

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE GOVERNMENT CENTER AT PARHAM**
4 **AND HUNGARY SPRING ROADS, ON THURSDAY JULY 23, 2015 AT 9:00**
5 **A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH JULY 6, 2015, AND JULY 13, 2015.**
7

Members Present: Gentry Bell, Chairman
Greg Baka, Vice Chairman
Dennis J. Berman
James W. Nunnally

Member Absent: Helen E. Harris

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

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

13 Thank you. Mr. Blankinship, would you please read the rules.
14

15 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
16 ladies and gentlemen, the rules for this meeting are as follows: Acting as
17 secretary, I will announce each case, and then a member of our staff will come
18 and make a brief presentation about that case. Then the applicant will be asked
19 to speak. And the Board will probably have questions for you. After the applicant
20 has spoken, anyone else who intends to speak will be given the opportunity.
21 After everyone has spoken, the Board will take that matter under advisement and
22 proceed to the next public hearing. After they've heard all five cases, they'll go
23 back through the agenda and vote on each case. They'll discuss and vote on
24 each case. So if you wish to hear their decision on a specific case, you can either
25 stay until the end of the meeting, or you can check the Planning Department
26 website—we usually get it updated within the hour after the meeting ends—or
27 you can call the Planning Department this afternoon. Also, I skipped over part of
28 that. We will ask everyone who intends to speak to each case to stand and be
29 sworn in.
30

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

35 Finally, in the foyer there is a binder containing the staff report for each case,
36 including conditions that have been recommended by the staff. It's particularly
37 important that the applicants be familiar with those conditions.

38
39 As I said, we're going to have staff reports before each case. That is a new
40 procedure for us, so there may be some glitches along the way of people not
41 being sure of the timing of things, so we'll just ask you to bear with us on that.

42
43 Also, I should mention that one of our members Mrs. Harris is not present this
44 morning. The state code requires that in order to grant a variance or a conditional
45 use permit you must have an affirmative vote from at least three members of the
46 Board, from a majority of the total membership of the Board. With one member
47 absent, that could possibly handicap your chances. So if anyone would prefer to
48 defer their case to next month, you of course have that right. Just let the Board
49 know that you would prefer to be heard next month.

50
51 **CUP2015-00023 CHRISTOPHER AND JENNIFER FOX** request a
52 conditional use permit pursuant to Section 24-95(i)(4) of the County Code to
53 allow a pool in the side yard at 8104 Spencely Place (WINDSOR ON THE
54 JAMES) (Parcel 756-730-5862) zoned One-Family Residence District (R-1)
55 (Tuckahoe).

56
57 Mr. Blankinship - Would anyone who intends to speak to this case
58 please stand and be sworn in. Raise your right hands, please. Do you swear the
59 testimony you're about to give is the truth, the whole truth, and nothing but the
60 truth so help you God?

61
62 Thank you. Mr. Gidley?

63
64 Mr. Gidley - Good morning, Mr. Chairman, members of the Board
65 of Zoning Appeals. Our first case this morning is a request for a conditional use
66 permit to allow a swimming pool in the side yard at 8104 Spencely Place. The
67 property is roughly 2.3 acres in area and is oddly shaped due to its location at the
68 end of the cul-de-sac.

69
70 The property's rear yard slopes down a total of twenty feet to a creek that runs
71 along the eastern boundary of the property. In addition, there are potential
72 wetlands located in the rear yard. Due to the steep slope and the potential for
73 wetlands, it is difficult, if not impossible, to place a pool in the rear yard as
74 required by code.

75
76 As you can see on the slide, the southern side yard is open and level, making it
77 much more suitable to place a pool in this location. As a result, the applicant has
78 applied for a conditional use permit to allow them to place a pool in the side yard.

80 The following are the required findings for a conditional use permit: Is this
81 request consistent with the Comprehensive Plan and the Zoning Ordinance? The
82 property is designated SR-1, Suburban Residential, on the Comprehensive Plan
83 where the swimming pool would be located. The zoning of the property is R-1,
84 One-Family Residence District. A swimming pool on a residential lot is consistent
85 with both the Comprehensive Plan and the Zoning Ordinance.

86
87 Secondly, would the request result in a substantial detrimental impact on nearby
88 property? As you can see on the slide, the property is located here. There are a
89 number of pools in the area. There's one up here on this lot here, likewise here
90 and here. In fact, the immediate next-door property also has a pool right here up
91 against the property line. The houses to the north and to the east are over 300
92 feet away. They are also screened by heavy tree cover. So they would not be
93 impacted by the proposed pool.

94
95 As I said earlier, the adjacent property does have a pool in their rear yard. It's
96 located right over here, but due to the heavy evergreen screen that is located
97 along the property line, you really can't see it. And likewise, they would not be
98 impacted if the pool was approved in the side yard on the subject property.

99
100 Staff does not see any substantial detrimental impact to this request. Since this
101 request is consistent with the surrounding land use, the Zoning Ordinance, and
102 the Comprehensive Plan, staff recommends approval for this request.

103
104 This concludes my hearing. Can I answer any questions?

105
106 Mr. Bell - Any questions?

107
108 Mr. Baka - I have no questions.

109
110 Mr. Bell - Thank you.

111
112 Mr. Baka - Thank you

113
114 Mr. Gidley - Thank you.

115
116 Mr. Blankinship - All right, if the applicants would come forward now.

117
118 Ms. Grossman - Hello.

119
120 Mr. Bell - Good morning.

121
122 Ms. Grossman - Good morning. I'm Jennifer Grossman. And that's
123 G-r-o-s-s-m-a-n.

124
125 Mr. Fox - I'm Christopher Fox—F-o-x.

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Mr. Bell - Go ahead.

Mr. Fox - First of all, I'd just like to say I think staff has done a very comprehensive and diligent job in describing the variance that we're asking for. I don't know that we have a lot to add in addition there, perhaps except to say that we have spoken with all of the neighbors who are potentially affected by this. We believe all of them are supportive of the pool. No one has voiced any concerns.

Ms. Grossman - Except for a pool party, maybe, but other than that. Also, just in case it wasn't noted, when we do put up the pool, we will put up additional screening, particularly in the front of the yard so that if anyone is driving in the cul-de-sac and happens to want to take a peek, they won't be able to see from the front of the house, as well as from the rear yard. We will also put up additional screening. There will also be a fence up, as required, as well as a pool cover to keep the neighborhood safe as well.

Mr. Bell - Have you read the conditions that you have to follow if we approve it?

Ms. Grossman - I was under the impression that additional screening, particularly in the front of the house, is a concern. And of course just the regular ordinances for a pool. We also went to our homeowners association, and we do have approval from them as well.

Mr. Bell - Any other questions?

Mr. Baka - Just one comment. I drove to the site. It was difficult indeed to see the side yard because it is so well screened already. Additional screening would only help. The applicant added that none of the neighbors are in objection. And I believe this would be a complement to the neighborhood. No concerns. Thank you, Mr. Chairman.

Mr. Fox - Thank you.

Ms. Grossman - Thanks.

Mr. Blankinship - Does anyone else intend to speak to that case or would anyone else like to speak? All right. In that case, the public hearing is closed.

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

172 Mr. Bell - Do I hear a motion on this case?

173

174 Mr. Baka - Yes. Mr. Chairman, I make a motion we approve
175 CUP2015-00023, with the conditions that were recommended in the staff report.
176 This case will not adversely affect the health, safety, or welfare of the
177 neighborhood or surrounding properties.

178

179 Mr. Bell - Do I hear a second?

180

181 Mr. Nunnally - Second.

182

183 Mr. Bell - Any discussion? All in favor say aye. All opposed say
184 nay. The ayes have it; the motion passes.

185

186 After an advertised public hearing and on a motion by Mr. Baka, seconded by
187 Mr. Nunnally, the Board **approved** application **CUP2015-00023, CHRISTOPHER**
188 **AND JENNIFER FOX's** request for a conditional use permit pursuant to Section
189 24-95(i)(4) of the County Code to allow a pool in the side yard at 8104 Spencely
190 Place (WINDSOR ON THE JAMES) (Parcel 756-730-5862) zoned One-Family
191 Residence District (R-1) (Tuckahoe). The Board approved the conditional use
192 permit subject to the following conditions:

193

194 1. This conditional use permit applies only to the accessory structure location
195 requirement for a swimming pool in the side yard. All other applicable regulations
196 of the County Code shall remain in force.

197

198 2. Only the improvements shown on the plot plan and building design filed with
199 the application may be constructed pursuant to this approval. Any additional
200 improvements shall comply with the applicable regulations of the County Code.
201 Any substantial changes or additions to the design or location of the
202 improvements shall require a new conditional use permit.

203

204 3. At the time of building permit application, the applicant shall submit the
205 necessary information to the Department of Public Works to ensure compliance
206 with the requirements of the Chesapeake Bay Preservation Act and the code
207 requirements for water quality standards. This includes ensuring that no fill shall
208 take place within the 100-year floodplain without compensating cut.

209

210 4. The swimming pool shall be enclosed by a fence as required by the Building
211 Code.

212

213

214 Affirmative: Baka, Bell, Berman, Nunnally 4

215 Negative: 0

216 Absent: Harris 1

217

263 it could alternately be used as parking for the site. The remaining two-thirds of
264 the property would not be restricted for the intended use.

265
266 Because of the wide variety of industrial uses available to the applicant and the
267 available design solution for the site, staff does not believe that the 300-foot
268 distance requirement unreasonably restricts the use of the property.

269
270 With respect to the findings, staff submits the following. Item #1. When the
271 applicant acquired the property in 2014, the County zoning regulations had been
272 in place for many years. If there is a hardship, it results from the applicant's
273 desire to use the property for a purpose that is subject to the 300-foot distance
274 requirement. In this sense, the hardship is self-imposed.

275
276 Item #2. Granting the variance would not be substantially detrimental to
277 surrounding properties due to the commercial and industrial nature of the
278 surrounding area, the Comprehensive Plan designation for the area, which is CC
279 (Commercial Concentration), and the shallow depth and vacant state of the R-6-
280 zoned parcel. Also, it is unlikely the R-6-zoned parcel would be developed for
281 multi-family use due to the intense commercial and industrial nature of the
282 surrounding area.

283
284 Item #3. The applicant owns the adjacent property to the east and is concurrently
285 requesting a rezoning of that property from M-1 to M-2 in order to allow the
286 proposed use. Approximately one-half of that property is within 300 feet of an R-4
287 district, which is located to the east of the site. So this is the subject property, and
288 over here is the R-4 district.

289
290 If this variance is approved, the Board can expect to see a similar application for
291 the adjoining property in the very near future.

292
293 Item #4. The M-2 district regulations are written in such a way that allows a wide
294 variety of uses that don't have a distance requirement. Alternately, there are
295 many uses that have a 300-foot distance requirement due to their intense nature.
296 With this in mind, granting this variance could be considered tantamount to a
297 rezoning of the property since it would make it available for a wide variety of uses
298 that would otherwise not be allowed on the property. And use variances are
299 prohibited by state code.

300
301 Item #5. No other relief is available to the applicant by way of code that would
302 allow him to use a portion of the property within the 300-foot distance
303 requirement.

304
305 In summary, the facts of the case do not lend themselves to making a finding that
306 the ordinance unreasonably restricts the use of the property since it can be used
307 for a wide variety of commercial and industrial uses without the need for a
308 variance. The hardship is created by the applicant's desire to use the property for

309 a use that is subject to the 300-foot distance requirement. A majority of the lot
310 can be used for his intended use without the need for a variance. Additionally,
311 the evidence does not support a finding that the situation before the Board is not
312 of a general or recurring nature because the applicant intends on submitting a
313 similar request for his adjoining lot in the near future. Based on this, staff
314 recommends denial of the variance request.

315

316 This concludes staff's presentation. I'm available for any questions you may
317 have.

318

319 Mr. Bell - Any questions? Thank you.

320

321 Mr. Madrigal - Thank you.

322

323 Mr. Blankinship - In trying to get all the new things in order, I actually
324 made a mistake there. I forgot to swear in everyone who intends to speak to that
325 case. So I hope everything you said was true.

326

327 Mr. Madrigal - It's your report.

328

329 Mr. Blankinship - If you would raise your right hand, please. Do you
330 swear the testimony you're about to give is the truth, the whole truth, and nothing
331 but the truth so help you God?

332

333 Mr. Foley - Good morning. This is my first time in front of the
334 BZA. I apologize if I mess up in any way. My name is Rusty Foley—F-o-l-e-y. I'm
335 a real estate broker. I represent the owner of this property. I represented him
336 when he purchased the property.

337

338 He bought this as an investment. He is a business owner in the County. He has a
339 couple of other industrial properties as well as this. The intention was to
340 purchase the property, get a tenant. We have had interest from a national group.
341 In order for them to commit to this site, they need outside storage for the entire
342 site. The R-6 zoning that we're 180 feet from is owned by Mr. Pugh, who also
343 owns the Fire-X Corp, which is adjacent to us. I've spoken with him, and he has
344 indicated that he has absolutely no problem with the variance and will support
345 our application to change the M-1 into the M-2 down the road. We're doing that
346 subject to getting a variance on this.

347

348 We feel that the R-6 zoning, which was I guess put in place back in the '60s
349 when the zoning code was originally written, is somewhat outdated in the sense
350 that the old zoning allowed an office building to be built on R-6. Mr. Pugh has
351 never gone any further in taking steps to try to rezone the property. We think that
352 if this were to go office, I guess it wouldn't have to change the zoning, but we feel
353 that this is a wasted space. Granted, you could use it for parking of cars. But
354 what we need to secure this business, which is not in the County presently, is to

355 be able to store product outside. In order to do that—we're getting prices on the
356 eight-foot fence now, because currently it is just about a six- or seven-foot screen
357 fence.
358

359 Anyway, I encourage you because we think that it is a waste, it would be
360 unreasonable not to be able to use the property in which it's zoned just because
361 we're 110 feet shy of the 300-foot requirement right now. I would urge the Board
362 to consider that. I'm happy to try to answer any questions.
363

364 We have M-2 zoning beside us, M-1 on one side. The R-6 is a vacant lot. It's
365 been vacant—I think it's a virgin lot, never has been built on to my knowledge.
366 And it's just in the way.
367

368 If I could answer any questions, I'll be happy to try.
369

370 Mr. Bell - As it stands now, you have a potential buyer if you
371 can—

372
373 Mr. Foley - Tenant, potential tenant.
374

375 Mr. Bell - Tenant.
376

377 Mr. Foley - Yes sir.
378

379 Mr. Bell - What kind of tenant is it and what difference—well,
380 first, what kind of tenant is it?
381

382 Mr. Foley - It is a national wholesaler. It's a waterworks supply
383 company.
384

385 Mr. Bell - And how does the heavy equipment enter into the
386 picture?
387

388 Mr. Foley - It would be product. It would be pipes and that kind of
389 stuff. It would be fully screened from the business that's in front of this. Actually, I
390 think the requirement is we have to fully screen the entire lot. And we're willing to
391 do that.
392

393 Mr. Bell - So it's not just for like construction contractor's
394 equipment.
395

396 Mr. Foley - This is for product. I don't think the code states
397 specifically for this use. The closest thing to the code is a builder storage yard.
398 That's why we presented it as that.
399

400 Mr. Bell - Thank you. Any questions?

401
402 Mr. Berman - Can you show us with the cursor down there where
403 they intend to put the shed?
404
405 Mr. Foley - We don't intend to put a shed.
406
407 Mr. Berman - Well, a storage facility.
408
409 Mr. Blankinship - It would just be outdoor storage. They would just
410 stack—
411
412 Mr. Berman - Oh, stack it?
413
414 Mr. Foley - Right. In other words, we would just be taking
415 advantage of what is now just a grassy yard. We would turn that into something
416 that's capable of whatever the code requires for us to be able to lay down pipes
417 and stuff of that nature. And—
418
419 Mr. Berman - So is there—oh, I'm sorry; I didn't mean to cut you off.
420
421 Mr. Foley - And this is not the first tenant that we've shown the
422 property to that requires outside storage. The location here, it's in the Enterprise
423 Zone, it's a great location for an industrial user. But the way this is set up,
424 everybody is looking for outside storage. Combining the two parcels, we've got
425 just shy of three acres here, which is kind of a needle in a haystack. It's very
426 scarce, if you will. And this site I think—the County's got a site here that could
427 provide a niche-type use. It's a good site. It's zoned M-2.
428
429 Mr. Berman - Is there a place on the lot—if you can go back to the
430 lot picture, please. Is there a place there that would be sufficient and still meet
431 the 300-foot setback to put outside storage?
432
433 Mr. Foley - There would not be enough yard. Right now, the way
434 we've got it set up is kind of an imaginary line. We have the rear section leased
435 out to a local firm. What we're offering the supply company is either the entire
436 site or about just shy of two acres. They need at least two acres. And with that,
437 we do not have anywhere near the room. In addition, we would need to rezone
438 the rear property, which is currently M-1 that backs up to the railroad track. We
439 would need to rezone that to M-2, which we have an application in place for that
440 to allow for outside storage. The variance on that is there may be enough yard
441 where we could get away with not getting the variance for the rear property, but
442 it's very important that we get the variance for this front property that's currently
443 zoned M-2.
444
445 Mr. Berman - You are aware that there is residential development in
446 the area and our concern is that—even though you said R-6 is a vacant and

447 virgin lot—there are houses being developed around in that area. And our
448 concern is we don't want to do any spot zoning and put anything too close to the
449 residential area. We're hoping that you can find enough space without having to
450 rezone or ask us to do a variance on the 300-foot limitation. That's what we're
451 trying to work with you on right now.

452

453 Mr. Foley - With all due respect, could you tell me where the
454 residential development is that you're speaking of?

455

456 Mr. Berman - Staff, if you can help me out. That was one of the
457 points you made that there is a likelihood of residential development in the area.

458

459 Mr. Blankinship - The property is zoned R-6, so it could be developed
460 tomorrow. We could get a site plan tomorrow to put multi-family or townhouses
461 there. It doesn't really seem that likely, given that it's between the B-1 and the O-
462 2 and it fronts on Staples Mill, but that potential exists. And of course on the other
463 side of Staples Mill there is an R-4 district with single-family homes.

464

465 Mr. Foley - Mr. Pugh, who owns that R-6 property, I do not think
466 has any intention of developing it as a residential property. He has been
467 approached by some retailers that he's kind of let go. But if he does anything with
468 the property, I would certainly think the highest and best use for this location
469 would be some sort of retail.

470

471 Mr. Blankinship - And that would require rezoning that property. And if
472 that property were rezoned, your issue would go away.

473

474 Mr. Foley - Correct.

475

476 Mr. Bell - Have you thought about going to see if you can have
477 it rezoned?

478

479 Mr. Foley - We do not own that property. Mr. Pugh, who I sat
480 down and spoke with when I made this application, I explained to him what we
481 were doing, that we were applying for this variance, we were going to apply for
482 rezoning on the rear property. His comment to me was "I fully support it. Let me
483 know if you have any problems."

484

485 From a practical standpoint, I don't see the variance as being unreasonable. And
486 I think it limits the use almost to the point of making that vacant, grassy lot
487 unusable. Granted, you can park cars there, I'm assuming.

488

489 Mr. Blankinship - Yes you can.

490

491 Mr. Foley - And that's it. That's not what we need in order to
492 secure this tenant, who would be a pretty good tax base for the County as well.

493
494 Mr. Berman - There's no reconfiguring of the lot, to your knowledge,
495 that would allow you to do what you need to without any variances or rezoning.
496
497 Mr. Foley - Not the way this—we need that grassy area that is
498 right now contained in that fence. We need this area in addition to everything
499 else that we have.
500
501 Mr. Berman - If at some point you combine the lots, would that be a
502 resolution that you could share? I know some things have to happen before
503 you're able to combine and use that adjacent lot, but would that be a resolution?
504
505 Mr. Foley - If we get rid of the current tenant in the rear, rezone
506 the property, and we're successful in rezoning it from M-1 and M-2, then that
507 could work.
508
509 Mr. Blankinship - And in that event, you'll be back before this Board for
510 another variance on the far side of the property.
511
512 Mr. Foley - That is correct. Long story short, in order to secure
513 this tenant, we have to have at least two acres of outside storage for their
514 product.
515
516 Ms. Moore - How much acreage do you have in front of the
517 building currently?
518
519 Mr. Foley - It's about a half an acre. When you say in front, are
520 you talking towards Staples Mill Road?
521
522 Ms. Moore - Correct.
523
524 Mr. Foley - It is about a half acre that is that grassy area. That's a
525 ballpark guesstimate.
526
527 Mr. Baka - I have a comment and then a follow-up question.
528 From purely a viewshed standpoint, especially when I drove on Greendale Road,
529 there are so many trees or a lot of screening across the road, it is very difficult to
530 see into the site. And similarly along Staples Mill Road when you're looking back,
531 there are some small scrub trees and it's difficult to see where the site would be.
532 So from a viewshed standpoint, people are often concerned about how it looks to
533 the neighbors and how it looks to motorists. I don't think there would be any
534 substantial detrimental impacts. That's on the practical side.
535
536 I guess the question I have is if this property—staff mentioned the property to the
537 east was going to be rezoned from M-1 to M-2. One thing I'm not clear on yet
538 that you may have mentioned is if the property were to be rezoned to M-2, would

539 that alleviate the need for this particular variance here today and therefore the
540 relief process is actually through the Board of Supervisors, not through the Board
541 of Zoning Appeals?

542

543 Mr. Blankinship - This property is already M-2.

544

545 Mr. Baka - Since this is already M-2, the variance—

546

547 Mr. Blankinship - Right. The M-2 zoning allows certain uses by right,
548 certain uses if they're 300 feet away, and certain uses if they're 600 feet away.

549

550 Mr. Baka - All right. So to clarify my question, is there any type of
551 other relief that the Board of Supervisors could grant on this rather than having to
552 pursue the variance? Is the variance a course of last resort?

553

554 Mr. Blankinship - They could amend the code.

555

556 Mr. Baka - Right.

557

558 Mr. Foley - Let me just add too. In order to do that, we would
559 have to get rid of one tenant that's currently there. It would complicate the issue.
560 And I'm sure the current tenant, who's on a short-term lease who's ask for a
561 longer-term lease—the Zaun subdivision—I guess you're familiar with that; it's in
562 the Enterprise Zone—is kind of a tight-knit group of business owners. So they all
563 work together. And one of those business owners is our tenant back here who he
564 also allows another business owner in the area to use the site as well with him. In
565 a perfect world, we'd love to keep the gentleman who is leasing the property in
566 the rear. We would love to move a national firm into the front section of the
567 property. Carry on. We just think it's reasonable, and it's unreasonable—well, I'll
568 stop there.

569

570 Mr. Gidley - Are you not creating a hardship by wanting to locate a
571 tenant on the site that doesn't meet the tenant's requirements?

572

573 Mr. Foley - The code allows it if it were another 110 feet further
574 from this R-6 parcel that's sitting there. And the question was are we creating a
575 hardship.

576

577 Mr. Gidley - I spoke to you earlier and spelled out the
578 requirements. By proposing to bring a tenant to a site that doesn't meet that
579 tenant's requirements, are you not creating a hardship that you're here protesting
580 against?

581

582 Mr. Foley - I don't think I'm creating a hardship. I think I am
583 requesting use of the property for which it's zoned. I'm just asking that we have a
584 110-foot variance so that we can use the property for which it is zoned.

585
586 Mr. Berman - Can I ask staff a question? You've recommended
587 denial. Do you have any recommendation for a succession of events that would
588 alleviate the situation?
589
590 Mr. Blankinship - As was mentioned, they could use the front portion of
591 the property for parking, and then use the area that's now paved for parking for
592 the laydown yard. The applicant says that that's not enough room to
593 accommodate his user. But other than that, it would be to continue to advertise
594 the property for lease until you find a user who could use it within the
595 requirements of the code.
596
597 Mr. Berman - I mean from a resolution standpoint that the County
598 can help with, if they pursue the rezoning of the R-6 or the granting of the M-1
599 and M-2.
600
601 Mr. Blankinship - The rezoning of the R-6 to anything other than a
602 residence district would solve this problem, yes.
603
604 Mr. Berman - But that's Mr. Pugh's domain.
605
606 Mr. Blankinship - Yes.
607
608 Mr. Berman - So there are options. They're not optimal.
609
610 Mr. Foley - Out of our control.
611
612 Mr. Bell - One of my concerns is that we are rezoning it this way
613 when there is—even though there are a lot of things that happen, the Board can
614 amend—there are other solutions other than the variance here. That's what I'm
615 looking at.
616
617 Mr. Berman - That's what I'm getting at.
618
619 Mr. Bell - I was thinking the same thing. So the hardship that's
620 being presented isn't quite—
621
622 Mr. Blankinship - Just for example, an auto repair business or an auto
623 body shop would be a B-3 use, which would be allowed in the M-2 district and
624 would not be subject to the distance requirement. So a user like that could go
625 onto the property today and use the full site.
626
627 Mr. Berman - We understand your preference to get a national
628 chain or whatever, but I'm not seeing anything overly compelling to override this.
629

630 Ms. Moore - Mr. Secretary, I'll put you on the spot with a
631 guesstimate The uses that would be allowed here, because you mentioned B-3,
632 which of course it's all B-2, all B-1, and all your M-1, your guess of how many
633 uses total that would be. Two hundred, you would think? A hundred?
634

635 Mr. Blankinship - Yes, depending on how you slice them. Yes, there are
636 a lot.
637

638 Ms. Moore - And how many guesstimate uses are not allowed
639 because of the distance?
640

641 Mr. Blankinship - The M-2 is the longest itemized list of uses. There are
642 probably at least fifty that are itemized there that have either the 300- or 600-foot
643 distance requirement. On the M-3 it's just a handful.
644

645 Ms. Moore - Okay.
646

647 Mr. Baka - With respect to Mr. Berman's comments earlier, I
648 guess my concern to the Board is that you have a use that does not appear to
649 have any substantial detriment or impact on the neighborhood, on Greendale
650 Road, on those on Staples Mill Road. And without this variance, you appear to
651 have a use that would be consistent—or let me use a double negative—not
652 incompatible with this business and light industrial area. There are some car
653 sales and contractors' yards when I drove there.
654

655 So I would think that this variance would be something that would help alleviate
656 that burden and remove that distance requirement when it doesn't appear to
657 have any impact on the neighborhood, albeit there are maybe dozens of other
658 uses that are permitted. I believe the applicant stated a fair case of us to consider
659 why not grant such a variance to alleviate that 300-foot condition from a vacant,
660 undeveloped parcel when there no residences on it. And a distance that goes
661 across a railroad track, busy and noisy and loud railroad track with forty, fifty feet
662 of trees. I couldn't even see the property from Greendale Road.
663

664 While there are a number of alternatives available, the applicant's done a fair job
665 of explaining why this might unreasonably restrict his use of the property for this
666 intended use.
667

668 Mr. Bell - Any other questions or statements? Thank you, sir.
669

670 Mr. Foley - Thank you.
671

672 Mr. Blankinship - Does anyone else wish to speak to this case? All
673 right, we will proceed.
674

675 [After the conclusion of the public hearings, the Board discussed the case
676 and made its decision. This portion of the transcript is included here for
677 convenience of reference.]
678

679 Mr. Bell - Do I hear a motion on this case? I move that this be
680 denied. It looks like to me we are in the process of doing some rezoning
681 ourselves. The process that the applicant is going through requires an M-1 or an
682 M-2 classification for other properties. They have to have it in order to support
683 what I understand is a potential tenant that will be using this piece of property. It
684 will require then that we go through this same process of a variance with those
685 two parcels of land once that's passed. Therefore, I move that this be denied this
686 variance at this time.

687
688 Mr. Berman - I second the motion to deny.

689
690 Mr. Bell - Any discussion? All in favor say aye. All opposed say
691 nay.

692
693 Mr. Baka - I'll vote nay.

694
695 Mr. Bell - The ayes have it.

696
697 After an advertised public hearing and on a motion by Mr. Bell seconded by
698 Mr. Berman, the Board **denied** application **VAR2015-00006, LSR GROUP LLC's**
699 request for a variance from Section 24-70(b)(3) of the County Code to operate a
700 contractor's equipment storage yard at 6117 Staples Mill Road (Parcel 774-747-
701 1018) zoned General Industrial District (M-2) (Brookland).
702

703
704 Affirmative: Bell, Berman, Nunnally 3
705 Negative: Baka 1
706 Absent: Harris 1

707
708
709 [At this point, the transcript continues with the public hearing on the next
710 case.]

711
712 **CUP2015-00024 MICHELLE COZART-MACKLIN** requests a
713 conditional use permit pursuant to Section 24-95(i)(4) of the County Code to
714 allow a garage to remain in the side yard at 7162 Messer Road (Parcel 806-696-
715 6632) zoned One-Family Residence District (R-2A) (Varina).
716

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

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Male - I do.

Mr. Blankinship - Thank you. Mr. Gidley, if you'll proceed.

Mr. Gidley - Thank you again, Mr. Chairman, Mr. Secretary, members of the Board. This also is a request for a conditional use permit. It would be to allow the existing detached garage to remain in the side yard following the proposed addition to the home.

The property is located at 7162 Messer Road. It is roughly two-thirds of an acre and is one of a number of similar lots located along the northwest line of Messer Road that you can see on the aerial here. The home was constructed in 1996, and a detached garage was constructed in 1998. Additions to the home were made in 2001 and in 2005. As you can see on the slide, there is an existing screened porch located on the rear of the home. The detached garage is over here on your left side.

The applicant would like to extend the home further towards the rear of the property with the addition as shown below. However, this would place part of the detached garage in the side yard, namely maybe the front third of it. As a result, the applicant is requesting a conditional use permit to allow the garage to remain and allow the addition to go forward.

Findings for a conditional use permit. Is the request consistent with the Comprehensive Plan and the Zoning Ordinance? The property is zoned R-2A, One-Family Residence District, and is designated TND, Traditional Neighborhood Development, on the Comprehensive Plan. One-family dwellings are consistent with both designations, and the Board is allowed under the Zoning Ordinance to approve a conditional use permit to allow an accessory structure in the side yard.

Secondly, would the request result in a substantial detrimental impact on nearby property? The closest home to the garage is located to the northeast, which is over here. It is located over 100 feet from the detached garage. The reality is the detached garage already exists. No changes are being proposed to the detached garage, so staff doesn't really see any detrimental impact to this neighbor.

As far as the rear yard where the addition would go, you can see it's heavily screened by Leyland cypress, which are evergreen. And behind it is actually a rather large farm. The same situation exists across the street where you can see it's an agricultural use right now. So there's really nobody to offend by this proposed addition.

765 In conclusion, the proposed addition meets the setback requirements of the
766 Zoning Ordinance. It would be allowed by right were it not for the existing
767 detached garage that would suddenly become partially in the side yard.

768
769 We don't see any substantial detrimental impact on any of the neighbors, as
770 explained. As a result, we recommend approval of the conditional use permit
771 subject to the conditions of the staff report. If you have any questions, I'll be
772 happy to answer them. Thank you.

773
774 Mr. Bell - Thank you. Questions?

775
776 Mr. Nunnally - Are there any other pools in that neighborhood?

777
778 Mr. Gidley - This is about a detached garage. As far as pools, let
779 me look at the aerial. It looks like there are a number of other detached
780 structures, one right here, one right here, and again here, the property owner's
781 current one, and there's a smaller one over here. So there are a number of
782 detached structures. They do appear to be in the rear yard, although if people did
783 an addition, potentially they could encounter the same issue.

784
785 Mr. Nunnally - And you say they've been there since 1996?

786
787 Mr. Gidley - The home was constructed in 1996, yes sir.

788
789 Mr. Nunnally - Okay.

790
791 Mr. Bell - Any other questions? Thank you.

792
793 Mr. Gidley - Thank you, Mr. Chair.

794
795 Mr. Blankinship - If the applicants would come forward, please.

796
797 Mr. Clinger - Good morning. My name is David Clinger. I'm the
798 architect representing the client. My last name also is C-l-i-n-g-e-r. David Clinger.
799 I'll allow my clients to introduce themselves, and then I'll give a short statement.

800
801 Mr. Macklin - Good morning. My name is Darryl Macklin. M-a-c-k-l-
802 i-n, Macklin.

803
804 Ms. Cozart-Macklin - Good morning. My name is Michelle Cozart-Macklin.
805 Cozart, C-o-z-a-r-t, and Macklin, M-a-c-k-l-i-n.

806
807 Mr. Clinger - The summary that was provided was very
808 comprehensive. There's not a whole lot else I can add. My clients are seeking to
809 put an additional bedroom and bathroom off the rear first floor of their house to
810 accommodate an aging mother. As was pointed out, were the garage that exists

811 now not there or farther back on the lot, we wouldn't even be here now. And
812 we're not encroaching any closer to any of the adjacent properties. So we feel we
813 meet basically all the requirements except for this one condition. We'd appreciate
814 if we could be granted the conditional use permit and allow my client to construct
815 the addition that they'd like to. Thank you. Any questions?

816
817 Mr. Bell - Questions?

818
819 Mr. Baka - Any objection from any neighbors?

820
821 Ms. Cozart-Macklin - No. We've spoken to our neighbors, and they are on
822 board with it.

823
824 Mr. Baka - Thank you.

825
826 Mr. Blankinship - Mr. Chairman, if I can ask one question. The
827 conditions mentioned the Health Department approval relative to the septic
828 system. Have you had a chance to look into that yet?

829
830 Mr. Clinger - The contractor I believe looked into that and
831 everything was fine with that. There were no issues.

832
833 Mr. Blankinship - Staff was not aware where on the property the septic
834 system is located. So we just thought we would draw that out to make sure it was
835 looked into before things got too far along.

836
837 Mr. Clinger - Yes.

838
839 Mr. Bell - Thank you, appreciate it.

840
841 Mr. Clinger - Thank you.

842
843 Ms. Cozart-Macklin - You're welcome. Thank you.

844
845 Mr. Bell - Is there anybody else who would like to speak to this
846 matter?

847
848 Mr. Blankinship - All right, then continuing.

849
850 **[After the conclusion of the public hearings, the Board discussed the case**
851 **and made its decision. This portion of the transcript is included here for**
852 **convenience of reference.]**

853
854 Mr. Bell - Do I hear a motion on this case?

855

856 Mr. Nunnally - Mr. Chairman, I move we approve this use permit
857 along with the conditions recommended by the staff. There is no detrimental
858 impact on the neighbors or the district, so I ask that I be approved.

859
860 Mr. Bell - Do I hear a second?

861
862 Mr. Berman - I second.

863
864 Mr. Bell - Any discussion? All in favor say aye. All opposed say
865 nay. The ayes have it; the motion passes.

866
867 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
868 Mr. Berman, the Board **approved** application **CUP2015-00024, MICHELLE**
869 **COZART-MACKLIN's** request for a conditional use permit pursuant to Section
870 24-95(i)(4) of the County Code to allow a garage to remain in the side yard at
871 7162 Messer Road (Parcel 806-696-6632) zoned One-Family Residence District
872 (R-2A) (Varina). The Board approved the conditional use permit subject to the
873 following conditions:

874
875 1. This conditional use permit is only to allow the existing detached garage to
876 remain in its existing location following the proposed addition to the home as
877 shown on the plans submitted with this application. All other applicable
878 regulations of the County Code shall remain in force.

879
880 2. The new construction shall match the existing dwelling as nearly as practical
881 in materials and color.

882
883 3. Approval of this request does not imply that a building permit will be issued.
884 Building permit approval is contingent on Health Department requirements,
885 including, but not limited to, soil evaluation for a septic drainfield and reserve
886 area.

887
888 4. Before beginning any clearing, grading, or other land disturbing activity, the
889 applicant shall submit an environmental compliance plan to the Department of
890 Public Works.

891
892 5. All exterior lighting shall be shielded to direct light away from adjacent
893 property and streets.

894
895
896
897 Affirmative: Baka, Bell, Berman, Nunnally 4
898 Negative: 0
899 Absent: Harris 1

900
901

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

904
905 **CUP2015-00025 WEST TOWER LLC** requests a conditional use
906 permit pursuant to Section 24-116(c)(1) of the County Code to hold a festival at
907 8900 W Broad Street (Parcel 759-756-4583 and 9275) zoned Business District
908 (B-2), Business District (B-3) and General Residence District (R-6) (Brookland).

909
910 Mr. Blankinship - Would everyone who intends to speak to this
911 application please stand and raise your right hand. Do you swear the testimony
912 you're about to give is the truth, the whole truth, and nothing but the truth so help
913 you God?

914
915 Voice - I do.

916
917 Mr. Blankinship - Thank you. Mr. Madrigal?

918
919 Mr. Madrigal - Mr. Chairman, members of the Board. The applicant
920 is requesting a conditional use permit to allow a one-day temporary event to be
921 held at the Gold's Gym Plaza shopping center. The event will be in the form of a
922 festival entitled the Gold Festival on Broad, and is scheduled for Sunday,
923 September 20, 2015, from 1 to 6 p.m.

924
925 The purpose of this event is to increase public awareness of the complex and
926 promote the businesses that compose the center. The applicant has indicated
927 that it will be a family-friendly event with live music, food, beer, vendors,
928 children's activities, and it will provide a fundraising opportunity for Prevent Child
929 Abuse Virginia. Admission into the event is planned to be free of charge.

930
931 The festival footprint will be approximately 60,000 square feet in size and will
932 occupy the interior of the parking area of the shopping center. You can see this is
933 the area here. It will temporarily displace approximately 160 parking stalls on the
934 property, which will be made up at the overflow parking lot located across
935 Homeview Drive. This is the overflow parking lot.

936
937 Within the festival footprint, the applicant intends to erect a 480-square-foot stage
938 underneath a 900-square-foot tent for musical performances, and the stage is
939 here. There will be a food court consisting of approximately six to eight food
940 trucks, which are these light blue squares here. There will be a beer truck with an
941 ID verification and ticket sales table. The beer truck is there, and the ID and ticket
942 sales table will be here. Several vendor booths are planned, as well as a kids'
943 activity area. The green squares are the vendor booths. The kids' activity face-
944 painting area is here. There will be portable restrooms provided to augment the
945 existing facilities at the center. These are shown here.

946

947 This will be a first-time event at the center, and the applicant expects
948 approximately 2,000 visitors throughout the day.

949
950 The shopping center sits on an 11.75-acre parcel and is improved with one- and
951 two-story buildings totaling just under 124,000 square feet of floor area. And it is
952 served by 530 at-grade parking stalls. Five hundred and twenty-seven stalls are
953 required by code. In addition to the on-site parking, there is the overflow parking
954 lot across Homeview that will provide an additional 187 stalls.

955
956 The anchors for the center are Gold's Gym and Regal Cinemas, and there are an
957 additional approximately sixteen tenants that make up the shopping center.

958
959 The zoning on either side of the center is primarily commercial with a small area
960 of light industrial to the west of the movie theaters. Here is the light industrial
961 area. There is a residential subdivision to the northwest, which is the Huntington
962 subdivision, and it's approximately 500 feet from the event area. The site backs
963 onto Westhunt Baptist Church, which is located here. It's zoned A-1 and is
964 approximately 600 feet from the event area. The Virginia Home for Boys, located
965 here, is approximately 700 from the event area and is also zoned A-1.

966
967 Although a small area of the property is conditionally zoned R-6, located here,
968 the majority of the center is commercially zoned, split between B-3 along Broad
969 Street and B-2 to the interior of the center. The Comprehensive Plan designation
970 for the property is CA, Commercial Arterial, and is consistent along the majority
971 of West Broad Street for commercial uses.

972
973 Since the proposed festival is promotional business activity, highlighting the
974 shopping center and its tenants, staff has found it to be consistent with both the
975 zoning and Comprehensive Plan designations for the site and the surrounding
976 area. Additionally, staff does not anticipate any substantial, detrimental, or lasting
977 impacts from the temporary event due to its placement within the center, its
978 limited duration, and the availability of parking for the property.

979
980 The only significant concern from staff will be the timing of the event since it will
981 coincide with the UCI World Road Cycling Championship races that commence
982 that week. Because the races are a world-class event, expected to draw
983 thousands of visitors to the region, County police and fire resources will be
984 limited. The applicant will have to take extra precautions to ensure a safe and
985 trouble-free event. With this in mind, specific conditions of approval have been
986 prepared in conjunction with police and fire to lessen and mitigate any adverse
987 impacts from the one-day event.

988
989 Based on these facts, staff recommends approval subject to the recommended
990 conditions.

991

992 This concludes my presentation. I stand ready to answer any questions you may
993 have.

994
995 Mr. Bell - Any questions? Thank you.

996
997 Mr. Blankinship - If the applicants would come forward?

998
999 Ms. Nguyen - My name is Regina Nguyen. Last name is spelled N-
1000 g-u-y-e-n. I work for Sugar Oak.

1001
1002 Ms. Gilbreath - My name is Alison Gilbreath, spelled G-i-l-b-r-e-a-t-h.
1003 And I represent Prevent Child Abuse Virginia.

1004
1005 Ms. Nguyen - We would like to host an event at our shopping center
1006 to promote the tenants in our shopping center as well as the center itself. We
1007 want to work with Prevent Child Abuse to promote their charity. All the tenants in
1008 the center are for this event and are very excited. Are there any questions?

1009
1010 Mr. Bell - Yes. Are there any other locations where you've done
1011 something like this?

1012
1013 Ms. Nguyen - We have done it in one of our centers in Texas.

1014
1015 Mr. Bell - Any other questions?

1016
1017 Mr. Berman - The overflow lot, that's not for Bruce's Auto Body, is
1018 it?

1019
1020 Ms. Nguyen - No.

1021
1022 Mr. Berman - That's for the shopping center specifically?

1023
1024 Ms. Nguyen - Yes it is.

1025
1026 Mr. Berman - Is there a crosswalk? Perhaps Public Safety is going
1027 to speak to this, but is there a crosswalk to get them from the overflow across
1028 Homeview Drive?

1029
1030 Mr. Madrigal - No, there is not. There's a view of the overflow
1031 parking lot.

1032
1033 Mr. Berman - Is there any concern about pedestrian traffic?

1034
1035 Mr. Madrigal - Not in my mind because it's a dead-end street on this
1036 side off of Homeview. In fact, it is. The property leads to some more parking
1037 areas and to the Virginia Home for Boys.

1038
1039 Mr. Blankinship - And that's not where the access for the Virginia Home
1040 for Boys is. Their access comes out on Broad a little bit east of here. Homeview
1041 is a very lightly traveled road.
1042
1043 Mr. Berman - Okay.
1044
1045 Mr. Bell - That's primarily used for movie overflows, really.
1046
1047 Mr. Blankinship - Right, right.
1048
1049 Mr. Berman - Thank you.
1050
1051 Mr. Baka - I had a general question about public safety. Based
1052 on the memo from the police department, how many officers do you intend to
1053 have on site at this event?
1054
1055 Ms. Nguyen - Whatever they recommend to us. We're going to have
1056 RMC Events at the event to kind of secure the event as well. But once we speak
1057 to Henrico County and once they give us a recommendation, we can go from
1058 there.
1059
1060 Mr. Baka - Okay. In their memo on July 9th, it talks about
1061 security under number three that says based on the number of attendees, they're
1062 looking at about eight officers and one supervisor. Is that a question we can ask
1063 of the police department?
1064
1065 Mr. Blankinship - Yes, I think we should.
1066
1067 Mr. Baka - All right. No other questions of the applicant. I think
1068 this is a great community event, and it's a good purpose.
1069
1070 Ms. Nguyen - Thank you.
1071
1072 Ms. Gilbreath - Thank you.
1073
1074 Mr. Berman - Thanks.
1075
1076 Sgt. Livingstone - Good morning. I'm Sergeant Jim Livingstone with
1077 Henrico Police. The question in reference to public safety and the
1078 recommendation by our office was eight officers and one supervisor. I believe
1079 that's based on the number of attendees and the fact that alcohol is going to be
1080 served at the event. I know they said they plan to have RMC Events, and we've
1081 worked with them as well in the past. I believe if she speaks with our secondary
1082 employment coordinator, they may be able to augment the number of officers
1083 based on how many RMC Event staff are going to be there as well.

1084
1085 We do have a concern about the crossing of pedestrians from the overflow lot or
1086 nearby shopping centers for parking. So we would have to have sworn officers to
1087 man the event or work the event so that we can address public safety needs.
1088

1089 Mr. Baka - Okay. No other questions.
1090

1091 Mr. Bell - As you know, Homeview and Broad is very busy
1092 coming out. This is a Sunday, and I understand it's like 2 to 6, so there shouldn't
1093 be a lot of traffic there. But I travel it quite a bit, and you just never know. Will an
1094 officer be assigned to that or is it just in case? There's a light there already.
1095

1096 Sgt. Livingstone - Correct. Depending on how many officers are there, I
1097 believe they would probably have an officer at least monitoring Homeview and
1098 Broad, that intersection. I'm not the incident commander for the event, but they
1099 would probably have somebody at the overflow lot and one or two or three inside
1100 the venue to ensure safety over there. They would probably also have officers on
1101 West End Drive to monitor any traffic over there as well.
1102

1103 Mr. Bell - In reading the report, there will be an officer
1104 permanently assigned to the beer truck. Is that correct?
1105

1106 Sgt. Livingstone - Correct. Traditionally at events like this we do have at
1107 least one officer on a beer truck.
1108

1109 Mr. Bell - Who handles the identification process? Do they do it
1110 or do the police do it?
1111

1112 Sgt. Livingstone - Usually the promoters handle identification.
1113

1114 Mr. Berman - Do you plan to put a detour in or close off that first left
1115 turn into the area off of Homeview? It's kind of tight pinch point, and you'd be
1116 thrown right into the event. Are people going to be allowed to turn left there or are
1117 they going to be diverted to the overflow lot?
1118

1119 Sgt. Livingstone - Are you saying when they come off of West Broad
1120 Street making a left onto Homeview?
1121

1122 Mr. Berman - Correct. And then the first left, that driveway that gets
1123 you to the event—if you move the cursor there.
1124

1125 Mr. Bell - The driveway as you're turning to go to For Eyes, the
1126 first driveway.
1127

1128 Mr. Berman - You make a left going east on Broad, and then you
1129 hang your first left into Gold Plaza. Right there. That is a tricky area to navigate

1130 even without that parking lot being full. My question is, is there any intention to
1131 block that off and divert traffic down Homeview to the overflow?

1132
1133 Sgt. Livingstone - If I'm not mistaken, they're going to have parking
1134 inside as well. Is there parking around the—? So they'll be parking inside there
1135 as well. If I had to guess about it, it would probably not be barricaded off. It would
1136 probably be allowed to go in there. Officers would probably have to monitor that
1137 location to see how things are going. If they feel that it's a safety hazard, then
1138 they would probably block it off and just divert traffic onto the overflow lot.

1139
1140 Mr. Berman - Okay. Yes, it's a little tricky there.

1141
1142 The other question is with regards to the bike race. Do you feel there's a concern
1143 that they'll be able to get Henrico officers? And if not, I think you mentioned a
1144 secondary market. You can lower the number of Henrico officers and replace?

1145
1146 Sgt. Livingstone - That is certainly a concern because of the bike races.
1147 One of the things we were considering—I don't know the numbers right now, how
1148 many officers are needed for the bike race on the twentieth. There are several
1149 days that require a lot more officers than other days. I would imagine if a
1150 secondary employment request went out, that we would have officers to cover it.
1151 Based on the numbers, like I said, that's how we came up with eight officers and
1152 one supervisor. With RMC Events being there as well, that will assist us. If they
1153 speak with our secondary employment coordinator, they may be able to reduce
1154 the number of officers based on how many RMC staff are going to be there. We
1155 do have to have a certain number based on numbers and alcohol and traffic
1156 safety.

1157
1158 Mr. Berman - Is the bike race all hands on deck similar to like
1159 NASCAR or a presidential visit or something like that?

1160
1161 Sgt. Livingstone - I believe it's going to be. As I said, I believe there are
1162 some days that require more officers than others. September 20th, at this point I
1163 don't know how many are needed for the bike race.

1164
1165 Mr. Berman - Thank you.

1166
1167 Mr. Bell - Any other questions or statements? Thank you, sir.

1168
1169 Sgt. Livingstone - Thank you.

1170
1171 Mr. Bell - Anybody else who would like to speak to this issue?

1172
1173 Mr. Blankinship - All right, next case.

1174

1175 [After the conclusion of the public hearings, the Board discussed the case
1176 and made its decision. This portion of the transcript is included here for
1177 convenience of reference.]

1178
1179 Mr. Bell - Do I hear a motion on this case? I move that we
1180 approve it. I think that it's for a good cause. I do not think that it will hurt the
1181 welfare of the neighborhood or the area. Do I hear a second?

1182
1183 Mr. Baka - Second.

1184
1185 Mr. Bell - Is there any discussion? Hearing none, all in favor say
1186 aye. All opposed say nay. The ayes have it; the motion passes.

1187
1188 After an advertised public hearing and on a motion by Mr. Bell, seconded by
1189 Mr. Baka, the Board **approved** application **CUP2015-00025, WEST TOWER**
1190 **LLC's** request for a conditional use permit pursuant to Section 24-116(c)(1) of
1191 the County Code to hold a festival at 8900 W Broad Street (Parcel 759-756-4583
1192 and 9275) zoned Business District (B-2), Business District (B-3) and General
1193 Residence District (R-6) (Brookland). The Board approved the conditional use
1194 permit subject to the following conditions:

1195
1196 1. This conditional use permit is for the approval of a one-day temporary event.
1197 Set-up shall not begin before 8:00 a.m. Saturday, September 19, 2015. The
1198 event shall be limited to Sunday, September 20, 2015, 1:00 p.m. to 6:00 p.m.
1199 Breakdown shall occur immediately after the event and end no later than
1200 midnight.

1201
1202 2. Only the temporary improvements shown on the layout plan filed with the
1203 application may be erected pursuant to this approval. Any additional
1204 improvements shall comply with the applicable regulations of the County Code or
1205 as specified in the conditions of approval.

1206
1207 3. The applicant shall clearly delineate the perimeter of the event area with 6-
1208 foot-tall construction fencing and shall install traffic barriers at affected parking
1209 drive aisles entrances to block vehicular traffic from entering the event area. Main
1210 traffic drive aisles (providing internal traffic circulation) leading in or out of the
1211 shopping center shall be kept free and clear of equipment, vehicles, and
1212 obstacles associated with the event. Fire lanes shall be maintained in
1213 accordance with the Fire Prevention Code. Access to on-site fire hydrants and
1214 fire department connections shall not be impaired.

1215
1216 4. Temporary tents shall maintain a 10-foot setback from buildings and other
1217 tents (unless attached). Tents shall not be enclosed. Generators used for the
1218 event shall maintain a 10-foot setback from tents and fuel cans. All temporary
1219 tents shall be properly tethered as required by the Department of Building
1220 Construction and Inspections.

- 1221
- 1222 5. The applicant shall obtain all necessary building permits for items including
- 1223 but not limited to tents in excess of 900 square feet, elevated stages, inflatable
- 1224 amusement devices, electrical generators, and electrical connections to be used
- 1225 during the event. The applicant shall request building permits no later than two
- 1226 weeks prior to the event and shall schedule inspections as required by the
- 1227 Department of Building Construction and Inspections.
- 1228
- 1229 6. The applicant shall provide adequate restroom facilities and hand-wash
- 1230 stations as required by the Department of Building Construction and Inspections
- 1231 or Department of Health. Portable facilities shall be located throughout the event
- 1232 area and not concentrated in one location.
- 1233
- 1234 7. Landscaping planters shall be kept free and clear of equipment and displays.
- 1235 All approved landscaping shall be maintained in a healthy condition at all times.
- 1236 Dead plant materials shall be removed within a reasonable time and replaced
- 1237 during the normal planting season.
- 1238
- 1239 8. The applicant shall maintain the property so that debris is controlled during
- 1240 the event. Adequate trash receptacles shall be provided throughout the site
- 1241 during the event.
- 1242
- 1243 9. On-site security measures shall satisfy the requirements of the Division of
- 1244 Police as outlined in their memorandum dated July 8, 2015.
- 1245
- 1246 10. On-site safety measures shall satisfy the Fire Division's written requirements
- 1247 – see attached memo dated July 7, 2015.
- 1248
- 1249 11. The applicant shall obtain a license for the sale of alcoholic beverages
- 1250 during the event.
- 1251
- 1252 12. The applicant shall prohibit loitering on the property.
- 1253
- 1254 13. Speakers for amplified sound and music shall be directed toward the
- 1255 shopping center in order to limit its impact on adjoining businesses and/or
- 1256 residential neighborhoods and shall not exceed 65 dB at the property line.
- 1257

1258

1259 Affirmative:	Baka, Bell, Berman, Nunnally	4
1260 Negative:		0
1261 Absent:	Harris	1

1262

1263

1264 **[At this point, the transcript continues with the public hearing on the next**

1265 **case.]**

1266

1267 **VAR2015-00007** **MIKA AND HENNA E. ELOVAARA** request a
1268 variance from Sections 24-95(c)(4) and 24-95(i)(1) of the County Code to allow
1269 the existing improvements to remain at 1804 Rockwood Road (BERKELEY
1270 PARK) (Parcel 761-746-9054) zoned One-Family Residence District (R-3)
1271 (Tuckahoe). The front yard setback is not met. The applicant proposes 29 feet
1272 front yard setback including steps extending 11 feet, where the Code requires 35
1273 feet front yard setback with steps allowed to extend 10 feet. The applicant
1274 requests a variance of 6 feet front yard setback for the dwelling and a variance of
1275 1 foot for the steps.

1276
1277 Mr. Blankinship - Would anyone who intends to speak to this case
1278 please stand and be sworn in? Raise your right hands, please. Do you swear the
1279 testimony you're about to give is the truth, the whole truth, and nothing but the
1280 truth so help you God?

1281
1282 Male - I do.

1283
1284 Mr. Blankinship - Thank you. Mr. Gidley.

1285
1286 Mr. Gidley - Thank you, Mr. Chairman, members of the Board.
1287 This is a request for a variance to allow an existing front porch on the house at
1288 1804 Rockwood Road to remain. You can see the existing porch right here on
1289 this slide.

1290
1291 The original home was built in 1953. In 2013, the home was purchased by Mr.
1292 Jose Velasquez, a general contractor, who applied for and received a building
1293 permit for additions to the first and second floors, including adding a covered
1294 front porch. During the permit review process, the applicant did not submit a
1295 detailed plot plan. Instead, Permit Center staff provided this computer-generated
1296 map of the existing home showing the required setbacks, which are noted in the
1297 corner down here.

1298
1299 A business partner of Mr. Velasquez briefly occupied the home before the
1300 applicants expressed interest in purchasing it. As part of the due-diligence
1301 process, the applicant's attorney received a certified survey of the property,
1302 which showed the violation in the front yard. This is the survey here, and you can
1303 see the building line right here. That's also the 35-foot setback line.

1304
1305 I'd also like to emphasize, in addition to the 35-foot setback required by the
1306 Zoning Ordinance, the subdivision plat also shows a 35-foot building line. That
1307 building line cannot be vacated by variance. So the applicant needs to apply to
1308 the Board of Supervisors to vacate the building line that's showing on the
1309 subdivision plat. So this is really a two-step process. A, a variance for the
1310 encroachment into the 35-foot setback under the Zoning Ordinance, and B, a
1311 vacation of the building line by the Board of Supervisors shown on the actual
1312 subdivision plat.

1313

1314 The key question in considering a variance is does the Zoning Ordinance
1315 unreasonably restrict the utilization of the property or would the variance alleviate
1316 a hardship due to a physical condition related to the property or its improvements
1317 thereon at the effective date of the ordinance. For the first part, there is no
1318 unreasonable restriction since there is a buildable area that is eighty feet deep.
1319 You have a 35-foot front yard setback and 40-foot rear yard setback. You can
1320 build front-to-back up to eighty feet.

1321

1322 Secondly, while having to remove the front porch could arguably constitute a
1323 hardship for the applicant, a variance may only be granted for improvements
1324 thereon at the effective date of the ordinance. Since the porch did not exist at the
1325 time of the effective date of the ordinance, it may not be the basis of a hardship
1326 that would justify a variance.

1327

1328 Further tests. The property for which the variance is being requested was
1329 acquired in good faith. The applicant did not cause the hardship. The applicants
1330 knew about the front porch when they purchased the home. They decided to go
1331 ahead and purchase it with the knowledge that they would need a variance. They
1332 did not cause the front porch problem, however, that was a general contractor
1333 who built the porch. The applicants did not cause the actual hardship.

1334

1335 Granting of the variance will be not a substantial detriment to adjacent and
1336 nearby property. The street has a 35-foot front building line. With the exception of
1337 the inside of the curb, the homes are built to meet that 35-foot front setback line.
1338 And to the extent people are allowed to start encroaching upon that, it could
1339 break the pattern of the neighborhood.

1340

1341 The condition or situation of the property is not so general or reoccurring so as to
1342 make reasonably practical the formation of a code amendment. The Zoning
1343 Ordinance does allow for a six-foot-wide covered front porch to encroach up to
1344 four feet into the front yard setback. This home and all other homes would be
1345 permitted to add that on to the house. However, to build anything larger, other
1346 property owners in this neighborhood would also encounter the same problem.
1347 So rather than having the BZA grant variances in each case, the more
1348 appropriate solution would be for the Board of Supervisors to amend the Zoning
1349 Ordinance.

1350

1351 The granting of a variance does not result in a use that is not otherwise permitted
1352 on the property or a change in the zoning classification of the property. This is
1353 not-an issue because it's zoned one-family residence district, and that's what the
1354 use of the property is. So that's not an issue.

1355

1356 In conclusion, there is no unreasonable restriction on the use of the property. The
1357 hardship results from the unlawful addition of a porch, not from a physical feature
1358 that existed at the time of the ordinance's adoption.

1359
1360 Finally, the condition is general and reoccurring such that an amendment to the
1361 Zoning Ordinance would be more appropriate than a variance. For these
1362 reasons, staff has to recommend denial of the variance.
1363
1364 That concludes my presentation. I'll be happy to any questions you may have.
1365
1366 Mr. Bell - Any questions?
1367
1368 Mr. Berman - If the Board of Supervisors were to amend the
1369 ordinance, would that impact the whole county or a certain area or what?
1370
1371 Mr. Gidley - They would have to remove the 35-foot building line
1372 for the subdivision, which would impact just the subdivision. An amendment to
1373 code to allow say a larger front porch to encroach into the front yard setback, that
1374 would apply to every home. So countywide, yes sir.
1375
1376 Mr. Berman - I can't remember if you stated this or not, but next
1377 door is the exact same situation, isn't it.
1378
1379 Mr. Gidley - Yes sir. And yesterday in speaking with I believe the
1380 attorney, I gather Mr. Velasquez has a third home that he did likewise with.
1381
1382 Mr. Berman - Are those homes exceeding the 35-foot BRL? Are
1383 they extending into the 35-foot front yard setback?
1384
1385 Mr. Blankinship - The one next door to this one does, yes sir. The one
1386 further up the block, we're not sure.
1387
1388 Mr. Gidley - The survey yesterday that was provided to me
1389 showed the same problem on that as well, yes.
1390
1391 Mr. Blankinship - Oh, okay. I haven't seen that yet. All right, thank you.
1392
1393 Mr. Gidley - Mr. Blankinship was out of town.
1394
1395 Mr. Baka - Excuse me, Mr. Berman. That's on the adjacent
1396 property, to clarify, not on the one that I saw down the street a block away, right?
1397
1398 Mr. Blankinship - I believe he's staying both of them.
1399
1400 Mr. Baka - All three of them?
1401
1402 Mr. Berman - All three.
1403

1404 Mr. Blankinship - Yes. This one, next door—and is it 1818, somewhere
1405 in that area.
1406
1407 Mr. Gidley - Correct. The address you mentioned this morning.
1408
1409 Mr. Blankinship - Okay. That's new information that we did not have.
1410
1411 Mr. Bell - Any more questions?
1412
1413 Mr. Berman - In light of that new information, what would staff—
1414 know staff is recommending denial. But as a best option to remediate, what is
1415 staff recommending? Either from us or the Board of Supervisors.
1416
1417 Mr. Gidley - From a legal perspective, we presented you our
1418 perspective of what the law states. As a practical matter, it's a difficult situation to
1419 resolve. I understand they went ahead and purchased the property knowing they
1420 would need to apply for a variance. I understand why they applied for a variance
1421 and I don't fault them for that. Staff presented a view of the law that we believe
1422 applies in this case. That's our role.
1423
1424 Mr. Baka - May I follow up on your question? To follow up on
1425 Mr. Berman's root cause or his point there, the R-3 district appears to have a 35-
1426 foot front yard requirement. Are there any other R districts available that have
1427 less of a front yard setback?
1428
1429 Mr. Gidley - This is an R-3 exception lot, so that's why it has a 35-
1430 front yard setback. If it was current R-3, it would be forty feet.
1431
1432 Mr. Baka - Are there any that have thirty or twenty-five feet in the
1433 code?
1434
1435 Mr. Gidley - Some of your residential townhome districts, I believe
1436 particularly if it's a private road. I want to say off the top of my head you can go
1437 down to either twenty-five or thirty feet. I don't have my code in front of me.
1438
1439 Mr. Blankinship - But even the R-4A, which is the smallest of the single-
1440 family districts, requires a 35-foot front yard.
1441
1442 Mr. Baka - This issue there, though, is if you talk about a zoning
1443 district is that it only applies to a couple houses in the neighborhood not to
1444 dozens of homes that are now individually owned, not owned by a developer
1445 seeking to rezone the area. Mr. Berman, are there other questions?
1446
1447 Mr. Berman - No. No, that's good.
1448

1449 Mr. Baka - My key concern is that this—I was unaware of the
1450 other two. I saw the other two houses. They're beautifully done. All three of them
1451 look like they've spruced up the neighborhood. Fantastic. For early homes built in
1452 the '50s, fantastic contractor/architectural job. I guess my concern is that now we
1453 have just one case before us, but we have three in the neighborhood which could
1454 be of a recurring nature. When I look at the actual home that was built, to me it
1455 would appear to unreasonably restrict the landowner if we were to say you have
1456 to absolutely remove the front porch, it can't remain, because it is part of the
1457 house now. It's part of the facade and the overall house. It would appear to
1458 unreasonably restrict the use of the land to just remove a porch and say you'd
1459 have to put the porch further back. You couldn't do that without affecting the
1460 entire house, literally demolishing and move plumbing back and every type of
1461 fixture back five, six, seven feet to the rear.

1462
1463 I guess my question is if denying this variance would require full removal of the
1464 porch, why doesn't that unreasonably restrict the owner's use of the property?
1465 Why isn't that unreasonable?

1466
1467 Mr. Gidley - Because the porch was built unlawfully in violation of
1468 the setback. The Zoning Ordinance allows an eighty-foot depth in which a home,
1469 including a front porch, could be built. This home and additional square footage
1470 could be built under the Zoning Ordinance. The problem was the contractor built
1471 it into the front yard setback. He just chose the wrong place to build it. And that's
1472 on the contractor; that's not a Zoning Ordinance restriction that is unlawfully
1473 restricting the property's use. It's the contractor's actions, not the Zoning
1474 Ordinance.

1475
1476 Mr. Baka - Two comments. The state code 15.2-2309 specifies
1477 that the property being requested was acquired in good faith. The current owner
1478 of the property was not the contractor.

1479
1480 Mr. Gidley - Yes sir, that's correct.

1481
1482 Mr. Baka - Okay. So is the net effect of this ordinance that it
1483 prevents any home on the street for improving a home in the front of the
1484 structure, that you could never build a front porch? Is that the net effect of the 35-
1485 foot building restriction line?

1486
1487 Mr. Gidley - As I stated earlier, you can build a six-foot-wide
1488 covered front porch so long as it does not encroach more than four feet into the
1489 front yard setback. If you wanted a front porch along the entire width of the home,
1490 such as this one here, that could be done so long as it is not covered. But if it's
1491 covered, then it has to meet this required 35-foot setback.

1492
1493 Mr. Baka - I guess I have a question for the staff, Mr. Gidley or
1494 Mr. Blankinship. To what extent does this Board need to consider the effect of

1495 two other properties on the same street that may have the same need for a
1496 variance? I guess what's our obligation to consider those other ones?

1497
1498 Mr. Blankinship - That is a really interesting question that I've put some
1499 thought into as well, Mr. Baka. I think the most important thing for the Board is to
1500 take each case on its own merits. But one of the findings that you're supposed to
1501 make is the one about the general or recurring situation. Is the condition or
1502 situation of the property concerned of so general or recurring a nature as to make
1503 reasonably practicable the formation of a general regulation to be adopted as an
1504 ordinance amendment.

1505
1506 The training session that I attended Monday that you also attended, the speaker
1507 put it this way, that one way to look at it is the purpose of a variance is to bring a
1508 lot up to having the same rights and privileges as the other lots in the
1509 neighborhood. A variance shouldn't take it from having the same rights as any
1510 others and give it an additional right. If you have a substandard lot that for some
1511 physical reason can't be used the same as the other lots in the neighborhood,
1512 the variance can make that party whole so that they have the same rights as
1513 everyone else. But where everyone shares the same limitations, the variance is
1514 usually not going to be an appropriate tool to give one or two or three lots an
1515 additional privilege that the other lots in the subdivision don't share.

1516
1517 Mr. Baka - All right. Well then that general comment would go
1518 back to—I believe, staff, you mentioned the applicant did not submit a detailed
1519 plot plan as part of the building permit. There was an earlier plot plan sketch that
1520 showed the front of the structure near the 35-foot building restriction line. Why
1521 wasn't a detailed plot plan required for a building permit or submitted at that
1522 time? And then secondly, are we allowed to ask was that also not submitted for
1523 the other two homes in the neighborhood? Perhaps I want to reserve that
1524 question for the applicant. I don't want to put the staff in an unfair position.

1525
1526 Mr. Gidley - I can answer that as well, having worked in the Permit
1527 Center at one point.

1528
1529 Mr. Baka - Sure.

1530
1531 Mr. Gidley - There is a certain cost to getting a professional plot
1532 plan prepared or a survey prepared. You get a lot of ordinary, everyday citizens
1533 who come in. There is a certain expectation that staff tries to work with people
1534 and not to impose great costs on them. It is a judgment call as to what is required
1535 by staff. Given that building line, me personally, I probably would have required
1536 more. But I understand the expectation is you try to work with and assist
1537 customers that come in for a permit.

1538
1539 Mr. Blankinship - On this plot plan, you see the statement there next to
1540 the County seal: "I, the owner/builder of the proposed structures on this lot, have

1541 field-verified all setbacks given on this plot plan.” That’s about the best we can
1542 do, to just make it clear to the applicant you’re responsible for meeting the
1543 requirements.
1544

1545 Mr. Baka - And let me just add that plot plan is much more
1546 thorough than what I’ve seen in other counties where I have personally worked,
1547 for a little bit of an anecdote there. I think the applicant’s done a tremendous job
1548 to improve the neighborhood. I’m inclined to support a variance because it
1549 appeared to unreasonably restrict the entire home. But now I’m troubled since
1550 you have three homes on one block of a recurring nature.
1551

1552 So I guess to your point, Mr. Berman, what is a potential solution. Are you saying
1553 as staff would say, a code amendment would actually be necessary to allow for
1554 finished porches that extend x-number of feet past the 35-foot building restriction
1555 line? And that’s only if the Planning Commission were to support that at public
1556 hearing and the Board of Supervisors would support that at public hearing. And
1557 then they amend that for R-3. And then therefore, we don’t have to grant
1558 variances? It seems like a long process.
1559

1560 Mr. Blankinship - Right. The Board of Supervisors has said the front
1561 setback is thirty-five feet. In other zoning districts it may be greater than that, but
1562 at the very least, in the one-family districts the front yard setback is thirty-five
1563 feet. And the only thing that can come forward of this is a covered porch not
1564 more than six feet wide, which can extend up to four feet into it. Other than that,
1565 the front setback is thirty-five feet. The Board of Supervisors has the authority to
1566 change that. They can say the front setback is twenty-nine feet. Or they can say
1567 the front setback is thirty-five feet, but you can have a porch the full width of the
1568 house. The Board of Supervisors has the authority to make those kinds of
1569 changes; this Board does not.
1570

1571 Mr. Baka - Is that the only remedy available to the applicant if
1572 this variance is not approved, to literally say that they have to go through an
1573 amendment to allow for—granted, the home is at thirty-five feet since the 1950s.
1574 So to say that a porch of a certain width may extend the entire length of the
1575 house and may be permissible only in the R-3 district, it seems like such a
1576 difficult mountain to climb. Going back to an earlier comment I made, it almost
1577 appears to unreasonably restrict the ordinance if we don’t grant the variance
1578 because that burden of proof is so high.
1579

1580 Mr. Berman - My earlier point was these porches, all three of them,
1581 were constructed knowingly in violation of the code. The hardship is brought
1582 about by that action, not by the shape of the lot or—you know, the house could
1583 have been set back further. Nobody wants to have to tell somebody they have to
1584 tear down the porch of a beautiful job that enhances the neighborhood. But if
1585 people go in with blatant disregard—and if I’m misrepresenting, my apologies;
1586 I’m looking forward to what you all have to say—of the code, then who knows

1587 what they're going to start to build. And they're going to come in here and
1588 assume that we're going to rubberstamp a variance for them.

1589
1590 Mr. Baka - Right. Ask for forgiveness—

1591
1592 Mr. Blankinship - Rather than permission.

1593
1594 Mr. Berman - That's not the way it's supposed to work.

1595
1596 Mr. Baka - All right. I'd appreciate a chance to hear from the
1597 applicant. Thanks.

1598
1599 Mr. Gidley - These gentlemen represent the purchaser—

1600
1601 Mr. Blankinship - The current owner.

1602
1603 Mr. Gidley - —not the contractor.

1604
1605 Mr. Blankinship - Not the one that caused the problem.

1606
1607 Mr. Berman - Understood.

1608
1609 Mr. Blankinship - Who does not own any property as of now that he's
1610 working on. I did look that up.

1611
1612 Mr. Berman - All right, thanks.

1613
1614 Mr. Bell - Thank you.

1615
1616 Mr. Dunn - Mr. Chairman, members of the Board, I'm Jim Dunn
1617 with Joyner Fine Properties. I am Mika and Henna's real estate agent. They are
1618 out of the County. He is the new assistant soccer coach at the University of
1619 Richmond, and he is in Finland right now. The current owner.

1620
1621 I've have taken some pictures to show the porches, what Paul had done, and just
1622 kind of show the street, kind of what it was before and what it is now. You all are
1623 exactly correct; it is a beautiful house. It's a beautiful renovation. I think it
1624 definitely adds value and adds character. It's a nice job.

1625
1626 I am speaking totally as a layman, as a real estate agent, not about zoning or any
1627 of that. It's my understanding that when Mr. Velasquez renovated, enlarged, did
1628 the porch, did everything, he did it with permits and approvals from Henrico
1629 County. The unlawful mention, I don't know, because it's my understanding he
1630 did everything with permits, that everything was approved, inspected, and done.
1631 So that, I'm not sure I can address that. But there are three, and I think there

1632 possibly may even by another one. There may even be four. But Velasquez did
1633 them all. He is the same person that did them all.

1634
1635 The curb appeal is wonderful. What has been done to the house is wonderful. I
1636 think when we talk about hardship, I'm going to talk about how I see a hardship
1637 for my clients. There is going to be a huge hardship if they are required to
1638 remove that front porch. There is going to be a big financial one because the
1639 house was appraised for financing and acquisition with the front porch on it. The
1640 tax assessment also reflects the front porch on it. For Henrico County, the tax
1641 assessment is up over 50 percent from 2013. So it's a very positive situation that
1642 is going on with these houses.

1643
1644 Architecturally, to remove that front porch, if you really study those pictures, I
1645 mean a roofline comes around, the way it arches up on the front, it's all designed
1646 around that front porch. It shows the porch on the permit, and it shows the
1647 different drawings. So if you had to remove that, we'd have to go back to the
1648 designing board. Basically, you're going to ruin the whole house because now
1649 you're going to say I can have a four-foot porch. If it was an error, it's an error
1650 from the previous person, nothing to do with the person that bought it.

1651
1652 And then the function. I do have a hard time saying there is not a hardship with
1653 the function of the front porch. You take the front porch off, that affects ingress
1654 and egress, how it's enjoyed, how it's used. So I do disagree. I think that would
1655 cause a huge function, a huge financial burden. And architecturally, I think it
1656 would destroy the house if you were forced to take the front porch off.

1657
1658 In summary, I'm asking for the County to grant the variance. I don't know all the
1659 other steps that have to go on. But Mr. Gidley has been extremely helpful in
1660 saying the next situation would be, if you are to grant the variance, they would
1661 have to go to the Board of Supervisors to get the building line on this house
1662 zoned. I don't know how to address the problem, but this particular one did have
1663 building permits. I don't know anything about the others. I was not involved in
1664 any of the others.

1665
1666 Do you have any questions?

1667
1668 Mr. Baka - Not at this time.

1669
1670 Mr. Bell - Thank you.

1671
1672 Mr. Dunn - Thank you very much.

1673
1674 Mr. Gray - I'm George Gray. Good morning, everyone. I work for
1675 Kerns & Kastbaum. We did the closing. I just want to share this also. This is
1676 the plan that was submitted with the building permit application. This does show

1677 the porch. I can't contemplate what was going through the builder's mind when
1678 he applied, but he did disclose that that's what he was constructing.

1679
1680 Just a few points, and I'm maybe just going to elaborate and reiterate some of
1681 the things that Jim has said. I would like to respond to the argument that this is
1682 kind of maybe not unique to this property. At the end of the day, we're talking
1683 about one builder who unfortunately slipped through the cracks on a couple of
1684 these permits. In using the numbers in the staff's report, I think we're talking
1685 about four instances. It's four instances of sixteen homes within 250 feet of the
1686 property, four homes of a hundred and—let me make sure I get this right—131
1687 total in the Berkeley Park neighborhood. So assuming that the County does not
1688 issue any permits for these types of structures, this situation is pretty unique to
1689 these four property owners. The granting of a variance, in my mind because of
1690 that, I don't see it as being open season for the perception that variances will be
1691 rubberstamped on these kinds of issues.

1692
1693 So really that's the main point I want to make, is just to reiterate that I think it is a
1694 pretty unique situation. The porch was constructed with the permission of the
1695 County. At the end of the day, it improves the character of the neighborhood. I
1696 think based on the widespread impact that a change to the zoning law would
1697 create to the character of the property, this really seems to be the most narrowly
1698 tailored way to solve this problem. Not only for the neighborhood, but for the
1699 Elovaaras as well.

1700
1701 That's really the main point I wanted to make. I thank you for your time.

1702
1703 Mr. Bell - Are there any questions?

1704
1705 Mr. Berman - Yes. I'm still struggling with the time table of did the
1706 Henrico County approve these plans with the covered porch that were in violation
1707 of the 35-foot setback?

1708
1709 Mr. Blankinship - The building plans show a porch. The plot plan that
1710 was submitted with it, which I think is the next page of what you're looking at
1711 there, shows the overall structure meeting the setback. The building plans, of
1712 course, don't show where the setback line is; that's shown on the plot plan. The
1713 issue is that the two are not in concert.

1714
1715 Mr. Berman - I was trying to figure out where the burden of
1716 responsibility is.

1717
1718 Mr. Blankinship - The County has a responsibility to review plans and
1719 permits thoroughly and to only issue them when everything is done correctly. But
1720 ultimately, the responsibility lies with the owner and the contractor, which in this
1721 case is the same person, which is not the applicant. The applicant's predecessor
1722 in title. Mr. Velasquez was both owner and contractor at the time the permits

1723 were submitted. The statement is on there, although it's not initialed, that he will
1724 field-verify that he's meeting the setbacks. And his building plans and his plot
1725 plan are in conflict.

1726

1727 Mr. Baka - To follow up on Mr. Berman's question, is there any
1728 merit to perhaps the Board obtaining some legal guidance on limitations—not
1729 limitations of our granting the variance, but are there any legal ramifications if this
1730 is a recurring nature of three times, and now you're saying four times, in the
1731 neighborhood? I'm just not sure if we have all the information in front of us today
1732 to make such a decision today.

1733

1734 I do have a question about the fourth. I thought there were three homes I saw
1735 when I drove by on the road. Do you believe there's a fourth home that looks like
1736 this in the neighborhood?

1737

1738 Mr. Gray - Maybe I misunderstood.

1739

1740 Mr. Dunn - I think possibly there are. There's this house and the
1741 house directly to the left of it. And then going down another block there's 1818.

1742

1743 Mr. Baka - There are two more down there? I saw one.

1744

1745 Mr. Dunn - It's either one or two. I think there are two side by side
1746 further down. I can verify that.

1747

1748 Mr. Baka - That's all right. Do you think all four of those were the
1749 same builder?

1750

1751 Mr. Dunn - I do.

1752

1753 Mr. Blankinship - I'm sure that 1802, 1804, and 1818 were the same
1754 builder. And the other probably was as well, if there is another.

1755

1756 Mr. Baka - And in all four of those cases, we may also find that
1757 perhaps the builder submitted—first of all, we know they got a building permit
1758 from the Permit Center. And then they may have submitted a plot plan to show
1759 the front of the structure meeting the 35-foot building line, but also submitting
1760 plans as the applicant submitted today to show that the porch is in front of the
1761 front wall of the home from the 1950s, meaning that the porch extends into that.
1762 So we may have the same situation.

1763

1764 Mr. Blankinship - We know the situation at 1802 is very similar. The
1765 other two, we don't have enough research to know that for sure. But I wouldn't be
1766 surprised.

1767

1768 Mr. Baka - Is there any obligation of the actual builder to come
1769 speak before this Board? It's been transferred, so these homeowners who have
1770 the need for the variance acquired it in good faith, as the code, Section 15.2-
1771 2309 suggests. But we can't have the builder come in and talk to us.
1772
1773 Mr. Blankinship - We can certainly request it, if we can find him. I don't
1774 know if we have an address or phone number.
1775
1776 Mr. Baka - He has a contractor's license and they have the
1777 phone numbers for the building permit in the Permit Center, in case they needed
1778 to call him during construction.
1779
1780 Mr. Dunn - We had some punch list items when—or Mika and
1781 Henna has some punch list items which he came back and fixed, so he's around.
1782
1783 Mr. Baka - This is challenging.
1784
1785 Mr. Berman - Isn't this a little bit caveat emptor? They bought the
1786 house. Did these people know that it was in violation?
1787
1788 Mr. Blankinship - At the time of closing, they were aware of it.
1789
1790 Mr. Berman - I was trying to absolve them of any of the issues and
1791 be respectful of the damage it would cause them, the hardship. But again, if I
1792 bought a car that I knew violated the emission's control and I knew I'd have to
1793 spend money to fix that car up, that's on me. I wouldn't have bought the car if I
1794 couldn't afford to fix it.
1795
1796 Mr. Baka - Good point. And to clarify, how do we know that the
1797 buyer was aware, Mr. Blankinship?
1798
1799 Mr. Blankinship - I'm not positive. We have that in writing somewhere in
1800 the file. We've spoken to the closing attorney.
1801
1802 Mr. Gidley - In a phone call from the attorney or the realtor, he told
1803 me. And then at the time of closing, they were debating whether to close, and I
1804 was on that conference call. A lot of parties were at the table then.
1805
1806 Mr. Berman - So does the settlement paperwork that you managed
1807 include a notation that the house was in violation?
1808
1809 Mr. Dunn - The survey that you have in front of you on the
1810 application is their survey. The survey that brought to light that there's a violation
1811 is the owner's survey.
1812

1813 Mr. Berman - My question was did the settlement paperwork that
1814 the owners signed—much like if there was a radon issue or whatever. Did the
1815 settlement paperwork including something that said you are purchasing a home
1816 that is currently in violation?
1817

1818 Mr. Dunn - That survey in—yes, they were aware of that. That
1819 survey indicated that. But again, they were also under the assumption that there
1820 were permits and inspections, and that the County had approved, and the porch
1821 was done with permission of the County.
1822

1823 Mr. Gray - I agree with everything you're saying. They were
1824 aware that this was a potential problem. But I don't think that precludes them
1825 from seeking a variance because of a hardship that is specific to their property. I
1826 understand the difficulty in kind of separating this. They were aware of it, but I
1827 also want to stress that the hardship is related to the property, not their own
1828 wrongdoing in any sense.
1829

1830 Mr. Berman - It's everybody's right to seek a variance, but not to
1831 assume that it will be resolved in their favor.
1832

1833 Mr. Gray - Right. Of course.
1834

1835 Ms. Moore - It appears that every home in that subdivision is built
1836 up to the front yard setback. So I would note that should the other homes be set
1837 back a little bit to allow for these additions in conformance to the front yard
1838 setback, since they all are, anyone who is going to want to repeat or improve
1839 their home is going to require a variance similar to this, which does make it very
1840 general in nature.
1841

1842 Mr. Baka - Yes.
1843

1844 Mr. Blankinship - So you would find yourself in a position of punishing
1845 people who do ask permission rather than forgiveness.
1846

1847 Mr. Baka - Correct.
1848

1849 Mr. Blankinship - If they'd come in before they built it, you'd probably
1850 say no. After they build it, you say yes. There's a built-in unfairness.
1851

1852 Ms. Moore - In this situation, like I said, if these three homes
1853 happen to built right on the line and the others weren't, maybe that was a unique
1854 characteristic.
1855

1856 Mr. Baka - I would tend to agree with Ms. Moore's comments that
1857 she just illustrated. I'll just be fair. If this were the only case in the neighborhood, I
1858 realize still it's a tough case for a variance, but I would be very inclined to support

1859 a variance for what's there to not unreasonably restrict the use of one home. But
1860 we have three, potentially four. And as Ms. Moore pointed out, there are
1861 potentially more down the road that could have this. I think the Board has a
1862 difficult time getting past Subsection 3 from the state code and Section 2309
1863 saying the condition or situation of a property concerned is not so general or
1864 recurring a nature to make reasonably practical the formation of a general
1865 regulation, meaning a general ordinance, which albeit it's a tough mountain to
1866 climb. It's tough.

1867
1868 I'm also inclined to think perhaps a thirty-day time period to think about this with
1869 any additional information or questions. The effect of a variance from legal
1870 comments or legal staff comments on the effect if this Board were to grant a
1871 variance, what's the precedent we set and how that negatively impacts the
1872 neighborhood.

1873
1874 Mr. Blankinship - We're scheduling a work session for the County
1875 Attorney's office to brief you on how to handle these new state code—

1876
1877 Mr. Baka - All right. Rather than considering a deferral for thirty
1878 days, since we have legal counsel coming to the end of the next meeting for a
1879 work session, what about a deferral for six days so we'll have the opportunity to
1880 have that training first.

1881
1882 Mr. Blankinship - We were going to do it at the beginning of the next
1883 meeting.

1884
1885 Mr. Baka - The beginning.

1886
1887 Mr. Berman - We'd still have a regular agenda. I'm in your same
1888 camp, Mr. Baka.

1889
1890 Mr. Baka - Okay.

1891
1892 Mr. Berman - I'm not comfortable.

1893
1894 Mr. Bell - I'd like a deferral so we can talk about it with other
1895 people too.

1896
1897 Mr. Baka - Do we wait for time of motion or should we do that
1898 type of motion right now?

1899
1900 Mr. Bell - That was my question. How do we do that.

1901
1902 Mr. Blankinship - You can do it either way.

1903

1904 Mr. Baka - I make a motion that we defer this case until the next
1905 month's meeting, the August meeting. That would be after training from counsel,
1906 correct?

1907
1908 Mr. Blankinship - Yes sir. August 27th.

1909
1910 Mr. Baka - Do the public hearings start at a certain time, like 10
1911 a.m. that day or do they start after?

1912
1913 Mr. Blankinship - The meeting will still be advertised at 9:00, but the
1914 first item on the agenda will be the work session.

1915
1916 Mr. Baka - Okay. I'll make a motion that we defer this case until
1917 the August meeting, based on the reasons we've already laid out.

1918
1919 Mr. Berman - I second the motion.

1920
1921 Mr. Bell - We have a first and a second. Any discussion?

1922
1923 Mr. Baka - I have a quick discussion point then. Would that also
1924 allow the benefit of perhaps the current owner to attend and/or the homebuilder
1925 who may have built one or two or more of these houses?

1926
1927 Mr. Blankinship - We will contact the contractor and ask him to attend.

1928
1929 Mr. Baka - At least they'll have the opportunity, although they
1930 may have other conflicts on that day.

1931
1932 Mr. Dunn - I will touch base with the owners. I do believe they'll
1933 be back by then.

1934
1935 Mr. Baka - Okay.

1936
1937 Mr. Bell - Any further discussion? All in favor say aye. All
1938 opposed say nay. The ayes have it. It's deferred for thirty days until our next
1939 meeting.

1940
1941 After an advertised public hearing and on a motion by Mr. Baka, seconded by
1942 Mr. Berman, **VAR2015-00007, MIKA AND HENNA E. ELOVAARA**, has been
1943 deferred until the August 27, 2015 meeting.

1944
1945 Affirmative: Baka, Bell, Berman, Nunnally 4
1946 Negative: 0
1947 Absent: Harris 1

1948
1949

1950 Mr. Bell - Do we want to go ahead for the voting or take a five-
1951 minute break?

1952
1953 Mr. Berman - I'm good.

1954
1955 Mr. Baka - I'm good.

1956
1957 Mr. Bell - All right, let's go on with the vote, then.

1958
1959 **[At this point, after the Board has discussed and voted on the public**
1960 **hearing cases, the transcript continues with the meeting.]**

1961
1962 Mr. Bell - That concludes the voting. We can go ahead and vote
1963 on the minutes. Do I hear a motion on the minutes?

1964
1965 Mr. Berman - I move that we accept the minutes as entered and
1966 waive the reading.

1967
1968 Mr. Bell - Do I hear a second?

1969
1970 Mr. Baka - Second.

1971
1972 Mr. Bell - Is there any discussion? Hearing none, all in favor say
1973 aye. All opposed say nay. The ayes have it; the motion passes.

1974
1975 On a motion by Mr. Berman, seconded by Mr. Baka, the Board **approved as**
1976 **submitted the Minutes of the June 25, 2015**, Henrico County Board of Zoning
1977 Appeals meeting.

1978
1979
1980 Affirmative: Baka, Bell, Berman, Nunnally 4
1981 Negative: 0
1982 Absent: Harris 1

1983
1984
1985 Mr. Bell - Is there any other business?

1986
1987 Mr. Blankinship - The 2016 calendar should have been included in your
1988 packages. It is your standard calendar. The meeting dates are the fourth
1989 Thursday every month except for November and December, which are moved to
1990 the third Thursday to avoid conflicting with the holidays. And then the application
1991 deadline for the first month is six weeks in advance to allow us the vacation time
1992 to interrupt the schedule. All of the others are five weeks in advance. So that's
1993 your normal standard calendar.

1994
1995 Mr. Bell - Thank you. Any other business?

1996
1997 Mr. Blankinship - We need a motion on that.
1998
1999 Mr. Baka - On the calendar?
2000
2001 Mr. Blankinship - Yes, we need a motion on the calendar.
2002
2003 Mr. Berman - I move that we accept the calendar as submitted.
2004
2005 Mr. Baka - Second.
2006
2007 Mr. Bell - Any discussion? Hearing none, all in favor say aye.
2008 All opposed say nay. The ayes have it; the motion passes.
2009
2010 Affirmative: Baka, Bell, Berman, Nunnally 4
2011 Negative: 0
2012 Absent: Harris 1
2013
2014 Mr. Bell - Let's go ahead and vote on adjournment. Do I hear a
2015 motion that we adjourn?
2016
2017 Mr. Baka - Before we adjourn, I just wanted to extend a warm
2018 thank you to Mr. Nunnally for his many years of service on the Board. We'll miss
2019 seeing you and wish you the best.
2020
2021 Mr. Nunnally - I'd like to thank you all too. Mr. Baka is the only one
2022 that's been here longer than anyone else today. I thank you all for the kindness,
2023 appreciate everything you've done for me, especially Ben. You've been great
2024 over the years.
2025
2026 Mr. Blankinship - It's been an honor working with you, Mr. Nunnally, it
2027 truly has.
2028
2029 Mr. Nunnally - I might sneak in to see you one of these days.
2030
2031 Mr. Blankinship - A nice snowy day you can drive up.
2032
2033 Mr. Baka - Please do. You're welcome every time.
2034
2035 Mr. Nunnally - Thank you all very much.
2036
2037 Mr. Bell - Thank you. Do I hear a motion that we adjourn?
2038
2039 Mr. Baka - So moved.
2040
2041 Mr. Bell - Do I hear a second?

2042
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2065

Mr. Berman -

Second.

Mr. Bell -

Any discussion? All in favor say aye. All opposed say

nay. We are adjourned.

Affirmative:

Baka, Bell, Berman, Nunnally

4

Negative:

0

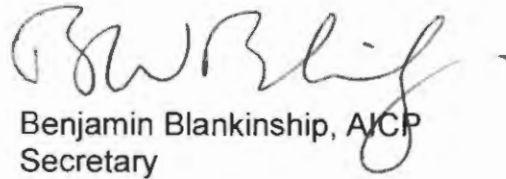
Absent:

Harris

1



Gentry Bell
Chairman



Benjamin Blankinship, AICP
Secretary