened in porch because of this problem. I think
 2936 two of them just recently got them built.
 2937
 2938 Ms. Harris - Questions from Board members?
 2939
 2940 Mr. Johnson - The wetlands behind on the side ...
 2941
 2942 Mr. Weston - Its actually to the left, Sir.
 2943
 2944 Mr. Johnson - On the left?
 2945
 2946 Mr. Weston - Yes, if you are looking in the backyard looking towards their
 2947 house, the wetlands is to the left side.
 2948
 2949 Mr. Johnson - Ok.
 2950
 2951 Mr. Weston - But their yard stay so saturated. You can see in the other
 2952 picture ... They had a picture just of the back of the house, you can tell by that picture
 2953 how wet the ground really is ... that was a different one, I thought you had another one.
 2954 Yeah, like all that, when you step, you sink. Like there's a creek when ... Can you go back
 2955 to the last picture, sir? No, the other one. The one that had the woods. So, right there
 2956 where that woods line is, is actually a small spring ... not a creek but, a spring. That also
 2957 flows through there as well.
 2958
 2959 Mr. Johnson - Is that a large ... the slope is that two or three feet or lower?
 2960
 2961 Mr. Weston - What did you say? How many feet?
 2962
 2963 Mr. Johnson - I mean ...
 2964
 2965 Mr. Weston - From the road?
 2966
 2967 Mr. Johnson - I mean from the back of the ... from the side of the facility.
 2968
 2969 Mr. Weston - Well, kind of like at the side it does slope down tremendously,
 2970 and then it gradually goes down. But I would say that it's probably every bit of 6-8 feet ...
 2971 level ... if you put a level to it.
 2972
 2973 Mr. Johnson - So, in order to fill it, it would be costly?
 2974
 2975 Mr. Weston - Yes.
 2976

2977 Ms. Harris - We were told that the ??? may sell part of the common ground
2978 to them but, they thought this was a quicker way of getting that resolved. I think we heard
2979 that in testimony. Are there any other questions? Ok, thank you so much, Mr. Weston.
2980
2981 Any other questions? Do we have anyone who opposes this application? So, we don't
2982 need rebuttal because there is no opposition. So let's go back and vote.
2983
2984 Last variance, 26. What is the pleasure of the Board?
2985
2986 Mr. Green - As the Three Chopt Representative, I recommend we approve
2987 the request for a variance for the Hennessey's family. One way I'm looking at it is that
2988 other individuals in the neighborhood have closed in decks, so it would not be out of
2989 character for them. They have obviously spent a considerable amount of money in
2990 building this house and enclosing the deck is going to add to the potential value. We
2991 have the health and safety concerns. I don't want to see anybody's grandkids, kids or
2992 myself get bitten by mosquitos. And we can create a situation where they can enjoy the
2993 house and the neighborhood. It would only help us as citizens of Henrico County and
2994 since they did move from Leesburg and took the property taxes out of Leesburg and bring
2995 them to the County of Henrico and are going to pay more in taxes, I move to approve.
2996
2997 Ms. Harris - Is there a second.
2998
2999 Mr. Reid - I second it.
3000
3001 Mr. Bell - I would second it as well. That is part of the development as
3002 well, wouldn't it be?
3003
3004 Ms. Harris - What was the question?
3005
3006 Mr. Green - Yes.
3007
3008 Mr. Bell - The enclosed in ... you already have a porch, it would just
3009 have to be closed in.
3010
3011 Mr. Blankinship - No, it is not existing now.
3012
3013 Mr. Green - No, they're going to build it.
3014
3015 Ms. Harris - They're going to build a deck and then close it in ... screened
3016 in after they build the deck.
3017
3018 Mr. Bell - Ok.
3019
3020 Ms. Harris - I see that the applicants have another remedy to this problem.
3021 You know, where they did not pursue because they thought we would be quicker and I
3022 feel that in this particular case, they should probably look at the alternative but, in going

3023 by the county's recommendation, the county agrees with me but, nevertheless ... any
3024 more discussion on this?

3025
3026 Mr. Blankinship - I just feel it's my responsibility to say, the same question has
3027 to be asked. The question is whether or not the Board has the jurisdiction to consider a
3028 variance here depends on whether there is reasonable use of the property without a
3029 variance; and I think in this case, in my judgement, they have reasonable use of the
3030 property now. So the Board does not have any jurisdiction to grant the variance.

3031
3032 Mr. Green - So, why did they come to us?

3033
3034 Mr. Blankinship - Because the applicant filed an application and it's our
3035 responsibility to bring it forth.

3036
3037 Mr. Green - If we approve it then what happens?

3038
3039 Mr. Blankinship - It depends on whether its appealed.

3040
3041 Mr. Green - Then I'd say let that go through the process. I certainly don't
3042 want to create a situation where someone has to now be put in a situation where they
3043 may have to buy additional property because then whoever owns that property knows
3044 that they're in somewhat of a distressed situation that could drive the price up. Also, I
3045 would like to approve it, and if it is appealed they will then have to handle it that way.

3046
3047 Mr. Johnson - One other question. The property, could that be granted to
3048 them, since no one owns it?

3049
3050 Mr. Blankinship - It's owned by the developer of the subdivision at this time. So,
3051 the developer could sell it to them.

3052
3053 Mr. Bell - Is it too late that, if Mr. Green would agree, that you could put
3054 a clause into the condition of approval that ...

3055
3056 Mr. Blankinship - That they ... that they buy it? Then there's no need for it.

3057
3058 Mr. Bell - No, I'm talking about before ... How could we cover that 5 feet
3059 in a conditional approval?

3060
3061 Mr. Blankinship - If they bought that 5 feet, there would be no need for the
3062 variance.

3063
3064 Mr. Bell - You're saying it's not there unless they buy it?

3065
3066 Mr. Blankinship - If they don't buy it, then a variance would be necessary for
3067 them to do what they want to the property.

3069 Mr. Bell - But where we are right now with this will give them a chance
3070 to buy it.
3071
3072 Mr. Blankinship - If they buy it, then the variance is not necessary. So,
3073 essentially, it's kind of either or.
3074
3075 Mr. Johnson - Madam Chair.
3076
3077 Ms. Harris - Yes, Mr. Johnson.
3078
3079 Mr. Johnson - Can we postpone this ...
3080
3081 Mr. Green - No.
3082
3083 Mr. Johnson - and give them time to ...
3084
3085 Ms. Harris - The problem is ...
3086
3087 Mr. Blankinship - We could have. There's a possibility.
3088
3089 Ms. Harris - Postpone it for what reason?
3090
3091 Mr. Johnson - Until they can talk with the property owners to see if they
3092 would make an agreement ... something with them, if not, you bring it back to us and we'll
3093 ...
3094
3095 Ms. Harris - I thought it was sworn testimony, they said that the property
3096 owner of the common area was willing to sell it to them.
3097
3098 Mr. Johnson - They were?
3099
3100 Ms. Harris - That was in the testimony.
3101
3102 Mr. Blankinship - I don't know that that's a matter of fact, at this moment. I'm
3103 sorry, the hearing is over at this point.
3104
3105 Mr. Johnson - But if that could happen ... if that would happen so they can
3106 talk with them and let us know that it's not been...
3107
3108 Mr. Green - They said that they couldn't buy it.
3109
3110 Ms. Moore - Should we go through the tests just as an exercise?
3111
3112 Ms. Harris - Yes, let's do that.
3113
3114 Mr. Johnson - Yes.

3115
3116 Ok, would everybody turn to variance 26 ... and let's look at these tests. Ok, the first one,
3117 the property interest for which the variance is being requested was acquired in good faith
3118 and any hardship was not created by the applicant for the variance. ... These are the
3119 subtests ... Oh the threshold, yes. Let's go back to the Code of Virginia, which provides
3120 that a variance shall be granted if the evidence shows that the strict application of the
3121 terms of the ordinance would unreasonably restrict the utilization of the property or that
3122 granting of the variance would alleviate a hardship due to physical condition related to the
3123 property or improvements there at the time of effective date of the ordinance.
3124

3125 Ms. Harris – So, here ...

3126
3127 Mr. Blankinship - The ordinance was in place long before the house was built.
3128

3129 Ms. Harris - Right.

3130
3131 Mr. Blankinship - So, when the builder decided where exactly to build the
3132 house, he did not allow enough room for a screened porch. But that's not a defect in the
3133 property and that's not a defect in the Code. That's a decision that the builder made when
3134 the house was built. I think that if the Supreme Court's guidance, which is cited there, is
3135 directly on point in a case like this; the case that was overturned in the Supreme Court
3136 decision. The case that I am referring to in that Supreme Court decision was somewhat
3137 similar to this one.

3138
3139 Ms. Harris - The Cochran case?

3140
3141 Mr. Blankinship - Yes, Ma'am.

3142
3143 Ms. Harris - If we see that they have a ... if this Ordinance would
3144 unreasonably restrict the utilization of property ... but see, they can use the property.
3145

3146 Mr. Johnson - Yes.

3147
3148 Ms. Harris - So, it doesn't restrict the utilization of property.

3149
3150 Mr. Blankinship - Right, the point of the Code means that there is no reasonable
3151 use of the property.
3152

3153 Ms. Harris - Right. So ... In the Cochran case, which was a Fairfax case
3154 ... they said appropriate for consideration by the BZA in a case that falls within its
3155 discretionary power that they are immaterial in a case where the BZA has no authority to
3156 act. I think that's what Mr. Blankinship is questioning ... whether we have the authority to
3157 act.
3158

3159 The owners have reasonable use of the property, utilization of the property. In this case,
3160 the BZA is empowered to act only if one of the two above requirements are met; and

3161 according to the staff, neither of the two requirements are met. The applicants' property
3162 is not unreasonably restricted, which the applicants admit in their application. There is a
3163 new residence that provides a reasonable use of the property. In addition, the applicants
3164 are free to build a deck onto the home, just not a screened porch. So, we know that the
3165 applicant can use the property and they can have a deck but, the vision for a screened
3166 porch has not been allowed.

3167
3168 But Cochran is saying that if you can use the property at all, that we have no authority to
3169 change that. So, as long as they can use the property for the intended purpose, we don't
3170 have the authority to say no or to deny the variance.

3171
3172 Mr. Green - I'm a little flustered ... because there are individuals out there
3173 that build and, do all kinds of things and these folks could have easily built a deck and
3174 screened it in and nobody probably would have ever paid attention or known anything
3175 about it. They had the due diligence and consideration, paid the necessary fees and be
3176 honest with us to bring this forward to us, and ... so I appreciate them for doing that. And,
3177 if we should have never heard this case because of this, then it should have never been
3178 brought, then my time should not be wasted sitting here with this. This should have been
3179 dealt with at a staff level. I have a job to do.

3180
3181 Mr. Blankinship - And we did explain that to them at the time.

3182
3183 Mr. Green - So, I still support giving the ...a ... the building of the deck,
3184 and with the screened porch ... if it's challenged and they've got to tear it down, then they
3185 need to know that that's a possibility.

3186
3187 Ms. Harris - Ok, did we deal with the two requirements? Ms. Moore, you
3188 want to say something?

3189
3190 Ms. Moore - No, I'm fine. Thank you, Ma'am.

3191
3192 Ms. Harris - Alright, are we ready ...

3193
3194 Mr. Blankinship - There was a motion on it?

3195
3196 Ms. Harris - On the floor. Any more discussion? And it was seconded,
3197 right?

3198
3199 Mr. Green - Yes.

3200
3201 Ms. Harris - So all in favor of approving this variance, say aye. Those
3202 opposed, say no. And, Mr. Johnson, did you vote? Mr. Johnson?

3203
3204 Mr. Johnson - Yes.

3205
3206 Ms. Harris - Did you say yes?

3207
3208 Mr. Johnson - Yes.
3209
3210 Ms. Harris - Ok, then the variance is settled ...
3211
3212 Mr. Johnson - No, what I was asking was could that happen if they do a
3213 smaller one? Without ...
3214
3215 Mr. Blankinship - They could build a smaller screened porch that would not
3216 need the variance. It would not be large enough to put a dining room table on it, for
3217 example. It would be about 7 or 8 feet deep. I think they wanted to build 12 feet So, some
3218 of it could be eight, but it could be reduced to seven.
3219
3220 Ms. Harris - Ok, if you abstain it would be 2, 2 ...
3221
3222 Mr. Green - What are you doing?
3223
3224 Mr. Blankinship - No, no ... Mr. Johnson ...
3225
3226 Ms. Harris - No, Mr. Johnson ...I mean, Mr. Johnson's vote ... he didn't
3227 say anything.
3228
3229 Mr. Green - Right.
3230
3231 Ms. Moore - Should we repeat the motion ...
3232
3233 Ms. Harris - Ok, yes.
3234
3235 Ms. Moore - ... and then vote again?
3236
3237 Ms. Harris - Alright, yes. Mr. Reid has properly seconded that we approve
3238 this variance. All in favor of approving the variance, say aye. Mr. Johnson, you said aye?
3239 Those who opposed, say no. So, that's 3-2? Mr. Johnson, did you abstain, or did you
3240 vote? I'm sorry.
3241
3242 Mr. Blankinship - We've got to have your vote on the record, it's part of the job.
3243
3244 Ms. Harris - If you abstain, then they lose.
3245
3246 Mr. Blankinship - Yes.
3247
3248 Ms. Harris - If you abstain, they lose. I'm trying to hear what he's saying.
3249
3250 Mr. Johnson - I like to see them have something ... It's a nice facility, but
3251 also if they can do something with the drainage to ... yes, yes ...
3252

3253 Mr. Green - They can't do anything with the drainage.
3254
3255 Mr. Johnson - I said, yes. Ok ...
3256
3257 Ms. Harris - Mr. Johnson said yes, so the variance has been approved.
3258
3259 After an advertised public hearing and on a motion by Mr. Green, seconded by Mr. Reid,
3260 the Board **approved** application **VAR2018-00026, JIM HENNESSEY's**, requests a
3261 variance from Section 24-94 of the County Code to build a screen porch and a deck at
3262 12288 Porsche Drive in Welwood Subdivision (Parcel 736-770-9418) zoned One-Family
3263 Residence District (R-2AC) (Three Chopt). The rear yard setback is not met.
3264
3265
3266 Affirmative: Green, Johnson, Reid 3
3267 Negative: Bell, Harris 2
3268 Absent: 0
3269
3270
3271 Ms. Harris - Ok, let's look at the minutes, please.
3272
3273 Mr. Blankinship - I believe we're still behind on some minutes. The party that
3274 does the minutes for us has had some difficulties keeping up with the workload. She
3275 sends her apologies, and we will get them as quickly as we can.
3276
3277 Ms. Harris - Ok, these are minutes from the ... November ... this is the last
3278 meeting. Ok ... What is the pleasure of the Board?
3279
3280 Mr. Green - The motion is in receipt to accept ...
3281
3282 Ms. Harris - The minutes?
3283
3284 Mr. Green - Yes, the minutes.
3285
3286 Ms. Harris - Mr. Bell, you said, second?
3287
3288 Mr. Bell - Second the motion.
3289
3290 Ms. Harris - Ok, are there any questions? It's been moved and properly
3291 seconded that we will approve the minutes. Any questions on the motion? All in favor
3292 say, aye. Opposed, say no. The minutes have been approved.
3293
3294 On a motion by Mr. Green, seconded by Mr. Bell, the Board **approved as submitted the**
3295 **Minutes of the November 15, 2018**, Henrico County Board of Zoning Appeals meeting.
3296
3297
3298 Affirmative: Bell, Green, Harris, Johnson, Reid 5

3299
3300
3301
3302
3303
3304
3305
3306
3307
3308
3309
3310
3311
3312
3313
3314
3315
3316
3317
3318
3319
3320
3321
3322
3323
3324
3325
3326
3327
3328
3329
3330
3331
3332
3333
3334
3335
3336
3337
3338
3339
3340
3341
3342
3343
3344

Negative: 0
Absent: 0

Ms. Harris - In your packet you have mail. Remember the last meeting, Mr. Blankinship gave us a presentation of the sites, all over the county, that have been reclaimed and closed ... and so this map accompanies this site. If you remember, there were numbers by map numbers in the last presentation. So, these are the maps.

Mr. Blankinship - Yes.

Ms. Harris - So if you check your notes from the last meeting ... Mr. Green, did you get notes from the last meeting? Did you get anything?

Mr. Green - Well, does this address the original question I had about landfills? This is the landfill?

Mr. Blankinship - Yes.

Mr. Green - ... and, I asked that we have a discussion about landfills because it keeps coming up ... Ok, I just need to read this.

Ms. Harris - Right.

Mr. Blankinship - And, the report was provided last month ... these are the maps that are attached to it.

Mr. Green - Good.

Ms. Harris Mr. Johnson

Mr. Johnson - ... and I talked with Madam Chair about this ... also, because a lot of these landfills are in the Varina area ... was that I'd like to know the names of all of them. Also, who is the owner of each one of them and how many owns more than just one. And, just having that kind of information and also where the locations are. I don't want Varina to become a dumping ground. But I'd like to figure out ... that by having this, it would help me out a lot.

Ms. Harris - Ok.

Mr. Green - Mr. Johnson, I certainly don't want to see Varina become a dumping ground either. But, as I've looked into this, I live in Short Pump, the Three Chopt area and that landfill has been closed and it only serves as a transfer station. So, everything from the West End comes to you ... and given the fact that the demographics of the two sides, you know, are minority ... Caucasian ... We need to make sure that we are sensitive to this issue. So, I don't want to see someone create a scenario where it

3345 appears that the African-American population is being used to dump these ... used as a
3346 dumping site. But we have got to recognize that the reality of it is that some of those
3347 landfill sites are just like some of these lands we see with these families were already
3348 there before all of these subdivisions and so, the real question is ... what comes ... who's
3349 on first and who's on second, and my theory is those on first are those that were there
3350 first. ... And when you are buying a house, you've got to consider what's coming up
3351 around you. When I bought my house in Short Pump 20 years ago, there was no mall.
3352 There was a farm, there was no Three Chopt Village, or none of that. Now, I have to deal
3353 with the fact that there is growth and all kinds of things and intrusions. And so, I just want
3354 to make sure, that we understood that this was not ... I don't want to turn this into a racial
3355 issue thing.

3356
3357 Ms. Harris - I think that Mr. Blankinship stated last week ... he went
3358 through the sites that had been reclaimed ... were closed. They really can be open
3359 already or they have to come to us.

3360
3361 Mr. Green - Not that, we can control.

3362
3363 Ms. Harris - Good point. In western Henrico, you know, we had the Quarry
3364 ... you know, blasting. In Varina, you had ... you have a lot of these closed sites, sand
3365 and gravel ...

3366
3367 Mr. Blankinship - Because that's where it is. It's a matter of geology. That's the
3368 location ... sand and gravel ...

3369
3370 Ms. Harris - Right, that's the location. What I think our Board has to do is
3371 to be sure that we don't open all of them at the same time. You know, 25 of them at the
3372 same time because one site may bring in 120 trucks a day, going and coming. So, I think
3373 it's on us to be sure that doesn't happen.

3374
3375 Mr. Green - I am very confident, with our current Chairperson that we're
3376 going to be kept in check ... and I vow my support to you to make sure that ... because
3377 you have been on this Board for a long time, a lot longer than I have and that you are
3378 very sensitive to that.

3379
3380 Ms. Harris - Yes.

3381
3382 Mr. Green - I just didn't want it to get ... you know to get ... you know ...
3383 one side versus the other side. It's a bigger picture with Ms. Harris' objective and balance.

3384
3385 Ms. Harris - I try. ...And Mr. Johnson, in answer to your question ... you
3386 want the owners of these sites. Look at what Mr. Blankinship assembled for us today.

3387
3388 Mr. Johnson - Yes.

3389

3390 Ms. Harris - He has the owners and the names of all these sites. We know
3391 the owners so we can tell if they have more than one site they are purchasing.
3392
3393 Mr. Johnson - And that way, if they are looking for something, we can tell
3394 them to go ...
3395
3396 Mr. Green - ... somewhere else.
3397
3398 Mr. Johnson - ... to the other end ... But I appreciate this. This is good to
3399 see and we're going to be using this for a long time.
3400
3401 Mr. Green - Yeah.
3402
3403 Ms. Harris - Yes, we are. ... Anything else for the Board? We had planned
3404 today to discuss the time limits, and unless we can talk about that in five minutes, we
3405 would probably need to defer that to the next meeting. What do you think?
3406
3407 Mr. Green - We defer it.
3408
3409 Ms. Harris - Mr. Green says we defer it to the next meeting. Maybe the
3410 next meeting will not be as lengthy. Ok
3411
3412 Mr. Blankinship - ... six more cases next month ...
3413
3414 Ms. Harris - How many variances?
3415
3416 Mr. Green - Can we do a limit on time?
3417
3418 Ms. Harris - That's what we're going to discuss.
3419
3420 Mr. Green - You as Chair can start doing that ...
3421
3422 Ms. Harris - Ok. The meeting is adjourned.

Ms. Helen E. Harris

Ms. Helen E. Harris, Chairman

Benjamin W. Blankinship

Mr. Benjamin W. Blankinship, Secretary