

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE GOVERNMENT CENTER AT PARHAM**
4 **AND HUNGARY SPRING ROADS, ON THURSDAY JUNE 22, 2017 AT 9:00**
5 **A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH JUNE 5, 2017 AND JUNE 12, 2017.**
7

Members Present: Dennis J. Berman, Chairman
William M. Mackey, Jr., Vice Chairman
Helen E. Harris
James W. Reid

Member Absent: Gentry Bell

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

8
9 Mr. Berman - Good morning. Welcome to the June 22nd meeting of
10 the Henrico Board of Zoning Appeals. For those who are able, please stand and
11 join us for the Pledge of Allegiance.

12
13 Our Board secretary, Mr. Blankinship, will now read you the rules.

14
15 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
16 ladies and gentleman. The rules for this meeting are as follows: Acting as
17 secretary, I'll call each case. And as I'm speaking, the applicant's welcome to
18 come down close to the lectern. We will ask everyone who intends to speak to
19 that case to stand and be sworn in. Then a member of the staff will give a brief
20 introduction to the case, and then the applicant will present their case. After the
21 applicant has spoken, anyone else who wishes to speak will be given the
22 opportunity. After everyone's had a chance to speak, the applicant, and only the
23 applicant, will have an opportunity for rebuttal.

24
25 After the Board has heard all the testimony and asked all their questions, they
26 will proceed to the next public hearing. They will render all of their decisions at
27 the end of the meeting so if you wish to hear their decision on a specific case,
28 you can stay until the end of the meeting, or you can check the Planning
29 Department website—we usually get it updated within an hour of when the
30 meeting ends—or you can call the Planning Department this afternoon.

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

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We are one member short this morning. The Code of Virginia provides that in order to rule in favor of an applicant or appellant, there must be three affirmative votes. Because we have one member absent, if anyone would like to defer your case until next month, that may increase your chances of getting three votes in favor. Would anyone like to defer your application until next month? Hearing none, shall we proceed?

Mr. Berman - Yes we shall. Thank you, sir.

Mr. Blankinship - The first case is deferred from two months ago. It's VAR2017-00008, Canaan Land Company.

VAR2017-00008 CANAAN LAND COMPANY requests a variance from Sections 24-9 and 24-94 of the County Code to build a one-family dwelling at 8415 Bronwood Road (PARHAM HILLS) (Parcel 755-749-4176) zoned One-Family Residence District (R-3) (Three Chopt). The public street frontage requirement and lot width requirement are not met. The applicant proposes 36 feet public street frontage and 62 feet lot width, where the Code requires 50 feet public street frontage and 80 feet lot width. The applicant requests a variance of 14 feet public street frontage and 18 feet lot width.

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

Mr. Madrigal - Thank you. Mr. Secretary, Mr. Chair, members of the Board, good morning.

Before you is a request to build a one-family dwelling in a residential district. The subject property is part of the Parham Hills subdivision, which was established in 1952. The property is 37,191 square feet in area. It is relatively flat and is predominantly a grass field. A creek runs along the entire southern boundary of the property and halfway up the rear of the lot with dense vegetative growth along the banks. County records indicate the presence of wetlands in the rear half of the property. It is bounded by residences with exception to an undeveloped lot which is adjacent and to the north of the property.

When the subdivision was created, the subject property was identified as a lake on the subdivision map. Although it was intended as a lake feature of the development, it was never reserved for that purpose and it never came to fruition. However, it does appear that the property was used a fill lot for rubble from street widenings.

80 The property was acquired by the applicant in July 1990. Over the last 27 years,
81 he has requested and received three variance approvals to waive the street
82 frontage and lot width requirements to build a single-family residence. In all three
83 instances, the home was never built, and the variances expired.

84
85 With respect to the hardship finding, because the lot was never intended to be
86 developed and instead was to be a drainage reservoir and decorative feature of
87 the subdivision, it was not provided with adequate street frontage or lot width.
88 Since it was intended to be a lake, the property owner did not have a reasonable
89 expectation that it could be developed. Although it has been granted several
90 variances in the past, further approvals are not guaranteed as laws and legal
91 attitudes have changed over time, substantially raising the bar for variance
92 approvals.

93
94 In the applicant's case, the three variance approvals were granted prior to the
95 2004 Cochran decision. If the applicant's request is denied, the property could
96 not be used for a one-family dwelling. Since the property was intended to be a
97 lake feature and the applicant did not avail himself of past approvals, it is not
98 clear whether there's a hardship justifying the granting of a fourth variance.

99
100 With respect to the subtests, test number 1, the property was acquired in good
101 faith and any hardship is not self-imposed. It appears that the applicant acquired
102 the property in good faith. Relative to whether there is a self-imposed hardship
103 issue, the applicant did not create the lot, but has failed to take advantage of past
104 variance approvals.

105
106 Test number 2, substantial detriment to adjacent or nearby properties. If a
107 variance is granted, several issues relative to that development of the property
108 must be overcome so it does not detrimentally impact adjacent and nearby
109 property.

110
111 As mentioned, a creek runs through the property, and there are wetlands present
112 on the lot. The creek enters the lot at the center of the 36-foot-wide street access
113 point which doubles as the street frontage. The creek creates a potential conflict
114 with any future driveway built for the lot. The applicant would have to ensure that
115 any future driveway is safe, it would not deteriorate the creek bank, and that
116 drainage on the lot and along the street would not be impeded. Since the creek
117 runs the entire the length of the lot, a substantial amount of work would have to
118 be performed to maintain drainage through the property. The limits of the
119 wetlands would have to be identified and any potential impacts caused by the
120 home would have to be approved by the Army Corps of Engineers.

121
122 Any future home would have to be situated carefully so that it does not infringe
123 on the privacy of adjacent lots by looking directly into their rear yards. Also, a
124 geologically survey will have to be conducted to determine if the lot in fact
125 contains road debris. That will determine what steps will be required to safely

126 construct a home on the property. And finally, the applicant would have to amend
127 the subdivision map to allow for the development of the lot.

128
129 Test number 3, the condition or situation on the property is not of a general or
130 recurring nature necessitating a code amendment. With respect to the applicant's
131 request, it's unique and is not a general recurring issue.

132
133 Test number 4, granting the variance will not result in a use variance or a change
134 in the zoning classification. The underlying zoning designation allows one-family
135 dwellings. The applicant is requesting the waiver of the minimum street frontage
136 and lot width standards in order to build a residence consistent with the zoning
137 designation.

138
139 Test number 5, relief is not available through a special exception or modification.
140 Neither of those two options is available in this case.

141
142 In concluding, although the property is residentially zoned, the subject property
143 was never intended to be developed. It was the developer's intent to make it an
144 environmental and decorative feature of the subdivision. To that end, it appears
145 that the lot was used as a landfill for rubble from street widenings. Since
146 purchasing the property, the applicant has been granted three separate variance
147 approvals for the development of the lot. In each instance, he has failed to take
148 advantage of those approvals. Because laws and legal attitudes have changed
149 over time, essentially raising the bar for variances, the property owner shouldn't
150 expect that a fourth variance will be approved, especially in light of the
151 engineering and environmental challenges associated with developing the lot. It
152 would be more prudent and preferable if the owner were to acquire additional
153 land from the adjacent undeveloped lot to satisfy code and void the need for a
154 variance. Thus, based on the facts of the case, staff recommends denial of the
155 applicant's request.

156
157 This concludes my presentation. I'll be happy to answer any questions.

158
159 Mr. Berman - Thank you, Mr. Madrigal. Any questions from the
160 Board?

161
162 Ms. Harris - Mr. Madrigal, do we know which part of the parcel is
163 fill lot?

164
165 Mr. Madrigal - No ma'am, we do not. I became aware of that from
166 testimony from I believe the 2002 variance request from reading from the
167 minutes where the applicant at that time was a contractor. I think they had done
168 some core sampling, and they found road debris.

169
170 Mr. Berman - Do you have any wetlands delineation on the plat?

171

172 Mr. Madrigal - No, we do not. But it is on the County maps.
173
174 Mr. Berman - Okay. I was curious where the buildable area was.
175 Any other questions?
176
177 Ms. Harris - Mr. Madrigal, one more question. So we are dealing
178 with a fill lot and we're dealing with a lot that does not meet the public street
179 frontage or the lot width requirements.
180
181 Mr. Madrigal - Yes, that is correct.
182
183 Ms. Harris - Thank you.
184
185 Mr. Berman - Okay, thank you very much.
186
187 Mr. Madrigal - Thank you.
188
189 Mr. Berman - I would like to hear from the applicant at this time.
190 Would you please spell your name at the microphone.
191
192 Mr. Hairston - My name is Will Hairston. That's H-a-i-r-s-t-o-n. I'm
193 president/owner of Canaan Land Company. As was mentioned, we've owned it
194 for 27 years.
195
196 I do find it a little discouraging that it seems to be held against me that we didn't
197 take advantage of our three previous grants. We tried very much to take
198 advantage of them. We had contract purchasers in each case, and they ended
199 up backing out of the contract at one point or another. It was usually because
200 they got very discouraged either from—a lot of times it wasn't just clear
201 requirements, but possible things, such as maybe the Army Corps of Engineers
202 was going to require a permit. Maybe it's going to require an offset of \$500 a foot.
203 Maybe there are wetland soils. So there's been kind of a gauntlet of challenges
204 that we have attempted to make. In each of the previous times, the contract
205 purchaser has backed out in face of some of these challenges.
206
207 It's the same case this time. We had a contract purchaser who, unlike earlier
208 times, seemed to be an experienced builder. But after talking with Mr. Madrigal,
209 he also asked to back out of the contract, which was kind of a blow to us.
210
211 We do have some experience in this. We are more familiar with the challenges.
212 So in preparation for this, I did meet with Mrs. Robin Wilder of Public Works to
213 address some of the questions. We had a good meeting. She seemed to think
214 that drainage would be considered Waters of the United States, but that it would
215 not require offsets or permitting because of the small area affected. I've also met
216 with Mr. Scott Jackson and got a letter yesterday, and I do think that some of the

217 uncertainties in the past have been clarified. So I think the prognosis moving
218 forward looks better this time.

219

220 In terms of the change in the environment, I realize that when I came to BZA
221 hearings, people were asking for garages and sunrooms, and it would be a
222 hardship if I can't build a sunroom. This isn't a case like that of just a garage or a
223 sunroom. If this is turned down—the only permitted use is a residential house,
224 which if turned down, there's no permitted use. I would call that a total and
225 dramatic hardship and kind of a classic case of an older lot that doesn't meet
226 current standards. Each of the past variances that were granted, that was cited
227 that it was a clear case of hardship.

228

229 So I just submit that to you that if the variance would be denied that I would hope
230 that maybe either the Planning Department or the County would make another
231 use. If it's deemed that it should just be part of the stormwater infrastructure,
232 maybe a recommendation would be that the County would buy it as a stormwater
233 infrastructure and not make us carry that hardship.

234

235 We've already been paying taxes on it for 27 years, and we've tried diligently to
236 move it forward and face the obstacles. But I think we're better understanding
237 these obstacles. At one point, we did do a soil test, drawing down 90 inches at
238 three different spots. So we do understand the challenges and it would require an
239 engineered foundation, which is often the case. A lot of building lots are based on
240 fill. But I would note that this fill has been there since the early '60s and is pretty
241 stable. I don't think anything found in any of the soil tests, including a soil test just
242 a couple weeks ago with Public Works that indicated either wetland soils present
243 or that the soils were an inherent impediment to building a single-family home.

244

245 Mr. Berman - Okay, thank you. If you could remain, please. No, I
246 mean at the podium. Thank you, Mr. Hairston. I wanted to see if the Board had
247 some questions for you.

248

249 Mr. Hairston - Sure.

250

251 Ms. Harris - Mr. Hairston, have you considered purchasing the
252 adjacent lot?

253

254 Mr. Hairston - Yes I have tried a number of times. In fact, I think—
255 are you Mr. Tate?

256

257 Mr. Tate- [Off microphone] Yes.

258

259 Mr. Hairston - Okay. The adjacent owner is here, and he can
260 address that. I got word to him in the last few weeks, and I heard back that you
261 were not willing to sell a portion. It was tried at different times, including the last
262 couple of weeks. He can speak to that. He owns lots 1, 2, 3, and 4. Parts of 4, if

263 he would be willing to sell, could do that. But earlier times and this time it did not
264 seem to be an option for us. But it was attempted.

265
266 Ms. Harris - One more question. When you purchased this
267 property, you were aware that this was a lake lot based on the intention of the
268 subdivision developers, right?

269
270 Mr. Hairston - I knew it had an unusual shape and all, but I did not—
271 I saw it as the intention was for it to be an attractive feature. But it seemed like
272 that was the intention in the '50s, but by the early '60s, it seemed to be that was
273 not something—it seemed to be just not suitable or functional as a lake lot. To
274 me it seems a little bit trying to say what the original developer's intention was.
275 But yes, it was meant to be a feature. But I think since the early '60s, the lake
276 intention hasn't been. In fact, it's been a filled-in lot in a residential subdivision.
277 And it is eight-five hundredths of an acre, so it's an unusually large lot.

278
279 And certainly ever since I came in and asked the County, they said it's a
280 buildable lot with a variance. That's what I've been told every time I asked, it's a
281 buildable lot with a variance. And the variance has been approved. So my
282 understanding of the tightening of the variance, it's only for hardships. And to me
283 this seems like a clear dramatic case of a hardship.

284
285 To me this idea of the original tenant, it strikes me like someone looking at
286 someone's genealogy and say well you were never meant to be—sort of reminds
287 of when Ted Cruz was trying to tell Donald Trump he couldn't be president
288 because he mother was born in Scotland. It seems to be an obscure fact in the
289 history of the lot not something that should render it eligible to endure a hardship
290 for all time and eternity. The attempt to have a lake was short lived and
291 unsuccessful. It doesn't seem like that should qualify for eternal hardship.

292
293 Mr. Berman - Any other questions?

294
295 Mr. Mackey - That was my question.

296
297 Ms. Harris - Mr. Hairston, where would you actually construct the
298 dwelling? You're dealing with the wetlands and the shape of this lot. Do you
299 know where you would actually place the dwelling?

300
301 Mr. Hairston - We have drawings from earlier ones. It's a little hard
302 in a proposed plan to do that when the engineering and—that would probably be
303 up to the engineer. I've used Bruce Hulcher in the past, and I would trust him to
304 site the exact siting. Like I say, I've met with multiple people in Public Works. And
305 I believe the wetlands question has been answered. The drainage question's
306 been answered. But the exact setbacks from the creek are still to be set. Our
307 contract purchaser was Mr. [unintelligible] Sindhu [sp]. And I'm actually hopeful
308 that based on the successful outcome of this that we can reengage him and

309 proceed. He's the one that is an experienced builder/developer and lives very
310 close to the area. I'm hopeful that he could move forward in the next few months.
311 However, I have also engaged Brian Hall of RBA Realtor to make sure we can
312 get the lot successfully built on in the time the variance permits.

313
314 Ms. Harris - I think this is my last question. Would you avoid the fill
315 portion of the lot for the dwelling?

316
317 Mr. Hairston - That's probably a question for the engineers. I'm not
318 sure. I'm guessing that at least part of the lot would be on fill. I think this question
319 came up in earlier variance hearings where some of the officials said it may
320 require a slab; it will dictate the type of foundation. That will be based on the
321 engineer, and there will probably be some further geotechnical. But my guess it
322 will be on fill, but it will be a foundation suitable for fill.

323
324 Ms. Harris - Thank you.

325
326 Mr. Berman - It would have been a lot easier to visualize this if we
327 had some sort of a lot placement, especially given the history of all the other
328 variances for it. Is there anything else? Are there any further questions? Is there
329 anything else you have to add?

330
331 Mr. Hairston - As someone who's trying to sell to a builder, we're at
332 the mercy of the people buying. We can't draw a picture and say here's the
333 improved picture. I would say that when the building permit gets approved, the
334 exact siting will be done, and both Planning and Public Works will write off on it.
335 In earlier times, we did do a little sketch. Those were kind of just that. They were
336 best guesses of where it would probably end up. That would be sort of an
337 informal engineering. But of course it would have to be done with the approval of
338 Planning and Public Works.

339
340 Mr. Berman - Do you happen to have any of those sketches with
341 you today?

342
343 Mr. Hairston - No. Let's see. I have a large file out in the car. As you
344 can imagine, 27 years, 3 variances. But I don't think I put that in. But I could bring
345 one in in a few minutes if it would—I do have it in the car.

346
347 Mr. Berman - That's permissible before the motion. As we go to the
348 other cases, that would be good. Thank you very much.

349
350 Mr. Hairston - Sure.

351
352 Mr. Berman - Appreciate it. Is there anyone present who is in
353 support of this application? Is there anyone present who is opposed to this
354 application? You can approach, please, and state your name and spell.

355

356 Mr. Tate - Name is Blanton Tate. B-l-a-n-t-o-n, T-a-t-e. My
357 parents purchased this piece of property as one contiguous piece and had three
358 houses moved in on lots 1, 2, and 3. They gave permission to the guy that was
359 doing Parham Road to put all the fill in the hole in the rear of the property. At that
360 time, it was not designated a lake lot; it was just one continuous property.
361 Sometime when they did an aerial survey, they designated that as a lake lot
362 where originally County records didn't show that. It just showed one piece of
363 property. Years later, they had it sold for an escheat sale and it was sold as a
364 lake lot with the Building Code.

365

366 The majority of it, the back of it was just a big hole when they filled it in. I have
367 never developed the Bronwood lot. I do own the three houses facing Parham
368 Road, but I just never decided to build back there. I think where they would sit the
369 house would negatively affect my property, and I don't know how the—it's just a
370 real strange situation where they would sit a house. It would be the rear of the
371 other properties facing it.

372

373 It is a wetland. When it rains a lot, it does get real swampy back there. It was a
374 lot of debris put in. I don't know how much. But mostly to the rear part of it, not to
375 the front part towards Bronwood and the other part between the houses on
376 Parham Road. That's relatively stable. They would have to build on the utility
377 easement to have a driveway. I don't know how they would do it without going
378 across my land to build. And I would not like them to use my land, to trespass my
379 land to affect their building.

380

381 That's all I have to say.

382

383 Mr. Berman - Thank you, Mr. Tate. Any questions for Mr. Tate?

384

385 Mr. Blankinship - I just want to make sure I understood what you were
386 saying. Along North Parham Road there are houses 35 feet back from the road.

387

388 Mr. Tate - Correct.

389

390 Mr. Blankinship - Then along Bronwood farther down on the right side
391 of the screen, there are houses set back 35, 40 feet. But you're saying that this
392 lot or this parcel, because it was not laid out as a lot, the house would be in the
393 rear yard of the houses on Parham.

394

395 Mr. Tate - Correct.

396

397 Mr. Blankinship - Whereas if, for example, you were to build a house in
398 the future on lot 4, it would be up on Bronwood and would not have that same
399 kind of impact.

400

401 Mr. Tate - Correct.
402
403 Mr. Blankinship - Okay. I think I understand what you're saying.
404
405 Mr. Tate - It was just a strange thing because it was drawn out
406 and surveyed as a separate lot.
407
408 Mr. Blankinship - Right.
409
410 Mr. Tate - I think when they did the aerial survey it was like
411 "what's this right here?" They designed it a lake lot. I was never notified or knew
412 anything about it. The next thing I know, it was escheated and sold by the state
413 as a piece of untaxed property— no-taxes-paid property and was transferred.
414
415 Mr. Blankinship - Right.
416
417 Mr. Tate - I found out about it years later. Twenty years later I
418 found out about it when Canaan Land Company said they wanted to sell me the
419 lot that I thought I had owned.
420
421 Mr. Berman - Thank you, Mr. Tate.
422
423 Mr. Tate - Okay, thank you.
424
425 Mr. Berman - Is there anyone else present who is opposed to this
426 application? Okay, hearing none, let's move on to our next case please.
427
428 **[After the conclusion of the public hearings, the Board discussed the case**
429 **and made its decision. This portion of the transcript is included here for**
430 **convenience of reference.]**
431
432 Mr. Mackey - Hold on for one second. He had those pictures.
433
434 Mr. Berman - Oh yes, thank you. You got out to your car. Can we
435 please see . . .
436
437 Mr. Hairston - Also, there was opposition, but I couldn't offer my
438 rebuttal because I went to my car. I had a couple of comments regarding the
439 objection.
440
441 Mr. Berman - Can we entertain . . . ?
442
443 Mr. Hairston - That drawing—and I apologize I only have one
444 copy—was done by a surveyor and does show that there is plenty of room to
445 place a house there showing a rear setback of 88 and 100 feet at two different
446 points.

447

448 This does speak to one of Mr. Tate's objections in having a house looking into
449 the other's backyards. I will point out that whenever there are houses facing on
450 an intersection, some yards look into the back of other yards. So it's really not
451 that unusual of a situation. And there is still a 100-foot rear setback, so it's not
452 like a house at the very back of a lot.

453

454 Mr. Blankinship - But this is not that case. On lot 4, another house up
455 on Bronwood would have the same relationship as the other houses in the
456 neighborhood. But here, you have a piece of land back—immediately in the rear
457 yards of those other houses. It was not originally intended as a house lot. So I
458 think it is a very different situation. I think Mr. Tate had a good point.

459

460 Mr. Hairston - And lot 4 has other challenges as well.

461

462 Mr. Blankinship - Right. How old is that plan?

463

464 Mr. Hairston - That one is from the '90s.

465

466 Mr. Blankinship - I don't think that's at all practical today because of the
467 stream that's there and because of setbacks from that stream and from the
468 wetland.

469

470 Mr. Hairston - Right. And that's one reason why I didn't submit it. I
471 feel like the only real proper one is somebody who's proposing to build a plan
472 and is planning to act on the one submitted. And that's the reason why I didn't
473 submit it. Like I said, we've had three variances. The other ones we would just
474 sometimes pencil in something, this is kind of what I'm thinking.

475

476 Mr. Blankinship - Sometimes that's enough, but when there are more
477 constraints on the lot, like on the second-to-last case where there were wetlands
478 on the lot, we needed to know where the wetlands are and where the house is
479 going to be relative to those areas. This plan I'm fairly certain is not—

480

481 Mr. Hairston - Would not pass muster. And that's a thing that I think
482 would—Public Works, I'm sure if a house were proceeding, there would be twists
483 and turns in that road—and this is the part that I would have done. There is the
484 utility, there are wetland issues, there is Army Corps. One thing this lot has going
485 for it is it's eighty-five hundredths of an acre, so there is plenty of wiggle room.
486 That's what has been looked at in the past.

487

488 It gives a picture of possibilities. I like that it does show setback, exactly how
489 many feet so that there is—like an Etch A Sketch, you can go many different
490 directions.

491

492 One final comment I would like to say. If the variance is turned down, how is that
493 different than a condemnation or even kind of like a seizing of property in a way?
494 I encourage you to consider the hardship that a lack of a variance would impose.
495

496 Mr. Blankinship - The answer to your question is that when this whole
497 large property was subdivided, this small area was intended to be a lake. So a
498 reasonable use was made of the whole parcel by all of the other lots that were
499 divided. But this lot was never intended to be a dwelling site.
500

501 Mr. Hairston - Right, right. Well I know for 27 years I was informed
502 by everybody in the County that it's buildable, it just needs a variance. If today
503 we don't get a variance, then I feel like it's 27 years of this right to be buildable,
504 it's like it's being pulled away. I would point out that it's been looked at three
505 times and felt like it did meet the requirements. And the tests, did we create this?
506 No. I do ask you to consider that, the hardship by such a decision.
507

508 Mr. Berman - The County was stating that it was buildable with a
509 variance. There is no presupposition that the variance will always been
510 approved.
511

512 Mr. Hairston - No, I understand.
513

514 Mr. Berman - So Mr. Tate's concern regarding the driveway, I think
515 that that example drawing does show that there is a possibly to not touch his
516 property.
517

518 Mr. Hairston - Right. And I might point out—
519

520 Mr. Blankinship - But that's in the stream.
521

522 Mr. Hairston - Right.
523

524 Mr. Blankinship - The driveway is right on top of the stream.
525

526 Mr. Hairston - I'll point out that the aerial photos shown are not exact
527 surveys. In Public Works, there are 36 feet of frontage. I think comments from
528 Public Works even in the last few weeks have shown that if necessary we can
529 extend the pipe if the stream is in the driveway or sort of on top of each other.
530 The pipe can be extended to accommodate a proper entrance. Thirty-six feet is
531 adequate for an entrance.
532

533 Mr. Berman - Okay. Anything else, Mr. Hairston?
534

535 Mr. Hairston - Are there any further questions?
536

537 Mr. Berman - No? Thank you for going out to get this.

538

539 Mr. Hairston - All right.

540

541 Mr. Berman - Okay. So that brings us to VAR2017-00008. Do I hear
542 a motion? I will make the motion since it's in my magistrate. I move that given the
543 wetlands concern, and the prior history of variance hearings on this, and concern
544 about the driveway, the possible remediation of fill, and the concern over
545 buildable area and neighboring lots' view of the placement of the house in the
546 buildable area, if any, I recommend that we not approve this variance. Do I hear
547 a second?

548

549 Ms. Harris - I second the motion.

550

551 Mr. Berman - Second from Ms. Harris.

552

553 Ms. Harris - I need to further say that the lot really has too many
554 problems. Wetlands, a former lake lot. Fill land. I've known cases where using fill
555 land will come back and bite you, so to speak, because it does sink sometimes. I
556 am offering a second to that motion.

557

558 Mr. Berman - We have a motion from Mr. Berman, a second from
559 Ms. Harris. Is there any further discussion from the Board? Hearing none, all in
560 favor of denial of this variance, signify by saying aye. Those opposed? There is
561 no opposition; that motion carries 4 to 0.

562

563 After an advertised public hearing and on a motion by Mr. Berman seconded by
564 Ms. Harris, the Board **denied** application **VAR2017-00008, CANAAN LAND**
565 **COMPANY** requests a variance from Sections 24-9 and 24-94 of the County
566 Code to build a one-family dwelling at 8415 Bronwood Road (PARHAM HILLS)
567 (Parcel 755-749-4176) zoned One-Family Residence District (R-3) (Three
568 Chopt).

569

571	Affirmative:	Berman, Harris, Mackey, Reid	4
572	Negative:		0
573	Absent:	Bell	1

574

575

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

578

579

580 **CUP2017-00024** **WISTER J. AMBROSE JR.** requests a conditional
581 use permit pursuant to Section 24-95(i)(4) of the County Code to build an
582 accessory building in the side yard at 4430 E Williamsburg Road (Parcel 852-
583 712-3573) zoned Agricultural District (A-1) (Varina).

584

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

589

590 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the
591 Board. Before you is a request to build an accessory structure in the side yard of
592 a one-family dwelling. The subject property is over four acres in size and is
593 bordered by a dense 50-foot deep tree line on all four sides. The lot is improved
594 with a newly constructed 1,800-square-foot ranch-style dwelling with an attached
595 three-car side-load garage. Access to the property is by way of an approximately
596 20-foot-wide access point and a 300-foot-deep gravel driveway.

597

598 The property is served by well and septic systems. The well is in the northwest
599 quadrant of the lot, and the septic system is located approximately 30 to 50 feet
600 in front of the dwelling.

601

602 The applicant purchased the property in January 2016 and finished construction
603 of the new home in May 2017. He would like to add a one-story, 360-square-foot
604 metal garage in the side yard approximately 30 feet west of his existing garage.
605 The proposed structure will house yard equipment used in the maintenance of
606 the property.

607

608 The property is zoned A-1 and is designed Suburban Residential 1 on the
609 Comprehensive Plan. A one-family dwelling is consistent with both the zoning
610 and the Comprehensive Plan designations. Because detached or attached
611 accessory buildings are customary and incidental to single-family dwellings, the
612 proposed use is also consistent with both land use designations.

613

614 The surrounding area is semi-rural in character and is composed of large lot
615 residential development and large acreage tracts of land. Minimum lot size starts
616 at one acre per residentially subdivided property and varies for existing acreage
617 parcels. The subject lot is over four acres in size, and the existing dwelling is set
618 back over 300 feet from the street. Because of the existing tree line surrounding
619 the property, the proposed garage will not have a visual or aesthetic impact on
620 the streetscape or surrounding property. Also, due to the proposed structure
621 placement, orientation, and proximity to other dwellings, staff does not anticipate
622 any detrimental impacts if the request is approved.

623

624 In conclusion, the applicant's request is consistent with both the zoning and
625 Comprehensive Plan designations. The existing tree line surrounding the
626 property prevents any visual or aesthetic impacts on the street or surrounding
627 property. The large size of the lots, the distance, and orientation of the homes
628 also helps to mitigate any negative impacts. Because the applicant's request will

629 not result in any detrimental impacts, staff recommends approval subject to
630 conditions.

631

632 Mr. Berman - Thank you, Mr. Madrigal.

633

634 Mr. Madrigal - Thank you.

635

636 Mr. Berman - Any questions from the Board? Thank you, sir. Can
637 we hear from the applicant, please? You can approach and spell your name.

638

639 Mr. Ambrose - My name is Wister J. Ambrose, Jr. That last name is
640 spelled A-m-b-r-o-s-e. I just want to build a shed to keep my lawnmowers and
641 ATVs and garden tools and stuff like that to keep it out of the main part of the
642 garage that adjoins the house. I guess that's it.

643

644 Mr. Berman - Thank you, sir. Questions from the Board?

645

646 Ms. Harris - Mr. Ambrose, will the new metal construction blend in
647 or complement your house? It seems you have a nice home here. Did you just
648 complete it in May? Is that right?

649

650 Mr. Ambrose - Yes.

651

652 Ms. Harris - In looking at the garages and barns, are they all
653 metallic?

654

655 Mr. Ambrose - Yes.

656

657 Ms. Harris - Okay. I was just curious as to why didn't you want a
658 garage that would be in keeping with the brick construction of the home.

659

660 Mr. Ambrose - I'm just using it for storage. I have two cars in each
661 bay, and then the third bay is like a storage area for stuff in the house. Like I say,
662 I just want to keep the lawnmowers and stuff away from the house because of
663 the smell of the grass and stuff in the garage that's attached.

664

665 Ms. Harris - This picture that we're looking at here, is this out of
666 brick or is this metal?

667

668 Mr. Ambrose - That's all brick.

669

670 Ms. Harris - So you just want a metal or metallic connection.

671

672 Mr. Ambrose - Yes.

673

674 Ms. Harris - Okay. I was just wondering if it would look better, be
675 more pleasing to the eye if this addition that you're asking for was made out of
676 brick too. But as you said if it's just for holding some of your equipment, I
677 understand.
678
679 Mr. Ambrose - Yes, that's all. I just wanted to do it out of metallic
680 because it was cheaper.
681
682 Ms. Harris - Thank you.
683
684 Mr. Mackey - The new shed, about how far will that be from the
685 existing garage?
686
687 Mr. Ambrose - I think it's about 36 feet.
688
689 Mr. Mackey - Okay.
690
691 Mr. Blankinship - I'd like to ask one question, if I may.
692
693 Mr. Berman - Yes sir.
694
695 Mr. Blankinship - Why couldn't you put the new structure in the rear
696 yard? Why did it have to be in the side yard?
697
698 Mr. Ambrose - I don't have it cleared off. I'd have to go clearing off
699 trees.
700
701 Mr. Blankinship - Does the land slope down as it goes farther back or
702 does it slope up?
703
704 Mr. Ambrose - It slopes up.
705
706 Mr. Blankinship - Okay. Would that have created problems for you in
707 terms of construction?
708
709 Ms. Ambrose - May I speak?
710
711 Mr. Blankinship - Yes ma'am. Let me get your name first.
712
713 Ms. Ambrose - I'm Terry Ambrose. One of the issues in the backyard
714 is that's where our drainage for the property is located. And then of course the
715 buffer trees are next. So that could impede our drainage.
716
717 Mr. Blankinship - Okay.
718
719 Mr. Berman - There's a six-foot incline in the backyard. Elevation.

720
721 Ms. Harris - Mr. Berman, I'd like to ask Mr. Ambrose something.
722 You have over four acres of land, do you not?
723
724 Mr. Ambrose - Yes.
725
726 Ms. Harris - What do you plan to do with the other acreage?
727
728 Mr. Ambrose - Some of it's growing back up into trees. I'd just let it
729 be for privacy.
730
731 Ms. Harris - Thank you.
732
733 Mr. Berman - Mr. Ambrose, are you under—is your neighborhood
734 under a homeowners' association?
735
736 Mr. Ambrose - No.
737
738 Mr. Berman - Okay. Any further questions? Thank you very much.
739
740 Mr. Ambrose - All right, thank you.
741
742 Mr. Berman - Is there anybody else here to speak in support of this
743 application? Anyone to speak in opposition to the application? Hearing none,
744 Mr. Blankinship, let's move to the next application.
745
746 **[After the conclusion of the public hearings, the Board discussed the case**
747 **and made its decision. This portion of the transcript is included here for**
748 **convenience of reference.]**
749
750 Mr. Berman - Do I hear a motion?
751
752 Mr. Mackey - Yes, Mr. Chairman. I make a motion that we approve
753 CUP2017-00024. I don't think it will cause any detriment to the community. I think
754 we should approve it.
755
756 Mr. Berman - We have a motion from Mr. Mackey. Do I have a
757 second?
758
759 Mr. Reid - Second.
760
761 Mr. Berman - Second from Mr. Reid. Any discussion? Without
762 further discussion, all in favor of the motion signify by saying aye. Those
763 opposed? There is no opposition; that motion carries 4 to 0.
764

765 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
766 Mr. Reid, the Board **approved** application **CUP2017-00024, WISTER J.**
767 **AMBROSE JR.** requests a conditional use permit pursuant to Section 24-95(i)(4)
768 of the County Code to build an accessory building in the side yard at 4430 E
769 Williamsburg Road (Parcel 852-712-3573) zoned Agricultural District (A-1)
770 (Varina). The Board approved the conditional use permit subject to the following
771 conditions:

- 772
- 773 1. This conditional use permit applies only to the construction of a detached,
774 one-car garage in the side yard. All other applicable regulations of the County
775 Code shall remain in force.
776
 - 777 2. Only the improvements shown on the plot plan filed with the application may
778 be constructed pursuant to this approval. Any additional improvements shall
779 comply with the applicable regulations of the County Code. Any substantial
780 changes or additions to the design or location of the improvements shall require
781 a new conditional use permit.
782
 - 783 3. Before beginning any clearing, grading, or other land disturbing activity, the
784 applicant shall obtain approval of an environmental compliance plan from the
785 Department of Public Works.
786

787

788 Affirmative:	Berman, Harris, Mackey, Reid	4
789 Negative:		0
790 Absent:	Bell	1

791

792

793 **[At this point, the transcript continues with the public hearing on the next**
794 **case.]**
795

796

797 **CUP2017-00025 DARRYN AND SUSANNE APPLETON** request a
798 conditional use permit pursuant to Section 24-95(i)(4) of the County Code to build
799 accessory structures in the side yard at 120 Brookschase Lane (WINDSOR ON
800 THE JAMES) (Parcel 756-731-2353) zoned One-Family Residence District (R-1)
801 (Tuckahoe).
802

803 Mr. Blankinship - Would everyone who intends to speak to this case
804 please stand and be sworn in. Raise your right hands, please. Do you swear the
805 testimony you're about to give is the truth, the whole truth, and nothing but the
806 truth so help you God? Thank you. Mr. Gidley?
807

808 Mr. Gidley - Thank you, Mr. Secretary. Good morning,
809 Mr. Chairman, members of the Board.
810

811 The subject property is located in the Windsor on the James subdivision, which is
812 on the south side of River Road. To familiarize yourself with it, Parham Road is
813 just to the west, and then to the east would be Ridge Road.

814

815 In October 2016, the applicants purchased two lots in this subdivision and
816 subsequently combined them into a single 1.252-acre lot. There is a one-family
817 dwelling currently under construction on the property. You can see that here,
818 although I'm sure it's much further along by now.

819

820 As part of the site improvement, the owners would like to have a detached
821 garage in the side yard, which would be located right over here. The garage
822 would be approximately 24 by 28 feet. This is a revised plat. The original plat
823 showed a 24-by-24 garage, which is what your staff report referenced. But the
824 floor plan showed the correct dimensions, so they revised their plat as shown
825 here to reflect the 24' by 28' dimensions.

826

827 In addition to the garage, they're proposing a pool back here. Most of the pool
828 would be located in the rear yard. But almost as a technicality, because part of it
829 would come in front of the rear line of the home, it would be considered partially
830 in the side yard. As a result of these two structures being—in the case of the
831 garage, completely in the side yard and then a little bit of the pool in the side
832 yard, they are requesting the conditional use permit to allow these in the side
833 yard.

834

835 Evaluation. Is the request consistent with the Comprehensive Plan and Zoning
836 Ordinance? The property is zoned R-1, One-Family Residence District, and is
837 designed as SR-1 on the Comprehensive Plan. A one-family dwelling is
838 consistent with both of these designations, and a detached garage and
839 swimming pool are customary and incidental to a single-family dwelling. And with
840 a conditional use permit, they are allowed to be placed in the side yard.

841

842 As far as any substantial detrimental impact on nearby properties, as you can
843 see here, the proposed garage would be just over 48 feet from the nearest
844 property line, which is the side property line. As you can see here, looking over
845 there you have existing trees and vegetation that would be along this property
846 line. So given the distance of 48-plus feet, which is twice the requirement,
847 actually, for the home, which is a 20-foot setback, given that and the buffering
848 here, I don't believe there would be any substantial detrimental impact to the
849 adjacent property.

850

851 I would point out on the floor plan for the proposed garage there's a first floor,
852 which would be used for the vehicles. Then there is a second floor that shows an
853 office. In addition, they showed a full bath and some aspects of a kitchen on it as
854 well. Under the Zoning Ordinance, if this were to become a residence, the only
855 person who could live up there would be a full-time employee of the property,
856 such as butler, for instance, or a nanny who worked there full time. Otherwise, it

857 can't be used as a residence. If it's just being used as an office, the Board may
858 want to consider restrictions such as those found in the conditions that would
859 limit the ability for it to be used for a residence. If it's just an office, then certainly
860 just a half bath would probably be sufficient for any needs that they would have.

861
862 As far as the swimming pool and any impact on adjacent properties, you can see
863 here the pool would go over basically in this area here. Looking towards the rear
864 property line, again there is vegetation back here that's being preserved. The
865 standard setback for a detached swimming pool is six feet. And again on the
866 survey, you can see the pool here is going to be way more than the required six
867 feet. So again I don't think there's going to be any real substantial detrimental
868 impact there. The distance from the side yard is even greater.

869
870 In conclusion, the applicants have actually combined two lots into one large lot.
871 As a result, there is sufficient room for the home and the two proposed
872 structures, the detached garage in the northern side yard and the swimming pool
873 in the back and a little bit of the side yard. Each of these will be located more
874 than 40 feet from the nearest property lines. Given that and the existing
875 vegetation, staff does not believe there will be a substantial detrimental impact to
876 nearby properties, assuming the garage isn't turned into an apartment. As a
877 result, staff can recommend approval of this request subject to the conditions that
878 are found in your staff report.

879
880 This concludes my presentation, and I will be happy to answer any questions you
881 may have.

882
883 Mr. Berman - Thank you, Mr. Gidley. Any questions from the Board
884 for Mr. Gidley?

885
886 Ms. Harris - Mr. Gidley, are garages often placed in the side yard?

887
888 Mr. Gidley - The preferred location is the rear yard. You do get
889 occasional requests to place them in the side yard. You just had one that came in
890 and the gentleman wanted it in the side yard. I think you have to look at these on
891 a case-by-case basis. In this case, there is a pretty decent slope here in the
892 backyard. The home goes back here a ways. There's a pool over here. They
893 could arguably relocate it back into this section here. But again as you can see,
894 there is a pretty decent slope, and I think they want to preserve some of the
895 vegetation back here with the neighbor as well.

896
897 If this was a single lot, it would probably be more of an issue. The fact that they
898 have two lots and this exceeds the setback requirement even for the dwelling. In
899 this case, I don't think it's going to be as much of an issue. That's something that
900 should be considered, obviously, in each case.

901
902 Ms. Harris - I'll save my other questions for the applicant.

903
904 Mr. Gidley - Okay.
905
906 Ms. Harris - Thank you.
907
908 Mr. Berman - According to the elevations, it's the same slope, a
909 two-foot gradual slope all across where the proposed garage is now and where
910 the pool is now and every place else. It's still like the same slope.
911
912 Mr. Gidley - Yes, fair enough.
913
914 Mr. Berman - Okay. Any other questions for Mr. Gidley? Thank you,
915 sir.
916
917 Mr. Gidley - Thank you, Mr. Chair.
918
919 Mr. Berman - Can we please hear from the applicant?
920
921 Mr. Atack - Good morning, Chairman Berman, members of the
922 Board. My name is Richard Correnty Atack. A-t-a-c-k. I am here representing
923 Dr. Appleton for two reasons. He is saving lives at work, and I am the author of
924 this concept. The last time I was at this hearing seven years ago, we did a very
925 similar one in Henley, same exact layout. I brought pictures of how that turned
926 out with the pool in the side yard and the same type of elevations that we're
927 experiencing on this property that we're building.
928
929 I do have HOA approval. First thing I did after meeting with these folks—I looked
930 at these lots probably six different times with other clients, other prospects that
931 were interested in building in Windsor on the James. It's not a neighborhood that
932 I developed. These lots have been around for a long time; it's a 20-year-old
933 subdivision.
934
935 These two lots, as I met with people in the past, they want to do these same
936 concepts with an outdoor living space and some type of garage on the side. The
937 topography required a retaining wall, which on the plans you would see the
938 retaining wall—it's about a \$100,000 retaining wall—to break grade. The
939 previous clients that I worked with, they couldn't afford it in their budget. The
940 Appletons, which I met with them, they came up with the idea why don't we buy
941 both lots. It's an \$800,000 lot that they decided to purchase to build this estate
942 on. It is the nicest estate being built in the County that I know of today. By doing
943 so and combining the lots, I realized that one—the HOA gave me approval for
944 this. Pools have already been built in Windsor on the James. They're similar. So
945 a precedent has already been set for the neighborhood for pools in the side yard.
946
947 And second, I took a look at all the setbacks for every house in the
948 neighborhood. My architect designed the first home in Windsor on the James 20

949 years ago, and he's designing this last home, coincidentally. But the setbacks
950 that you are seeing in this case that you're reviewing today provide the largest
951 distances in side yards of any property in the neighborhood simply because they
952 bought two lots. The idea of this two-tiered backyard is a concept that can be
953 seen in that exhibit, but I'm also working on another client that is doing a similar
954 concept. What the market in this price range is wanting to do is they're wanting to
955 have the best of both worlds where they can come out of their kitchen and not be
956 on a deck that's ten feet off the ground, having to traverse a lot of stairs. But they
957 would also like to have a walkout basement. So it just takes money and retaining
958 walls to be able to accomplish that where you're able to have a nice, flat, level
959 backyard on your living space and then your basement walking out to this pool.

960

961 That's all I have. Any questions, I'll be glad to answer them.

962

963 Mr. Berman - Thank you, sir. Any questions from the Board?

964

965 Ms. Harris - Yes. Mr. Atack, you're the contractor?

966

967 Mr. Atack - Yes ma'am. Twenty years.

968

969 Ms. Harris - All right.

970

971 Mr. Atack - Fourth generation.

972

973 Ms. Harris - I was wondering. I think I drove by, and you've
974 already proceeded with the construction. Right?

975

976 Mr. Atack - Yes ma'am. We have a permit to build the home. We
977 would be applying for the permits to build these if we get approval from this
978 Board.

979

980 Ms. Harris - So you already have built the foundation for the pool
981 and the garage?

982

983 Mr. Atack - No ma'am.

984

985 Ms. Harris - You have not.

986

987 Mr. Atack - Because I don't have the permits for those, so that's
988 not a good idea. I have built the foundation, obviously, for the home and the
989 retaining walls to set that backyard up.

990

991 Ms. Harris - Right. It seems as though the pool is not that many
992 feet from the side yard. I was wondering why couldn't you just comply, I guess.

993

994 Mr. Atack - I wish I could. Your specific question is the pool is . . .

995

996 Ms. Harris - If you look at what we have here on the screen, what
997 places it in the side yard is because the dwelling . . .

998

999 Mr. Atack - Ten feet. It's ten feet code. The pool has to stay ten
1000 feet away from the home—it's actually a fire code—so that ladders can get up to
1001 the second floor in case of a fire.

1002

1003 Ms. Harris - Look at the extension into the backyard, the rear yard.

1004

1005 Mr. Atack - I'm not sure if I follow your question.

1006

1007 Ms. Harris - I'm familiar with the ten feet.

1008

1009 Mr. Gidley - I'm Mr. Gidley, for the record. I think what she's
1010 saying is if the pool is moved back maybe five feet or so it would be behind the
1011 rear line there in which case it wouldn't need the use permit.

1012

1013 Ms. Harris - Yes, that's it.

1014

1015 Mr. Atack - I understand your question now, Ms. Harris.

1016

1017 Ms. Harris - Okay.

1018

1019 Mr. Atack - The preferred location is here for two reasons. One,
1020 the lot slopes off significantly to that far left corner. By pushing it back, we would
1021 have to bring in a lot more fill to accomplish that. The landscape plan and the
1022 way this is going to be set up, if this does get approved, the walkway will be the
1023 preferred location for it. But to answer your question, the grade is the reason why
1024 the pool did not get pushed back further, simply.

1025

1026 Ms. Harris - Thank you.

1027

1028 Mr. Atack - Yes ma'am.

1029

1030 Mr. Berman - Any other questions?

1031

1032 Mr. Mackey - Yes. Mr. Atack, have the Appletons seen the
1033 conditions of approval?

1034

1035 Mr. Atack - They have. And those conditions, I did want to speak
1036 to that. Item #4, which obviously is what Mr. Gidley brought up. It's interesting
1037 how neighbors in high-end communities are concerned about a garage being
1038 rented in a \$3 million house, but I'm prepared to answer that. The Appletons are
1039 German. They moved here from Germany. They set it up to use it as an office,
1040 but they also would be using it for an au pair that would be on their payroll, which

1041 is what Mr. Gidley referred to. In Germany, they also have people of this wealth
1042 who will bring a nurse in to live on their property as they age. They don't just
1043 send you out to Crump Park; they bring a nurse in to live there.

1044
1045 Mr. Berman - I am familiar with your projects and your father's, and
1046 they're wonderful properties.

1047
1048 Mr. Atack - Thank you.

1049
1050 Mr. Berman - I live next to them. So I have no doubt this would be
1051 as well. In fact, when Mr. Reid and I were on site, we couldn't believe this lot was
1052 still available because that's quite a nice community.

1053
1054 Mr. Atack - Yes, it's amazing. These lots that are just kind of left
1055 in these neighborhoods in the County. Since the 20 years when Mr. Amason
1056 developed them, these large homes and these three-car garages weren't a
1057 concept and popular like that. So yes, it's rare to find these properties. But with
1058 the new demands of homebuyers, we'll run into these variances.

1059
1060 Mr. Berman - Very good. Any further questions?

1061
1062 Mr. Blankinship - I just want to clarify on condition 4. Do we need to
1063 amend that condition? The way it's drafted, a dwelling up there would not even
1064 be allowed for a person employed on the premises, which the code does allow.

1065
1066 Mr. Berman - Right. I thought we may bring it up at motion to
1067 possibly strike #4 if the Board is—

1068
1069 Mr. Atack - Yes. Mr. Blankinship, I wanted add, too, that the
1070 Appletons would be glad to sign anything to support that they would not be
1071 renting out that room.

1072
1073 Mr. Berman - Virginia Code still stands to cover it if we strike #4.

1074
1075 Mr. Blankinship - Right.

1076
1077 Mr. Berman - Very good. Thank you, sir.

1078
1079 Mr. Atack - Thank you.

1080
1081 Mr. Berman - Anybody here today to speak in support of this
1082 application? Anybody to speak in opposition? Hearing none, may we hear the
1083 next case, please?

1084

1085 [After the conclusion of the public hearings, the Board discussed the case
1086 and made its decision. This portion of the transcript is included here for
1087 convenience of reference.]
1088

1089 Mr. Berman - Do I hear a motion?
1090

1091 Mr. Reid - I make a motion that we approve CUP2017-00025, for
1092 the construction of the swimming pool and the detached garage at 120
1093 Brookschase Lane.
1094

1095 Mr. Berman - Mr. Reid, would you entertain striking condition #4,
1096 which would allow for a kitchen and a full bath?
1097

1098 Mr. Reid - Yes.
1099

1100 Mr. Berman - Okay. With that extra stipulation, do hear a second?
1101

1102 Ms. Harris - I second the motion.
1103

1104 Mr. Berman - Ms. Harris has seconded the motion. Any further
1105 discussion?
1106

1107 Ms. Harris - I think we need to give a reason here. I don't think it
1108 will adversely affect the community. In fact, it enhances the beautiful community
1109 that it is.
1110

1111 Mr. Berman - Any further discussion? Hearing none, all in favor
1112 signify by saying aye. Those opposed? There is no opposition; that motion
1113 carries 4 to 0. And please indicate the striking of condition #4.
1114

1115 After an advertised public hearing and on a motion by Mr. Reid, seconded by
1116 Ms. Harris, the Board **approved** application **CUP2017-00025, DARRYN AND**
1117 **SUSANNE APPLETON** request a conditional use permit pursuant to Section 24-
1118 95(i)(4) of the County Code to build accessory structures in the side yard at 120
1119 Brookschase Lane (WINDSOR ON THE JAMES) (Parcel 756-731-2353) zoned
1120 One-Family Residence District (R-1) (Tuckahoe). The Board approved the
1121 conditional use permit subject to the following conditions:
1122

1123 1. This conditional use permit applies only to the placement of the proposed
1124 detached garage and swimming pool in the side yard. All other applicable
1125 regulations of the County Code shall remain in force.
1126

1127 2. Only the improvements shown on the plot plan and building design filed with
1128 the application, as modified below, may be constructed pursuant to this approval.
1129 Any additional improvements shall comply with the applicable regulations of the

1130 County Code. Any substantial changes or additions to the design or location of
1131 the improvements shall require a new conditional use permit.

1132
1133 3. The new construction shall match the existing dwelling as nearly as practical in
1134 materials and color.

1135
1136 4. Before beginning any clearing, grading, or other land disturbing activity, the
1137 applicant shall obtain approval of an environmental compliance plan from the
1138 Department of Public Works.

1139
1140 5. All exterior lighting shall be shielded to direct light away from adjacent property
1141 and streets.

1142
1143 6. The swimming pool shall be enclosed as required by the Building Code.

1144
1145
1146 Affirmative: Berman, Harris, Mackey, Reid 4
1147 Negative: 0
1148 Absent: Bell 1

1149
1150

1151 **[At this point, the transcript continues with the public hearing on the next**
1152 **case.]**

1153
1154

1155 **CUP2017-00026** **TIARA LITTLE** requests a conditional use permit
1156 pursuant to Section 24-12(g) of the County Code to operate a family day home
1157 with employees at 6356 Walnut Forest Court (DARBYTOWN MEADOWS)
1158 (Parcel 809-703-5085) zoned One-Family Residence District (R-3C) (Varina).

1159
1160 Mr. Blankinship - Would everyone who intends to speak to this case
1161 please stand and be sworn in. Raise your right hand, please. Do you swear the
1162 testimony you're about to give is the truth, the whole truth, and nothing but the
1163 truth so help you God? Thank you. Mr. Madrigal?

1164
1165 Mr. Madrigal - Mr. Chairman, members of the Board. Before you is a
1166 request to operate a large family day home with an employee from outside the
1167 home. The subject property is located in the Darbytown Meadows subdivision,
1168 which was established in the early 1990s. The property is improved with an
1169 approximately 1,600-square-foot tri-level home with open parking constructed in
1170 1998. The applicant purchased the property in December 2013, and she began
1171 operating a family day home at the beginning of 2016. She is conditionally
1172 licensed by the state for a large family day home for the care of up to 12 children.

1173
1174 Large family day homes are permitted by right in the R-3 District. Because she
1175 would like to hire an outside employee to assist here with the business, she is
1176 required to obtain a conditional use permit.

1177
1178 The property is zoned R-3C and is designated Suburban Residential 2 on the
1179 Land Use Plan. A one-family dwelling is consistent with both the zoning and
1180 Comprehensive Plan designations. A large family day home is also consistent so
1181 long as there are no detrimental impacts on neighboring properties.

1182
1183 The subject property is located next to a corner lot and backs onto a large
1184 common area. Its location affords easy access and circulation for drop-off and
1185 pickup of children. Onsite parking is provided by way of a concrete driveway that
1186 can accommodate up to two vehicles with additional space in the side yard
1187 adjacent to the driveway.

1188
1189 Staff does not anticipate any detrimental impacts on local traffic or on street
1190 parking as a result of the applicant's request. The existing family day home has
1191 been in operation for well over a year. The hours of operation are from 7 a.m. to
1192 6 p.m., Monday through Friday, corresponding to the general work week. Staff is
1193 not aware of any complaints against the property or other detrimental impacts as
1194 a result of the request.

1195
1196 In conclusion, the proposed use is consistent with both the zoning and
1197 Comprehensive Plan designations. The family day home has been operating
1198 without incident for well over a year. Staff does not anticipate any substantial
1199 detrimental impacts to nearby property by the addition of one employee. Staff
1200 recommends approval subject to conditions. That concludes my presentation.

1201
1202 Mr. Berman - Thank you, Mr. Madrigal. Questions from the Board of
1203 staff?

1204
1205 Ms. Harris - No.

1206
1207 Mr. Mackey - I have a question. Mr. Madrigal, you said the applicant
1208 has been in operation for a year?

1209
1210 Mr. Madrigal - Over a year, yes sir.

1211
1212 Mr. Mackey - Okay. I have a question about condition #6, "The
1213 applicant shall secure the rear yard with a four-foot tall fence." Was that already a
1214 condition when she first opened up?

1215
1216 Mr. Madrigal - My understanding is that the state can put in a
1217 condition with respect to the operation of the facility, number of kids, what they're
1218 empowered to do. Physical improvements, unless they're a life-safety issue, I
1219 don't think they can get into it.

1220
1221 When we were there, the rear yard—let me see if can find a picture of that up
1222 here. The rear yard is fenced generally all the way around, but there are some

1223 openings here and on this side. Because it's a corner lot, because there's traffic,
1224 I was just thinking for safety purposes just to enclose that. It doesn't necessarily
1225 have to be a privacy fence. It could be just a low four-foot fence. But just to keep
1226 the kids inside from not wandering out into the street.
1227
1228 Mr. Mackey - All right. Thank you.
1229
1230 Ms. Harris - A related question. Mr. Madrigal, the fence that we
1231 have observed, is that already four feet tall?
1232
1233 Mr. Madrigal - This one is a privacy fence, so that's about six feet
1234 tall. This one here along the back, yes, that's about four feet tall.
1235
1236 Ms. Harris - Okay. So they are at least four feet.
1237
1238 Mr. Madrigal - Yes. You can see it better here.
1239
1240 Ms. Harris - Okay.
1241
1242 Mr. Madrigal - And that separates the backyard from the common
1243 area as well.
1244
1245 Ms. Harris - Thank you.
1246
1247 Mr. Berman - Mr. Madrigal, for condition #3, 7 a.m. to 6 p.m., should
1248 that also indicate Monday through Friday?
1249
1250 Mr. Madrigal - We could add that, yes. Unless she wanted to do
1251 something on the weekends, which then would necessitate her to come back.
1252
1253 Mr. Berman - Okay. I'll check with the applicant. Thank you.
1254 Anybody else? Very good. Thank you, sir.
1255
1256 Mr. Madrigal - Thank you.
1257
1258 Mr. Berman - Would the applicant please approach.
1259
1260 Ms. Little - Hi. My name is Tiara Little. T-i-a-r-a, L-i-t-t-l-e. Any
1261 questions?
1262
1263 Mr. Blankinship - Can you begin by just telling us a little bit about your
1264 business?
1265
1266 Ms. Little - Oh, I'm sorry. Yes. I currently operate a family home
1267 daycare. I have 12 kids enrolled, in which I hired a worker to help me with the
1268 kids. I operate Monday through Friday from 7 a.m. to 6 p.m. As mentioned, I've



1269 been operating for well over a year now and never had any issues or any
 1270 problems. I just wanted to make sure I follow formalities and get everything in
 1271 place.
 1272

1273 Mr. Blankinship - What ages of kids do you keep?
 1274

1275 Ms. Little - Right now from 6 weeks old to 12 years old. But the
 1276 kids that I have primarily range from 3 months old up to 5 years old.
 1277

1278 Ms. Harris - Ms. Little, do you have children of your own in the
 1279 home?
 1280

1281 Ms. Little - Yes, I have my daughter. She's four years old.
 1282

1283 Ms. Harris - Just one?
 1284

1285 Ms. Little - Yes.
 1286

1287 Ms. Harris - Okay, thank you.
 1288

1289 Mr. Berman - Would you have any issues in finishing off the fence?
 1290



1291 Ms. Little - No. I actually planned on doing so once my finances
 1292 permitted.
 1293

1294 Mr. Berman - Would you have a guess of the timeline?
 1295

1296 Ms. Little - I would say around fall, hopefully.
 1297

1298 Mr. Berman - 2017?
 1299

1300 Ms. Little - Yes, this year.
 1301

1302 Mr. Berman - Any other questions?
 1303

1304 Mr. Mackey - Yes. Ms. Little, have you seen all the other conditions
 1305 of approval?
 1306

1307 Ms. Little - Yes.
 1308

1309 Mr. Mackey - Do you have any problems with keeping any of them?
 1310

1311 Ms. Little - No.
 1312



1313 Mr. Mackey - Okay.
 1314

1315 Mr. Berman - Okay, thank you very much.
1316
1317 Ms. Little - Thank you. Anybody here to speak in support of the
1318 applicant? Anybody in opposition to the application? Hearing none, let's proceed,
1319 please.
1320
1321 **[After the conclusion of the public hearings, the Board discussed the case**
1322 **and made its decision. This portion of the transcript is included here for**
1323 **convenience of reference.]**
1324
1325 Mr. Berman - Do I hear a motion.
1326
1327 Mr. Mackey - Yes, Mr. Chairman. I make a motion that we grant
1328 approval of CUP2017-00026 and allow Ms. Little to hire an employee to help with
1329 her daycare.
1330
1331 Mr. Berman - Would you entertain modifying condition #3 to
1332 stipulate Monday through Friday with the current hours?
1333
1334 Mr. Mackey - Yes I would. The applicant had already said that she
1335 had no problem with that, and I agree.
1336
1337 Mr. Berman - Thank you. We have a motion from Mr. Mackey. Do I
1338 hear a second?
1339
1340 Ms. Harris - Second the motion. I feel that we have to have
1341 premium family daycare businesses for the children in the neighborhood. It's
1342 wonderful that someone so youthful will undertake this task.
1343
1344 Mr. Berman - Mr. Blankinship, would it behoove us to put a sunset
1345 date or a due date on condition #6 or just leave it as-is?
1346
1347 Mr. Blankinship - I'll leave that up to the Board. I didn't feel that strongly
1348 about the condition either way. The applicant expressed a willingness to build the
1349 fence and gave a time frame. I don't know.
1350
1351 Mr. Berman - Does the Board have any thoughts? Personally, I feel
1352 the intent is there, and I don't need any further clarification for condition #6,
1353 unless you all do.
1354
1355 Mr. Mackey - I don't feel the need.
1356
1357 Mr. Berman - Okay. Very good. We have a motion from Mr.
1358 Mackey. Do we have a second?
1359
1360 Ms. Harris - Yes, from me.

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Mr. Berman - From Ms. Harris. Any further discussion? Hearing none, all in favor of the motion signify by saying aye. Those opposed? There is no opposition; that motion carries 4 to 0.

After an advertised public hearing and on a motion by Mr. Mackey, seconded by Ms. Harris, the Board **approved** application **CUP2017-00026. TIARA LITTLE** requests a conditional use permit pursuant to Section 24-12(g) of the County Code to operate a family day home with employees at 6356 Walnut Forest Court (DARBYTOWN MEADOWS) (Parcel 809-703-5085) zoned One-Family Residence District (R-3C) (Varina). The Board approved the conditional use permit subject to the following conditions:

1. This conditional use permit applies only to the operation of a family day home with one employee from outside the home. All other applicable regulations of the County Code shall remain in force.
2. No more than twelve children, exclusive of the care provider's own children, may receive daycare services at any one time.
3. The hours of operation shall be limited to Monday through Friday, 7:00 am to 6:00 pm.
4. Vehicles associated with the family day home, including vehicles used by the operator and employee shall be parked on-site, off of the public street right-of-way.
5. There shall be no more than one sign, not exceeding one square foot in area or four feet in height, advertising the family day home. The sign shall not be illuminated.
6. The applicant shall secure the rear yard with a four-foot tall fence.
7. All landscaping shall be maintained in a healthy condition at all times. Dead plant materials shall be removed within a reasonable time and replaced during the normal planting season.

Affirmative:	Berman, Harris, Mackey, Reid	4
Negative:		0
Absent:	Bell	1

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

1407 Mr. Blankinship - That completes our conditional use permits. There are
1408 two variances on this month's agenda.

1409

1410

1411 **VAR2017-00011** **EMERALD LAND DEVELOPMENT, LLC** requests a
1412 variance from Section 24-95(b)(8) of the County Code to build a one-family
1413 dwelling at 3303 Darbytown Road (Parcel 822-695-7551) zoned Agricultural
1414 District (A-1) (Varina). The lot width requirement is not met. The applicant
1415 proposes 126 feet lot width, where the Code requires 150 feet lot width. The
1416 applicant requests a variance of 24 feet lot width.

1417

1418 Mr. Blankinship - Would everyone who intends to speak to this case
1419 please stand and be sworn in. Do you swear the testimony you're about to give is
1420 the truth, the whole truth, and nothing but the truth so help you God? Thank you.
1421 Mr. Gidley?

1422

1423 Mr. Gidley - Thank you, Mr. Secretary.

1424

1425 The subject property is located at the intersection of Darbytown and Duran
1426 Roads. It is currently vacant, as you can see here, and is zoned A-1 Agricultural
1427 District. Staff did not receive a home design; however, we did just recently
1428 receive a design for a proposed garage that would be attached to the home. You
1429 should have a copy of that at your desk.

1430

1431 The property is a pre-1960 exception lot, and it contains approximately 34,000
1432 square feet of lot area. This is in keeping with minimum lot area requirement of
1433 30,000 square feet; however, the lot has only 126 feet of lot width versus the
1434 required 150 feet. As a result, the applicant is here today requesting a 24-foot-lot-
1435 width variance.

1436

1437 Public water is available to the property. Public sewer, because it located within
1438 300 feet, the applicant will have to connect to public sewer. So he will need to
1439 extend public sewer to the property.

1440

1441 In evaluating the variance, the two main conditions deal with an unreasonable
1442 restriction on the use of the property or a hardship due to a physical condition of
1443 the property at the time of the ordinance. Except for right-of-right acquisition, the
1444 property has been in its present configuration since 1907, over a hundred years.
1445 Due to its unusual shape, the required lot width is not met despite the property
1446 containing over three-quarters of an acre. This results in an inability to build a
1447 home on the property absence a variance. As a result, the first test of an
1448 unreasonable restriction on the property appears to be met. The unusual shape
1449 of the lot could also qualify as a hardship due to a physical condition of the
1450 property. Again, since the lot goes back to 1907, it predates the Zoning
1451 Ordinance. So that obviously was the situation at the time of the adoption of the
1452 original Zoning Ordinance.

1453

1454 As far as the five subtests, the applicant appears to meet these as well. He
1455 acquired the property in good faith and did not create any of the hardship here.

1456

1457 As far as substantial detriment, the front and sides of the property are public
1458 streets. The surrounding uses include the school over here and then residential
1459 uses around it. So it is consistent with the development pattern in the area. The
1460 lot to the rear contains a one-family dwelling. Along this common lot line here, as
1461 you can see, there are wooded wetlands located right here. So their privacy
1462 would be retained if this lot was developed. As a result, staff does not really
1463 anticipate any substantial detrimental impact on nearby property.

1464

1465 There are a variety of home styles in the area, and staff has conditions on this
1466 which would help ensure the construction of the house—which again, we didn't
1467 have an elevation of it or a layout plan of the proposed home—would fit in with
1468 the surrounding homes.

1469

1470 As far as a general reoccurring condition, the property is unique, obviously due to
1471 its shape, and it's not general or reoccurring. As a result, it would be difficult to
1472 address the issue through a general regulation.

1473

1474 The proposed one-family dwelling is permitted by right in A-1 District. As a result,
1475 it is not a use variance. And finally, a special exception or modification is not an
1476 option in this case.

1477

1478 The five subtests thus appear to be met.

1479

1480 In conclusion, due to the lot's unusual triangular shape, the lot width requirement
1481 is not met. This prohibits a reasonable use of the property. As a result, it's an
1482 unreasonable restriction on the property's use, and there's arguably a hardship
1483 due to the physical shape of the property. Since the proposed use as a one-
1484 family dwelling is consistent with the surrounding uses, staff does not see any
1485 substantial detrimental impact. As a result, we can recommend approval of this
1486 request subject to the conditions found in your staff report.

1487

1488 This concludes my presentation. If you have any questions, I will be happy to
1489 answer those.

1490

1491 Mr. Berman - Thank you, Mr. Gidley. Just to clarify, we are now in
1492 possession of the improvement plan with the house placement.

1493

1494 Mr. Gidley - Okay, I didn't see that. I was out yesterday afternoon.

1495

1496 Mr. Berman - If you want to take a look, you're welcome to. I'm
1497 assuming that this is facing Darbytown Road. That's what it looks like to me. The
1498 front of the house.

1499
1500 Mr. Blankinship - You can ask the applicant that.
1501
1502 Mr. Berman - Okay, it looks like it. All right. Any questions for
1503 Mr. Gidley?
1504
1505 Ms. Harris - Is there an adjacent vacant lot?
1506
1507 Mr. Gidley - The only lot that's immediately adjacent is the one
1508 behind it. This is developed with a single-family home that you can see right
1509 here. I can zoom in, actually. There we go. That's a better picture. So you
1510 essentially have Duran Road here, Darbytown here, and then this lot here. Those
1511 are the three neighbors to this property.
1512
1513 Mr. Berman - If it's fast and easy, could you use the measurement
1514 tool to tell me what the lot line is for that house—where your cursor is now—to
1515 Darbytown? I just want to make sure it's 51 feet, similar to where they propose to
1516 put this new home.
1517
1518 Mr. Gidley - Oh, sure. You're wanting to measure—
1519
1520 Mr. Blankinship - I don't think you can measure on that.
1521
1522 Mr. Berman - Okay. There actually is a way to do it, but I don't want
1523 to slow down the proceeding. Okay. Any other questions?
1524
1525 Ms. Harris - The 24 feet that they need, do you think it's
1526 possible—is it 24 feet that they need?
1527
1528 Mr. Gidley - Correct.
1529
1530 Ms. Harris - Okay. Is it possible that they could acquire that from
1531 the adjacent property, do you think?
1532
1533 Mr. Gidley - No ma'am, that's not really an option. The front is
1534 going to be along Duran here. To measure it, you would place the center line
1535 here, and take it to the rear lot line here, and then go back the required setback,
1536 and then come across. You get a line something like this. So you would need to
1537 acquire land out here in the right-of-way, actually, if you wanted to bump that up.
1538
1539 Ms. Harris - This question I probably will have to ask the applicant.
1540 In view of the survey that we received this morning, it seems that they have a lot
1541 of wetlands on this property. So maybe they can explain to me just how much
1542 and if this will have an effect on the property itself. I'll ask the applicant.
1543
1544 Mr. Gidley - Okay.

1545
1546 Mr. Berman - Any other questions for Mr. Gidley? Very good. Thank
1547 you, sir.
1548
1549 Mr. Gidley - Thank you, Mr. Chairman.
1550
1551 Mr. Berman - Could the applicant please approach?
1552
1553 Mr. Rempe - Good morning, Mr. Chairman, Board members. Good
1554 morning staff. My name is Mark Rempe. R-e-m-p-e. I'm with Emerald Land
1555 Development.
1556
1557 We've outlined our argument within the application, and we concur with staff's
1558 finding for approval. We hope that we get approval on this case as well. I'm here
1559 to answer any questions. We do have a rendering of the house, the plans for the
1560 house we intend to build. And we do have a contract purchaser that wants to be
1561 on this lot with this house and wants to be a Henrico resident as well. So I'm
1562 happy to answer any questions.
1563
1564 Mr. Blankinship - You do have house plans? We were provided with the
1565 garage plan, a garage addition.
1566
1567 Mr. Reid - How many square feet would the house be,
1568 Mr. Rempe?
1569
1570 Mr. Rempe - The house will be 1,155 square feet. It's a rancher.
1571 One story. It would fit nicely within the character of the neighborhood.
1572
1573 Mr. Blankinship - One of the proposed conditions called for 1,400
1574 square feet of finished floor area, so you should probably address that.
1575
1576 Mr. Rempe - Yes, we would like to amend that. We have a home
1577 buyer who loves the plan and loves the one-car garage that's attached. That's
1578 what we would like to build.
1579
1580 Mr. Mackey - Mr. Chairman, do we need to ask staff why they came
1581 up with the 1,400?
1582
1583 Mr. Blankinship - We can get him back up here after Mr. Rempe.
1584
1585 Mr. Mackey - Okay. All right.
1586
1587 Mr. Gidley - Yes sir, Mr. Mackey. What happened is I looked at
1588 some of the surrounding homes and their typical square footage and came up
1589 with a number that was in the middle of that or reflected the middle trend line. So

1590 1100 I don't think would be out of character, but again, the number I came up
1591 with was more of an average.

1592
1593 Mr. Mackey - Okay. All right. Thank you, Mr. Gidley.

1594
1595 Mr. Gidley - Yes sir.

1596
1597 Mr. Berman - Thank you.

1598
1599 Ms. Harris - Mr. Rempe, we do have a plat that was given to us
1600 this morning. Can you explain all of these lines that are going through this
1601 drawing? We know there are wetlands there. Do you have your copy of this?

1602
1603 Mr. Rempe - I remember. I think I remember. As far as the
1604 wetlands go, we will not impact the wetlands. We'll be outside the wetland. As far
1605 as the house placement, we will be coming off Darbytown Road, so the house
1606 will face Darbytown Road.

1607
1608 Ms. Harris - Wetlands are normally marked off on the plat, but
1609 here it seems you have a lot going on in this lot here. I'd like to know what's
1610 going on with it.

1611
1612 Mr. Rempe - I think it shows the house placement. It shows a
1613 buildable area as well. That buildable area takes into consideration the setbacks,
1614 the zoning setbacks.

1615
1616 Ms. Harris - Yes, we see that. Maybe you need to look at what I'm
1617 looking at.

1618
1619 Mr. Rempe - Okay.

1620
1621 Mr. Berman - I believe the shape around it is the buildable area and
1622 the dotted shapes are wetlands.

1623
1624 Mr. Rempe - Yes. You're right, there is a lot of stuff going on here.
1625 You also see where a silt fence is going to be on the property for erosion control.
1626 You also see some topography lines on there. You can see where the wetlands
1627 are. You can see where the silt fence is. You can see where the driveway is
1628 coming off of Darbytown Road. And the house with the one-car garage.

1629
1630 Ms. Harris - It seems like the wetlands are going through the
1631 house.

1632
1633 Mr. Rempe - No. That's a topography line. That's a topography line
1634 going through the house. The wetlands are to the left, on the left side of the lot.
1635 And then in the back of the lot there's a little bit of wetlands of well.

1636
1637 Ms. Harris - Okay. I'm just wondering if the homeowner is going to
1638 have some problems with this particular construction. I know that in Varina there
1639 are plenty of other properties that you could have selected other than this. But if
1640 that's acceptable—I think with the freedom of information, if the homeowner
1641 knows that all of this is going on, I think that might be fair.
1642
1643 Mr. Rempe - Sure. Sure thing. This plat right here shows that we're
1644 not putting the house on any wetlands, and we're staying away from the
1645 wetlands.
1646
1647 Ms. Harris - Okay. This would have helped if I had a scaled
1648 drawing telling me which hyphens or which lines represent which.
1649
1650 Mr. Rempe - Sorry about that. It's a busy plat; I understand that.
1651
1652 Mr. Blankinship - Ms. Harris, if you compare the plat that was
1653 distributed this morning to the one that's in your package, it might be a little bit
1654 more clear. The one in the package shows only the wetlands. So by comparing
1655 that to the other, it's a little easier to distinguish.
1656
1657 Mr. Rempe - So if you picture the house kind of going away from
1658 the wetland in the center of the lot, that's where that house placement would be.
1659
1660 Ms. Harris - I still see field located wetlands. Do you see that?
1661
1662 Mr. Blankinship - Yes ma'am.
1663
1664 Ms. Harris - Okay. Where would the house be in comparison to
1665 this?
1666
1667 Mr. Berman - The north edge of it.
1668
1669 Ms. Harris - The north edge of the wetlands?
1670
1671 Mr. Berman - The wetland, yes.
1672
1673 Ms. Harris - Is that good?
1674
1675 Mr. Berman - That's probably why there's a silt fence there.
1676
1677 Ms. Harris - We look at Varina sometimes, and water is a problem
1678 when there's flooding. I'm just wondering if this is going to be one of those
1679 instances where people will have a flood in their backyard.
1680

1681 Mr. Rempe - We'll work with Public Works on the building permit.
1682 And I'm sure they'll have the grading just right for the lot. We still have to go
1683 through that building permit process with grading and all those conditions you get
1684 when you get a building permit.
1685
1686 Mr. Mackey - Mr. Rempe, just for clarification, from what I can
1687 understand, the wetlands are the area that's in the dotted area.
1688
1689 Mr. Rempe - That's correct.
1690
1691 Mr. Mackey - Okay.
1692
1693 Mr. Berman - Mr. Rempe, do you happen to know if the front of this
1694 house aligns with the house to the south of it, so 51 feet?
1695
1696 Mr. Rempe - It should.
1697
1698 Mr. Berman - It looks like it would, but I don't have a scaled
1699 drawing.
1700
1701 Mr. Rempe - It should.
1702
1703 Mr. Mackey - It says 51.08.
1704
1705 Mr. Blankinship - Right. He's wondering exactly what the measurement
1706 is on the next house.
1707
1708 Mr. Mackey - The next house over. Okay, okay.
1709
1710 Mr. Berman - Any other questions for the applicant? Thank you. Sir.
1711
1712 Mr. Rempe - Thank you.
1713
1714 Mr. Berman - Anybody else here to speak in support of the
1715 application? Will you please approach?
1716
1717 Mr. Riley - Good morning, Mr. Chairman, rest of the Board. My
1718 name is Patrick Riley. I'm a real estate agent with Coldwell Banker. I represent
1719 appraisers and the attempted transaction to purchase this property.
1720
1721 The purchasers have been under contract to obtain this property from Emerald
1722 Land Development since February 24, 2016. So to handle any objection in
1723 regards to concern of the lot, they are 100 percent committed as soon as the
1724 County will grant us permission to move forward.
1725

1726 Mr. Berman - They're aware of everything that Ms. Harris brought
1727 up?

1728
1729 Mr. Riley - Yes sir. Absolutely.

1730
1731 Mr. Berman - Any questions for Mr. Riley from the Board or staff?
1732 Thank you for coming today.

1733
1734 Mr. Rempe - Thank you.

1735
1736 Mr. Berman - Any others to speak in support? Any to speak in
1737 opposition? Hearing none, let's go to our last application, please.

1738
1739 **[After the conclusion of the public hearings, the Board discussed the case**
1740 **and made its decision. This portion of the transcript is included here for**
1741 **convenience of reference.]**

1742
1743 Mr. Berman - Do I hear a motion?

1744
1745 Mr. Mackey - Yes, Mr. Chairman. I make a motion that we approve
1746 the granting of VAR2017-00011. It appears that the main question and all five
1747 subtests were met. I do feel that we need to amend condition #4 from 1,400
1748 square feet, I believe it was, to 1,150 square feet for the dwelling.

1749
1750 Mr. Berman - Do you recommend 1,100 or 1,150 or just leave it at
1751 what the builder stated? 1,150 is fine.

1752
1753 Mr. Mackey - Okay. I think that's what he stated.

1754
1755 Mr. Reid - Yes, 1,155.

1756
1757 Mr. Berman - Okay. Very good. We have a motion from Mr. Mackey
1758 with an amended condition. Do I hear a second?

1759
1760 Mr. Reid - Second.

1761
1762 Mr. Berman - We have a second from Mr. Reid. Any further
1763 discussion?

1764
1765 Ms. Harris - Yes. I feel that this is a sub-lot that we are essentially
1766 forcing construction. I think it just adds to the problem, especially with the area
1767 already having wetlands. I just feel that it's not the right thing to do for the
1768 community. That's just how I feel.

1769

1770 Mr. Berman - Very good. Any other discussion? Hearing none, all in
1771 favor signify by saying aye. Those opposed? Ms. Harris is in opposition. Motion
1772 passes 3 to 1.

1773
1774
1775 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
1776 Mr. Reid the Board **approved** application **VAR2017-00011, EMERALD LAND**
1777 **DEVELOPMENT, LLC** requests a variance from Section 24-95(b)(8) of the
1778 County Code to build a one-family dwelling at 3303 Darbytown Road (Parcel 822-
1779 695-7551) zoned Agricultural District (A-1) (Varina). The Board approved the
1780 variance subject to the following conditions:

- 1781
1782 1. This variance applies only to the lot width requirement for one dwelling only.
1783 All other applicable regulations of the County Code shall remain in force.
1784
1785 2. Before beginning any clearing, grading, or other land disturbing activity, the
1786 applicant shall submit an environmental compliance plan to the Department of
1787 Public Works.
1788
1789 3. Any dwelling on the property shall be served by public water and sewer. The
1790 developer shall be responsible for extending public sewer to the property and
1791 recording public easements for this extension.
1792
1793 4. Any dwelling on the property shall contain at least 1,150 square feet of finished
1794 floor area and have a brick foundation on all four sides.

1795
1796

1797 Affirmative:	Berman, Mackey, Reid	3
1798 Negative:	Harris	1
1799 Absent:	Bell	1

1800
1801

1802 **[At this point, the transcript continues with the public hearing on the next**
1803 **case.]**
1804
1805

1806 **VAR2017-00012** **EMERALD LAND DEVELOPMENT, LLC** requests a
1807 variance from Section 24-95(d)(1) of the County Code to build a one-family
1808 dwelling at 420 N Mullens Lane (GREENDALE PARK) (Parcel 826-726-7807)
1809 zoned One-Family Residence District (R-3) (Varina). The lot width requirement is
1810 not met. The applicant proposes 100 feet lot width, where the Code requires 150
1811 feet lot width. The applicant requests a variance of 50 feet lot width.

1812
1813 Mr. Blankinship - Does anybody intend to speak to this case that did
1814 not speak to the last? Would you please stand and be sworn in. Raise your right

1815 hand, please. Do you swear the testimony you're about to give is the truth, the
1816 whole truth, and nothing but the truth so help you God? Thank you. Mr. Gidley.

1817

1818 Mr. Gidley - Thank you, Mr. Secretary.

1819

1820 Just for the record, you should have a survey at your desk there of the property.
1821 That was just recently received, and I appreciate the applicant getting that to us.
1822 The only thing of note on the survey I would also point out is in the back there
1823 appears to be some overlap with another property. That's something the
1824 applicant obviously will work out with them. As far as the variance is concerned,
1825 that's for lot width, and I'm sure the house is going to be much closer to Mullens
1826 Lane, so I don't think that's going to be an issue here. But I wanted to point that
1827 out.

1828

1829 The subject property we're dealing with is on the west side of Mullens Lane and
1830 contains roughly 1-1/2 acres of land. It's zoned R-3, One-Family Residence
1831 District. The property does meet the standard R-3 lot size and lot width
1832 requirements. However, public utilities are not available to the property. Because
1833 of this, a 150-foot wide lot is required. And instead, as you can see on the survey
1834 that was provided today, it has only 100 feet of lot width, so the variance being
1835 requested is 50-foot-lot-width variance.

1836

1837 Evaluation. Is there an unreasonable restriction on the property? Because it has
1838 only 100 feet of lot width rather than the required 150 feet, you can't build a home
1839 absence a variance. Purchasing additional property does not really appear to be
1840 very reasonable here. As you can see, there are homes on the adjacent
1841 properties, and they tend to be skewed over towards this side as well. So that's
1842 not really an option. Therefore, absence a variance, there does not appear to be
1843 a reasonable use of this property. Otherwise, given its reasonable size, this
1844 arguably results in an unreasonable restriction.

1845

1846 As far as the five subtests are concerned, the applicant appears to meet these.
1847 The property was acquired in good faith, and the applicant did not create the
1848 hardship.

1849

1850 As far as substantial detriment, there are homes to the north and to the south
1851 and across the road. So the development pattern in the area is residential, and
1852 the proposed home would be similar in size and complementary to the adjacent
1853 properties.

1854

1855 As far as a general or recurring situation, there's often a legitimate need for
1856 additional lot width and lot area when you lack public utilities. This is to provide
1857 room for a well and septic system. However, it's not a general recurring situation
1858 because each property is different. The soils are different on each property, and
1859 as a result, the requirements for what you need on each lot for a septic system
1860 does vary. So it's not a general recurring situation.

1861

1862 As far as the use, again, the property is zoned R-3. A single-family dwelling is a
1863 permitted use. It's not a use variance. A special exception or modification is not
1864 an option in this case.

1865

1866 In conclusion, when lots lack access to public utilities, they often need to provide
1867 additional lot width. However, when improvements in septic system design would
1868 enable these properties to be developed, it's arguably an unreasonable
1869 restriction to prohibit development of such lots. So the main test I believe is met.
1870 Again, the five subtests are met. The home would be complementary to the
1871 surrounding dwellings and located on a lot that meets the normal R-3 standards
1872 for lot area and lot width. As a result, staff can recommend approval of this
1873 request subject to the conditions found in your staff report.

1874

1875 This concludes my presentation. I will be happy to answer any questions you
1876 have.

1877

1878 Mr. Berman - Thank you, Mr. Gidley. The original staff
1879 recommendation was deferral lacking a survey. The survey is now in, and that is
1880 the reason why you've changed your recommendation?

1881

1882 Mr. Gidley - Yes sir, that's correct. The description of the property,
1883 the legal description, was a little unusual. And the development, there was a
1884 ruling back in the '90s by the Director of Planning that it was not actually a
1885 recorded subdivision. We also had an email from an attorney saying someone in
1886 her office had concerns, too, about the shape of the property. So there seems to
1887 be a lot of questions, and we felt in this case it was best to have a survey so the
1888 Board knew exactly what they were dealing with and what impacts there could be
1889 on any adjacent properties.

1890

1891 Mr. Berman - Thank you. Related to that—wow, the survey was
1892 done yesterday.

1893

1894 Mr. Gidley - Yes sir.

1895

1896 Mr. Blankinship - The ink is still wet on that.

1897

1898 Mr. Berman - That is very current. Additionally, do you know how far
1899 away public sewer is—or utilities would be?

1900

1901 Mr. Gidley - I don't know right offhand. I believe they're probably in
1902 North Washington Street, but I don't know right offhand. I did look initially, and
1903 they were nowhere near this lot. So that's not really an option.

1904

1905 Mr. Berman - Yes, that's all I needed to know. If it was not too far
1906 away, I would question it.

1907

1908 Mr. Gidley - When you put the layer on, it doesn't show up
 1909 anywhere near the lot in question.

1910

1911 Mr. Blankinship - Public Utilities requires them to connect if they're
 1912 within 300 feet.

1913

1914 Mr. Berman - Great. Thank you. Any questions for Mr. Gidley?
 1915 None? Thank you, sir.

1916

1917 Mr. Gidley - Thank you, Mr. Chairman.

1918

1919 Mr. Berman - Would the applicant please approach?

1920

1921 Ms. Sylva - My name is Judy Sylva.

1922

1923 Mr. Blankinship - Sorry, we're going to hear from the applicant first.
 1924 You'll be next.

1925

1926 Mr. Berman - Mr. Rempe?

1927

1928 Mr. Rempe - We concur with the staff's finding on granting
 1929 approval. We appreciate staff's time on this matter. I'm here to answer any
 1930 questions.

1931

1932 Mr. Berman - Any questions for Mr. Rempe? Okay, hearing none—

1933

1934 Mr. Mackey - Just out of curiosity. Do you know how far the public
 1935 utilizes are?

1936

1937 Mr. Rempe - I do not.

1938

1939 Mr. Mackey - Okay.

1940

1941 Mr. Berman - Thank you, sir. And now anybody else in support
 1942 please approach.

1943

1944 Ms. Sylva - Hi, how are you doing? My name is Judy Sylva. S-y-l-
 1945 v-a. I live at 400 Mullens Lane. The property that's there has been there since
 1946 I've been there, 27 years. We've been cutting the property and taking care of it.
 1947 It's just a very narrow piece of property there. I was looking at the type of home
 1948 that was going to be built, and we have like smaller, country blacktop—it's like
 1949 country living out there, and they're going to build a two-story, really nice looking
 1950 house there. Which I'm sure that would help our property.

1951

1952 The sewer situation, they have said that they were going to have sewer out there
1953 years ago. We've never gotten sewer. I think they've gone as far as East
1954 Washington.

1955
1956 I don't know. It seems like a very small area to put such a big two-story house in.
1957 Until I had the understanding of the property, we'd been taking care of that all
1958 along. Actually, I have horses, and they feed in that area. I've been there 27
1959 years, never even knew it anyone else's property. When we purchased it from
1960 Mr. Groome, I took it that we had the three lots. But our three lots continue—kind
1961 of where the little fence and the woodpile are, we're over to the left there. I take it
1962 that the house will be built somewhere in that little field right there, because
1963 behind it's nothing but woods and a little creek back there. It just seems like a
1964 mighty small spot to put a big two-story house, especially when the rest of the
1965 neighbors—there are a few homes, new ones that have been built in there that
1966 are newer homes, nice looking homes. But like I said, we're more like country out
1967 there.

1968
1969 I'm just expressing my opinion. I'm not opposing a house being put there, but it's
1970 going to be really close between the two that are there. And that land's been
1971 sitting for at least—it would have to be, like I said, the 27 years I've been there.
1972 The land has just been left sitting there.

1973
1974 Mr. Berman - Thank you very much. Any questions?

1975
1976 Ms. Harris - Your name, again, please?

1977
1978 Ms. Sylva - Judy Sylva. S-y-l-v-a.

1979
1980 Ms. Harris - All right. Ms. Sylva, do you think that if a home is built
1981 there it would be detrimental to the community?

1982
1983 Ms. Sylva - No.

1984
1985 Ms. Harris - Okay, thank you.

1986
1987 Mr. Berman - I want to be clear. Which lot are you?

1988
1989 Ms. Sylva - I'm at 400. I'm on the left. I have the horse barns. I'm
1990 there on the left. And I have three lots there.

1991
1992 Mr. Berman - Okay. Thank you. Any questions? Thank you for
1993 coming today.

1994
1995 Ms. Sylva - Okay. Thank you. Can I ask a question, please?

1996
1997 Mr. Berman - Yes ma'am, absolutely.

1998
1999 Ms. Sylva - Will I be hearing if anything else will be going on or
2000 notified by mail when anything will start taking place if they are going to build?
2001
2002 Mr. Blankinship - Not normally, no.
2003
2004 Ms. Sylva - You don't. Okay.
2005
2006 Mr. Berman - But you're welcome to contact the County and ask
2007 how the case is proceeding.
2008
2009 Ms. Sylva - Okay, all right.
2010
2011 Mr. Berman - If this goes forward, they still need to apply for a
2012 building permit and other things like that.
2013
2014 Ms. Sylva - Okay.
2015
2016 Mr. Berman - So there are other opportunities to interact. But you
2017 formally won't be notified.
2018
2019 Ms. Sylva - Okay. All right.
2020
2021 Ms. Harris - Ms. Sylva, you do plan to stay while we vote, right?
2022
2023 Ms. Sylva - Yes ma'am, I will.
2024
2025 Ms. Harris - Okay. So at least you'll know whether or not—
2026
2027 Ms. Sylva - Yes.
2028
2029 Ms. Harris - —to proceed with that. All right.
2030
2031 Ms. Sylva - Yes I will. Thank you for letting me know that. I
2032 appreciate it.
2033
2034 Mr. Berman - Thank you.
2035
2036 Ms. Sylva - Okay, thank you.
2037
2038 Mr. Berman - Anybody else in support? Or opposition? Hearing
2039 none, let's proceed to motions and deferrals, if any.
2040
2041 **[After the conclusion of the public hearings, the Board discussed the case**
2042 **and made its decision. This portion of the transcript is included here for**
2043 **convenience of reference.]**

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Mr. Berman - Do I hear a motion?

Mr. Mackey - Yes, Mr. Chairman. I move that we approve VAR2017-00012. The County had recommended that we defer until we had a formal survey done. The survey was turned in today, and the County has changed their recommendation to approval. It appears the main question was met and all five subtests were met in order to grant a variance.

Mr. Berman - We have a motion from Mr. Mackey. Do I hear a second?

Ms. Harris - I second the motion. I did drive through the neighborhood. There are diverse homes in the neighborhood. The neighbor did verify that it would enhance the neighborhood, I quite agree with her. So I do second this motion.

Mr. Berman - We have a second from Ms. Harris. Any other discussion? Hearing none, all in favor signify by saying aye. Those opposed? There is no opposition; that motion carries 4 to 0.

After an advertised public hearing and on a motion by Mr. Mackey, seconded by Ms. Harris, the Board **approved** application **VAR2017-00012, EMERALD LAND DEVELOPMENT, LLC** requests a variance from Section 24-95(d)(1) of the County Code to build a one-family dwelling at 420 N Mullens Lane (GREENDALE PARK) (Parcel 826-726-7807) zoned One-Family Residence District (R-3) (Varina). The Board approved the variance subject to the following conditions:

1. This variance applies only to the lot width requirement for one dwelling only. All other applicable regulations of the County Code shall remain in force.
2. Only the improvements shown on the building design filed with the application may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements will require a new variance.
3. Approval of this request does not imply that a building permit will be issued. Building permit approval is contingent on Health Department requirements, including, but not limited to, soil evaluation for a septic drainfield and reserve area, and approval of a well location.
4. Before beginning any clearing, grading, or other land disturbing activity, the applicant shall submit an environmental compliance plan to the Department of Public Works.

2090 5. The existing pile of tree stumps shall be removed from the property prior to the
2091 issuance of a certificate of occupancy.

2092
2093 6. The large dead tree to the northwest of the pile of tree stumps shall be
2094 removed prior to the issuance of a certificate of occupancy.

2095
2096
2097 Affirmative: Berman, Harris, Mackey, Reid 4
2098 Negative: 0
2099 Absent: Bell 1

2100
2101
2102 Mr. Berman - Any new business?

2103
2104 Ms. Harris - The minutes.

2105
2106 Mr. Berman - Let's go to approval of the minutes. Any corrections to
2107 the minutes? No corrections requested. Do I have a motion on the minutes?

2108
2109 Ms. Harris - I move that we accept the minutes as presented.

2110
2111 Mr. Berman - Do I hear a second?

2112
2113 Mr. Mackey - Second.

2114
2115 Mr. Berman - Motion by Ms. Harris, second by Mr. Mackey. Any
2116 further discussion? Hearing none, all in favor signify by saying aye. Those
2117 opposed? There is no opposition. The minutes are approved 4 to 9.

2118
2119 On a motion by Ms. Harris, seconded by Mr. Mackey, the Board **approved as**
2120 **presented** the **Minutes of the May 25, 2017**, Henrico County Board of Zoning
2121 Appeals meeting.

2122
2123
2124 Affirmative: Berman, Harris, Mackey, Reid 4
2125 Negative: 0
2126 Absent: Bell 1

2127
2128
2129 Mr. Berman - Any further business?

2130
2131 Mr. Blankinship - I always forget to do this at the beginning of the
2132 meeting. Ms. Kristin Smith, a new member of the Planning Department staff has
2133 been in attendance this morning.

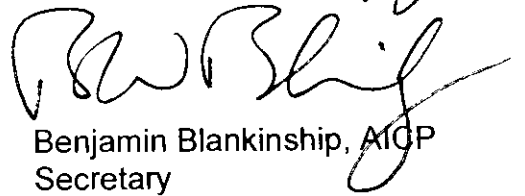
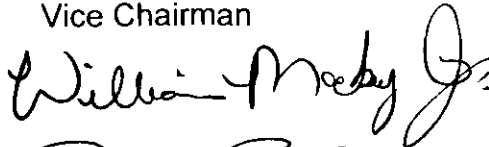
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Mr. Berman -
are adjourned.

Good morning, Ms. Smith. Welcome to the group. We

William M. Mackey, Jr.
Vice Chairman



Benjamin Blankinship, AICP
Secretary