

1  
2 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
3 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**  
4 **GOVERNMENT CENTER AT PARHAM AND HUNGARY SPRING ROADS, ON**  
5 **THURSDAY JANUARY 24, 2019 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED**  
6 **IN THE *RICHMOND TIMES-DISPATCH* JANUARY 7, 2019 AND JANUARY 14, 2019.**  
7  
8

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

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

23 **Ms. Harris -** Welcome to the January 24<sup>th</sup> meeting of Board of Zoning  
24 **Appeals. Please stand for our Pledge of Allegiance.**  
25

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

28 **Ms. Harris -** Good Morning members of the Board and Mr. Blankinship.  
29 **Please accept my apologies for being late this morning. At this point, we're going to ask**  
30 **Mr. Blankinship, who's acting as our Secretary, to read the rules that govern this meeting.**  
31

32 **Mr. Blankinship -** Good Morning, Madam Chair, members of the Board, ladies  
33 **and gentlemen. The rules for this meeting will be as follows: By acting as Secretary I'll**  
34 **announce each case and then we will ask everyone who intends speak to that case to**  
35 **stand and be sworn in. Then a member of the staff will give a brief introduction to the**  
36 **case, then the applicant will present their application. Then anyone else who wishes to**  
37 **speak to that case will have an opportunity. After everyone's had a chance to speak, the**  
38 **applicant and only the applicant will have an opportunity for rebuttal. As soon as that first**  
39 **hearing is finished, we will begin the hearing on the second case, and the Board will go**  
40 **through all of the Public Hearings and then after they've gone through all of the Public**  
41 **Hearings, they go back through the agenda and make all of their decisions at the end of**  
42 **the meeting. So, if you wish to hear their decision on a specific case, you can either stay**  
43 **until the end of the meeting, or you can check the Department of Planning's website. We**  
44 **usually get it updated within an hour of when the meeting ends, or you can call the**  
45 **Planning Department this afternoon.**  
46

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

50  
51 We have all five Board members and I am not aware of any requests for deferral or  
52 withdrawal. So, I think we are ready to proceed.

53  
54 Ms. Harris - Great. Would you call, please, the first case?

55  
56 Mr. Blankinship - CUP2019-00001, Linda A. Harris.

57  
58 **CUP2019-00001 LINDA A. HARRIS** requests a conditional use permit  
59 pursuant to Section 24-12(e) of the County Code to allow a noncommercial kennel at  
60 6408 Kilgore Street (New Market Farms) (Parcel 801-704-7621) zoned One-Family  
61 Residence District (R-3) (Varina).

62  
63 Mr. Blankinship - Would everyone who intends to speak to this case, please  
64 stand and be sworn in.

65  
66 Do we not have an applicant? Linda A. Harris, is someone representing her? Madam  
67 Chair, do you want to pass that by and see if they are stuck in traffic as well?

68  
69 Ms. Harris - Yes, please.

70  
71 Mr. Blankinship - Alright.

72  
73 CUP2019-00002, Andrew Beach.

74  
75 **CUP2019-00002 ANDREW BEACH** Requests a conditional use permit  
76 pursuant to Section 24-95(i)(4) of the County Code to build a detached garage in the side  
77 yard at 701 Devon Road (Westham) (Parcel 761-739-4926), zoned One-Family  
78 Residence District (R-3) (Tuckahoe).

79  
80 Would everyone who intends to speak to this case, please stand and be sworn in.

81  
82 Raise your right hand, please. Do you swear that the testimony that you are about to give  
83 is the truth, the whole truth, and nothing but the truth, so help you God?

84  
85 All - I do.

86  
87 Mr. Blankinship - Thank you. Mr. Madrigal.

88  
89 Mr. Madrigal - Thank you, Mr. Secretary, Madam Chair, Members of the  
90 Board.

91  
92 Ms. Harris - Good morning.

93  
94 Mr. Madrigal - Before you is a request to the Board to build a detached  
95 garage in the side yard of a one-family residential lot.  
96

97 The subject property is part of the Westham subdivision. The lot is 4/10<sup>ths</sup> of an acre in  
98 area and is improved with a 1.5 story, 3000 sq. ft. residence with open parking,  
99 constructed in 1955. The applicants acquired the property in April of 2016. In November  
100 of 2018, they requested a building permit to construct an attached 658 sq. ft. covered  
101 patio off the rear of the home and a 2-story, 1,354 sq. ft. detached garage in the side yard.  
102 ... This is the proposed patio; and then, this is the proposed garage... Because of the  
103 proposed location in the side yard, the code requires the approval of a CUP. ...So, this  
104 is the existing residence, the extension of the covered patio, placement of the garage in  
105 the side yard ...  
106

107 The property is zoned R-3 and is designated Suburban Residential 2 (SR2) on the 2026  
108 Future Land Use Map. A one-family dwelling is a principal permitted use in this district  
109 and is consistent with the Comprehensive Plan designation. The existing residence has  
110 a deep front setback of 63-ft. instead of 35-ft., which is typical of exception lots. The  
111 applicant modified the rear yard by lowering the rear yard grade and installing a 5-foot tall  
112 retaining wall at the northeast corner of the lot. ... And here you can see the retaining wall  
113 that goes up approximately 5-ft. tall and they removed quite a bit of soil... This grade  
114 modification facilitates the placement of the proposed structures behind the residence,  
115 particularly the proposed garage. The applicant intends to construct a substantial  
116 covered patio with amenities to include an exterior fireplace and grilling kitchen off the  
117 rear of the home. It will measure approximately 26-ft. wide by 25-ft. deep. The proposed  
118 garage will be located at the northeast corner of the lot, occupying a portion of the side  
119 and rear yards. The garage will be two-stories in height and will measure 24-ft. wide by  
120 32-ft. deep. It will have a bonus room on the second floor with independent access at the  
121 rear of the structure. Dormers will be placed on the east and west sloping sides of the  
122 roof with much of the second floor glazing occurring on the southern and western facades.  
123 As designed, the applicant's request should not pose any substantial detrimental impacts  
124 on adjacent or nearby property. The garage will be predominately in the rear yard and  
125 the second floor is designated to overlook the applicant's side and rear yards. The  
126 architectural design is consistent with and will complement the existing dwelling. Glazing  
127 on the second floor will be limited to the western and southern facades to preserve privacy  
128 for the applicant's adjacent neighbors. Furthermore, its deep placement on the lot will  
129 have negligible impacts on the streetscape.  
130

131 In conclusion, the proposed garage is consistent with both the zoning and Comprehensive  
132 Plan designations on the property. The applicant's grade modifications of the rear yard  
133 and installation of a retaining wall will facilitate the proposed structure. The proposed  
134 architectural design will complement the existing dwelling and it will be sensitive to  
135 maintaining his northern and eastern neighbor's privacy through the strategic placement  
136 of the windows on the second floor. And, the garage will have negligible impacts on the  
137 streetscape due to its deep placement on the lot. Staff does not anticipate any detrimental  
138 impacts with this proposal. Based on the facts of the case, staff recommends approval



139 subject to the attached conditions. That concludes my presentation, I'll be happy to  
140 answer any questions.  
141  
142 Ms. Harris - Yes, I have a couple of questions. How close will this garage  
143 be to that wall?  
144  
145 Mr. Madrigal - That garage will be at the closest point, approximately a little  
146 bit over five feet. I'm looking at a plot plan here. So, here at this location, 5.7 ft. Back  
147 here will be, 10.42 ft., minimum and will be 3-ft. from the side property line.  
148  
149 Ms. Harris - So between the garage and the next door property, we do  
150 have at least how many feet?  
151  
152 Mr. Madrigal - 5.7 at the least.  
153  
154 Ms. Harris - What is the square footage on the garage?  
155  
156 Mr. Madrigal - Combined it's over 1,300 sq. ft.  
157  
158 Ms. Harris - You said 1,300?  
159  
160 Mr. Madrigal - Yes.  
161  
162 Ms. Harris - Thank you.  
163  
164 Mr. Blankinship - That's first floor and second floors?  
165  
166 Mr. Madrigal - Yes, that's first and second floors.  
167  
168 Ms. Harris - Right.  
169  
170 Mr. Madrigal - Yes. Just one floor is over 700 ... on the first floor.  
171  
172 Ms. Harris - Ok, thank you. Are there questions from Board members?  
173  
174 Mr. Johnson - Also, is there a fence between that property and the property  
175 next to it?  
176  
177 Mr. Madrigal - Yes, if you look at ... let's see ... you can see here the  
178 retaining wall and there's a privacy fence.  
179  
180 Mr. Johnson - Yes, ok.  
181  
182 Ms. Harris - Are there other questions from Board members? Thank you,  
183 Mr. Madrigal.  
184

85 Mr. Madrigal - Thank you.  
186  
187 Ms. Harris - Would the applicant please come down and state your case.  
188 Give us your name, then how do you spell your last name.  
189  
190 Applicant - Andy Beach, and it's B-E-A-C-H.  
191  
192 Ms. Harris - Thank you.  
193  
194 Mr. Beach - And so we bought this house two years ago and you know all  
195 the cold winters we've been having, my wife has been wanting to park her car in the  
196 garage. So, that's a lot of the reason for it and it seems like it's just a technicality that the  
197 porch we're putting on now... puts it in the side yard. The garage is actually behind the  
198 living space of the house so it feels and looks like it's going to be in the back yard, but I  
199 know, technically, it will be in the side yard too. That's why we have to get a Conditional  
200 Use Permit but tried to ... I called all of the neighbors; they're all friends of ours and  
201 everybody's 100 percent fine with everything. So, it shouldn't have any impact on them.  
202  
203 Ms. Harris - Any questions of Mr. Beach?  
204  
205 Mr. Bell - Mr. Beach, are you familiar with the conditional ... conditions  
206 of approval in the packet ... in the packet ... particularly number six?  
207  
208 Mr. Beach - I haven't read through it thoroughly. No, sir.  
209  
210 Mr. Bell - Number six reads, "The garage shall not be occupied as a  
211 dwelling and shall not have any provision for cooking." Do you agree with that?  
212  
213 Mr. Beach - Yes, sir.  
214  
215 Mr. Bell - Thank you.  
216  
217 Mr. Beach - Yes, I'm fine with all these.  
218  
219 Ms. Harris - Ok. Any other questions from Board members? Thank you,  
220 Mr. Beach.  
221  
222 Mr. Beach - Alright, thank you guys.  
223  
224 Ms. Harris - Is there anyone who supports this request? Is there anyone  
225 who is in opposition to this request? Ok, that concludes this case.  
226  
227 **[After the conclusion of the public hearings, the Board discussed the case and**  
228 **made its decision. This portion of the transcript is included here for convenience**  
229 **of reference.]**  
230

231 Ms. Harris - Andrew Beach, CUP2019-00002. What is the pleasure of the  
232 Board?

233  
234 Mr. Reid - I move that we approve conditional use permit (CUP2019-  
235 00002) for Mr. Beach to build a detached garage at 701 Devon Road, in Westhampton  
236 and that they will comply with the conditions of approval listed in the staff report, dated  
237 January 24, 2019.

238  
239 Mr. Johnson - I second.

240  
241 Ms. Harris - Do we have a reason why for your motion to approve?

242  
243 Mr. Reid - I think that there are no complaints from the neighbors and it  
244 is a well thought out plan for what he is planning to do in the neighborhood.

245  
246 Ms. Harris - Ok. Mr. Johnson, was there any other thing?

247  
248 Mr. Johnson - No.

249  
250 Ms. Harris - Ok.

251  
252 Mr. Johnson - I would second.

253  
254 Ms. Harris - The motion is that we approve this conditional use permit.  
255 Any questions on the motion? All those in favor say, aye.

256  
257 The Board - Aye.

258  
259 Ms. Harris - Opposed say, no. The ayes have it, then so ordered.

260  
261 After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Johnson,  
262 the Board **approved** application **CUP2019-00002, ANDREW BEACH's** request for a  
263 conditional use permit pursuant to Section 24-95(i)(4) of the County Code to build a  
264 detached garage in the side yard at 701 Devon Road (Westham) (Parcel 761-739-4926)  
265 zoned One-Family Residence District (R-3) (Tuckahoe). The Board approved the  
266 application subject to the following conditions:

267  
268 1. This conditional use permit applies only to the construction of a detached garage in the  
269 sideyard. All other applicable regulations of the County Code shall remain in force.

270  
271 2. Only the improvements shown on the plot plan and building design filed with the  
272 application may be constructed pursuant to this approval. Any additional improvements  
273 shall comply with the applicable regulations of the County Code. Any substantial changes  
274 or additions to the design or location of the improvements shall require a new conditional  
275 use permit.

276

- 77 3. The new construction shall match the existing dwelling as nearly as practical in  
278 materials and color.
- 279
- 280 4. All exterior lighting shall be shielded to direct light away from adjacent property and  
281 streets.
- 282
- 283 5. The height of the garage shall not exceed 20 feet, as provided by Sec. 24-95(i)(2) of  
284 the County Code.
- 285
- 286 6. The garage shall not be occupied as a dwelling and shall not have any provision for  
287 cooking.
- 288
- 289
- 290 Affirmative: Bell, Green, Harris, Johnson, Reid 5
- 291 Negative: 0
- 292 Absent: 0

293

294

295 Ms. Harris - Mr. Blankinship, please call the next case.

296

297 Mr. Blankinship - Alright, VAR2019-00001, Eric Walker.

298

299 **VAR2019-00001** **ERIC WALKER** requests a variance from Section 24-95(b)(5)  
300 of the County Code to build a one-family dwelling at 713 Sibley Avenue (Lakeside  
301 Terrace) (Parcel 786-751-2770), zoned One-Family Residence District (R-3) (Fairfield).  
302 The lot width requirement and total lot area requirement are not met. The applicant has  
303 6,000 square feet total lot area and 60 feet lot width where the Code requires 8,000  
304 square feet total lot area and 65 feet lot width. The applicant requests a variance of 2,000  
305 square feet total lot area and 5 feet lot width.

306

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

309

310 Raise your right hands, please. Do you swear or affirm that the evidence you are about  
311 to give is the truth, the whole truth, and nothing but the truth, so help you God?

312

313 All - Yes.

314

315 Mr. Blankinship - Mr. Gidley.

316

317 Mr. Gidley - Thank you, Mr. Secretary, members of the Board. Good  
318 Morning

319

320 The Board - Good morning.

321

322 Mr. Gidley - The subject property is located in the Lakeside Terrace  
323 subdivision; and, lots in the subdivision are typically 20-feet wide. So, developers coming  
324 in would piece together several lots in order to have a large enough parcel to construct a  
325 home.  
326

327 The parcel originally, in this case, contained five lots in total. And, that had the required  
328 lot area and lot width. In 1945, two of the lots shown here were acquired by the county  
329 for the potential extension of Noble Avenue ... down below here. Following this  
330 acquisition, the parcel remained buildable because it was large enough and had enough  
331 lot width.  
332

333 In 1968, however, this part of Lakeside Terrace was rezoned from R-4 to R-3 to reflect  
334 the larger lot sizes on which homes were being constructed, for the most part. This act,  
335 unfortunately, left the property five-feet shy of the required lot width and 2,000-square-  
336 feet shy of the required lot area. And, the lot is right here, and the land acquired by the  
337 county is right over here.  
338

339 In evaluating this variance request ... Is the property unreasonably restricted by the  
340 zoning ordinance? As you can see here, the lot in question is level and is essentially  
341 suitable for building, but not for any other use permitted in the R-3 district. And this is  
342 another view here. And, although the street was never constructed, the county did place  
343 a water line underneath this property over on the side here and as a result, the county's  
344 not really interested in selling or giving away the land to Mr. Walker, the applicant. As a  
345 result, there's really no option to acquire additional land for this applicant. So, absent a  
346 variance in this case there would be no reasonable use of the property, and assuming the  
347 Board concurs with this finding ... if you look ... as noted in the staff report, all five sub-  
348 tests are met in staff's belief. And, briefly, the proposed home should not have a  
349 substantial detrimental impact on nearby properties. You can see here ... a dwelling  
350 could be put on here that would meet the setbacks.  
351

352 The applicant didn't create this hardship. The circumstances are rather unique that  
353 caused this situation. So, in conclusion, due to a previous land acquisition by the county  
354 followed by the rezoning, the property was left without substantial lot area or lot width. It  
355 lacks a reasonable beneficial use. Staff believes all five sub-tests are met, especially  
356 since the proposed use of the property for a dwelling is consistent with the surrounding  
357 neighborhood. As a result, we recommend approval of this request subject to the  
358 conditions in the staff report. And, that concludes my presentation and if you have any  
359 questions, I'd be happy to answer them.  
360

361 Ms. Harris - Thank you, Mr. Gidley. Do we know of other instances where  
362 the county has property with the water line underneath it ... under it and they cannot  
363 actually sell the land?  
364

365 Mr. Gidley - I'm sure there are many cases out there where ... when  
366 someone wants some property from the county they will send ... the department that  
367 handles that will send a memo out the different agencies such as the Planning



68 Department, Public Works, Public Utilities and ask them their position on the issues ...  
369 "Do you have any concerns?" ... And, in this case, when I talked to Public Utilities, they  
370 indicated to me they would have a concern about selling the land because you have a  
371 water line buried underneath there and so their ... they view the lot as being used by the  
372 county. Actually, it's not right-of-way, it's actually a lot owned by the county.  
373

374 Mr. Blankinship - It is an unusual case. Usually, water lines would run in an  
375 easement on private property. So, it is a little unusual that the county actually owns the  
376 property.  
377

378 Ms. Harris - Property that they cannot do anything with? Is that true?  
379

380 Mr. Blankinship - Other than operate the water line?  
381

382 Ms. Harris - Yes. Are there other questions from Board members?  
383

384 Mr. Johnson - Yes. Being out there just looking at that property I noticed that  
385 there's not a waterway system under it ... it's just running on the ground above that ...  
386 that's not going to impact the applicant, and also behind it they have a new development?  
387

388 Mr. Gidley - Yes, sir.  
389

390 Mr. Johnson - And, that new development has a ... right directly behind it is  
391 a waterway management system. Is that impacting ... going to impact the applicant as  
392 well?  
393

394 Mr. Gidley - On that, I think you're saying there's a water retention facility  
395 behind it? Is that what you are saying?  
396

397 Mr. Johnson - Yes.  
398

399 Mr. Blankinship - Its storm water management.  
400

401 Mr. Johnson - Yes.  
402

403 Mr. Gidley - Yes, the applicant in this case, obviously will not go up on  
404 property he does not own and he will need to account for water on his own property. I  
405 suspect it would flow down towards Sibley Avenue then into the County sewer system.  
406

407 Mr. Green - Right there.  
408

409 Mr. Johnson - It would be a nice looking area.  
410

411 Ms. Harris - Are there any other questions from Board members? Thank  
412 you, Mr. Gidley.  
413

414 Is the applicant here this morning to speak to this case?  
415  
416 Applicant - Yes. My name is Eric Walker. Last name is spelled,  
417 W-A-L-K-E-R. I am the applicant and purchaser of this property. I'm proposing or  
418 requesting a variance to build a single-family dwelling on the property. The proposed  
419 house and lot is consistent in size with the other housing in the neighborhood. And, that  
420 essentially without this variance, there would be no benefit to the owners with this lot. At  
421 this time, I'd be happy to answer any questions.  
422  
423 Ms. Harris - Mr. Walker, those trees there, what are you going to do about  
424 those? I noticed it's a wooded lot.  
425  
426 Mr. Walker - Yes, Ma'am. So, I would basically clear the trees to the  
427 neighbor... to build a house, but basically clear about 25-feet around the house. So, the  
428 future homeowner would have some yard use, but at the same time keeping enough  
429 screening on the rear and sides.  
430  
431 Ms. Harris - So, you will retain some of the trees.  
432  
433 Mr. Walker - Yes, Ma'am.  
434  
435 Ms. Harris - Ok. Other questions from Board members? Thank you.  
436  
437 Mr. Walker - Thank you.  
438  
439 Ms. Harris - Is there anyone who wishes to support this request? Is there  
440 anyone who wishes to oppose this request? Please come forward. Give us your name  
441 and spell your last name.  
442  
443 Citizen - Good morning.  
444  
445 The Board - Good morning.  
446  
447 Citizen - Thank you for your time and consideration. Give me a second  
448 to put my stuff together here. I was going to do this extemporaneously, but I ran it by my  
449 wife and she said, "Don't do it." So, I'm going to read from a statement.  
450  
451 I am Peter Silberman, S-I-L-B-E-R-M-A-N, and I reside with my wife at 711 Sibley, just  
452 across from the water line. We have owned and lived there since 2004. I received notice  
453 from the county, which I have with me by the way, that there was a proposal to build a  
454 residence to the east of my property on what partially is kept county land, and I was being  
455 notified that in the event that the proposal was granted, the variance, that it would be  
456 necessary for my address to be changed.  
457  
458 Mr. Green - Oh.  
459

460 Mr. Silberman - When I asked if my neighbor at 709, which would be on the  
461 other side of the proposal, was also informed in such a manner I was told, I believe, I  
462 spoke to one of the Planners. I'm not really positive who, but it might have been Ms.  
463 Kristen Smith. Anyway, I was told that only I was informed because only my property  
464 would be so affected.

465  
466 I would like to address my concerns as to why the variance should not be granted, and  
467 also, in case it is granted to address the unfairness, the inconvenience and burden of a  
468 mandated address change falling on me. Finally, I would offer a solution whereby all  
469 concerned would be treated fairly. So, first to the objection to granting the variance ...  
470 and it's just one real item that has to do with drainage. As far as having a new neighbor,  
471 I'm already getting used to instant suburbia behind my house, which two years ago had  
472 been completely wooded. But anyway, as to my objection to the granting ... I took photos,  
473 but it was just after a slight rain a week ago. And, those don't really show much. I wish I  
474 could have taken one today. It would have been a big difference.

475  
476 There is a big drainage problem on our street. The county came about a year or so ago  
477 and one previous time to try to mitigate the situation. The jams occur in front of and on  
478 the parcel of land which is the County's and also, the proposed development site where  
479 the trees are. The crew reshaped the incline on the street somewhat to improve flow, but  
480 that only lasted for a couple of months and now vegetation has grown once again, flooding  
481 occurs regularly once again. My driveway is particularly affected. The water cannot  
482 adequately reach the ditch which is in the proposed property. In my opinion, construction  
483 there would only make the drainage flow far worse, adversely affecting my property. I'm  
484 not an engineer, but in my opinion it would make the proposed property untenable.  
485 Anyway, that's my only objection to the actual granting.

486  
487 Number two, if the Commission ... excuse me ... should grant a variance, I would like to  
488 protest the notion that my property should be the one forced to be the household doing  
489 the readdressing.

490  
491 My neighbor at 709 ... oh, by the way I didn't know how many people are on the  
492 Commission but I made two copies ... Can I hand these out?

493  
494 Mr. Blankinship - Please bring them forward. Thank you.

495  
496 Mr. Silberman - My neighbor at 709, which is a rental property, is adjacent to  
497 number 705. There is no 707. And, as you can see they are right next to each other, 705  
498 and 709. My property is quite a distance from the proposed development. The woods,  
499 the ditch, the water access on Nobel Avenue and my driveway being in between. If any  
500 property should be forced to change its address, it should be 709, which could become a  
501 much more meaningful 707 and the new house ... could become 709. That would be much  
502 more orderly and conform to the County's wish to not be of any kind of "hazard to public  
503 safety." However, I do not wish that my neighbor at 709 be subjected to that possibility  
504 any more than I'd want that to happen to me. Therefore, I propose that the new property,  
505 if granted or be ok'd by the Commission, be assigned the number of 709 ½. I have

506 included proofs of several instances of "1/2" addresses in Henrico County including photos  
507 just in Lakeside alone. There are others around the county as well. There would be no  
508 burden on the developer to have that address and it would alleviate myself and anyone  
509 else from having to change our addresses. Thank you for your consideration.

510

511 Ms. Harris – Are there questions of Mr. Silberman?

512

513 With the county owning the property between your property and the subject property, the  
514 drainage problem that you have ... Do you think it's alleviated because they have that  
515 strip of land?

516

517 Mr. Silberman - Do I think it is alleviated?

518

519 Ms. Harris - Yes.

520

521 Mr. Silberman - It's not alleviated.

522

523 Ms. Harris - It's complicated?

524

525 Mr. Silberman - Not at all.

526

527 Ms. Harris - It's not, it's not complicated?

528

529 Mr. Silberman - This morning, it's just a big lake running up to my next door  
530 neighbor on the west.

531

532 Ms. Harris - Ok. Is there a ditch there? Is there actually a ditch there?

533

534 Mr. Silberman - There is a ditch. It's overgrown as well. I don't know why it  
535 was originally built, but in the stand of woods, just beyond the water main ... Nobel  
536 Avenue ... there is a ditch. When they came by about a year or so ago, the county, they  
537 kind made more of an incline to help the drainage. If that could be taken care of more  
538 permanently, I'd be very happy ... perhaps a culvert or something. I don't know, but as  
539 things stand now ... again, not being an engineer, but as things stand now with an  
540 assumed filling in of that ditch, the drainage problem would be even worse.

541

542 Mr. Blankinship - The ditch you describe is on the county property, not the  
543 private property?

544

545 Mr. Silberman - Yes, I'm not positive it's ...

546

547 Mr. Blankinship - I wasn't aware there was ...

548

549 Mr. Silberman - Well, I haven't been to look at it lately. I believe it's still on the  
550 tree line. I wish I could point it out exactly, but it's in those trees for sure. Because I don't



551 see it. It's definitely in those trees there because I don't see it in the cleared area there,  
552 which had been woods as well up until two years ago.

553  
554 Ms. Harris - Ok. Are there other questions from Board members?

555  
556 Mr. Green - Yes. How is it that the county can reassign his address, just  
557 his address to a different number versus impacting everybody? Because that is  
558 problematic for mail and your recommendation for 709 ½, could be problematic for the  
559 other two neighbors, his property and the other two neighbors. How did that happen?

560  
561 Mr. Silberman - How would that be problematic for anybody if it was assigned  
562 a different number?

563  
564 Mr. Green - No, I'm saying how did they do that?

565  
566 Mr. Silberman - Oh, I don't know. I just have the evidence that it has been  
567 done often enough.

568  
569 Mr. Blankinship - Can you put the site map back up? I don't know how that  
570 address got assigned, but you can see what the problem is there. You have houses one  
571 (1), three (3), five (5), nine (9), and eleven (11). And, the space between in between 9  
572 and 11 is the vacant property. Yet, 02, 06, 08, 10, 12 ... 10 is right across from 11 ...  
573 706, I guess, is right across from 9 ... it could be corrected either by 709 going to 707, or  
574 by 711 going to a higher number just to create an odd number between the 9 and the 11,  
575 but that's not really a matter for this Board to resolve. That's something that's handled ...  
576 there is a formula for how they decide those addresses. It's based on where the driveway  
577 is located, and it indicates a distance from the end of a block to where the driveway is  
578 located. So, that emergency vehicles don't have to guess. It makes it more predictable  
579 for them. How this one was wrongly assigned to begin with, I don't know. But clearly, one  
580 of those numbers was assigned incorrectly when it was assigned.

581  
582 Mr. Silberman - So, my presentation and plea to do "½" number is being  
583 addressed to the wrong people?

584  
585 Mr. Blankinship - Yes. If you want to, call Ms. Smith back ... she would be the  
586 best person to address that. She is the addressing coordinator. So, she didn't write the  
587 manual but she's the person responsible for implementing the system.

588  
589 Mr. Silberman - Well, I apologize profusely.

590  
591 The Board - That's alright.

592  
593 Mr. Blankinship - It's good to bring it to a public forum that way we know we  
594 have a responsibility to follow through.

596 Mr. Green - So, if that drainage problem were addressed, which might not  
597 be his issue, but the county's issue, it would be ok?  
598  
599 Mr. Silberman - If I was addressed in a way that I no longer had ... or anybody  
600 had that stack-up, I'd be very pleased.  
601  
602 Mr. Green - You are not opposed to the house, you're just opposed to ...  
603  
604 Mr. Silberman - No. I mean like I said, I'm already used to all these other  
605 neighbors so, I'm not opposed to the house, per se.  
606  
607 Mr. Green - Thank you.  
608  
609 Mr. Silberman - Thank you very much.  
610  
611 Ms. Harris - Any other questions from Board members?  
612  
613 Mr. Silberman - Sir?  
614  
615 Mr. Johnson - This indicated that with the new development proposed out  
616 there the drainage might be taken care of when that happens.  
617  
618 Mr. Silberman - Well ...  
619  
620 Mr. Johnson - Plus you have drainage in to ... across the street, you are  
621 going to have another problem. But, anyway, the development might take care of that.  
622  
623 Mr. Silberman - Well, the development was ...  
624  
625 Mr. Johnson - ... proposed development we talked about, not the  
626 subdivision.  
627  
628 Mr. Silberman - oh, ok.  
629  
630 Ms. Harris - Other questions? Thank you, Mr. Silberman.  
631  
632 Mr. Silberman - Thank you also.  
633  
634 Ms. Harris - Anyone else who wishes to speak in opposition to this  
635 request?  
636  
637 Citizen - Hello all.  
638  
639 The Board Hello.  
640  
641 Citizen - Hi there, my name is Scott, last name is C-L-A-Y, Clay.

642

643 First, I appreciate the chance to be heard. What I can do to affect how you guys see this,  
644 I don't know, but that little red square is me directly across from where it, number seven-  
645 hundred and eight (708) is.

646

647 All these shots been taken on good days to be out. Nice clear blue skies on all these  
648 shots. Can we go back to the view of the cut-through area? There you go, thank you.  
649 There is the vinyl valley, as I call it. You may possibly be catching on that I am in dissent  
650 of this proposal. I've been living here for 20-years now. Folks, I've tried to run a little  
651 company called Clay Appliance. It's a family business I've kept going for 60-years now,  
652 with a pretty good popular following. I raised my son, put him in the military and living  
653 there for the first 10-15 years thereabout, and that whole view was nothing but a wooded  
654 lot, a wooded area. Well, little by little as I've lived there all that amount of time, I've come  
655 to learn many, many, things. One you are not going to have a view of ... I'll ask that you  
656 participate in imagining. If you've ever driven past the Belmont Golf Course, coming down  
657 a road called Hilliard, from Lakeside ... you suddenly get this new panoramic view of the  
658 road dropping away. Something so reminiscent of a place called Broaddus Flats out in  
659 Hanover County, where this sudden drop occurs ... and you are basically looking right at  
660 our neighborhood from that view. And, that is the depth and dropout of this bottom out  
661 area. That is a bowl-shaped area, all the way around this whole block. I've been all around  
662 it. I have walked the whole area with my son and my dog with many, many things to see  
663 that every area around it is an uphill. This is a bottom bowl area with the center point  
664 being a swamp. Down that street, beyond that view, this nice sunny day, is a swamp that  
665 can easily be found. It has a protected reserve area around it. We can't use it. Luckily  
666 though, these guys ... I mean, these guys have had enough ability to truck in rock and  
667 sand and everything else to get this vinyl valley, I call it, leveled and sitting there. But, one  
668 thing I'm just requesting that ... if anybody knows about something that's called SWR?  
669 It's called surface water runoff and I'm an expert at that.

670

671 Um ... some little slotted-in, cherry-picked homes were put in there in the last eight years  
672 or something, above me, behind me on the next street back along with the fact that the  
673 insurance adjusters and regulators I've spoken to call this whole entire area a flood risk.  
674 Everything around here, they call a flood risk. We're in a flood plain, they call it. Sorry If  
675 I'm a little confused. I'm not going to prepare anything to write down. I just want to speak  
676 to you.

677

678 But, this shot we're seeing right here, I think he's trying to tell you something, that again,  
679 only somebody that lives there 24-hours a day, as I would, might know. And, he's trying  
680 to speak of ... there has been a connecting run-off ditch through the middle of that  
681 property. It's not on the road. That angle, if you are seeing what I'm seeing right there  
682 where the pavement ends, and that red netting and all that ... there's no ditch there. That  
683 is absolutely flat. There is no cut-away run-off.

684

685 This little neighborhood ... this area that has been built over 40-70 years, one to two  
686 homes at a time, really slow development has had no raging impact of a building project  
687 like this come into it. You could tell as you walk and traverse the area, that all the way up



688 to 95, Lakeside Boulevard is just little piece areas that got one home at a time, that got  
689 built and so forth. Yeah, the ... right behind me, Lakeside Boulevard. That's the longest  
690 reaching road that actually goes from the traffic signal up to Brook Road and it ends at  
691 95, at the top of a hill overlooking the highway by 300-feet down. And ... um ... I've come  
692 to find, that my own self, 95 was there and everything else was ... this whole area actually  
693 was a place that got put into history by somebody named Gabriel Prosser. If y'all ever  
694 heard of him.

695  
696 Gabriel Prosser was a person named after his plantation owner, the Prosser family that  
697 owned the plantation from Wilkinson Road all the way to Brook Road for many, many  
698 years and ... this place goes back to 1800 when Mr. Prosser tried to rebel against the  
699 slavery that was going on at the time, and got himself put into history by being lynched.  
700 His rebellion was put down as he was going to go to Richmond and take over the City of  
701 Richmond. Anyway, I think that whole area ... I think they want you to know ... is a very  
702 sensitive area. I don't think I've ever seen much about geology ... anybody really,  
703 actually, truthfully ... plotting what the geology is here ... This whole area is riddled with  
704 strings. Um ... I might call it an inter-Lagos, like a place in Brazil ... There are  
705 underground streams and little run-offs and connecting rivers and what not, all over the  
706 place. And, I know for a fact, one of them is in my street. Sibley Avenue, itself, has a  
707 stream going below the pavement, trying to carry off tons of water.

708  
709 So one of my favorite, or least favorite four-letter words now has become R-A-I-N. And  
710 now, just do what we got to do to look at the climate we live in today, and the east coast,  
711 the eastern seaboard is just constantly besieged by rain. Last year, the month of July had  
712 23 days of rain and a hot, steamy month that was supposed to maybe boil off the water.  
713 And, so I'm requesting that please you guys consider with all those trees that are in that  
714 photo ... This is what ties property together ... is rooted things and groups of plant life like  
715 that, that has been there for hundreds of years that are rooted together. This is what I  
716 want basically, the soul that is going to buy that property to know is that there is no control  
717 over the water.

718  
719 I, myself, have been through the vinyl valley recently, a few times looking, and there's  
720 water standing on every one of those properties. Every one of those lots is a giant mud  
721 pit. And, the guys are just going to keep on doing their job working and they are just  
722 driving around there in their Bobcats and what not and just kind of sloughing mud around,  
723 but this place is highly, highly neglected for how sensitive it is to water, surface water run-  
724 off. I've got problems on my property, and to just wrap it up to say, the properties behind  
725 me that were open to allow to be built, I got to speak to the roads supervisor for your  
726 county and he, in short and quick terms, basically told me that, "you've had houses built  
727 around you, Mr. Clay. And, that was about how he cut it off, and I've been battling surface  
728 water run-off ... my lot is basically useless, and my home is probably worth about \$20,000  
729 dollars less because of the territory around it, behind it, is full of water.

730  
731 And, that shot is basically a good shot, basically ... on a blue sky day, but anyway, I'm  
732 going to wrap up by saying ... just right now is a way of looking at it with my own expertise,  
733 which you might call a citizen scientist. I stay on the website all the time watching NOAA



734 website and I'm a weather expert, in my own way. And that lot without a ditch in front of  
735 it ... the street is completely level with the lot, itself. I left there this morning and that whole  
736 place was a lake. Just like Pete is trying to tell you. It's just poorly managed. I've had a  
737 county environmentalist trying to help me. They can't pinpoint any of it and I kind of feel  
738 sorry for whoever is going to get that lot. I think the person that wants it should know that.  
739 That this place is poorly managed. It's out of control. The geology all through it is ... the  
740 ground is full of clay. It does not drain water off well. And, I don't really see any way how  
741 you can replace the below sub-soil ground. So, we really, really have terrible drainage. I  
742 basically looked up to see within a year or two of my dilemmas ... sure enough, here in  
743 Pete's driveway is the Welcome Wagon of the same little environmental people that get  
744 sent out when we call to ask for help, and they basically come out, smile at you, look at  
745 you and then hand you mosquito repellent cans. That's all that gets done. And, that was  
746 actually the beginning of all this.

747  
748 I was worried about my neighbors and people around me for the amount of mosquito  
749 populations that are being built in these uncontrollable areas. And, that is basically a  
750 swamp right there and if they take those trees down, and open that area ... its' going to  
751 be unlivable for me. I wish I could now sell my house and get out of there, but I have  
752 somewhat lived there and ... anyway, just to quickly wrap it up ... 10 or 15 years, time  
753 went by ... now we got sort of some new skies and some new world over here ... you can  
754 read about it and see about it in the news every day. Battling sea level rise and climate  
755 problem, and we are an acute example of it. It floods here all the time. I'm requesting that  
756 if the county can't at least do more to guarantee us that we can be professionally told that  
757 they can control the water in this area ... and now tear this all up and make a big mud pit  
758 out of it and remove all these long-time trees and what not, that unfortunately...

759  
760 Ms. Harris - Ok, thank you, Mr. Clay. Are there questions from Board  
761 members?

762  
763 Mr. Johnson Yes, you said you've been out there for 20 years?

764  
765 Mr. Clay - Yes, sir.

766  
767 Mr. Johnson - Fifteen to twenty years?

768  
769 Mr. Clay - Yes, sir.

770  
771 Mr. Johnson - I notice on your side, as a matter of fact, by your house ... the  
772 water is draining from your area over across the road to that.

773  
774 Mr. Clay - Right. Also, I've had to tear my property up to create a  
775 drainage ditch just to try and relieve my back property of the water standing ... I'm sorry,  
776 I didn't mean to talk over you.

777  
778 Mr. Johnson - This development might correct some of that too. Some of  
779 that issue is water from your side coming over there.

780  
781 Mr. Clay - It's coming from Lakeside. The water is coming from all  
782 around there ...  
783  
784 Mr. Johnson - That's a little drainage there as well. It drains right by your  
785 property, then through a little pipe that comes into that roadway to that property ...  
786  
787 Mr. Clay - I don't follow you. I'm sorry.  
788  
789 Mr. Johnson - Ok. I would just want to remind you that that development  
790 might make a difference with the work on the water drainage.  
791  
792 Mr. Clay - Ok. Yes, sir. I appreciate you asking. In this view you can  
793 see that ... one thing I've learned is the infrastructure contains either a ... of a street ...  
794 you just have a curbing to guide the water off, or in general, you will have actual ditches,  
795 like Ms. Harris was speaking of, and I would say a ditch could probably hold a lot more  
796 water flow than a little curbing like that can. But, on the opposite view on the other side of  
797 the street, the curbing basically is on the other side ends directly at Mr. Pete's property.  
798 He ... and then ... it's just raw development all the way down the hill, with these really old  
799 homes dotted in from the forties down there. So ...  
800  
801 Ms. Harris - We can see if the builder will address some of those water  
802 issues in just a moment. Any more questions from Board members?  
803  
804 Mr. Green - My concern is not necessarily the house, but the way the  
805 county has not addressed the water issue. So, why should one person be responsible for  
806 something that I would think is a county issue that impact not only you, but possibly all  
807 the other neighbors. So, that's the main issue right there.  
808  
809 Mr. Clay - Well, some of the folks aren't here today and that's partly why  
810 I came. Just the construction of the property ... I mean ... that's not showing you real well  
811 ... that picture right there ... how it's cut off some time back. That is a cul-du-sac right up  
812 against the end of that. And, just now and the last 30-days or something, the circle is  
813 being filled in, and a home is being built right behind where that little white shed can be  
814 seen. That's the next home coming in, in the cul-du-sac. The next one coming in has  
815 been directly ... anyway you might be actually able to see it, right there being built on the  
816 far right. So, after that easement, around that cul-du-sac, is now coming very, very close  
817 ... right up around to where this property is ... its right up against this line of this property,  
818 and so the people in 709 and 711 have both talked to me ... and maybe they are too busy  
819 and not well enough to be here, but they've got standing water all behind their homes  
820 now. And, they are complaining and saying that ... you know ... as soon as they started  
821 this building project for this now, water is being pushed back ... and this is a downhill.  
822 That's one of the things ... this street does have a slight slope and as it goes down the  
823 hill, it gets graded higher. I mean, further sloping and water is rushing down this hill to get  
824 to the bottom, at all times ... which is what water does, in my expertise. It runs to the least  
825 point of resistance. So, I mean ... again, there's no ditching as this road goes completely

326 to the bottom and hits a road called Moss Side where it T's out. The properties all the way  
827 down past this, 709, 11, and 13 or whatever ... or may be in reverse. I may have it in  
828 reverse. So, the only way from Pete's house down this road to the end of it, none of them  
829 have any ditch. It's been left that they can park their cars right in front of their homes,  
830 right on street level and there's no run-off at all. So, I mean, unless they were possibly  
831 proposing to grade it, grade a ditch of some kind ... for real that took this property all the  
832 way down to the bottom ... it's gonna keep spreading water and settling the next two over  
833 ... 709 and the next one down, they are going to continue to collect water. And, so Charles  
834 isn't here ...

835  
836 Mr. Green - So, the real problem is all that new development ... if all that  
837 new development wasn't there, would that house being built still be problematic for you?  
838

839 Mr. Clay - Right, right. In one way, if all of that wasn't being done to  
840 disturb any ... really sensitive water flow that's all around that that cannot be forecast or  
841 controlled ... it may not have upset the water table or what not ... to be right up against  
842 this last piece of property.  
843

844 Mr. Green - Right.  
845

846 Mr. Clay - And, since all that's been gone ... I mean ... all I can say is I  
847 guess I'm a bit of a homebody. I do a lot of work at home. If you are around somewhere  
848 24-hours a day, you really begin to see the constant buildup of ... I'm sorry if I'm  
849 overstepping my time with you guys. That's a long time with you guys. If you take those  
850 trees away, cut that property up ... it's just going to take some more rooted soil together  
851 that's held together and just destroy what's holding it together again and we're going to  
852 be living with more and more water flow.  
853

854 Ms. Harris - Ok. Mr. Green, does that answer your question?  
855

856 Mr. Green - Yes.  
857

858 Ms. Harris - Any more questions from Board members? Mr. Clay thank  
859 you for coming in.  
860

861 Mr. Clay - Thank you so much for listening.  
862

863 Ms. Harris - Ok, do we have anymore persons in opposition to this  
864 request? No?  
865

866 Mr. Blankinship - Mr. Walker, I think wants a rebuttal.  
867

868 Ms. Harris - Mr. Walker. Now we hear the rebuttal.  
869

870 Mr. Walker - I'm not sure where to start.  
871



872 Mr. Blankinship - I think if you just addressed the drainage.  
873  
874 Mr. Green - Absolutely.  
875  
876 Mr. Walker - So, two things I heard from both parties ... is the ... basically  
877 there's no ditch on my side of Sibley, and I think me and Mr. Gidley spoke about the  
878 maintenance of the right-of-way. If I'm not mistaken, the drainage line or the drainage  
879 ditch that should be there is on county property. And, the maintenance of that road  
880 probably needs to improve, but when I build the house, I'm mandated under Public Works  
881 requirements to improve what I'm doing and what's there. So, I ultimately am willing to  
882 clean up my side of Sibley in front of the proposed dwelling. But ultimately, in my opinion,  
883 the maintenance of Sibley on ditch side or not ... or on the curb side needs to be improved  
884 which is something that's maintained by Public Works maintenance.  
885  
886 Ms. Harris - Ok. Any more rebuttal? Mr. Walker, thank you so very much.  
887 That concludes this case. We move on to ...  
888  
889 Mr. Clay - Anyway I do a rebuttal to that?  
890  
891 Ms. Harris - No, he just did the rebuttal.  
892  
893 Mr. Clay - Oh, ok. I just ...  
894  
895 Ms. Harris - We have a procedure, where the applicant states the case,  
896 and those who agree and those who oppose speak, and then the applicant comes back  
897 and rebuts anything that has been said that they disagree with or they have a solution for  
898 ... but, we thank all citizens for coming in and expressing their opinions.  
899  
900 **[After the conclusion of the public hearings, the Board discussed the case and**  
901 **made its decision. This portion of the transcript is included here for convenience**  
902 **of reference.]**  
903  
904 Ms. Harris - Ok, the next case is VAR2019-00001. What is the pleasure  
905 of the Board? I move that we approve this variance that's in the Fairfield District.  
906 Certainly, this lot is unbuildable as it stands. So, the reason why would be the county  
907 owning the adjacent parcel and I feel that Mr. Walker, with his experience, can take care  
908 of the drainage for this particular situation, for this particular lot. So, my motion is to  
909 approve. Is there a second?  
910  
911 Mr. Reid - I second.  
912  
913 Ms. Harris - This motion is seconded. Any discussion on this motion?  
914  
915 Mr. Johnson - I think that development would make a difference in the  
916 drainage out there and that it would help with the swell. Because looking out there, any  
917 development would also take into consideration the drainage, especially close to the



918 houses and stuff, and this will be close to all that ... houses in that area, and it would  
919 close up the last lot.

920  
921 Ms. Harris - Ok. Any more discussion on this particular motion? All in  
922 favor say, aye.

923  
924 Ms. Harris - Ok. Any dissention from the opposition? Ok, the motion was  
925 approved.

926  
927 After an advertised public hearing and on a motion by Ms. Harris and seconded by Mr.  
928 Reid, the Board **approved** application **VAR2019-00001, ERIC WALKER's** request for a  
929 variance from Section 24-95(b)(5) of the County Code to build a one-family dwelling at  
930 713 Sibley Avenue (Lakeside Terrace) (Parcel 786-751-2770), zoned One-Family  
931 Residence District (R-3) (Fairfield). The Board approved the request subject to the  
932 following conditions:

933  
934 1. This variance applies only to the lot width and lot area requirement for one dwelling  
935 only. All other applicable regulations of the County Code shall remain in force.

936  
937 2. Only the improvements shown on the plot plan and building design filed with the  
938 application may be constructed pursuant to this approval, including a brick front  
939 foundation. Any additional improvements shall comply with the applicable regulations of  
940 the County Code. Any substantial changes or additions to the design or location of the  
941 improvements will require a new variance.

942  
943 3. Clearing, grading, or other land disturbing activity shall not begin until the applicant  
944 has submitted, and the Department of Public Works has approved, an environmental  
945 compliance plan.

946  
947 4. Any dwelling on the property shall be served by public water and sewer.

948  
949  
950 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
951 Negative: 0  
952 Absent: 0

953  
954  
955 Ms. Harris - Now we move on to the next case.

956  
957 Mr. Blankinship - VAR2019-00003, Mann Kidwell Shade Corporation.

958  
959 **VAR2019-00003 MANN KIDWELL SHADE CORP.** requests a variance from  
960 Section 24-94 of the County Code to build a loading dock and canopy at 6011 W. Broad  
961 Street (Westwood) (Parcel 770-741-2406) zoned Business District (B-3) (Brookland).  
962 The rear yard setback is not met. The applicant has 10 feet rear yard setback where the

963 Code requires 40 feet rear yard setback. The applicant requests a variance of 30 feet rear  
964 yard setback.

965  
966 Would everyone who intends to speak to this case, please stand and be sworn in.

967  
968 Raise your right hands, please. Do you swear that the testimony that you are about to  
969 give is the truth, the whole truth, and nothing but the truth, so help you God?

970  
971 All - Yes.

972  
973 Thanks. Mr. Madrigal.

974  
975 Mr. Madrigal - Thank you, Mr. Secretary, Madam Chair, Members of the  
976 Board. Before you is a request to build a loading dock and canopy in the rear yard of a  
977 commercial property. The property has been zoned B-3 since the comprehensive  
978 rezoning of 1960. The building was constructed in 1965 and was acquired by Covered  
979 Up LLC in 2004.

980  
981 The site, as laid out, complies with the minimum 40-foot rear yard setback. In November  
982 of 2004, Mann Kidwell applied for a variance to build a loading dock and canopy in the  
983 rear yard. Although their request was approved, the improvements were never built and  
984 the variance expired. Shortly thereafter, the Board became aware of the Cochran decision  
985 in which the State Supreme Court clarified that the BZA had no authority to grant a  
986 variance unless the effect of the ordinance as applied to the property under consideration  
987 would, in the absence of the variance, interfere with all reasonable beneficial uses of the  
988 property taken as a whole. Mann Kidwell has now applied for the same variance that was  
989 approved in 2004. However, given the guidance of the Supreme Court, it is now clear  
990 that the Board lacks jurisdiction to approve it.

991  
992 With request to the threshold question, the property was occupied for 53 years by West  
993 End Rentals starting in 1965 to 2004. Thereafter, it has been occupied by Mann Kidwell.  
994 Although a loading dock would make the building more functional and accessible, there  
995 is no evidence that supports that a 40-foot setback unreasonably restricts the use of the  
996 property or that it imposes a hardship as defined by the State Supreme Court.

997  
998 With respect to the five substests, Item #1: good faith acquisition, because there is no  
999 hardship, this test is not relevant. Item #2: substantial detriment, the adjacent property to  
1000 the southwest is residentially zoned and is part of the Westwood Manor subdivision, it is  
1001 improved with a one-family residence that was built in 1952. To reduce the setback from  
1002 those dwellings from 40-feet to 10-feet could be expected to have a substantial  
1003 detrimental impact due to noise, glare, traffic and visual impact. These could be  
1004 somewhat mitigated by increasing the height of the privacy fence and adding landscaping.  
1005 Item #3: general and recurring nature, there was nothing unique or unusual about the  
1006 property. Item #4: use variance or change in zoning classification, a retail store is the  
1007 principal permitted use in the B-3 District. Approval of the variance would not result in a

1008 use of variance or a zoning change. And, then Item #5: special exception remedy, that  
1009 option is not available for the applicant's request.

1010  
1011 In conclusion, the applicant's request does not satisfy the hardship requirement as laid  
1012 out by the State Supreme Court. As such, the BZA has no authority to go further.  
1013 Additionally, the property owner has an existing reasonable use of the property, absent  
1014 the loading dock. Based on the facts of the case, staff recommends denial of the variance  
1015 request.

1016  
1017 Ms. Harris - Are there questions of Mr. Madrigal? Thank you so much.

1018  
1019 Mr. Madrigal - Thank you.

1020  
1021 Ms. Harris - Let's hear from the applicant now. Please give us your name  
1022 and spell your last name.

1023  
1024 Applicant - Good morning. My name is Claire Shirley, and that's S-H-I-  
1025 R-L-E-Y, and I am representing Andrew Kidwell with Mann Kidwell, who is here with me  
1026 today. We disagree with the finding, how did he word it ... that the BZA does not have the  
1027 authority to grant the variance. Because we do believe it's a hindrance on the property.  
1028 Mr. Kidwell renovated the building in 2004 in the Enterprise Zone and has been operating  
1029 since then out of the existing space. Shortly after that, in 2004, they applied for the  
1030 variance and it was granted. Since then, the rules have changed. Since then, we have  
1031 had many recessions and tough economic times through which ... um ... Nan Kidwell has  
1032 weathered the storms and is now doing financially better. And, now it's appropriate to  
1033 build what the variance that was already approved.

1034  
1035 So, with the rule change business is good and that's the problem. Product is coming into  
1036 the back area. We're not planning to change the use of the back area. The back area is  
1037 currently being used for zoning. I mean, for deliveries. Excuse me. So, as you can see  
1038 in the photo that's what it's being used for now. And, I'm hoping to build a structure to  
1039 enclose that. So that when deliveries come in in the rain they don't have to stop what they  
1040 are doing. Mr. Kidwell may need to leave now, if it starts raining again to go take a delivery  
1041 in because that's what has to happen. Then it can't sit out in the rain and we're losing  
1042 product, we're losing merchandise, which is also revenue. This is an Enterprise Zone.  
1043 Business grows and now that's the problem. We need to build this loading dock in order  
1044 to enclose it. It will also screen the delivery area from the adjacent residential property.

1045  
1046 The adjacent properties ... I don't know if you can go back to that ... the photos that show  
1047 the adjacent properties. Those buildings are ... oh, I'm sorry ... maybe the aerial. The  
1048 buildings on either side also are commercial. Also, as you can see in that photo, they go  
1049 all the way to the back property line. There is no 40-foot setback on those properties.  
1050 They were built prior to that ordinance going into effect. Their deliveries come in those  
1051 back areas just like this property proposes to do.



1053 Um ... the response from zoning ... Planning says that it would increase traffic in the  
1054 back, that's not the case. In fact, with the building constructed as proposed, the addition  
1055 ... Traffic wouldn't be cut off from driving through that back area to the adjacent property  
1056 and making a circle around that building. So, it actually would decrease the traffic flow  
1057 behind the residential property by putting a building across that space. And, then the  
1058 noise, the deliveries are still continuing to be there. The noise would then be inside a  
1059 loading dock instead of outside in the open for the adjacent properties.

1060  
1061 Ms. Shirley - Did you have anything you want to say?

1062  
1063 Citizen - My name is Andrew Kidwell, K-I-D-W-E-L-L. Thanks for your  
1064 time this morning. My company Mann Kidwell was the pilot child for the Henrico County  
1065 Enterprise Zone in '04. I'm very appreciative for your support at the time. When we  
1066 renovated this building, expenses far exceeded what I had anticipated, therefore, the  
1067 loading dock which was approved and it's been needed ever since. I got sidelined March  
1068 1<sup>st</sup> of '08. Our business crashed for three years like most everybody else's. And, we have  
1069 been able to make do, but we've gotten to a point to where the business has grown. And  
1070 to back up and tell you what we do, so you'd have an idea why we need a covered loading  
1071 dock. We do custom interior window treatments, finished interior furniture grade products  
1072 that don't do well in the rain. They don't do well sitting on a pallet in the rain. The way  
1073 things work currently, today is a prime example. It's raining profusely today. It's raining a  
1074 lot all the time. We get deliveries. Deliveries show up whether it's raining or whether it's  
1075 sunny, and they leave the pallets right outside the building. At that point, for example, I  
1076 need to stop what I'm doing, the ladies in the office need to stop what they are doing and  
1077 installers need to be pulled off of jobs ... brought back immediately to address and secure  
1078 the product, getting it in the building. Yes, we get FedEx. Yes we get UPS. Those get  
1079 brought in the building by the delivery companies, but the common carriers, we pay a lift  
1080 gate fee since we have no loading dock. Their responsibility is to drop the product off  
1081 and leave it. So, we are desperately seeking Your support to remedy this situation where  
1082 deliveries can be delivered and not be addressed until we need to address them because  
1083 they're in a secured loading dock. So, we have quite a few pictures if any of you guys  
1084 would like to look at any of these showing what we deal with on a weekly basis.

1085  
1086 Again, the variance was approved. We didn't have the resources at the time. We have  
1087 the resources now. We have the business now. In order for our business to continue and  
1088 be successful, we have to address receiving product like everybody else up and down  
1089 Broad Street. There's no way that Home Depot or the other guys up the street don't have  
1090 loading docks and don't have issues that don't accommodate that. We're looking what  
1091 was already approved. I had one neighbor contact me out of the several houses behind  
1092 us. We spoke and shared our plans and he was very pleased with the direction that we  
1093 were going. We've had no opposition that I'm aware of. Thank you for your time.

1094  
1095 Ms. Shirley - We'll be happy to answer any questions.

1096  
1097 Ms. Harris - Ok. Are you an attorney or engineer?

1098



1099 Ms. Shirley - Engineer.  
1100  
1101 Ms. Harris - Engineer. I noticed on the application ... you said that ... you  
1102 used the words "unnecessary health and safety risk that could be improved." I was just  
1103 ... I had a question about what's unhealthy?  
1104  
1105 Mr. Kidwell - Can I answer that?  
1106  
1107 Ms. Harris - Please, please answer that for me.  
1108  
1109 Mr. Kidwell - Well, actually when it's cold and you are standing out in the  
1110 rain for 30-minutes to an hour ...  
1111  
1112 Ms. Harris - Yes, I understand. I understand. Ok. And, do you have  
1113 internal storage there?  
1114  
1115 Mr. Kidwell - Yes. We're maxed out.  
1116  
1117 Ms. Harris - You're maxed out.  
1118  
1119 Mr. Kidwell - We are maxed out. The idea of positioning this on the side of  
1120 the building where it doesn't affect our setback seems like a logical idea, but it takes the  
1121 whole parking lot for the driver to bring the truck in from off of Broad Street and to get  
1122 turned around and lined up behind the building ... if we wanted this off the side of the  
1123 building in the middle of the parking lot, there would be no room for the tractor trailers to  
1124 actually get in and get lined up to deliver.  
1125  
1126 Ms. Harris - Yes, I understand that. I visited your site. But, are you aware  
1127 that ... do you have a copy of the report?  
1128  
1129 Mr. Kidwell - Yes.  
1130  
1131 Ms. Harris - Ok, are you aware that the rules have changed?  
1132  
1133 Ms. Shirley - Yes.  
1134  
1135 Ms. Harris - And, so they're saying according to the Cochran Case, we  
1136 have no jurisdiction, we have no authority to grant you what you wish because of the  
1137 guidelines that have been given us.  
1138  
1139 Ms. Shirley - But the wording of that ... I'm sorry, I didn't mean to talk over  
1140 you.  
1141  
1142 Ms. Harris - Yeah.

1144 Ms. Shirley - The wording of that ... um ... the terms that restrict  
1145 unreasonable utilization of the property. That's what takes away your authority from my  
1146 interpretation of that statement. It says the Code of Virginia provides ... a variance shall  
1147 be granted if the evidence shows that the strict application of the terms that were met.  
1148 But unreasonable restrict utilization of the property or the granting of the variance as a  
1149 result of a hardship due to a physical condition relating to the property. And I think we're  
1150 there. I mean I think, in my opinion ...  
1151  
1152 Ms. Harris - Ok, I think we had several comments. Could you finish your  
1153 point, please?  
1154  
1155 Ms. Shirley - I believe that the interpretation of restricting the authority of  
1156 the BZA relates to the hardship on the property.  
1157  
1158 Ms. Harris - Ok. Are there questions from Board members?  
1159  
1160 Mr. Bell - In the back there, where you have the two 8-foot doors, I'm  
1161 assuming that's where Y'all are storing the stuff that's not inside?  
1162  
1163 Mr. Kidwell - Yes.  
1164  
1165 Mr. Bell - And because it's filled up, you need more room on the outside  
1166 is what you are saying?  
1167  
1168 Mr. Kidwell - We need to send these pictures out so you can get a better  
1169 idea of what we are dealing with ...  
1170  
1171 Mr. Bell - Well, basically, I'm just interested in that door. Is that where  
1172 the dock is going to go?  
1173  
1174 Mr. Kidwell - The dock is going to go ... if you are looking at the picture,  
1175 basically from just to the right of where the double doors are, to the east is where the  
1176 loading dock would be, where the trucks would back right to a rollup door and leave the  
1177 pallets, the product there.  
1178  
1179 Ms. Shirley - Under cover.  
1180  
1181 Ms. Harris - Ok.  
1182  
1183 Ms. Shirley - Under cover.  
1184  
1185 Mr. Bell - How high is the loading dock?  
1186  
1187 Mr. Kidwell - Whatever is standard for the delivery trucks that deliver.  
1188  
1189 Ms. Shirley - Four-feet.

1190  
1191 Mr. Bell - Is that four-feet out or actually 34-feet out and 20-feet across?  
1192 That's going to be ...  
1193  
1194 Ms. Shirley - Right, its 34-foot back to the existing building towards the  
1195 property line and then 20-feet down to the front of the loading dock, and then it would be  
1196 4-feet high. The loading dock would be 4-feet high.  
1197  
1198 Mr. Bell - Also, what I'm hearing is talk that the business has grown well  
1199 and a lot of what I hear are business problems more so than dealing with variances.  
1200 Whether we can issue a variance or not depends on a lot of things, and one of the things  
1201 we talked about was the Cochran decision.  
1202  
1203 Ms. Harris - Right.  
1204  
1205 Mr. Bell - So, we have to look at that because that's a definite no ...  
1206 because it's no up to us to say it, it's been said. So, that then makes your growth even  
1207 harder, I realize, because you've still got to find places to put this. How would you handle  
1208 this if this is denied?  
1209  
1210 Mr. Kidwell - The same way we've been doing it. It's just ridiculous to run a  
1211 business this way. Now the pictures ... if we could pass these down, I think you'd get a  
1212 better idea of the size and the scope of what we are working with here. We're not dealing  
1213 with a box you pick up. These are minimum 4-foot by 4-foot pallets. There's one picture  
1214 here with 12-foot long pallets, 10-foot long pallets and its cardboard separating your  
1215 finished product from Mann Kidwell is separated from a layer of cardboard from the  
1216 weather.  
1217  
1218 Mr. Bell - Right.  
1219  
1220 Mr. Kidwell - Ok. It's ... we have to pay lift gate fees for every delivery. We  
1221 have to stop what we are doing every week to receive deliveries. It's not a functional way  
1222 to run and receive a business for us. I think the pictures really need to be looked at so  
1223 you will see the size of problem.  
1224  
1225 Ms. Harris - We congratulate you on your growth.  
1226  
1227 Mr. Kidwell - Well, thank you.  
1228  
1229 Ms. Harris - But, we think you do have a growth problem here. Here in our  
1230 Code, if you have access to your business, if you are not restricted from doing your  
1231 business ... and you are not ... and you are growing, then we have no jurisdiction to,  
1232 according to Cochran, to make a decision in this case.  
1233  
1234 The ruling is there is no evidence that the 40-foot setback unreasonably restricts the use  
1235 of the property. So, you have use of the property and its growing. Your business is

1236 growing. So, it doesn't seem like it's unreasonably restricting the use of your property.  
1237 That's what Cochran is saying.

1238  
1239 Mr. Kidwell - So, let me ask you a question. What happens when I have five  
1240 to ten-thousand dollars' worth of product that gets ruined from not being brought in in a  
1241 timely fashion?

1242  
1243 Ms. Harris - Mr. Kidwell, you are going to have to find that ...

1244  
1245 Mr. Kidwell - I'm asking you.

1246  
1247 Ms. Harris - Now, I going to say you are going to have to find an area  
1248 where you can store if you have this much stock coming in. I mean, I can't solve it  
1249 because I'm not the owner, but to me you have a growth problem. I don't know how other  
1250 ...

1251  
1252 Mr. Kidwell - We've had a problem since I've got in the building in '05. I  
1253 couldn't financially afford to do the loading dock. I bought the building and paid over  
1254 \$400,000 thousand for the building, I did three-hundred and some thousand in  
1255 renovations through the Enterprise Zone Program. You guys were very helpful, very  
1256 helpful. The county was great. But here we are in a situation where enough is enough. I  
1257 mean, why should we continue to run a business in a fragile environment where it's all  
1258 weather related whether or not I'm going to be able to deliver a customers' product in the  
1259 correct condition or not. That's the hardship.

1260  
1261 Ms. Shirley - In the evaluation under the letter "i" it says, "The property  
1262 interest for which the variance is being requested was acquired in good faith and any  
1263 hardship was not created by the applicant for the variance." The property was acquired  
1264 in good faith with an approved variance for this loading dock in 2005. Since then, the  
1265 rules have changed around this. And that's the hardship that had nothing to do with ...  
1266 business had nothing to do with this particular property. The rules changed and I think  
1267 that's what our hardship is. Is that the rules changed around this. Mr. Kidwell went into  
1268 this project in good faith that a loading dock could be built there.

1269  
1270 Ms. Harris - Our dilemma is that the rules did change and we're going by  
1271 the rules. That's our dilemma. We see that your business has grown and we congratulate  
1272 you on that, but like most businesses that grow, you've got to decide if you are going to  
1273 stay there or move to a larger location.

1274  
1275 Mr. Kidwell - I mean ... does Henrico not want my tax base to ... that's what  
1276 I'm getting at is ...

1277  
1278 Ms. Harris - Does Henrico ever not want our taxes? But let me let other  
1279 Board members address questions to you.

1280  
1281 Ms. Harris - Mr. Johnson.



282  
1283 Mr. Johnson - Mr. Kent ... Kenwell ...  
1284  
1285 Mr. Kidwell - Kidwell ... but, yes sir.  
1286  
1287 Mr. Johnson - Yes, Kidwell. Also, with the structure you have ... and I  
1288 noticed that on the side where you have your doors at that you have your materials  
1289 stacked. If you, just an observation, if you went to the back of it and put the doors in the  
1290 back and changed around inside that would alleviate some of your problem. You would  
1291 still have areas to put your materials inside ... and you can do it inside. The trucks can  
1292 also come around, you might want to consider revitalizing the interior and exterior of the  
1293 facility. Like you said, our hands are tied based on the new regulations, but there are  
1294 some things that you might want to consider doing.  
1295  
1296 Ms. Shirley - The maneuverability for trucks ... for trucks, it doesn't quite  
1297 work on the site to put the loading dock on the side, like you are saying ... in the ...  
1298  
1299 Mr. Kidwell - If you are looking at the back corner of the building, from the  
1300 rear towards Broad Street, and my parking lot is going to be to the left of that ... if I were  
1301 to put the loading dock on that corner ... ok ... and didn't go past the back of the building  
1302 currently ... there's not enough room if I put the loading dock right there where that prompt  
1303 is they will not have enough room to pull in the parking lot and line up. It's not enough  
1304 space for the 18-wheeler. They barely have enough room now to ... between my building  
1305 and the adjacent property owners to the west. If they are going to come in and circle and  
1306 backup behind the building that there is not enough room to circle and back up to an  
1307 extension of the building off of the west side. There's not enough room.  
1308  
1309 Ms. Harris - Ok. Mr. Green, you had a question?  
1310  
1311 Mr. Green - Mr. Kidwell, I've watched you in the development. I've  
1312 watched you in ... how it's grown because my accountant's office is a couple doors down  
1313 from that. So, I've actually utilized you for some of your services. So, I can certainly  
1314 appreciate it, but this is interesting that what you want to do, and I understand over time,  
1315 they've jammed a couple of buildings in there where you've always had some good space  
1316 ... you know ... between the different businesses and like that ... you know, some Auto  
1317 Zone, some auto place just jammed up in there which crowds you. The thing that baffles  
1318 me is that you can't do it and I don't know why it's even brought to us if you can't do it.  
1319 Personally, I would support it, but if we can't do it, then I'm ... I don't ... this Cochran piece  
1320 was even brought to us and told it couldn't be. And, I want somebody to explain that to  
1321 me. As to why do we have people take their time to do this only to know that they can't  
1322 do it? It's a waste of their time. It's a waste of our time. If someone would just explain  
1323 the rules to them, then we wouldn't be dealing with this.  
1324  
1325 Mr. Blankinship - Oh, we did have a meeting before they applied and we  
1326 explained both sides of the issue ...  
1327

1328 Mr. Green - Right ...  
1329  
1330 Mr. Blankinship - They felt passionately about their case and felt that they had  
1331 the right to come and make that argument to the Board. It's not for staff to pre-empt them  
1332 from even making their case. So, that's why they do it. We do have that conversation in  
1333 advance and we're as forthright as we can be with the applicants about what they can  
1334 expect when they get here. Sometimes that's a cheerful conversation and sometimes it's  
1335 a difficult conversation. It's not my place as staff to refuse the process of the application.  
1336  
1337 Ms. Shirley - Mr. Blankinship did a fine job of explaining that to us, but I  
1338 would suggest that that's open for interpretation. I think that the ruling is open for  
1339 interpretation and I think that is why we would like to present it. Why we wanted to present  
1340 it to you today.  
1341  
1342 Mr. Blankinship - And, that's why the five of you make the decision, rather than  
1343 the one of me.  
1344  
1345 Ms. Shirley - Thank you.  
1346  
1347 Ms. Harris - Any other questions from Board members? I want to thank  
1348 you for coming in, and we'll make the decision at the end of the meeting.  
1349  
1350 Ms. Shirley - Thank you very much for your time.  
1351  
1352 Ms. Harris - Is there anyone who wishes to speak in support of this  
1353 application? Is there anyone who wishes to oppose this application? That concludes the  
1354 case. Thank you.  
1355  
1356 **(This case was deferred. See page 54 for discussion.)**  
1357  
1358  
1359 Mr. Blankinship - VAR2019-00004, Higgins Family Limited Partnership.  
1360  
1361 **VAR2019-00004 HIGGINS FAMILY LIMITED PARTNERSHIP** requests a  
1362 variance from Section 24-94 of the County Code to build a one-family dwelling at 916 S.  
1363 Gaskins Road (Parcel 738-732-0576) zoned One-Family Residence District (R-0)  
1364 (Tuckahoe) The lot width requirement is not met. The applicant has 50 feet lot width  
1365 where the Code requires 200 feet lot width. The applicant requests a variance of 150 feet  
1366 lot width.  
1367  
1368 Mr. Blankinship - Madam Chair, members of the Board, there was an email  
1369 message left on the table for you this morning. It arrived yesterday, so it was not included  
1370 in your package. Do we all swear the testimony we're about to give is the truth, the whole  
1371 truth and nothing but the truth so help you God? Thank you.  
1372  
1373 Speakers - Yes.

374  
375  
1376  
1377  
1378  
1379  
1380  
1381  
1382  
1383  
1384  
1385  
1386  
1387  
1388  
1389  
1390  
1391  
1392  
1393  
1394  
1395  
1396  
1397  
1398  
1399  
1400  
1401  
1402  
1403  
1404  
1405  
1406  
1407  
1408  
1409  
1410  
1411  
1412  
1413  
1414  
1415  
1416  
1417  
1418  
1419

Mr. Blankinship - Mr. Gidley.

Mr. Gidley - Thank you Mr. Secretary, members of the Board. The subject property located off of the southern portion of Gaskins Road, and as noted in the Staff Report, has a rather complicated history of subdivisions and divisions and boundary line adjustments, etc. Essentially, you have these parcels here, the one in red, the one containing the applicant's house up here, along with this parcel down through here. And, this is part of the family land where back in 2001 they decided to subdivide this land. The problem was that the subject property, itself, here ... did not meet the lot width requirement which is required to be met up along the public street. So, they came in in 2001 and applied for a variance for this, which this Board granted. One of the neighboring property owners appealed that decision and in a 2005 opinion, the Circuit Court of Henrico County overturned the variance and said that the Board does not have the authority to grant this variance.

Now the reason for this goes back to the Cochran decision that has been discussed. And the Cochran decision basically said that ...

Mr. Blankinship - You probably don't need to belabor the whole thing again.

Mr. Gidley - Ok, that's fine. We'll just get on with it, which is fine with me. And the interesting thing is ... if you look at the aerial here, you have a property here that's undeveloped and doesn't have a home on it and you are left wondering, probably, what's the court thinking ... why did the court say under Cochran this Board has no authority to grant a variance. Well ... Judge Hicks, in his opinion, basically went back pre-subdivision, and said look ... the family's property was all this in here, you have the applicant's home right here, you have what was a barn and is now a residence right here ... that is the reasonable use of the property taken as a whole and the applicant should not have subdivided the property unless they could do so in a way that met the Zoning Ordinance, and that's why the court overturned the decision.

The quote from Judge Hicks ... he wrote, "The R-0 Zoning District does not interfere with all reasonable beneficial uses of the property taken as a whole" because the Higgins family has enjoyed the use of the home "at 908 S. Gaskins and will continue to do so without the variance request. Therefore, the Court finds that the Board of Zoning Appeals did not have the authority to grant the zoning variance to permit the subdivision of parcels into new lots."

What the applicant is asking the Board to do today is to turn around and reapprove the variance the court previously said the Board did not have the authority to grant. If I understand their attorney's position correctly, they're saying that State Code has been reworded to say that the Zoning Ordinance if it unreasonably restricts the utilization of the property may grant a variance. And, if I understand it now, they're in effect saying that they can develop the property but, they have to build a public road up this narrow stem, right here ... that's expensive and that's unreasonable. The problem with that



1420 interpretation is that it looks just at this property and Judge Hicks in his opinion said no.  
1421 The property is all the family land. The property has a reasonable use; therefore, you can  
1422 apply it's not unreasonably restricted and that's why the Judge threw out the case; and, I  
1423 think that remains the case despite the rewording of State law.

1424  
1425 Finally, even if for the sake of argument, if the staff or the Board for that matter were to  
1426 agree with the applicant's reinterpretation of State code, there remains one problem ...  
1427 and that is, as you have noted in your staff report, five subtests are required to be met in  
1428 order for a variance to be granted. And one of these is that the need for the variance that  
1429 is being applied for was not created by the applicant. And, the applicant in this case, did  
1430 create the need for the variance. The applicant is a professional landscape architect  
1431 whose firm does a lot of land use planning. He was aware of the requirements under the  
1432 Zoning Ordinance for a lot and yet he created an extra lot that did not meet the  
1433 requirements of Code. And he, and he alone, is responsible for this hardship. And  
1434 because of this requirement five-subtest is not met, a variance may not be granted.

1435  
1436 The letter of opposition that Mr. Blankinship pointed out from a resident across Gaskins  
1437 Road, they made several points, but the first point basically talks about this. And, if I can  
1438 paraphrase them, they say, "We believe the variance request does not satisfy the Code  
1439 of Virginia which specifically requires that any hardship was not created by the applicant  
1440 for the variance. In this case, the applicant created the variance situation they're hoping  
1441 the BZA will rectify by granting a variance. The applicant knowingly subdivided their land  
1442 into too many parcels knowing the only way they could build a house on the subject  
1443 property here is to get a variance." And, they point out that even if the law did change,  
1444 that does not change the fact that the applicant originally subdivided their land knowing a  
1445 variance would be required for them to build a house. So, they created a hardship.

1446  
1447 The reason for this requirement is pretty obvious. You don't want people, in effect,  
1448 creating lots that are in violation of the Zoning Ordinance and then turning right around  
1449 coming in to the BZA saying "fix this for me." Because then you are, in effect, inviting  
1450 people to break the law and just have Y 'all fix the problem. And that's the reason this is  
1451 in State Code as a required finding the Board must make. And so even if the applicant's  
1452 interpretation of the law has changed, this test is not met and accordingly the variance  
1453 may not be granted. So, in conclusion, staff believes that this case is essentially a repeat  
1454 of the earlier case that Judge Hicks already ruled that this Board did not have the authority  
1455 to grant. Even with the change of State law, the state legislature added the requirement  
1456 that the applicant for the variance did not create the hardship being applied for and this  
1457 is not met. As a result, staff recommends denial of this request and that concludes my  
1458 presentation. If you have any questions, I'd be happy to answer them.

1459  
1460 Mr. Green - How much land is that?

1461  
1462 Mr. Gidley - Let me get my notes. ... 3.959 acres.

1463  
1464 Ms. Harris - Ok.

1465

1466 Mr. Green - So, he can't subdivide it but, he can do something else with  
1467 it? They can do something else with it?  
1468

1469 Mr. Gidley - I think what the court said is ... I mean ... we get people come  
1470 in a lot of times complaining about someone's going to build behind me ...  
1471

1472 Mr. Green - Right.  
1473

1474 Mr. Gidley - ... and they'd like it to be preserved as a natural area. What  
1475 the court essentially said is, going back to Cochran, the property had a reasonable use  
1476 ... it has a house here ... it has a house here. And a lot of these lots in this area are rather  
1477 large and they're in effect ... the court, in effect, said you don't have a right to subdivide  
1478 it further and create this new lot unless you do so in a way that meets the law. And I think  
1479 that's a good kind of summary of where they are coming from.  
1480

1481 Mr. Green - Tell me ... My question is, if the owner says, "I want to build  
1482 another house, I can go build right there ... where there would be no problem for  
1483 themselves to subdivide? Could they do that?  
1484

1485 Mr. Gidley - If it were originally one parcel? Once again, no sir, they could  
1486 not.  
1487

1488 Mr. Green - Oh.  
1489

1490 Mr. Gidley - You could essentially have one home per lot.  
1491

1492 Ms. Harris - Mr. Gidley, are you aware that 3.9-acre sale sign that's on the  
1493 property?  
1494

1495 Mr. Gidley - As I recall, I did see one.  
1496

1497 Ms. Harris - Ok, I'll ask the applicant about it.  
1498

1499 When you create a subdivision, what are the guidelines as it pertains to Cochran?  
1500

1501 Mr. Gidley - Under ... In some ways, that's two different questions. One,  
1502 when you create a lot ... getting back to what I said earlier ... the expectation is you are  
1503 going to do so in a way that meets the Zoning Ordinance. And I think that's especially true  
1504 when you are a professional who deals with development in the county and who knows  
1505 the rules and regulations. And, what the neighbor said in their email was that they tried to  
1506 create too many lots. They had the ability to subdivide this legally but, they just tried to  
1507 create one too many lots out of it and then they expected the Board to come in and fix  
1508 the problem.  
1509

1510 Where Cochran comes into play, in staff's view is ... and in the court's view was the court  
1511 looked at the property before it was subdivided and said there's reasonable use here.



1512 You have a house here now, subsequently, you have another one down here. That's your  
1513 reasonable use. If you want to subdivide it further you can do so if you meet the  
1514 requirements of the Zoning Ordinance, which this lot does not.

1515  
1516 Ms. Harris - Yes, I understood that. We have cases where subdivisions  
1517 are created from large parcels of land. What's the difference?

1518  
1519 Mr. Gidley - Okay, you mean like in Varina or something?

1520  
1521 Ms. Harris - Yes.

1522  
1523 Mr. Gidley - And that's a good question. I think the big difference,  
1524 sometimes, that you see is ... in this case, the applicant had frontage on Gaskins Road  
1525 and had the ability to divide the property in a legal way that met the Zoning Ordinance  
1526 but, they wanted one more extra lot. In other cases, you have property that doesn't have  
1527 public street frontage at all and has no opportunity to make use of their land because  
1528 there is a lack of public street frontage. And then the question comes out ... "When did  
1529 this division occur?" You know, if it occurred a long time ago before the Code required  
1530 public street frontage, then that's an easy case. You can't hold them responsible for  
1531 something that was done, which at the time was legal. But, when this was done, the law  
1532 was quite clear, and you had a professional landscape architect dividing it out in a way  
1533 that he knew didn't meet Code and that's the difference.

1534  
1535 Ms. Harris - Any other questions of Mr. Gidley?

1536  
1537 Mr. Johnson- Yes. Also, with the property, if they put a roadway in ... all the  
1538 way through ...

1539  
1540 Mr. Gidley - Yes, sir.

1541  
1542 Mr. Johnson - ... and go back and have the land zoned to meet the  
1543 regulations ... Is that a ... is that something viable that they could do?

1544  
1545 Mr. Gidley - Yes, sir. That's a good insight on your part, Mr. Johnson. That  
1546 was noted in the court decision by Judge Hicks when he said an option remains. The  
1547 applicant could build that public street through that stem, and it is expensive but, that is  
1548 an option and the court specifically pointed that out in their opinion ... that the applicant  
1549 had other options.

1550  
1551 Mr. Johnson - Ok.

1552  
1553 Ms. Harris - Other questions of Mr. Gidley?

1554  
1555 Mr. Green - So, how would ... so, if they don't do that, how would they get  
1556 to that land now ... off of ... how would they get to that, if they don't do that?

1557



1558 Mr. Gidley - Yes, sir. What they are showing ... and you note that little  
1559 pointy area up here ... if we go back here to the site map, that's here. And what they are  
1560 showing essentially is coming in off of Daniel Street rather than Gaskins ... coming in ...  
1561

1562 Mr. Blankinship - That's Gaskins?  
1563

1564 Mr. Green - Yeah.  
1565

1566 Mr. Blankinship - You're turned around, Paul, that's Gaskins.  
1567

1568 Mr. Gidley - Oh, it is. I'm sorry.  
1569

1570 Mr. Blankinship - Yeah, that is coming through the 50-ft. Their proposal is to  
1571 build a driveway where the original anticipation was, they would build a public street.  
1572

1573 Mr. Green - Right.  
1574

1575 Mr. Gidley - Ok, and that's why that was designed that way because it  
1576 does provide that as an option.  
1577

1578 Ms. Harris - Ok, are there other questions? Thank you, Mr. Gidley.  
1579

1580 Mr. Gidley - Thank you, Ma'am.  
1581

1582 Ms. Harris - Let's hear from the applicant now, please.  
1583

1584 Applicant's Rep. - Madam Chair, members of the Board. My name is Andy  
1585 Condlin from Roth Jackson here on behalf of HK Development. The applicant which is  
1586 Higgins Family Limited Partnership. So, this property is 3.9 acres as showing on the  
1587 screen. I'd like to address some procedural issues first ... before we get into the  
1588 substance of the argument.  
1589

1590 First is the staff's report reference to a couple of folks in opposition and I have here, I'm  
1591 gonna give you a couple of things ... a number of ... emails from two folks who were in  
1592 opposition in the staff report but have since, after we've sat down with them and gone  
1593 over it, they're able to say that they support it including Mr. Tagent ... Mr. & Mrs. Tagent  
1594 who are here now. Also, here are ... the adjacent land owners, seven of them. There's a  
1595 map in there as well of folks that have provided a letter in support of our case that are  
1596 adjacent land owners. I think there was a question regarding the contract for sale. We  
1597 actually have an opportunity to sell this for one home. HK Development could actually be  
1598 the developer of that site for users ... and this is the Letter of Intent. And I want to have  
1599 that for the record.  
1600

1601 The other thing I want to point out that Mr. Gidley, and I'm going to respectfully disagree,  
1602 this property that he was talking about ... the subject property I got highlighted here is  
1603 actually owned by the Higgins Family Limited Partnership. It's a family property. Mr.

1604 Ralph Higgins, who's the professional he's talking about actually owns this on his own.  
1605 They are not actually owned by the same people and have not been. There are ... this is  
1606 Mr. Higgins' property. I also wanted to point out that I think it's very important ... because  
1607 that does make a distinguished fact. It's not like we can put the properties together.  
1608

1609 When we asked for a variance in 2001, we received actually three variances, which the  
1610 court approved two of those three variances. All three were appealed to the Circuit Court,  
1611 and two of the three were approved. One of the variances was for Mr. Ken Higgins, the  
1612 brother of Ralph, because this is a private road. It's not a public road. The County Club  
1613 of Virginia owns Daniels Road and we had to get a variance in order to have public road  
1614 frontage. And, County Club of Virginia has agreed, with all the property owners, that ...  
1615 now that Mr. Higgins can ... Ken Higgins ... No more lots can access Daniels Road. We  
1616 cannot actually access Daniels Road to the property, through the Ralph Higgins property  
1617 through any other way. The only way this property in the back that's owned separately  
1618 from Mr. Ken Higgins, they're not connected in any way, is to access it off of Gaskins  
1619 Road.  
1620

1621 The other variance they granted was to Janie Higgins the sister, who they liked to joke,  
1622 that put in a barn because they converted the barn into a home. And, as you can see, this  
1623 lot frontage was not met, and this additional lot was created that actually meets the Code  
1624 standard. We actually received three variances, one for Mr. Ken Higgins on a private road  
1625 with no frontage, one for Ms. Janie Higgins for, I believe that was 50-ft as well ... I'm going  
1626 by memory on that one; and then for this lot. The court actually approved the two  
1627 variances for Janie and Ken, and then denied it for this one based on the Cochran case  
1628 saying there was an alternative. The alternative being, I think you've already figured out,  
1629 is that we could build a public right-of-way over and across this 50-ft. strip, with a cul-du-  
1630 sac. That 50-ft. strip, when you build it, have to have a 36-ft. wide ... we have to  
1631 meet public road standards ... 36-ft. wide. So, we're going to have to clear the entire 50-  
1632 ft., pave 36-ft. of it, and put a cul-du-sac at the end of it, for one lot. That road, and I know  
1633 you are not concerned and you shouldn't be concerned ... the standards say you  
1634 shouldn't be concerned by money but, by our estimates and by the contractor's it's going  
1635 to cost four-hundred and twenty-five thousand dollars (\$425,000) to build that road to  
1636 public road standards for a public road.  
1637

1638 The 1-acre lot next to us, if I may, is two-hundred and seventy-thousand dollars  
1639 (\$270,000) by assessment by the county. So, a 1-acre lot is two-hundred and seventy-  
1640 thousand dollars (\$270,000), and we're being asked to build a four-hundred and seventy  
1641 ... excuse me ... a four-hundred and twenty-thousand-dollar (\$420,000) road for the  
1642 benefit of two-hundred and seventy-thousand dollars (\$270,000). And, we could divide it  
1643 by right, without zoning ... could divide it into three lots. That's what we don't want to do.  
1644 That's what the neighbors don't want to do. So, what we're asking for is because of the  
1645 public roads standards the county is requiring us to meet those public roads standards ...  
1646 is to spend the money to meet those standards, we've got to subdivide the property in  
1647 order to get a return for three 1-acre lots. That would be two-hundred and seventy-  
1648 thousand dollars (\$270,000) a piece. Again, it's not your concern about the money but,  
1649 its simple math.

1650

1651 I do want to address, as you've heard from the previous case, the fact of ... before I get  
1652 into the other issues with respect to this ... is that because the Circuit Court ... Mr. Gidley  
1653 did a nice job, he said because the Circuit approved this and denied our variance, you  
1654 must also deny it. I'm going to pass out, if I may, a case from Staunton, Virginia, that is  
1655 uncharacteristically similar to our case. That case was approved by the BZA, the Circuit  
1656 Court overturned it, the applicant came back in because there were changes to the law  
1657 and the BZA and Director of Planning said you can't appear before the BZA because you  
1658 already appeared, and the Circuit Court already overturned you. And, the Supreme Court  
1659 said, in 2017, you must hear the case on the merits that it's presented under the current  
1660 law. The fact that it was decided under previous law, the BZA heard this case in 2017 ...  
1661 (INAUDIBLE) ... now hear the case on its current merits. The Circuit Court decision has  
1662 absolutely no bearing on the merits of this case and your decision today.

1663

1664 I apologize that I didn't get this to you earlier but, it came up just this morning and I was  
1665 preparing to be able to present that if necessary. So, that is what the Supreme Court  
1666 in this case said. And, I'm requesting this case be heard on its merits ... not only because  
1667 of this Code but, as Mr. Gidley pointed out the fact that the Standard of Review in 15.2-  
1668 2309 has changed. In fact, changes have occurred by the General Assembly since the  
1669 approval of this case on the very Code setting your standards were changed in 2002,  
1670 2003, 2006, 2008, 2009, and again in 2015. I made a typo in my applicant statement  
1671 where I referenced the Code change that's relevant was 2005, it was actually 2015.

1672

1673 There are two relevant Code changes that have occurred, if I may get to your exercise  
1674 today and I apologize. I have provided for with two different versions that have been  
1675 changed. One is ... that was referenced in the court case that I just provided you that  
1676 says, "if the granting of the variance will alleviate a clearly demonstrable hardship" ... they  
1677 deleted approaching confiscation as you know. That was a standard that Judge Hicks  
1678 used in looking at this. This did not approach confiscation in his mind because there were  
1679 alternative uses. That is, we could build a public road and divide it into three lots. That  
1680 has now been eliminated by the General Assembly. The other one that is much more  
1681 relevant, in 2015, of which I'm going to propose to you, is that in 2015, the Ordinance  
1682 actually says ... the State Code actually says ... I can provide to you that it's an  
1683 unreasonable restriction or I prove it's a hardship. Today I'm going to prove that this is  
1684 an unreasonable restriction and it's an unreasonable hardship. I believe I have those two  
1685 provisions, but I just handed them out to you.

1686

1687 First, with respect to an unreasonable restriction, that we feel that we can still meet. It is  
1688 our position that requiring a 50-ft. wide road, 36-ft. pavement, clearing the entire land for  
1689 one lot, is unreasonable in and of itself ... That to be able to require us, in order to pay for  
1690 the county of standards to subdivide this property into three lots which we are allowed to  
1691 do by right but, not allow us to do so because we can't financially do it for one lot is  
1692 unreasonable in and of itself. But, beyond that, we can still meet the zoning standards  
1693 and county public right-of-way standards without a variance. We can do that today by two  
1694 different ways, and I describe this in my applicant statement.

1695



1696 The first is to build a private drive in a public right-of-way. The answer to that is we could  
1697 dedicate the right-of-way by zoning standards. The right-of-way does not have to be built  
1698 as long as my lot is located on a right-of-way that's dedicated to public standards ... the  
1699 dedication itself ... so it's a public right-of-way, not a road. We don't build a road and we  
1700 put a private drive. This meets the county zoning standards. In fact, that has been done  
1701 in numerous occasions throughout the county. I've got a couple of examples I provided  
1702 in my applicant's report, including right here on Sandalwood; the Three Ten private drive  
1703 over public right-of-way; here on Highland Road, serving a number of lots on private  
1704 drives on public rights-of-way; here on Lambeth, private drive on a public right-of-way. All  
1705 coming out at different reasons but, they do occur. So, not only do we then meet zoning  
1706 and we're willing to do this ... not only do we then meet zoning but throughout the county,  
1707 this has actually occurred. And, further, as I provided to you ... hear me out one more  
1708 time ... On the county website itself, under Public Works, allowable forms ... they actually  
1709 have a form to be signed ... it's for a driveway in an unapproved right-of-way, exactly  
1710 what we are proposing to do. They had it. They've signed them before; I've signed them  
1711 on behalf of applicants and reviewed these. This is part of the county policy to allow for a  
1712 driveway in an unapproved right-of-way. We're happy to do this. We think this is a great  
1713 resolution that would result in only one lot and we don't have to go through the expense  
1714 of building, and we meet the county public road policy. Unfortunately, we received an  
1715 email from Mr. Silber on December 20, 2018, confirming that in fact we do meet the zoning  
1716 standards by this suggestion but, Public Works has ... is not agreeable for a private road  
1717 in a separate agreement. Despite the fact that it has been done before and despite the  
1718 fact that they have a form on the county ... to allow us to do this, the county rejected us.  
1719 So, we actually meet the standard. It actually says, in the last line, "I understand that  
1720 you've applied for a variance, that's really your resolution is to get a variance" ... from the  
1721 County Deputy Manager ... Deputy County Manager suggested that. To me, that's an  
1722 unreasonable restriction to allow us to meet zoning, to allow us to have a form on the  
1723 county website to say we'll put a private driveway in a public right-of-way but, then deny  
1724 us the right to do that. That, to me, is an unreasonable restriction. I've got one more for  
1725 you, too, which is not a very good drawing because I did this myself ... which is what I  
1726 call ... what's affectionately been called in the county "Hinson Bubble", a small cul-du-  
1727 sac, a half cul-du-sac bubble ... right on Gaskins Road. Again, something we are willing  
1728 to do, something that will meet zoning, something that has been done throughout the  
1729 county, something that the county has a policy for but, again, we've been denied. So, we  
1730 would build a public right-of-way, a public road to public road standards, a half of a cul-  
1731 du-sac on a 50-ft. right-of-way ... We now become a cul-du-sac lot ... Under a cul-du-sac  
1732 lot, I believe Mr. Blankinship, we have to be 20-ft. wide at that point.

1733  
1734 Mr. Blankinship - Well, cul-du-sac lots were ... the rules were changed several  
1735 years ago. I don't think that's any longer an option under the Code. It was previously but,  
1736 I don't believe it is any more.

1737  
1738 Mr. Condlin - Well, there's been a number of examples and where it's been  
1739 provided.

1740  
1741 Mr. Blankinship - Right, where at the time, it was lawful. At the time ...

1742  
1743 Mr. Condlin - Still under the cul-du-sac ... still under the Zoning Ordinance,  
1744 if you are defined as a cul-du-sac lot ... and I will just go through this if I may ... is 20-ft.  
1745 in width. If a cul-du-sac lot is a lot that fronts on a cul-du-sac. A cul-du-sac is a road that  
1746 terminates at a circular round-a-bout. So, I believe we meet the definition of a cul-du-sac  
1747 lot because this lot would now be at the end of a circular cul-du-sac. I was going to give  
1748 you some examples which Mr. Blankinship says they don't like these anymore. There's  
1749 one in ...

1750  
1751 Mr. Blankinship - It's not that we don't like them, it's that the Code changed.  
1752 That they are no longer ... that option is no longer available.

1753  
1754 Mr. Condlin - Well, it's interesting because I asked, and I'll go to the email  
1755 ... when I presented this, Public Works has reviewed the proposal according to an email  
1756 from Gary Duvall on January 9, 2019, we cannot support the request, he actually provided  
1757 to me the Public Roads Standards of a Hinson Bubble regarding a modified cul-du-sac  
1758 that would come off and would look very similar to these as to what would be approved.  
1759 He didn't say we couldn't do it. He said they wouldn't approve it ... Public Works because  
1760 they wouldn't meet the public roads standards and he provided this as an example to me  
1761 of something on which we could do but, they wouldn't approve.

1762  
1763 So, that brings us back to question of unreasonable restriction. It's our position that it's  
1764 an unreasonable restriction on the utilization of our property to require a 50-ft. cleared,  
1765 260-ft. long, 36-ft. wide pavement road for one lot. It's an unreasonable restriction to  
1766 require then, based on the economics, that we can put in three lots, but we can't put in  
1767 one because the economics don't work, and the county would require that public road for  
1768 just one lot. We also think it's an unreasonable restriction to allow for a private drive on a  
1769 public right-of-way by zoning, by Public Works policy, by the Standard of the Maintenance  
1770 Agreement throughout the county that's been done, and to deny us that. We think it's an  
1771 unreasonable restriction, as well, for the county to deny us about the Hinson Bubble,  
1772 which is an alternative that allows for ... again by the Zoning Ordinance, that allows for  
1773 cul-du-sac lot by its definition. We believe we would meet that and yet Public Works has  
1774 said, "We would not approve that" even though they have standards for those small  
1775 modified cul-du-sacs. So, that's our unreasonable restriction.

1776  
1777 It's our position that based on the Code changes in 2015 that this Board can grant a  
1778 variance if they believe that what has been done is an unreasonable restriction. We're  
1779 not just limited to, in our position, to just building a public road, we also had these other  
1780 two options that I described ... a public drive and a public road, and a Hinson bubble. But  
1781 I also believe that we meet the hardship test established by Cochran, as amended by the  
1782 General Assembly. And, as Mr. Gidley had pointed out, I think you will see that we need  
1783 just about every test, except for the one that he brought up, which I'm going to address in  
1784 a second. Regarding both our staff report and as I outlined in our applicant statement,  
1785 that was just that one criteria, but for example, the granting of the variance would not be  
1786 a detriment to adjacent and nearby properties. I would propose to you that not granting  
1787 the variance would actually be a greater detriment, because the only option we now have



1788 we no longer could do a private drive in a public road right-of-way, we can't do a Hinson  
1789 Bubble. The only option we have in order to build on this property is to put a public road,  
1790 clear out 50-ft. as opposed to a 14-ft. driveway; put in 36-ft. of pavement, 260-ft. in length  
1791 with a cul-du-sac, and now we've got to build three homes instead of one. That, to me,  
1792 would be a greater detriment, a greater hardship not only to this property but, to the  
1793 surrounding property. And, the question becomes, "Did this applicant cause this himself?"  
1794 Again, I would point out the applicant is not Mr. Ralph Higgins. Mr. Ralph Higgins has  
1795 owned his property on his own, individually, with his wife ... this property which is the  
1796 subject property, that Janie Higgins and the extra lot and the Ken Higgins lot were all  
1797 owned by the Higgins Family Partnership. That's where the property came from. That's  
1798 was the subdivision. By the very act of this BZA in 2001, they granted three variances to  
1799 grant the configuration that we have today. Literally, granted the Ken Higgins lot variance,  
1800 the Janie Higgins lot variance ... this did not need the variance, and this. The Circuit  
1801 Court, Judge Hicks, actually approved two of the three. Again, the Ken Higgins lot and  
1802 the Janie Higgins lot; but did not approve this because a public road could be put over  
1803 that, over top of that 50-ft. strip.

1804  
1805 By the very act of the BZA and the very act of the Circuit Court, they created this  
1806 configuration. The land was relied upon ... we relied upon those decisions and created  
1807 these lots as were approved by the variance. The only piece left over is this lot right here.  
1808 Now, is that a self-imposed hardship? I would propose that in fact it was not. It was in  
1809 reliance upon what was approved and is still law, and these are legitimate lots that are  
1810 allowed to be ... to occur. This was what has happened. And, I would also propose that  
1811 the fact that the hardship that was created is by the fact that we are not allowed, by the  
1812 county, to build a private drive in a public road. We are not allowed by the county to build  
1813 a modified cul-du-sac, and those would be another way to get around this and that also  
1814 ... and that fact in a sense creates that hardship.

1815  
1816 Finally, if I may, and I am concluding now, is that a couple of neighbors as I referenced  
1817 ...

1818  
1819 Mr. Madrigal - You said the last one was the last one!

1820  
1821 Mr. Condlin - I agree with that and I apologize. I'm under oath, too! I'm  
1822 handing out some proposed conditions. I know this is a different case, certainly a unique  
1823 case which has been addressed by the staff report. And these, now five conditions, in  
1824 talking with the neighbors you can see I've written in a fifth condition but, I'm going to read  
1825 them for the benefit of folks sitting here. But, number one was that I would propose that  
1826 no more than one dwelling may be developed on the property. The whole point that we  
1827 are trying to get at is we could do a public road and build three lots. No one wants that.  
1828 No one wants us to declare the full 50-ft. No one wants us to put three lots on here.  
1829 There is one neighbor in opposition that sent the email this morning or yesterday  
1830 afternoon that was concerned about taking trees out. Well, that's exactly what would  
1831 happen. You'd have a lot more traffic, a lot more impact with three lots versus one.

1832



1833 We also provide that any driveway may serve only one lot on the property. Again, limiting  
1834 it to just the one lot.

1835  
1836 I modified number three where it says any driveway. The reason that we did that was to  
1837 not limit it to 14-ft. because Mr. Schultz wanted to make sure that we have enough room  
1838 to meander around existing trees ... that we may not be able to achieve that 14-ft., we  
1839 still have to achieve whatever standards the county would impose upon us for a driveway,  
1840 and we will do that ... but, we are saying that any driveway that should be developed to  
1841 limit the extent of clearing for the driveway as much as possible. The idea being that we  
1842 want to keep the trees along the driveway and create as much buffer and have as little  
1843 impact as we can.

1844  
1845 Number four is any driveway serving the property shall be maintained in good condition  
1846 and provide safe access. The reason for that is obviously for safety purposes we want to  
1847 be able to have it maintained well. You can see a long driveway is not unusual, right here  
1848 that was approved for the variance. I'll also point out here there would be a long driveway  
1849 here with a lot that has ... and then, right here another long driveway without the long  
1850 front lot frontage. While not completely consistent about the area, it's not completely  
1851 atypical either.

1852  
1853 And then finally, pursuant to the conversations with the neighbors, I added a number five  
1854 in handwriting that ... the property may not be divided or subdivided in any way. The  
1855 concern being that we get to put a house on here, we put the house here and maybe we  
1856 attach this lot to up here or over here and create two lots off of Middle Quarter. We're not  
1857 looking to do that. We understand the neighbors' concerns. Our point is here's a lot of 3.9  
1858 acres, if this variance is approved, we are going to keep it as 3.9 acres. That part of this  
1859 is not going to go somewhere else to create more lots. One home, 3.9 acres and that's  
1860 it. That's what we are trying to achieve.

1861  
1862 With that, I know I've covered a lot, covered it quickly, some of it is somewhat new but,  
1863 ... I'll be happy to answer any questions at this time. I know we have a number of folks  
1864 that want to speak in favor of this as well.

1865  
1866 Ms. Harris - Thank you. Are there questions from Board members?

1867  
1868 Thank you so much, Mr. Condlin. All persons who wish to support this request, and you  
1869 are here, please come forward and give us your name. And we do ask that you do not  
1870 repeat anything that has already been established. I know it's going to be difficult because  
1871 Attorney Condlin covered quite a bit.

1872  
1873 Supporter #1 (rep.) - Well, good morning Madam Chairwoman and members of  
1874 the Board. Thank you for hearing us this morning. My name is Stephen Piepgrass. I'm  
1875 an attorney at Troutman Sanders.

1876  
1877 Mr. Harris - How do you spell your last name, please?  
1878

1879 Mr. Piepgrass - Its spelled P-I-E-P-G-R-A-S-S. And, I represent Ms. Cary  
1880 Hancock-Easterly. I'm in a bit of an unusual position this morning because I am arguing  
1881 against a case that we won back in 2005.

1882  
1883 Mr. Piepgrass - That was Judge Hicks' decision that's been referenced this  
1884 morning. I have never done that before but, I'm here to do that this morning. And, the  
1885 reason I'm here to do that is I'm representing Ms. Hancock-Easterly who is the daughter  
1886 of the Hancock's who we represented back in that case and now lives in the family home,  
1887 at 904 S. Gaskins.

1888  
1889 Sometimes conditions change and people change and people's claims change. The plan  
1890 that's being proposed by the Higgins Family Limited Partnership this morning is one that,  
1891 although we'd love to keep this lot completely forested for the rest of time so that we could  
1892 all enjoy the views, we also understand that there is a right to develop and use your  
1893 property. And, this proposal is the one that impacts the neighbors the least and that we  
1894 can live with. It's a reasonable one. A single private driveway for a single house, no  
1895 further subdivision of this 3.9 acres. It's minimal in its impact and its one that we can live  
1896 with.

1897  
1898 There have been a number of references to the Cochran case. Both in our current case  
1899 and in the one before. And, the opinion of the staff seems to be that your hands are tied.  
1900 Cochran says what it says, you can never do anything different. The Supreme Court of  
1901 Virginia in the case that was passed up by my colleague, Mr. Condlin, this morning said  
1902 the opposite. And, that was just in 2017... and so I'm not going to fault the staff for that  
1903 change but, what the Supreme Court said was when there's a change in the law your  
1904 hands are not tied. You can actually come forward and look at the facts again. And, in  
1905 fact, if you don't do that and if you don't consider it in light of current law, then you can be  
1906 reversed as a Board. Particularly, if you say, the only reason I am making this decision is  
1907 because of the Cochran case. That's what the Supreme Court said, and it said it in the  
1908 context of this very same statute we're acting under this morning, 15.2-2309. One of the  
1909 changes was the removal of the clearly demonstrable hardship approaching confiscation.  
1910 That approaching confiscation language is no longer in the statute like it was when the  
1911 Cochran decision was decided. And I know that because I have my partner, Mr. Glass  
1912 who's retired, and I've taken over his practice ... and I have his brief, which is the one  
1913 that he wrote to Judge Hicks. And, he relied on that statute to Judge Hicks. That language  
1914 isn't in there anymore. And so, what does that mean for the Court ... for the Board? It  
1915 means your hands aren't tied. Yes, Cochran still is out there. Yes, it's still good law in  
1916 some ways, but the standard has changed, and the Board has a responsibility to take  
1917 each case before it in light of the law as it stands today. And so, I'm going to read just a  
1918 little bit here from the 2017 Virginia Supreme Court decision that you have in front of you,  
1919 the Chilton-Bolloni decision. "Local zoning ..."

1920  
1921 Mr. Blankinship - Where are you?

1922  
1923 Mr. Piepgrass - And this is on page ... which version of it you have, I've got  
1924 maybe 340 or 15 ... I'm not sure which of the pages you've got in front of you.

1925  
1926 Mr. Blankinship - These are one through eleven (1-11).  
1927  
1928 Mr. Piepgrass - Well, ok. I have one copy here, but I'm happy to make copies  
1929 for you.  
1930  
1931 Mr. Blankinship - Can you just approximate where you are?  
1932  
1933 Mr. Piepgrass - There's a decision for the Chilton-Bolloni case ...  
1934  
1935 Mr. Blankinship - There's a blocked quote on page 6 ...  
1936  
1937 Mr. Piepgrass - Yeah, there's a block quote quoting the Marks case...  
1938  
1939 Mr. Blankinship - There are two more on nine ...  
1940  
1941 Mr. Piepgrass - On page ...  
1942  
1943 Mr. Blankinship - Marks would be on nine, the middle of nine ...  
1944  
1945 Mr. Piepgrass - Yes, it's right there, right after Marks.  
1946  
1947 Mr. Blankinship - So, the last paragraph on page 9 is where you are going to  
1948 read?  
1949  
1950 Mr. Piepgrass - Yes, that's correct.  
1951  
1952 Mr. Blankinship - Thank you.  
1953  
1954 Mr. Piepgrass - "Local zoning offers a unique administrative challenge in that  
1955 property remains held over time in changing neighborhoods, inevitably producing  
1956 changes in the law, including in zoning ordinance themselves and in the applicable  
1957 statutes." That's what we've got here. We've got both. "These reflect the changing  
1958 desires of the locality as to the direction of development of the neighborhood and, in the  
1959 case of statutes from the General Assembly, of the scope of authority provided to  
1960 accommodate such changing circumstances."  
1961  
1962 And then moving on, a couple paragraphs down ... "Use of a property should not be  
1963 forever governed and restricted by the date at which an owner first seeks permission to  
1964 alter the property. It should be allowed to evolve along with the zoning standards of the  
1965 locality." That's what we are asking for today, and that's why the Court said you can't  
1966 apply principals of res judicata, the principles that ... because this case came before this  
1967 Board back in 2001 and then the Court ruling in 2005 ... your hands are tied, you can't  
1968 rule differently ... Supreme Court here says, "no" you've got to reconsider the  
1969 circumstances, look at them under the new light. Where you had neighbors, who at one  
1970 point, opposed this change and now support it. And when the law changes, reconsider it



1971 and then come to a new reasonable decision and that's what we're asking for today. And,  
1972 in light of the conditions that the Higgins Family Partnership has said they would put on  
1973 this property, we believe that allowing a private drive to that single-family home on a  
1974 property that it will not be subdivided again is in keeping with the neighborhood and in  
1975 keeping with the neighbors' desires, and in keeping with our desires as the Hancock  
1976 family who opposed this just 13 years in the past. So, I appreciate your time and hearing  
1977 us out on this. I'm happy to answer any questions, if you all have.

1978  
1979 Ms. Harris - Ok, Mr. Piepgrass. You have a question, Mr. Bell?

1980  
1981 Mr. Bell - The private road, do you have any alternative to it ... to having  
1982 a private road?

1983  
1984 Mr. Piepgrass - We would oppose a public road. We don't believe that it's  
1985 necessary to have the elaborate cul-du-sac or Hinson bubble. We think a private drive  
1986 alone would be sufficient, would be in keeping with the ordinances, and would be in  
1987 keeping with the current statute as it is today. But we would prefer any alternative to that  
1988 public road which would then require this property to be further subdivided and more  
1989 houses built.

1990  
1991 Mr. Bell - Like part of the Cochran doctrine, it talks about hardship tests  
1992 and reasonable use. Even though this would be new, it hasn't changed from the  
1993 standpoint of us.

1994  
1995 Mr. Piepgrass - It talks ... the Cochran tests talks about um ... and I've got it  
1996 right here ... It talks about a hardship approaching confiscation. That's not ... and that  
1997 approaching confiscation has changed and that was one of the arguments we relied on  
1998 to Judge Hicks in which the Court bought and said, "ok, we're going to reverse the BZA  
1999 on this issue. And, I can also speak to that one of five factors we agree that if it were a  
2000 different party, the Higgins Family Partnership and they did in fact rely on the actions of  
2001 this Board when they initially granted the variance that was then reversed by the Circuit  
2002 Court.

2003  
2004 Mr. Bell - Thank you.

2005  
2006 Ms. Harris - Mr. Green?

2007  
2008 Mr. Green - Mr. Gidley, based on information that was presented ... we  
2009 got the information from the Cochran case. Because it appears that new information is  
2010 being presented which has updated that decision. Has that been validated? Because  
2011 that could change the parameters of how we look at this. I mean we're looking at  
2012 something that was done a while ago. They're bringing in something which is different,  
2013 and which could change the opinion that we have. So, can you validate what they are  
2014 saying?

2015

2016 Mr. Gidley - I've been listening too, with interest, Mr. Green. I've not seen  
2017 the opinion or decision that they are referencing. Just my personal thoughts, just sitting  
2018 there listening, is ...  
2019  
2020 Mr. Green - I'm not interested in ...  
2021  
2022 Mr. Gidley - I'm sorry ...  
2023  
2024 Mr. Green - I'm looking at legal ... the legality ...  
2025  
2026 Mr. Blankinship - If I can pick up there, Mr. Green, I saw this case and it was  
2027 presented to me as a case on res judicata, which is really the point of being argued in this  
2028 case. I have not studied it personally in the sense of whether it affects our view of  
2029 Cochran. Just because it hadn't occurred to me until this morning. And I have not had a  
2030 chance to discuss it with the County Attorney's Office or anybody like that. So, the answer  
2031 to your question is no. The county staff has not had an opportunity to respond to that  
2032 specific argument, based on this case.  
2033  
2034 Mr. Green - Well, shouldn't ... before someone give us a legal opinion and  
2035 another party comes in that can challenge that legal opinion that we have the County  
2036 Attorney's office give us their brief?  
2037  
2038 Mr. Blankinship - Yes, sir, it would be very helpful to do that.  
2039  
2040 Mr. Green - I mean, because right now, I'm hearing two different things.  
2041  
2042 Mr. Blankinship - Yes, sir, it'd be very helpful to have time to discuss this with  
2043 the County Attorney's Office.  
2044  
2045 Mr. Green - I'm hearing something old and I'm hearing something new,  
2046 and I'm inclined to go with new facts as opposed to old facts until you can prove to me,  
2047 or someone can prove to me that the old facts are reigning. And, I would hope that in the  
2048 future that, you know, as we're reading this stuff ... I got it and you are reading it, you  
2049 form an opinion that I also want the counter argument so when I'm sitting there reading, I  
2050 can compare side-by-side and not necessarily hear what the argument is but read it and  
2051 do my necessary research.  
2052  
2053 Ms. Harris - I have a question, too, of Attorney Piepgrass.  
2054  
2055 Mr. Piepgrass - Yes.  
2056  
2057 Ms. Harris - Yeah, you quoted the Code ... 15.2-2309? What date was that  
2058 ... was that Code?  
2059

2060 Mr. Piepgrass - Yes, Ma'am. The previous version was, I believe the  
2061 amendment was ... so the current version does not have ... That would be 2017 and 2018  
2062 does not have that language approaching confiscation.  
2063  
2064 Ms. Harris - No, I'm asking you ...  
2065  
2066 Mr. Piepgrass - The old version was ...  
2067  
2068 Ms. Harris - The date, the date of that Code?  
2069  
2070 Mr. Piepgrass - ... so that the approaching confiscation language was  
2071 eliminated by changes in 2009.  
2072  
2073 Ms. Harris - That was not what I was asking. Is this Code being stated in  
2074 our evaluation, Board Members?  
2075  
2076 Ms. Harris - Ok, we're dealing with 15.2-2309 and confiscation is not  
2077 mentioned here either but, I just wanted to know what date is this? Do you know the date  
2078 of this Code? That was my question.  
2079  
2080 Mr. Blankinship - I think 2015 is what ...  
2081  
2082 Mr. Harris - 2015?  
2083  
2084 Mr. Piepgrass - It changed in 2015.  
2085  
2086 Ms. Harris - So, the report that we ...  
2087  
2088 Mr. Blankinship - Current. The most recent change ...  
2089  
2090 Ms. Harris - Yes, right.  
2091  
2092 Mr. Piepgrass - The most recent change ...  
2093  
2094 Ms. Harris - So, the information that we have received as a Board is based  
2095 on 2015, which is current. It's not based on 2000 ... '04 ... Cochran. It's based on this ...  
2096 the Code of Virginia's 2015.  
2097  
2098 Mr. Piepgrass - Yes, Ma'am.  
2099  
2100 Ms. Harris - Ok, that was my question.  
2101  
2102 Mr. Piepgrass - And, our argument would be that the Code has changed since  
2103 Cochran has decided.  
2104  
2105 Ms. Harris - We heard you and we see. Thank you.



2106  
2107 Mr. Piepgrass - Thank you.  
2108  
2109 Ms. Harris - Any more questions from Board members? Do we have the  
2110 County Attorney here today? ... to see ...  
2111  
2112 Mr. Blankinship - No, Ma'am.  
2113  
2114 Ms. Harris - We, do not?  
2115  
2116 Mr. Blankinship - It would be very helpful to me to have time to study this, do  
2117 some research, meet with Mr. Condlin perhaps, and meet with someone from the County  
2118 Attorney's office to get some ...  
2119  
2120 Mr. Harris - Yes. We have received quite a bit of information this morning  
2121 that we have not had a chance to peruse, plus we need to hear something from the  
2122 County Attorney, too.  
2123  
2124 Mr. Blankinship - Ok.  
2125  
2126 Ms. Harris - So, would you be agreeable if we defer this case until next  
2127 month?  
2128  
2129 Mr. Condlin - Madam Chair, I know there are a number of people here who  
2130 wanted to speak in favor as well ... Would it be possible for them to speak so they wouldn't  
2131 have to come back? And, it would allow me to talk to my client about that question and  
2132 in the meantime, if they could speak in favor ...  
2133  
2134 Mr. Blankinship - I would just continue with the public hearing until we have  
2135 heard everyone.  
2136  
2137 Ms. Harris - Right, we will continue ...  
2138  
2139 Mr. Condlin - I have to check with my client on that discussion.  
2140  
2141 Ms. Harris - That will be fine. You need a few minutes?  
2142  
2143 Mr. Condlin - While they are speaking in favor, I certainly can talk to my  
2144 client at that time, if that works, if that's alright?  
2145  
2146 Ms. Harris - If we're going to defer it do we...  
2147  
2148 Mr. Blankinship - I think we should continue the hearing ...  
2149  
2150 Ms. Harris - Ok.  
2151

2152 Mr. Condlin - Ok, I prefer folks that are here not have to make a second trip.  
2153  
2154 Ms. Harris - Exactly, exactly. Ok.  
2155  
2156 So, we have persons in favor of this petition to come down and speak.  
2157  
2158 Supporter #2 - Good morning.  
2159  
2160 Ms. Harris - Good morning.  
2161  
2162 Supporter #2 - I'm Mike Crowley and I own the property at 901 S. Gaskins  
2163 Road  
2164  
2165 Mr. Green - Yes, you got to spell your name.  
2166  
2167 Mr. Crowley - C-R-O-W-L-E-Y.  
2168  
2169 Mr. Blankinship - Thank you.  
2170  
2171 Mr. Crowley - I think why a lot of us are here ... probably would prefer that it  
2172 not be developed but, we believe that this is be best case scenario. I'm opposed, I'm  
2173 speaking for myself, to a public road there. It's a little misleading when you look at that  
2174 map. The requirement of 200-ft on Gaskins Road ... if you look at my lot up there, it  
2175 shows two lots but those lots were purchased to combine so it would be 200-ft. ... when  
2176 my house was built in 1940. But if this is the best use of this, I'm 100% opposed to a  
2177 public road there. As long as there is a restriction that it is one single-family home and  
2178 the property can be no further subdivided, I think this is the best solution for everybody,  
2179 that's fair to everybody. Thank you.  
2180  
2181 Ms. Harris - Ok, thank you, Mr. Crowley. Any questions of Mr. Crowley?  
2182 No, I don't think so. Anyone else who wishes to support this petition? Ok, to avoid  
2183 repetition ...  
2184  
2185 Mr. Blankinship - If we could just have of a show of hands, Mr. Condlin.  
2186  
2187 Supporter #3 - My name is ... I'm Maria Vockel-Lightfoot. V-O-E-C-K-L  
2188 hyphen L-I-G-H-T-F-O-O-T.  
2189  
2190 And I purchased, with my husband Mark, who is out of town today, ... the Janie Higgins  
2191 property, the barn, and I support this private road to the new house. And, when I  
2192 purchased it, they told me this might be happening. So, I expected it. So, Janie and  
2193 Ralph had installed a... the Higgins ... they had a similar road to our house installed and  
2194 it works wonderfully, and it looks great. And so, I'm in favor.  
2195

2196 Ms. Harris - Ok. Do we have anyone else in support or do we have a show  
2197 of hands ... you don't have to speak if we have a show of hands of those persons who  
2198 are in support of this petition.  
2199  
2200 Mr. Blankinship - For the record, there are five additional people who have not  
2201 spoken who are in ...  
2202  
2203 Mr. Green - Do they have anything different to say?  
2204  
2205 Ms. Harris - Is it that you have something different to say? I think the nod  
2206 says, no. Now, let Mr. Condlin come back.  
2207  
2208 Mr. Condlin - Actually, I assume there's no one here in opposition here, at  
2209 present.  
2210  
2211 Ms. Harris - Let me ask. Is there anyone here in opposition to this  
2212 request? Ok, your assumption was correct.  
2213  
2214 Mr. Condlin - I certainly have talked to my client. We're confident in our  
2215 position. While we would like to move forward today and we think we meet the standards  
2216 today, even without the County Attorney's opinion ... certainly, if that's what you would  
2217 like to have and have a discussion with the County Attorney, we're confident in that we  
2218 could do that, talk to Mr. Ivy about that.  
2219  
2220 Ms. Harris - Just that you've given us a lot of information to read ...  
2221  
2222 Mr. Condlin - Well, I ...  
2223  
2224 Ms. Harris - ... at the hearing, which we cannot read in five minutes.  
2225  
2226 Mr. Condlin - I understand that, yes Ma'am.  
2227  
2228 Ms. Harris - So, this is why ...  
2229  
2230 Mr. Condlin - Unfortunately, I didn't know that was the staff's position of  
2231 saying the Circuit Court ruled, therefore, you must rule the same way until I got the staff  
2232 report and that was the response to that. And I would say that from your position that we  
2233 still meet the standards of unreasonable restriction, given what Public Works and the  
2234 county have done with respect to our driveway regardless of ... which was not presented  
2235 as part of the 2001 and 2005 cases. We would prefer to have a vote today but, we would  
2236 agree to deferral if that's what you would prefer. Thank you.  
2237  
2238 Ms. Harris - Board members ... ok ... Mr. Johnson is going to say  
2239 something.  
2240



2241 Mr. Johnson - Just one more question. When you were talking about the  
2242 right-of-way from the county ... saying about doing the public road ... In doing the public  
2243 road, are they saying you can't do it at all?  
2244

2245 Mr. Condlin - There is two different things I'm saying. I think I mixed the two  
2246 up. I want to make sure I clarify. To do a public road over the 50-ft. stem ... would have  
2247 to be cleared, the 50-ft. would have to be cleared and we'd have to build 36-ft. of  
2248 pavement, curb to curb ... and it would be 260-ft. in length ending in a cul-du-sac is what  
2249 we'd have to do.  
2250

2251 The option that I presented is a public right-of-way, not developing the actual physical  
2252 road but, dedicating the same 50-ft. width and ending in a cul-du-sac but, just dedicating  
2253 via paper road just like I showed you in three other examples and we can find another  
2254 half dozen throughout the county, if you like, and allow for a private drive over and across  
2255 that public right-of-way ... and what that agreement in essence says as a part of my  
2256 applicant statement is that the county has on their website ... that says you can put a  
2257 private drive in a public right-of-way ... is that you will maintain your drive ... we can build  
2258 a road ... we don't have any obligation to maintain your drive and maintain your private  
2259 property, but it is a public right-of-way and the public can go on and across it and you will  
2260 indemnify the county, in essence, that's what it says. And we're agreeable to all of that.  
2261 We're willing to do that, and Public Works said no to the right-of-way dedication and a  
2262 private drive in the right-of-way dedication. Public Works just said you must, you must,  
2263 you must build a public road, 50-ft. clearance, 36-ft. wide pavement and to do so, just the  
2264 economics of it means we're going to end up clearing that land, which is unreasonable,  
2265 given the nature of that area, and then just to pay for it ... it's going to have to be three  
2266 lots, which we have by right. We're not going to have to rezone, we don't have to ask  
2267 permission to do a public road, we don't have to have permission ... well, we'd have to  
2268 ask permission to do a subdivision, but it gets approved. There's no legislative approval,  
2269 its ministerial approval. So, we have every right. We've designed it, we can fit it in there,  
2270 we just don't want to do it. The neighbors don't want it. I'm not sure what the county  
2271 wants. I think the county doesn't want it, given Mr. Silber's email that said, "Hopefully,  
2272 he'll get the variance" and pushing us towards the variance. But Public Works does not  
2273 want a private drive in a right-of-way. They don't want a Hinson bubble. I don't even  
2274 know why they would want a public road serving one lot. That seems silly to me to have  
2275 one road, a long road 50-ft. wide serving one lot. And financially, we just can't do it.  
2276

2277 Mr. Green - Answer a question for me. I'm not concerned about what  
2278 somebody wants. I'm concerned about the law. What is the law?  
2279

2280 Mr. Condlin - The law says I could put a public right-of-way in and build the  
2281 road and I can put one or three lots there. The law also says, according to the Zoning  
2282 Ordinance, I can dedicate the public right-of-way and put a private drive in there. The  
2283 county policy is I can do that as well. They denied me that. I don't know why, without  
2284 explanation. My opinion is that also the law says I can put in some version of a Hinson  
2285 bubble, a modified cul-du-sac, which has been given to us as an option by the county;  
2286 and, the county has denied that right, too. Again, I think those are unreasonable

2287 restrictions where I've got three choices ... build a public road, by law ... build a public  
2288 road ... dedicate a right-of-way and build a private drive or do a Hinson bubble. Two of  
2289 those three have been denied and the county is forcing us to put in a public road, the 50-  
2290 ft. wide road, and when they do that then we're going to have to put in three lots.  
2291

2292 Mr. Green - And, when they did that, did they cite any specific law?  
2293

2294 Mr. Condlin - No, no ... now it's an arbitrary decision. I couldn't ...  
2295 Everyone's shut down. I've got a good relationship with Public Works. There is no access  
2296 to information as to why they denied those, other than the answer was ... when you saw  
2297 in the one email ... Public Works has considered it and you are not approved for that. And  
2298 that's their policy. They've decided to do that despite it occurring elsewhere in the county.  
2299 That's allowed by law and they said no and that to me is an unreasonable restriction in  
2300 and of itself, which is the Code that we are asking for 15.2-23—  
2301

2302 Mr. Green - And, once again, based on law.  
2303

2304 Mr. Condlin - Based on law. Solely, on law. Regardless of what the  
2305 neighbors think, regardless of what we think ... if I had come forward in 2001 and said I  
2306 can only do a public road and build it 50-ft. wide and 36-ft. pavement, I think the BZA  
2307 would look at that and say, then that's what you got to do, that's the law. But I have other  
2308 options, by the law, and those are being denied me by Public Works. And that's why they  
2309 said to go the BZA, that's your relief ... and that's what I'm doing. By law.  
2310

2311 Ms. Harris - Thank you, Mr. Condlin.  
2312

2313 Mr. Condlin - Thank you.  
2314

2315 Ms. Harris - Board members, do you think we need to have a ruling or an  
2316 explanation from the County Attorney?  
2317

2318 Mr. Green - With all due respect, I think that the County Attorney's office  
2319 should have done a better job in preparing for this and its going to put some undue  
2320 hardship, potentially, on the individuals to come back. You know, when you are presenting  
2321 cases to us, we need as much of the facts as we possibly can get with the County  
2322 Attorney's office, with staff ... with all of them ... all of the individuals that are there. You  
2323 know ... I don't appreciate just hearing one side without giving the other side, and that  
2324 kind of skews how we can look at this thing. And, just because one side is prepared and  
2325 the other isn't, I think the side that is prepared has made a strong argument based on  
2326 "law" and presented the "law" to us, not opinion but, "law" ... I'm not necessarily inclined  
2327 to deferring.  
2328

2329 Ms. Harris - Ok. Other members of the Board, do you have an opinion  
2330 about deferral, or not?  
2331



2332 Mr. Johnson - I would like to hear what the attorney would say, and also even  
2333 with Public Works and get an idea from him what Public Works is really doing and why.  
2334 And with that, then the Board can make a decision then. That's my ...  
2335

2336 Mr. Green - Mr. Johnson, don't you think it's impending upon ... you know,  
2337 I have a job. I guess we all have jobs. When we come to hear these cases, I don't want  
2338 to keep coming back to hear cases and have them deferred. I take time off from my job  
2339 to come and I expect all parties to be prepared, and if one side is not as prepared, then  
2340 it's not my fault. That is the fault of the party that is not prepared and I should not be  
2341 subjected to suffering because somebody did not do all of what they should do; and I  
2342 don't think that all of the folks that are bringing the case should have to, you know, pay  
2343 an attorney again, come back again, and we rehash all of this again. I think people need  
2344 to be well-prepared. In my job, when I'm presenting something, I have to have all my  
2345 facts together, I have to have it there or I don't get what I want.  
2346

2347 Mr. Johnson - I understand, Mr. Green, but there are a lot of materials that  
2348 came out today. There was a lot of input from the public as well, and just to make sure  
2349 that we're representing the county and we are hearing everything the county is saying as  
2350 well, so we don't overlook anything. And, I think it's a good idea what was said but, I just  
2351 want to hear the other parts of it.  
2352

2353 Ms. Harris - Ok. Mr. Bell?

2354  
2355 Mr. Bell - A combination of both. First, we didn't have the information ...  
2356 complaint information in the case today from either side. Because as you saw the past  
2357 hour, about an inch of materials that affects the applicants, as well as today as not getting  
2358 anything from the Commonwealth Attorney's office. That being the case, I think we need  
2359 time to "read" the information that was presented us, so that we know what we're voting  
2360 on, and then get what they tell us. We're going to come across a number of codes and  
2361 regulations, we're going to have to read them one at a time, which frankly, is the job of  
2362 the attorney for the county, I believe, and not me alone, because I didn't go to law school.  
2363 So, therefore, I think that to defer it satisfies all those things.  
2364

2365 Ms. Harris - Ok, Mr. Reid, you have something to say on this?

2366  
2367 Mr. Reid - I think that it probably should be deferred until we hear what  
2368 the county's opinion is on the recent legal cases that, supposedly, supersedes the law  
2369 back in 2002. But I would defer until we hear both sides, I think these folks have presented  
2370 a real good case for the variance, but I still think we need to hear the other side also.  
2371

2372 Ms. Harris - Ok. A motion is in order. Who wants to make the motion?

2373  
2374 Mr. Green - Well, I have a question.  
2375

2376 Ms. Harris - We can save that for the motion. Ok? Can I have a motion?  
2377 And, then we'll get to the question portion of the motion. Ok?



2378  
2379 Mr. Johnson - Motion for deferral.  
2380  
2381 Ms. Harris - Ok, is there a second?  
2382  
2383 Mr. Green - I'll second.  
2384  
2385 Ms. Harris - Ok, it's been moved and properly seconded that we defer this  
2386 case until the next meeting which would be ...  
2387  
2388 Mr. Blankinship - February 28<sup>th</sup>.  
2389  
2390 Ms. Harris - February 28<sup>th</sup>. Are there questions? Now, Mr. Green, do you  
2391 have a question?  
2392  
2393 Mr. Green - Does this impact Kidwell case as well?  
2394  
2395 Mr. Blankinship - I think it certainly could.  
2396  
2397 Mr. Green - So, we need to go ahead and defer that one, if they are  
2398 agreeable to that.  
2399  
2400 Ms. Harris - You want to make an amendment to your motion?  
2401  
2402 Mr. Johnson - Yes, I amend the motion ...  
2403  
2404 Mr. Blankinship - Let's have two separate motions.  
2405  
2406 Ms. Harris - Ok, yes.  
2407  
2408 Mr. Blankinship - If you don't mind, Madam Chair.  
2409  
2410 Ms. Harris - Ok, we can do that. All in favor of deferring this case, Gaskins  
2411 Road case until the next meeting say, aye.  
2412  
2413 Ms. Harris - Those opposed ... Ok, the ayes have it and we will defer this  
2414 case until the next meeting.  
2415  
2416 On a motion by Mr. Johnson, seconded by Mr. Green, the Board **deferred** application  
2417 **VAR2019-00004 HIGGINS FAMILY LIMITED PARTNERSHIP's** request for a  
2418 variance from Section 24-94 of the County Code to build a one-family dwelling at 916 S.  
2419 Gaskins Road (Parcel 738-732-0576) zoned One-Family Residence District (R-0)  
2420 (Tuckahoe). The Board deferred the case until the February 28, 2019 public hearing.  
2421  
2422  
2423

2424	Affirmative:	Bell, Green, Harris, Johnson, Reid	5
2425	Negative:		0
2426	Absent:		0
2427			
2428			
2429	Ms. Harris -	Hopefully at the next meeting we will have legal	
2430	representation here.		
2431			
2432	Mr. Blankinship -	We'll certainly have more of an explanation.	
2433			
2434	Ms. Harris -	Ok, it's got to be more than an explanation. Ok. Now, going	
2435	back to the Kidwell case ...		
2436			
2437	Mr. Blankinship -	We actually jumped over one of the public hearings ...	
2438			
2439	Ms. Harris -	No, we're going to go ...	
2440			
2441	Mr. Blankinship -	Oh, you want to do the deferral first?	
2442			
2443	Ms. Harris -	Yeah. We're trying to do deferrals and then we'll go back to	
2444	case of the person who was not here.		
2445			
2446	Mr. Blankinship -	Yes, Ma'am.	
2447			
2448	Ms. Harris -	Ok, what is your pleasure about the deferral about the Kidwell	
2449	case?		
2450			
2451	Mr. Bell -	I recommend that we defer it for reasons similar to what Mr.	
2452	Green talked about. Much of this information should go to the Commonwealth Attorney		
2453	to be reviewed to help us ...		
2454			
2455	Mr. Blankinship -	County Attorney.	
2456			
2457	Mr. Bell -	County Attorney to help us make a decision about this case.	
2458			
2459	Ms. Harris -	Ok, is there a second?	
2460			
2461	Mr. Green -	Second.	
2462			
2463	Ms. Harris -	Ok, motion is to defer this ... the Kidwell case until the next	
2464	meeting. Are there any questions?		
2465			
2466	Mr. Green -	But, would they agree to it? Did they agree to it?	
2467			
2468	Ms. Harris -	All in favor ...	
2469			

170 Mr. Blankinship - They said, thank you.  
2471  
2472 Ms. Harris - They did say, thank you. All in favor of this motion say, aye.  
2473  
2474 Ms. Harris - Ok, motion is carried, and so ordered. And we do know that  
2475 as the attorney just said, there was an update on Cochran, when we think about the State  
2476 code 2015, but I think that that was considered in the evaluation report that we received  
2477 from the county. That was considered. So, we do need clarification. I think that's the best  
2478 way.  
2479  
2480 On a motion by Mr. Bell, seconded by Mr. Green, the Board **deferred** application  
2481 **VAR2019-00003, MANN KIDWELL SHADE CORP's** request for a variance from Section  
2482 24-94 of the County Code to build a loading dock and canopy at 6011 W. Broad Street  
2483 (Westwood) (Parcel 770-741-2406) zoned Business District (B-3) (Brookland). The rear  
2484 yard setback is not met. The case was deferred until the February 28, 2019 public  
2485 hearing.  
2486  
2487  
2488 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
2489 Negative: 0  
2490 Absent: 0  
2491  
2492  
2493 Now, we have one more case and then we can do the voting.  
2494  
2495 Mr. Blankinship - And that is CUP2019-00001, Linda A. Harris.  
2496  
2497 **CUP2019-00001 LINDA A. HARRIS** requests a conditional use permit  
2498 pursuant to Section 24-12(e) of the County Code to allow a noncommercial kennel at  
2499 6408 Kilgore Street (New Market Farms) (Parcel 801-704-7621) zoned One-Family  
2500 Residence District (R-3) (Varina).  
2501  
2502 Mr. Blankinship - Is there anyone here to represent this case? Ok, I'm sorry  
2503 you got carried over. You weren't here when we called it first. I understand there was  
2504 traffic.  
2505  
2506 Applicant - It was horrible.  
2507  
2508 Mr. Blankinship - Would you raise your right hand, please? Do you swear the  
2509 testimony you're about to give is the truth, the whole truth, and nothing but the truth so  
2510 help you God?  
2511  
2512 Applicant - I do.  
2513  
2514 Mr. Blankinship - Thank you. Mr. Gidley?  
2515



2516 Mr. Gidley - Thank you, Mr. Secretary and members of the Board. The  
2517 subject property is located in the New Market Farms Subdivision and it contains a one-  
2518 family dwelling. The applicant has a total of nine Rottweilers, six of which are over the  
2519 limit of three dogs. As a result, she is requesting a conditional use permit to allow her to  
2520 keep the nine dogs.

2521  
2522 The applicant has also bred animals in the past and has indicated to staff that she would  
2523 like to have another liter or two; however, the breeding of dogs in a residential district is  
2524 not allowed, even with the use of a conditional use permit.

2525  
2526 Is her request consistent with the Zoning Ordinance and Comprehensive Plan? A one-  
2527 family dwelling is certainly consistent with the one-family R-3 zoning and the  
2528 Comprehensive Plan designation of Suburban Residential 2 (SR2). The keeping of nine  
2529 dogs on a residential lot does require a conditional use permit, and having nine dogs kept  
2530 outside, that's actually more consistent with an acreage parcel that's located, perhaps,  
2531 out in the country rather than within a subdivision.

2532  
2533 As you can see here, the applicant keeps her dogs in up to four cages located in a fenced  
2534 rear yard. While the property is over 300-ft. deep, its' width is only 80-ft., which is similar  
2535 to that of other suburban lots. As many as six homes back up to the applicant's rear yard,  
2536 with the closest dwelling less than 50-ft. from where the dogs are kept. The keeping of  
2537 this many large dogs, especially of a breed known to be aggressive, can present both  
2538 safety and noise issues for the neighbors.

2539  
2540 Our staff did receive a call from a nearby resident expressing opposition of this request.  
2541 He indicated there used to be the three permitted dogs on the property and at the time  
2542 that was a reasonable level of noise as far as the noise and what have you. But, he said  
2543 that when it went up to nine it became, in effect, too much and became a problem at that  
2544 point.

2545 So that's why he was expressing opposition.

2546  
2547 He also indicated there were dogs being bred there and said there were people coming  
2548 and going to look at the dogs and pick them up.

2549  
2550 Finally, staff noted the pens were extremely muddy. I know this has certainly been a  
2551 difficult year with rain, as far as the conditions and lots of rain this year, but it is an  
2552 applicant's responsibility to ensure that animals there are kept within reasonable  
2553 conditions for the welfare of the animals, themselves. And so, in conclusion, use permits  
2554 before this Board typically involve fewer dogs that are kept, primarily, indoors which limits  
2555 their impact on the neighbors. In this case, these dogs are kept outside and that does  
2556 impact the neighboring property owners. In addition, as noted, the breeding of dogs is  
2557 not allowed in residential neighborhoods under the Zoning Ordinance, even with a use  
2558 permit. For these reasons, staff urges denial of this request and if you have any  
2559 questions, I'd be happy to answer. Thank you.

2560  
2561 Ms. Harris - Any questions of Mr. Gidley?

2562 Mr. Green - Mr. Gidley, we heard a case similar to this before and the limit  
2563 was three dogs per household.  
2564  
2565  
2566 Mr. Gidley - Yes, sir. That's correct.  
2567  
2568 Mr. Green - And, we upheld that.  
2569  
2570 Mr. Gidley - Yes, sir.  
2571  
2572 Ms. Harris - Any other questions of Mr. Gidley? Alright, thank you so very  
2573 much.  
2574  
2575 Mr. Gidley - Yes, Ma'am.  
2576  
2577 Ms. Harris - Let's hear from the applicant now, please? Please come  
2578 forward, give us your name, and spell your last name.  
2579  
2580 Applicant - Linda A. Harris, H-A-R-R-I-S. I've been in my home for 40  
2581 years. I've always had dogs. Three was the limit that I could handle, at the time. But  
2582 recently, I got two rescues that were going to be put down if I didn't get them. And, as my  
2583 dogs get older, I replace them with younger dogs. That's what I do. Because I was  
2584 breeding a litter or two per year. I didn't know it was against the law to breed puppies. I  
2585 didn't know that. That's brand new to me. People breed all the time. Poodles, Yorkies,  
2586 Collies ... I didn't know it was against the law for breeding. I had no idea. So, I was  
2587 breeding them, maybe two litters a year, maybe. One of my problems is, if I had three  
2588 dogs and the three dogs was one and two females that means I could have four litters  
2589 per year. But I only have nine dogs and I only have two litters per year and y'all are  
2590 making it a big deal. They are very well taken care of and he's talking about the mud; my  
2591 whole yard was mud. It's mud now. Whatever I need to do, I want to keep my animals. I  
2592 don't care what I have to do, I want to keep them. They are not mean, they are not vicious.  
2593 I haven't had any complaints, whatsoever, in the 40 years I've been there, as far as noise.  
2594 He's talking about the noise. No noise, regular barking. He's talking about sanitation, I  
2595 clean up behind them very well. Very well. We don't have an odor problem. That's it.  
2596  
2597 Ms. Harris - Are there questions of Ms. Harris?  
2598  
2599 Mr. Bell - Ms. Harris you've had nine dogs all this time, plus litters?  
2600  
2601 Ms. Harris - No, I just recently acquired nine dogs.  
2602  
2603 Mr. Bell - Ok ...  
2604  
2605 Ms. Harris - Let me see, I had three ...  
2606  
2607 Mr. Bell - How many ....

2608  
2609 Ms. Harris - I had three, at first. Then, after my husband passed, I felt like  
2610 empty, or something and I got three more. And, then I got two rescues that was going to  
2611 be put down... you know ... I just couldn't let um ... I just couldn't do it.  
2612  
2613 Mr. Bell - How old are your dogs? What's the oldest one?  
2614  
2615 Ms. Harris - My oldest one is eight.  
2616  
2617 Mr. Bell - Ok, then from eight on down?  
2618  
2619 Ms. Harris - Eight on down.  
2620  
2621 Mr. Bell - How long do they normally live?  
2622  
2623 Ms. Harris - Well, my last one that passed that I'm replacing was 12, 13,  
2624 and 14.  
2625  
2626 Mr. Bell - Ok. You had three dogs before you got these?  
2627  
2628 Ms. Harris - Yes.  
2629  
2630 Mr. Bell - Got these nine?  
2631  
2632 Ms. Harris - Yes.  
2633  
2634 Mr. Bell - If we were to ... if we were to vote and they agree with the  
2635 conversation that I'm having, you can't have any more than nine dogs. You can't have  
2636 any more dogs than the nine. As they pass, you will not get any more.  
2637  
2638 Ms. Harris - Oh no, I can't, I'm getting too old for it.  
2639  
2640 Mr. Bell - So, ok. That means that we've taken care of that part of it.  
2641 Now, how about the breeding? What's your intention on that?  
2642  
2643 Ms. Harris - Well, if ... I didn't know it was against the law. What do I have  
2644 to do if I want to have ...?  
2645  
2646 Mr. Bell - The breed you have, in itself, we're talking about ... the Code  
2647 says that you can only have three unless you go to a commercial kennel and then you  
2648 can have more than three. So, we're trying to satisfy commercial kennel. How many are  
2649 going to make you satisfied that you can support?  
2650  
2651 Ms. Harris - Just the nine dogs. I'm not going to get any more.  
2652



2653 Mr. Bell - Ok. So, therefore, that's taken care of. But how many times  
2654 are you planning to breed?  
2655  
2656 Ms. Harris - Maybe two litters a year, tops. I don't ... you don't make  
2657 money breeding dogs.  
2658  
2659 Mr. Bell - And a litter is normally, how many? Normally.  
2660  
2661 Ms. Harris - Six to eight. The most I've ever had was 10.  
2662  
2663 Mr. Bell - How long do you keep the litter before you can start selling  
2664 them?  
2665  
2666 Ms. Harris - I have some at eight weeks. By 10 weeks, they are gone.  
2667  
2668 Mr. Bell - Ok.  
2669  
2670 Ms. Harris - I don't breed junk animals. I breed family members. They are  
2671 not vicious. They are not mean. I could bring all nine of them in here and tell each one of  
2672 them to sit in these chairs and be quiet. They would do it.  
2673  
2674 Mr. Bell - But we are not talking about how many they are ...  
2675  
2676 Ms. Harris - I'm just saying ... to say that nine is so many, it's not that  
2677 many.  
2678  
2679 Mr. Bell - How often do you clean up the kennels?  
2680  
2681 Ms. Harris - Every single day, except when it's pouring down rain. You  
2682 cannot clean up mud and poop. It's impossible. I clean kennels every day. Fresh food  
2683 and water, every day. Scoop the back yard, every day.  
2684  
2685 Mr. Bell - Have you had any complaints about the dogs from your  
2686 neighbors?  
2687  
2688 Ms. Harris - No, no.  
2689  
2690 Mr. Bell - In 40 years?  
2691  
2692 Ms. Harris - Not one.  
2693  
2694 Mr. Bell - Not one has come over to say ...  
2695  
2696 Ms. Harris - to me ...  
2697  
2698 Ms. Bell - Not one has come over to say anything to you.

2699  
2700 Ms. Harris - Not one.  
2701  
2702 Mr. Blankinship - But the reason the application is in front of you is because the  
2703 county has received a complaint.  
2704  
2705 Mr. Green - Yes, it is.  
2706  
2707 Ms. Harris - How many complaints have they received?  
2708  
2709 Mr. Bell - There's been complaints.  
2710  
2711 Ms. Harris - Because I have ... then, well tell me if something's going on  
2712 with ...  
2713  
2714 Mr. Bell - I guess if the dogs get to barking that is the number one thing  
2715 probably ... out of the cage. So, how about the barking problem?  
2716  
2717 Ms. Harris - Well, I can fix the barking problem. I can work on the barking  
2718 problem but, one of the barking problems is ... could you see the back part of that property  
2719 that sees my property ... I'm going to tell you which one is part of the problem. Not that,  
2720 where the woods and stuff are. No, not that. Back up. The other home. See those homes  
2721 over there, that white house ... they love to take the short cut to go to the store. And, they  
2722 will make a ruckus when somebody is walking back there. They'll make a big ruckus. And,  
2723 I have five pens, not four.  
2724  
2725 Ms. Harris (Chair) - I have a question. Ms. Harris.  
2726  
2727 Ms. Harris - Yes.  
2728  
2729 Ms. Harris (Chair) - Other questions, Mr. Johnson  
2730  
2731 Mr. Johnson - Yes. Ms. Harris, I've been by looking at the facility and I've  
2732 noticed that all the dog houses you had out there, and also during the time, I noticed the  
2733 new grass in the kennels in the lots you have there. And it also could get really muddy  
2734 and then, the smell. What would happen?  
2735  
2736 Ms. Harris - I don't have ... I pick them up.  
2737  
2738 Mr. Johnson - What I'm saying is that with those dogs, the county regulations  
2739 says you can only have three. And also, with the three, I notice you were saying that the  
2740 pets live both in house and outside the house.  
2741  
2742 Ms. Harris - Yes, they do. Well, not all nine of them can come in the house  
2743 at one time, except for when there is a hurricane and something like that. While I might

2744 take three or four in this day and let the other two in the next day, you know, like that. So,  
2745 they know how to behave in the home.  
2746

2747 Mr. Johnson - And, also in addition to that, the regulations says that  
2748 domestic animals that are ... if you have more than four, there shouldn't be no commercial  
2749 ... not used for any commercial ...  
2750

2751 Ms. Harris - What do you mean by commercial?  
2752

2753 Mr. Green - Selling.  
2754

2755 Mr. Johnson - You are selling dogs or something like that ...  
2756

2757 Ms. Harris - It's not for a profit.  
2758

2759 Mr. Johnson - ... in a residential area. It doesn't make any difference.  
2760

2761 Ms. Harris - Ok.  
2762

2763 Mr. Johnson - It's the Code of Virginia ... Code for the county. And also,  
2764 some complaints as well. I'm just looking at what came up. That I don't know if they are  
2765 talking to you or not but, the time I was out there just looking from the street and ... I  
2766 wouldn't like to live next door to that. You know, not unless you have some kind of greater  
2767 closing it off so I couldn't see it or something. But I'm just giving you an idea ...  
2768

2769 Ms. Harris - Are you saying the next door, that 6410?  
2770

2771 Mr. Johnson - To the left of your house ...  
2772

2773 Ms. Harris - Its 6410 and the other one is on another street.  
2774

2775 Mr. Green - Right.  
2776

2777 Ms. Harris - Is that what you are talking about? That's the same neighbor.  
2778 I've had them all the time.  
2779

2780 Mr. Johnson - I was referring to just the site from the street. From ... the view  
2781 of your house from the street.  
2782

2783 Ms. Harris - What do I do? Do I panel it off? I mean I want to know, what  
2784 do I need to do to keep my animals.  
2785

2786 Mr. Johnson - Now, one thing the Board has to consider is the number of  
2787 dogs you have out there now, and also the aggressiveness of the dogs. Have any of  
2788 them gotten out before?  
2789



2790 Ms. Harris - No.  
2791  
2792 Mr. Johnson - They stay in that kennel ...  
2793  
2794 Ms. Harris - No, they go into the yard, too. At the bottom of my fenced in  
2795 area, I have an electric wire all the way across ... just like you would do a horse or  
2796 something. They don't touch that fence. They've never been out, at large, never. In 40  
2797 years, never.  
2798  
2799 Ms. Harris (Chair) - According to the rules we have it says the breeding of dogs  
2800 ... Did you get a copy of the report?  
2801  
2802 Ms. Harris - Yes, I did.  
2803  
2804 Ms. Harris (Chair) - Ok. It says that the breeding of dogs for commercial purposes  
2805 is not allowed within a residential district. So, you say you breed about two or three litters  
2806 ... maybe a year ...  
2807  
2808 Ms. Harris - Yes.  
2809  
2810 Ms. Harris Chair) - Ok.  
2811  
2812 Ms. Harris - A year.  
2813  
2814 Ms. Harris (Chair) - And that's not allowed in the commercial, I mean the  
2815 residential area. In other words, if you were ... if you had a business location, it would be  
2816 completely different, but because you are in a residential neighborhood, breeding is not  
2817 allowed. It is considered illegal, really, I guess ... based on the Code. So, our concern is  
2818 the breeding and also the fact that you have so many dogs. We've had cases come  
2819 before us before where they had more than three but, I don't think any of them that had  
2820 nine Rottweilers. I drove by there, too. And so ...  
2821  
2822 Ms. Harris - But they are very sweet. I'm telling you.  
2823  
2824 Ms. Harris (Chair) - Well, they stopped and looked at me ... you know like ... What  
2825 are you doing here?  
2826  
2827 Ms. Harris - They are not going to let anybody come in there.  
2828  
2829 Ms. Harris (Chair) - Yes.  
2830  
2831 Ms. Harris - ... and all of that.  
2832  
2833 Mr. Harris (Chair) - Right. Mr. Green, you had something to say?  
2834

2835 Mr. Green - Ms. Harris, a couple of things I'm concerned about. One, you  
2836 know, is we've got to follow the rules, and the rules say that you can only have no more  
2837 than three. We've had cases before where we denied individuals because they had more  
2838 than three and, unfortunately, they had to make alternative arrangements for their dogs.  
2839 Two things, one ... I'm concerned about Rottweilers, they need exercise. They need  
2840 places to run. They need to get that energy out. So, just being penned up in a cage ...

2841  
2842 Ms. Harris - Oh no, they go out.

2843  
2844 Mr. Green - No, no ... hold on, hold on. They get penned up in a cage ...  
2845 now that's the second thing ... and then, I'm really concerned about the disposal of their  
2846 waste. How do you do that? Do you just throw it in the trash can?

2847  
2848 Ms. Harris - I go through the yard ...

2849  
2850 Mr. Green - Where do you put it?

2851  
2852 Ms. Harris - I scoop the yard, put it in a plastic bag, tie it up and put it in  
2853 the trash.

2854  
2855 Mr. Johnson - In addition to that in the yard, not in the cages you have the  
2856 in, do you pick it up in there, as well.

2857  
2858 Ms. Harris - Yes, I do. I pick up behind them every day.

2859  
2860 Mr. Reid?? - Have your neighbors ever complained about the smell?

2861  
2862 Ms. Harris - No, because I clean up and it's not going to leave no smell. I  
2863 clean up behind them. They are like my children. I just love them. And, they are not  
2864 penned up all the time. They take turns being out running around. They take turns.

2865  
2866 Mr. Green - Well, my concern is this statute says that three, and we ... it's  
2867 not fair to other folks that we've denied having more than three dogs to grant an exception  
2868 for nine. I guess I'm having a hard time trying to justify that. Folks love their animals.  
2869 Folks love their dogs but, nine in a commercial ... in a residential neighborhood, especially  
2870 Rottweilers, while they may be nice and you know them, you know ... I wouldn't want to  
2871 walk up on them because I don't know what they would do ... with any dog ... or anyone  
2872 with or more than three or four dogs. So, that's my concern. The pens seem to be  
2873 appropriate but, at some point, we've got to follow the rules. The rules say three.

2874  
2875 Ms. Harris - I know the rules say three. That's why I'm applying for this, so  
2876 I can keep them. Keep all nine. I'm not getting any more. That's it for me. I just don't  
2877 want to have to put them down or ... God bless them ... or take them to the shelter where  
2878 they are going to be put down. I couldn't do that. I couldn't live with myself if I got rid of  
2879 them. I could not live with myself.

2880

2881 Mr. Johnson - Madam Chair.  
2882  
2883 Mr. Harris (Chair) - Yes, Mr. Johnson.  
2884  
2885 Mr. Johnson - In addition to that, it says that you can't breed them either in  
2886 a residential area. And that is another thing the Board is looking at. You can't sell them  
2887 or breed them in that area. Not unless you go to another zoning.  
2888  
2889 Ms. Harris - Oh but, sometimes though, I have breeder partners that bring  
2890 me their puppies to sell.  
2891  
2892 Mr. Green - That's more than three.  
2893  
2894 Ms. Harris - That's more of the same?  
2895  
2896 Mr. Green - That's more than three.  
2897  
2898 Ms. Harris - But the puppies ...  
2899  
2900 Mr. Green - But you still have more than three.  
2901  
2902 Ms. Harris - I still have nine Rottweilers, yes. That's why I'm applying for  
2903 this particular ... so I can keep them. I don't want them to be put down. I'm 68 years old.  
2904 I cannot afford to move. I've been there for 40 years.  
2905  
2906 Mr. Johnson - And, they can't be bred.  
2907  
2908 Ms. Harris - They can't be bred. You are saying no breeding ...  
2909  
2910 Mr. Johnson - No breeding.  
2911  
2912 Ms. Harris - ... and, keep the nine.  
2913  
2914 Mr. Johnson - I didn't say that.  
2915  
2916 Ms. Harris - I'm just saying, no breeding ...  
2917  
2918 Mr. Green - How many puppies does another breeder bring in to you?  
2919  
2920 Ms. Harris - They might bring me three or four puppies. So, they brought  
2921 puppies from me.  
2922  
2923 Mr. Green - So, that's twelve then.  
2924  
2925 Ms. Harris - No, I don't have that. All I have is just the nine.  
2926



2927 Mr. Green - But if they bring three to you, that's twelve.  
2928  
2929 Ms. Harris - Three babies that won't be there no more than a week.  
2930  
2931 Mr. Johnson - But they can't sell them?  
2932  
2933 Mr. Blankinship - Why would they come to your house?  
2934  
2935 Ms. Harris - They come to my house because ... well I got the proper  
2936 facility for them. I have the little area for them. You know, stuff like that.  
2937  
2938 Mr. Blankinship - So you ...  
2939  
2940 Ms. Harris - That's what they do.  
2941  
2942 Mr. Green - When you sell them, how much do you sell your Rottweilers  
2943 for?  
2944  
2945 Ms. Harris - It depends on whether or not they are papered Rottweilers, or  
2946 whether they are import Rottweilers. I'd say between 12 and 15.  
2947  
2948 Mr. Green - Hundred?  
2949  
2950 Ms. Harris - Yes.  
2951  
2952 Mr. Green - So, you don't think that would be enough for you to run a  
2953 commercial facility to do all of that?  
2954  
2955 Ms. Harris - Well ... You don't make money! Just to put them on the  
2956 ground. That means the momma and the daddy ... the shots and all that ... Just to put  
2957 them on the ground it costs \$750. That's what I do. That's just to get them on the ground  
2958 and ready to go. Cost about \$750 per puppy.  
2959  
2960 Mr. Green - Ok but, then you say \$1200 ...  
2961  
2962 Ms. Harris - Yes.  
2963  
2964 Mr. Green - So, another \$750.  
2965  
2966 Ms. Harris - So, out of the 1200, it cost me \$800 to feed um, you know ...  
2967 just to feed um.  
2968  
2969 Mr. Green - All of them?  
2970  
2971 Ms. Harris - All of them. It cost me \$600 for heartworm medication. For all  
2972 of them. It cost me \$400 for the flea medication. That's if everybody helps and don't

2973 nothing happen. That's all the time. I figured it all out. Each puppy, I make \$210 dollars.  
2974 Out of eight puppies.

2975  
2976 Mr. Johnson - Ms. Harris.

2977  
2978 Ms. Harris - Yes.

2979  
2980 Ms. Johnson - Again, there is no breeding and there shouldn't be any more  
2981 than three.

2982  
2983 Ms. Harris - So, what am I supposed to do? Shoot'um in the head? They  
2984 are gonna put them down. Or, am I supposed to ...

2985  
2986 Mr. Green - A rescue, another rescue won't take them?

2987  
2988 Mr. Johnson - Another kennel?

2989  
2990 Ms. Harris - No. No. They might take them but, I don't know.

2991  
2992 Ms. Harris (Chair) - I know you hate to sell them but, you ...

2993  
2994 Ms. Harris - Oh, I can sell them. I can sell them with no problem.

2995  
2996 Ms. Harris (Chair) - That's what I'm saying. That might me another option. I know  
2997 you hate to, because they're in your heart ... but, still a ... we have, we're faced with those  
2998 two things, more than three and the fact that you are living in a residential area.

2999  
3000 So, are there any more questions from Board members?

3001  
3002 Mr. Green - Yes, and the other concern that I have is the urine that is  
3003 contaminating the ground. I mean those dogs produce a ...

3004  
3005 Ms. Harris - They sure do. I've got a little thing hooked up to the water  
3006 hose that you sanitize the whole yard with. I got a 100-ft. hose that I sanitize my yard  
3007 with once a week. It's a thing that hook up to the hose, it's called Yard Odor or Kill Odor,  
3008 or Pet Odor, or something like that. That hook up to the water hose. After you spread it  
3009 on out, you have no odor.

3010  
3011 Mr. Green - But it's still saturated, into the ground, right? That urine is ...

3012  
3013 Ms. Harris - It's saturated in the ground, yes. But, when you treat it, you  
3014 don't have the odor. It's similar to that stuff you do like Pet Odors on carpet. It's similar  
3015 to that. Its enzymes based.

3016  
3017 Ms. Harris (Chair) - Ok, a ... we have to move on. Are there any more questions  
3018 from the Board members or anymore slated for Ms. Harris?

3019  
3020 Ms. Harris, thank you so much for coming in and we're sorry you had to wait. I was late,  
3021 too because I got caught in it.  
3022  
3023 Ms. Harris - Yes, because traffic was awful.  
3024  
3025 Ms. Harris (Chair) - Yes, it was, and I don't know why but it was. But, anyway,  
3026 thank you for coming in. We're getting ready to vote now, if you want to wait around.  
3027  
3028 Ms. Harris - Ok.  
3029  
3030 **[After the conclusion of the public hearings, the Board discussed the case and**  
3031 **made its decision. This portion of the transcript is included here for convenience**  
3032 **of reference.]**  
3033  
3034 Ms. Harris (Chair) - Ok, let's go back to ...  
3035  
3036 Mr. Blankinship - Ms. Harris.  
3037  
3038 Ms. Harris (Chair) - Ms. Harris is the first case. What is the pleasure of the Board?  
3039  
3040 Mr. Johnson - Madam Chair.  
3041  
3042 Ms. Harris - Yes, Sir.  
3043  
3044 Mr. Johnson - The regulations says we shouldn't be breeding in a residential  
3045 area, nor should we have more nine ... even if you reduce it to three, you could probably  
3046 agree to that. Based on the conditional use code, it is not consistent with the  
3047 Comprehensive Plan ... that we would deny it if you don't reduce it to three.  
3048  
3049 Ms. Harris - The motion is to deny, unless it is reduced to three?  
3050  
3051 Mr. Johnson - Yes.  
3052  
3053 Ms. Harris - Is there a second to the motion?  
3054  
3055 Mr. Green - Second.  
3056  
3057 Ms. Harris - It's been moved that we deny this application, until it's reduced  
3058 to three ...  
3059  
3060 Mr. Blankinship - While it's reduced to three, she doesn't need a use permit.  
3061  
3062 Mr. Green - Right.  
3063



3064 Ms. Harris - Oh, that's right, so motion is to deny this application. Are there  
3065 any questions on the motion? All in favor of denying say, aye.

3066  
3067 Ms. Harris - Those opposed say, no. The ayes have it. It is denied.

3068  
3069 After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr.  
3070 Green, the Board **denied** application **CUP2019-00001, LINDA A. HARRIS's** request for  
3071 a conditional use permit pursuant to Section 24-12(e) of the County Code to allow a  
3072 noncommercial kennel at 6408 Kilgore Street (New Market Farms) (Parcel 801-704-  
3073 7621), zoned One-family Residence District (R-3) (Varina).

3074  
3075  
3076 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
3077 Negative: 0  
3078 Absent: 0

3079  
3080  
3081 Ms. Harris - And the last two cases were deferred, and we've already  
3082 voted on those. Ok, in your packet you received some information on Cochran and since  
3083 we do have two cases that have been deferred, we do need to study that closely along  
3084 with the information that we were given today. And, also the report that was prepared by  
3085 the County of Henrico, keeping in mind that Cochran was not the last word on this ... on  
3086 what we are dealing with. There was a ruling in 2015 that also you need to consider. And  
3087 so, we'll do our homework and we will hear from the County Attorneys, so we should be  
3088 on target.

3089  
3090 Is there any more business before this body? We had said we were going to discuss time  
3091 limits. We keep running out of time to discuss it.

3092  
3093 Mr. Blankinship - I do have one important matter, Madam Chair. Which is, a  
3094 couple of your recent decisions have been appealed to the Circuit Court. One of those is  
3095 the Yarborough case, the horses on Woodman Road which was an appeal brought before  
3096 you and you overturned the decision of the Director of Planning regarding that  
3097 determination.

3098  
3099 As part of that, we received a subpoena which includes any notes that members of the  
3100 Board may have on that case. Mr. Green has asked a couple of times, "Are we supposed  
3101 to be keeping our notes?" And this the first time I've seen a subpoena that specified that  
3102 your notes should be turned over. If you have any notes that you took during that  
3103 deliberation on the Yarborough case, we do need those. So, please contact me and we'll  
3104 make arrangements to pick them up from you or send them in however you wish.

3105  
3106 But, in addition to that, I think you know the East End Landfill case was appealed to the  
3107 Circuit Court, the Circuit Court upheld your decision and that has now been appealed to  
3108 the Virginia Supreme Court. So, we'll see when the Supreme Court takes that case on.

3109

3110 And, also the Airbnb case, that you had the same week as the Yarborough case, in that  
3111 case you upheld the Board ... I'm sorry ... the notice of violation. That was appealed to  
3112 Circuit Court but, the Appeal was faulty and had to be withdrawn. So, that decision stands.  
3113

3114 Ms. Harris - Well ...

3115

3116 Mr. Johnson - The Appeal you mentioned before the last one, what was that  
3117 one?

3118

3119 Ms. Harris - The landfill.

3120

3121 Mr. Blankinship - The East End Landfill.

3122

3123 Mr. Johnson - Oh, ok.

3124

3125 Mr. Blankinship - I guess that was before your appointment. The Board revoked  
3126 the conditional use permit to operate the landfill.

3127

3128 Ms. Harris - Do you know what date that was because we've had so many  
3129 cases coming.

3130

3131 Mr. Blankinship - I don't off the top of my head.

3132

3133 Ms. Harris - Just please let us know. Ok, is there any more business?

3134

3135 Mr. Blankinship - Oh, and the last item is, I'm sorry that the Minutes have run  
3136 so far behind. We should be delivering the December minutes to you shortly, and we're  
3137 trying to catch up on the others.

3138

3139 Ms. Harris - Any more business to report?

3140

3141 Mr. Green - I would just caution everybody that having sat on a number of  
3142 Boards that we have to be real careful when we write notes. That's why I always leave  
3143 them behind.

3144

3145 Ms. Harris - Right.


3146

3147 Mr. Green - I don't know what they can make of this one. This one says  
3148 square footage 1,300.

3149

3150 Ms. Harris - I don't think that would help anyone. Ok, there's no more  
3151 business before the Board. We do want you to think about time limits ... if we need to set  
3152 any standards if we need to change the time limits. I think we did pretty well today with  
3153 the time, considering the cases we had. But please, make a decision in your own mind  
3154 that you can bring to us if you have any suggestions as to how we can handle time limits.  
3155 With that being said, the meeting is adjourned.

3156  
3157  
3158  
3159  
3160  
3161  
3162  
3163  
3164  
3165  
3166  
3167  
3168  
3169  
3170  
3171  
3172



---

Ms. Helen E. Harris, Chairman



---

Mr. Benjamin W. Blankinship, Secretary