

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **GOVERNMENT CENTER AT PARHAM AND HUNGARY SPRING ROADS, ON**
4 **THURSDAY JUNE 25, 2026 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN**
5 **THE *HENRICO CITIZEN* JUNE 9, 2026 THROUGH JUNE 16, 2026.**
6

7
8 **Members Present:** Barry R. Lawrence, Chair
9 John R. Broadway, Vice-Chair
10 Terone B. Green
11 Joseph S. Massie, III
12 Walter L. Johnson, Jr.
13

14
15 **Member Absent:** None
16

17 **Also Present:** Ben Sehl, Assistant Director of Planning
18 Benjamin W. Blankinship, AICP, Secretary
19 Paul M. Gidley, County Planner
20 Sara Rozmus, AICP, County Planner
21

22
23 **[Recitation of Pledge of Allegiance]**
24

25 **Mr. Lawrence-** Welcome everyone again, and we are now going to have Mr.
26 **Blankinship** read our rules for today's meeting.
27

28 **Mr. Blankinship-** Good morning, Mr. Chair, Members of the Board and good
29 morning to everyone in the room with us. I'd also like to welcome those of you who are
30 joining us on Webex this morning. If you wish to observe the meeting but you do not
31 intend to speak, then welcome and thank you for joining us. For those of you on Webex
32 who would like to speak, we need to know that in advance so that we can connect you at
33 the appropriate time. So, if you are an applicant or if you have questions or comments on
34 one of the cases, please press the chat button now. It's located in the bottom right corner
35 of the screen. And when the chat window opens, please select Janaya Poarch from the
36 list of participants and let her know your name and which case you're interested in. The
37 chat feature will only be used to schedule speakers, so please do not type questions or
38 comments into a chat, but please send a chat to Janaya Poarch now.
39

40 So, for those of us in the room, well, for everyone, as secretary, I will call each case, and
41 we will ask everyone in the room who intends to speak to that case to stand and be sworn
42 in. Then for the conditional use permits and variances, a member of the planning
43 department staff will give a brief presentation, then the applicant will present their case,
44 and then anyone else who wishes to speak in favor or in opposition will have the
45 opportunity. We'll hear from people in the room first and then from those on Webex. After
46 everyone has had a chance to speak, the applicant and only the applicant will have an

47 opportunity for rebuttal. We also have two appeals on the agenda this morning, and for
48 those the order of speakers is a little different. For the appeals, the assistant county
49 attorney will speak on behalf of the Planning Director, then the appellant will present their
50 case, and each side will have a limit of ten minutes. Then anyone else who wishes to
51 speak will be given the opportunity with a time limit of three minutes. We'll again hear
52 from citizens in the room first and then from those on Webex. We do have all five
53 members. Let me just mention that the meeting is being video recorded. And we will be
54 transcribing minutes. So, for those in the room, everyone will make their presentations at
55 the podium up at the front, please. We will ask everyone to speak directly into the
56 microphone there at the podium. State your name and please spell your last name so that
57 we get it all correctly in the record. And of course, once your case is over, the case you're
58 interested in is over, you're free to leave. There's no need for you to stay until the rest of
59 the meeting.

60
61 **CUP-2026-101093 Larry Owens for Talliscia Irby: conditional use permit to build a**
62 **detached accessory dwelling unit at 1601 Harvest Grove Lane, Harvest Crest,**
63 **Fairfield. Parcel 809-731-6427. Zoning: R-3AC, One-Family Residence District**
64 **(Conditional). Code Section: 24-4406.**

65
66 With that, Mr. Chair, we do have two withdrawals on the agenda. I'd like to announce
67 those just in case anybody's here for one of the withdrawn cases. The first is CUP-2026-
68 101093, Larry Owens for Talliscia Irby, a conditional use permit to build a detached
69 accessory dwelling unit at 1601 Harvest Grove Lane, in the Harvest Crest subdivision in
70 the Fairfield Magisterial District. That case has been withdrawn, so if anybody is here for
71 that, you get your morning back.

72
73 **CUP-2026-101260 Margaret Congdon: conditional use permit to keep up to six hens**
74 **in the rear yard at 6 Carterham Court, Deer Lodge, Tuckahoe. Parcel 746-736-2117.**
75 **Zoning: R-1, One-Family Residence District. Code Section: 24-4420.G.**

76
77 Also, CUP-2026-101260, Margaret Congden, a conditional use permit to keep up to six
78 hens in the rear yard at 6 Carterham Court in Deer Lodge, in the Tuckahoe Magisterial
79 District. That case has been withdrawn as well. Alright, we don't, that I know of, have any
80 requests for deferral. We're ready to begin.

81
82 Mr. Lawrence- Okay, thank you Mr. Blankinship, and if you can please call
83 our first request now.

84
85 **CUP-2026-101038 Randy Hooker for J. E. Liesfeld Contractor, Inc.: conditional use**
86 **permit to extract sand and gravel at 8951 Strath Road, Varina. Parcel 816-677-8788.**
87 **Zoning: A-1, Agricultural District. Code Section: 24-4205 and 24-4327.**

88
89 Mr. Blankinship- First case is CUP-2026-101038, Randy Hooker for J E
90 Liesfeld Contractor, Incorporated, a conditional use permit to extract sand and gravel at
91 8951 Strath Road in the Varina Magisterial District. Would everyone who intends to speak
92 to this case please stand and be sworn in? Raise your right hands, please. Do you swear

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

95
96 Mrs. Rozmus- Mr. Secretary, Liesfeld Contractor owns 147.611 acres on
97 both sides of Strath Road. Mining sand and gravel was approved on both sides of the
98 road between 1988 and 1994. Apparently only the west side was excavated. In 2018, the
99 board approved a conditional use permit for reclamation of 64.65 acres on the west side
100 of Strath Road. New conditional use permits were approved in 2020 and 2022 and most
101 recently in 2024. As the operation on the west side of the road is nearing completion, the
102 applicant has requested a new conditional use permit to excavate sand and gravel on the
103 east side of the property between Strath Road and Interstate 295. The property east of
104 Strath Road measures 73.14 acres of which 41.11 acres would be disturbed. Sand and
105 gravel would be excavated to an average depth of 15 feet. When the excavation is
106 complete, the operator will bring soil, rock, and other materials from construction
107 excavation sites to fill and reclaim the property. They will be covered with topsoil, and
108 permanent vegetation would be established.

109
110 On this other half of the site the proposed final elevations are higher than the existing
111 grades but would not be out of character for the surrounding areas. On the northern half,
112 the highest natural grade is 146 feet. The maximum finished grade on the reclamation
113 plan shows 164 feet. The site adjoins interstate 295 for approximately eight tenths of a
114 mile. For most of that distance, the highway is lower than the adjoining land, so the
115 excavation and reclamation should not be noticeable from the road. Most of Kingsland,
116 closer to Kingsland Road, the ground is more level, the site is impacted by wetlands, so
117 the excavation will be further away from the highway. For these reasons staff does not
118 anticipate the proposed use will have any detrimental impact on the view from the
119 interstate.

120
121 Along Strath Road, there are 13 homes on parcels abutting or adjacent to the site. Of
122 those, nine are within 500 feet of the proposed excavation and fill. Staff has recommended
123 two adjustments to the design that would reduce the number of homes within 500 feet to
124 four. The recommended conditions also include limitations on the hours of operation,
125 requirements for controlling dust and mud, and protections for nearby homes served by
126 wells. The recommendations are intended to mitigate the detrimental impact on nearby
127 homes for this temporary use. After excavation and reclamation, the property will be
128 stabilized with permanent ground cover. At this time, the applicant does not have any
129 specific plans for future use of the property. After the public hearing, if the board is
130 satisfied the detrimental impacts of the proposed excavation will be mitigated, staff
131 recommends approval subject to the conditions included in the staff report. I can answer
132 any questions.

133
134 Mr. Lawrence- Does anyone from the board have any questions for Ms.
135 Rozmus? I do have one, Ms. Rozmus. Is the maximum finished grade on the northern
136 half of the site going to be 146 feet, 156 feet, or 164 feet? Staff expressed concern that
137 the highest grade shown on the plan is 18 feet higher than the natural grade, so I wasn't

clear from the staff report whether that has been, in staff's opinion, that issue has been resolved with the applicant.

Mrs. Rozmus- I believe you are correct, the concept plan has shown 164, but the maximum finished grade would be 156, which is more consistent with the natural grade of 146.

Mr. Lawrence- So it's going to end up being somewhere between what the actual grade is and what their original concept is.

Mrs. Rozmus- It seems like, yeah, within like a 10 feet margin of error.

Mr. Lawrence- Is that consistent with some other projects like this that we've had in the county?

Mrs. Rozmus- Yeah, it is. Yeah, it is consistent with the grade around the area as well.

Mr. Blankinship- We look at those case by case and in some examples, a neighbor or someone passing by on the road would be looking at, essentially, a new mountain where there hadn't been one before, and on those we have asked applicants to make revisions to their plans. Here, it's deep in the rear yards of most of those houses and facing the interstate, as Ms. Rozmus was explaining, is not really gonna be visible because of the way the land is shaped around the interstate itself, it slopes up and then back down again. So that's why we didn't really dwell on that concern in this report.

Mr. Lawrence- Okay. Alright. Thank you. Any other questions from the board before we move on? Thank you, Ms. Rozmus.

Mr. Blankinship- I do have two items on that. One is that we left on the table for you this morning a revised set of conditions. They are the standard conditions for applications of this type, so you've seen them before. But somehow, we had an error when we printed those and conditions four and five were kind of run together on the document. I'm still not sure exactly how that happened, so we just printed a clean set for everybody to have. The other is that after the staff reports were sent out, we did not receive any emails, but I have received two telephone calls from residents along Strath Road, expressing concern about truck traffic and particularly the speed of truck traffic using the existing site. So, I've mentioned that to the applicants so that they have, just this morning, so that they'll have a minute to prepare their response to that. But we have had that concern expressed by some of the neighbors, that there has been a detrimental impact from the speed of trucks traveling on Strath.

Mr. Lawrence- Okay, very good. Thank you, Mr. Blankinship. There are no more questions from the board. We'll now hear from the applicant. I believe Mr. Hooker is going to be representing J.E. Liesfeld Contractor.

184 Mr. Hooker- Good morning, Mr. Chair, members of the board, planning
185 staff, my name is Randy Hooker with Engineering Design Associates, here to request
186 your consideration of this use permit, and we have reviewed the conditions provided in
187 the use permit and agree to those conditions. As stated, there is some history with this
188 site being, the property itself, being mined. The eastern side of the property is underway
189 of the reclamation process, and it still requires additional time for that. The west side of
190 the site, excuse me, the east side of the site would be reclaimed, mined and reclaimed,
191 the west side of the site would continue to be reclaimed. Regarding the truck traffic, we
192 can only request that police enforce traffic speeds within the area. The contractor, J E
193 Liesfeld, utilizes contractors for hauling purposes. And they really can't, it's not their own
194 staff that they have control over. So again, we request that the police enforce traffic
195 speeds in that area. If you guys have any other questions or concerns, I'd be happy to try
196 to answer those for you. Kelby Morgan is also here with me today with J.E. Liesfeld, he
197 may be able to answer any questions you may have as well.

198
199 Mr. Green- Just turn that just a little bit to you because...

200
201 Mr. Lawrence- Thank you Mr. Hooker. Are there any questions from the
202 Board for Mr. Hooker or who was the other?

203
204 Mr. Hooker- Kelby Morgan

205
206 Mr. Lawrence- Okay, thank you, sir. If there are no more questions then we'll
207 ask if there's anyone here in the audience or on Webex who wishes to speak in support
208 of this request. Hearing none, we'll ask if there's anyone here or on Webex who wishes
209 to speak in opposition to his request. Mr. Blankinship, you mentioned we received an
210 email, I believe.

211
212 Mr. Blankinship- We did not receive an email, but we had two phone calls.

213
214 Mr. Lawrence- Two phone calls that were concerned specifically about the
215 traffic.

216
217 Mr. Blankinship- Yes.

218
219 Mr. Lawrence- But they didn't express opposition to the case per se, just
220 questions about that component.

221
222 Mr. Blankinship- I think that's a good characterization.

223
224 Mr. Lawrence- Okay. All right, if no one else wants to speak, we're gonna
225 close the public hearing and unless there's further discussion by the board, I think we
226 have a motion at this time.

227
228 Mr. Johnson- Yes. I move the approval of the condition to use permit subject
229 to the conditions recommended by the staff. It is consistent with the comprehensive plan

230 and the zoning ordinance. And staff have not heard many complaints about the project
231 around the road.

232
233 Mr. Green - Second.

234
235 Mr. Lawrence- We have a motion by Mr. Johnson and a second by Mr.
236 Green. All in favor of the motion say "Aye". Is there anyone opposed? I hear none. The
237 motion carries. This case is approved.

238
239 Mr. Hooker- Thank you.

240
241 On a motion by Mr. Johnson, seconded by Mr. Green, the Board **approved case CUP-**
242 **2026-101038** subject to the following conditions:

243
244 1. This conditional use permit is subject to all requirements of the Henrico County Zoning
245 Ordinance, including Section 24-4327.

246
247 2. The limits of disturbance will be revised to be at least 500 feet from the dwellings at
248 8873 Strath Road and 8646 Gibbs Lane.

249
250 3. Before beginning land disturbance, the applicant must post a financial guarantee in the
251 amount of \$123,000 guaranteeing that the land will be restored as provided in the
252 reclamation plan. In the event of termination of that financial guarantee, this permit will be
253 void, and excavation must cease. Within the next 90 days following termination, the
254 applicant must restore the land as provided for under the conditions of this use permit.
255 Termination of such financial guaranty will not relieve the applicant from its obligation to
256 indemnify the County of Henrico for any breach of the conditions of this use permit.

257
258 4. Before beginning land disturbance, the applicant must obtain approval of an
259 environmental compliance plan by the Department of Public Works (DPW). The applicant
260 must continuously satisfy DPW that erosion control measures are in accordance with the
261 approved plan and are properly maintained. As site conditions change, updated plans
262 and bonds may be required as determined by DPW.

263
264 5. Before beginning excavation, the applicant must obtain a mine license from the Virginia
265 Department of Energy.

266
267 6. Before beginning excavation, the areas approved for mining under this permit must be
268 clearly delineated on the ground by five-foot-high metal posts at least five inches in
269 diameter and painted in alternate one-foot stripes of red and white.

270
271 7. Throughout the life of this permit, the applicant must comply with the Chesapeake Bay
272 Preservation Act and all state and local regulations administered under that act applicable
273 to the property.

275 8. Activities that result in sound clearly audible beyond the property lines must be limited
276 to Monday through Friday, 6:00 am to 6:00 pm when Daylight Saving Time is in effect
277 and 7:00 am to 5:00 pm when Eastern Standard Time is in effect. Activities that result in
278 sound clearly audible beyond the property lines must not be conducted on Saturdays,
279 Sundays, or national holidays.

280
281 9. All access to the operation must be from the entrance onto Strath Road shown on the
282 plans.

283
284 10. The applicant must maintain a gate at the entrance to the property. This gate must be
285 locked at all times except when authorized representatives of the applicant are on the
286 property.

287
288 11. The applicant must maintain a sign at the entrance to the site stating the name of the
289 operator, the use permit number, the mine license number, and the telephone number in
290 case of emergency. The sign must be 12 square feet in area and the letters must be three
291 inches high.

292
293 12. The applicant must maintain "No Trespassing" signs every 250 feet along the
294 perimeter of the property. The applicant must furnish the Chief of Police a letter
295 authorizing the Division of Police to enforce the "No Trespassing" regulations and
296 agreeing to send a representative to testify in court if requested.

297
298 13. The applicant must post and maintain standard "Truck Entering Highway" signs on
299 each side of the entrance to the property from Strath Road.

300
301 14. The applicant must post and maintain a standard stop sign at the entrance to Strath
302 Road.

303
304 15. A water truck must be available on the site at all times and dust must be controlled in
305 accordance with the latest version of the Virginia Erosion and Sediment Control
306 Handbook.

307
308 16. Trucks must not leave the site in groups of three or more at any one time.

309
310 17. Trucks must be loaded and covered to prevent spilling on any public road.

311
312 18. The applicant must maintain the property, fences, and roads in a safe and secure
313 condition until the excavation is completed and the property is reclaimed.

314
315 19. If, in the course of its operations, the applicant discovers evidence of cultural or
316 historical resources, or an endangered species, or a significant habitat, it must notify the
317 appropriate authorities and provide a reasonable opportunity to investigate the site. The
318 applicant must report the results of any such investigation to the Planning Department.
319

20. If evidence shows that the operation authorized by this conditional use permit has an adverse impact on a water well, the owner of the well may request a hearing before the Board. If the Board finds, after reviewing the evidence at a public hearing, that the well was adversely affected by the fill operation, the applicant must immediately cease operations until the problem has been corrected to the satisfaction of the Board.

21. To protect public safety, open and vertical excavations having a depth of 10 feet or more for a period of more than 30 days must be effectively sloped to a 2:1 slope or flatter.

22. Topsoil must not be removed from any part of the property outside of the area in which mining is authorized. Sufficient topsoil must be stockpiled on the property for respreading in a layer with five inches of minimum depth. All topsoil must be stockpiled within the limits of disturbance and provided with adequate erosion control protection. If the site does not yield sufficient topsoil for five inches of cover, additional topsoil must be brought to the site when the site is reclaimed.

23. The final grading of the site must be consistent with the elevation shown on the approved reclamation plan. Reclamation will not be considered complete until the disturbed area is covered completely with permanent vegetation.

24. A superintendent personally familiar with all the terms and conditions of Section 24-4327 of the County Code, as well as the terms and conditions of this use permit, must be present at the beginning and conclusion of operations each workday to see that all the requirements of the Code and conditions of this use permit are observed.

25. During reclamation, the operator must submit a quarterly report stating the origin, nature, and quantity of any material deposited on the site, certifying that no hazardous material was included. Only stone, bricks, tile, sand, gravel, soil, concrete and similar materials may be deposited on the site, and they must not include any hazardous materials as defined by the Virginia Hazardous Waste Management Regulations.

26. The applicant must submit a progress report to the Board on or about June 25, 2027. The progress report must identify the nature and amount of excavated material taken from the site, the nature and amount of fill material brought to the site, the acreage mined to date of the report, the acreage left to be mined, the acreage reclaimed to date of the report, and the expected timeline for completion of mining and reclamation.

27. This conditional use permit will expire two years from the date of approval (June 25, 2028). Reclamation must be completed by not later than three years from the date of approval (June 25, 2029), unless a new permit is granted by the Board of Zoning Appeals.

Affirmative:	Broadway, Green, Massie, Lawrence, Johnson	5
Negative:		0
Absent:		0

366
367 **CUP-2026-101049 Charisse Cofield: conditional use permit to convert an attached**
368 **garage to an accessory dwelling unit at 1401 Neblett Court, Village at Olde Colony,**
369 **Varina. Parcel 803-696-8956. Zoning: R-3C, One-Family Residence District**
370 **(Conditional). Code Section: 24-4406.**

371
372 Mr. Blankinship- Mr. Chair, the next case is CUP-2026-101049, Charisse
373 Cofield, a conditional use permit to convert an attached garage into an accessory dwelling
374 unit at, 1401 Neblett Court, in the Village of Olde Colony, in the Varina Magisterial District.
375 The applicant is joining us on Webex. Is there anyone else in the audience who intends
376 to speak to this case? Please stand and be sworn in. Alright, Mr. Gidley.

377
378 Mr. Gidley- Oh, good morning. I didn't get sworn in.

379
380 Mr. Blankinship- Do you swear the testimony you are about to give is the truth,
381 the whole truth, and nothing but the truth, so help you God?

382
383 Mr. Gidley- I do.

384
385 Mr. Blankinship- Thank you.

386
387 Mr. Gidley- Thank you, Mr. Secretary. Good morning, Mr. Chairman,
388 members of the Board. The subject property is located in the Olde Colony subdivision.
389 This is between Route 5 and Osborne Turnpike just north of Laburnum Avenue. This is a
390 picture of the applicant's house here. As you can see, they have an attached garage.
391 They would like to convert the garage into an ADU to house an elderly parent. This is
392 what it would look like here. As you can see, it would contain a bedroom, a bathroom, a
393 living room, and the kitchen. After you get through adding additional walls and insulation
394 it would come to around 400 square feet, which is well within the allowable limits for an
395 ADU on this property. Here's another picture of what it'll look like at the end. As for
396 potential impacts, staff anticipates few, if any. Converting the existing garage into an ADU
397 would not increase the scale of the home, and having an elderly parent reside on the
398 property of their family would have little impact on the neighborhood. And as you can see
399 here, the driveway, once the garage is converted the driveway is large enough to
400 accommodate three vehicles, so that should not be a problem either. As a result, staff
401 sees little if any impact on the surrounding neighborhood and we recommend approval
402 subject to the conditions in your staff report. If you have any questions, I'll be happy to
403 answer those. Thank you.

404
405 Mr. Lawrence- Does anyone from the board have questions for Mr. Gidley at
406 this time? Okay, hearing none we will hear from the applicant who's on Webex?

407
408 Mr. Blankinship- Yes, that's correct. Staff, can we connect to Ms. Cofield,
409 please? Good morning. We're not getting any sound in the meeting room. Where's Fred?
410 He's working on it. I apologize.

412 Mrs. Cofield- Okay, hello.
413

414 Mr. Blankinship- Here we are. Thank you. Good morning.
415

416 Mrs. Cofield- Okay, good morning. Again, my name is Charisse Cofield. I
417 just am on here in case I needed to speak, but I don't have anything to add to what the
418 gentleman presented. Thank you.
419

420 Mr. Blankinship- Thank you for joining. Can you tell us briefly what your plans
421 are and who's going to live in the unit and that sort of thing?
422

423 Mrs. Cofield- Yes, sure. We are converting the garage space so that my
424 mother can live with us. So that's really the only purpose of converting the space just to
425 give her a place to stay that has a little bit of independence from the main dwelling of the
426 home. So, no further plans than that.
427

428 Mr. Blankinship- Alright, Thank you.
429

430 Mr. Lawrence- Thank you, Ms. Cofield. Is there anyone on the board that has
431 questions for Ms. Cofield?
432

433 Mr. Green- I don't have any questions for Ms. Cofield. Mr. Blankinship,
434 the General Assembly passed some legislation relative to ADUs. Could you just give us
435 a quick overview or refresher, for the audience and myself? I know that we're more
436 restrictive than the state, but just trying to refresh myself a little bit.
437

438 Mr. Blankinship- Yes sir. As part of their overall effort toward affordable
439 housing, the General Assembly does now as of July, well on July 1st and after, counties
440 in Virginia and cities and towns will be required to allow accessory dwelling units by right
441 without going through a public hearing process unless they already had an ordinance in
442 place before the General Assembly session. Because we have been reviewing and
443 approving accessory dwelling units for many, for several years, five years, our legislative
444 liaison, you know, put that fact in front of our legislators and they said, "Well if it's working
445 for you, you can continue doing what you're doing, but everyone else in the state is going
446 to start allowing them by right."
447

448 Mr. Green- So is that gonna lead to confusion where people in Henrico
449 think that they can just do things but realize they still may have to come to us? And is that
450 gonna cause folks to have to stop and get approval? I mean, how are we gonna get that
451 message out that we're a little bit more restrictive than everybody else?
452

453 Mr. Blankinship- We have had a couple of those phone calls already at our
454 permitting center just asking, "Hey, why do I have to go through this? Didn't you guys hear
455 about the General Assembly action?" And we've had to explain that to them, but they're
456 picked up at building permit. This case just came in and applied for a building permit. The
457 renovations they were doing showed a kitchen, a second kitchen in the house, and as

458 you know, that's what kind of triggers us to start asking those questions, is this an
459 accessory dwelling unit? So that's the point at which we pick it up and would explain to
460 the applicant that you may have heard that, but it doesn't apply to us.

461
462 Mr. Green- But do you think that's ... I guess everybody's gonna always
463 get a building permit.

464
465 Mr. Blankinship- They're required to. Not everyone does, but it is a
466 requirement.

467
468 Mr. Green- Okay, I just wanted a refresher, thank you.

469
470 Mr. Lawrence- That's a good question. I'm glad you asked that, Mr. Green.
471 The General Assembly is getting more and more intrusive in local zoning matters, but as
472 usual, Henrico kind of leads the pack, we try to be proactive. So, I think we anticipated
473 what was coming down the line and adopted our ordinance before we got preempted. I
474 think that was good for Henrico, but I agree that it may cause some confusion. Do we
475 know what the surrounding jurisdictions like Chesterfield, Hanover, Richmond... do they
476 all have ordinances as well?

477
478 Mr. Blankinship- I know the city of Richmond has allowed them by right for
479 several years. They originally did it the same way as us, and then they decided to just
480 allow it by right. As far as I know Chesterfield requires a conditional use permit, but I don't
481 know if they have a specific ordinance that would... I don't know how the state legislation
482 will affect them.

483
484 Mr. Lawrence- And just to also clarify here too, if Ms. Cofield simply wanted
485 to turn her garage into another bedroom or a living area, that would not require a
486 conditional use permit, right? What triggers it is the bathroom and kitchen facilities.

487
488 Mr. Blankinship- That's the main thing, and you know it does have a separate
489 entrance so you can come into it and out of this unit without going into the house at all.
490 So it is an independent dwelling unit. It's separate from the principal dwelling.

491
492 Mr. Lawrence- Okay. Any other questions from the board before we open up
493 the public hearing? Thank you, Mr. Gidley.

494
495 Mr. Gidley Yes sir.

496
497 Mr. Lawrence- Do we have to hear from the applicant? No, we did hear from
498 the applicant. Mr. Gidley confused me because he's still at the podium. I forgot we'd
499 already heard from the applicant. Okay, is there anyone here in the audience or on Webex
500 that wishes to speak in support of this case?

501
502 Mr. Blankinship- There's no one else on Webex for this besides the applicant.
503

Mr. Lawrence- Okay. Is there anyone that wishes to speak in opposition to the case? Hearing none, then we will close the public hearing. Unless there is any further discussion by the Board, I think we would entertain a motion at this time.

Mr. Johnson- Yes. And I move that we approve this conditional use permit subject to the conditions recommended by staff. It is consistent with the comprehensive plan and the zoning. The unit will be part of the house. It will also provide independent living space for family as well. Yeah, I move for approval.

Mr. Massey- Second.

Mr. Lawrence- We have a motion from Mr. Johnson and a second by Mr. Massey?

Mr. Massie- Yes sir.

Mr. Lawrence- Okay. All in favor of the motion say "Aye".

Board- Aye.

Mr. Lawrence- Anyone opposed? I don't hear any opposition. Motion carries, this conditional use permit is approved.

On a motion by Mr. Johnson, seconded by Mr. Massie, the Board **approved case CUP-2026-101049** subject to the following conditions:

1. This conditional use permit authorizes the conversion of the existing garage into a one-bedroom accessory dwelling unit. All other applicable regulations of the County Code remain in force.

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

3. The exposed foundation of the converted garage must be brick as required by the proffered conditions of rezoning cases C-78C-05 and C-36C-07.

4. The applicant must obtain a building permit for the proposed accessory dwelling unit within two years of the date of approval (by June 25, 2028), or this conditional use permit will expire. If the building permit is cancelled or revoked after that date due to failure to diligently pursue construction, this conditional use permit will expire at that time.

Affirmative: Broadway, Green, Massie, Lawrence, Johnson 5

Negative:
Absent:

0
0

CUP-2026-101050 Damon Murphy: conditional use permit to convert a pool house to an accessory dwelling unit at 1030 Berryhill Road, Richmond Heights, Varina. Parcel 800-693-2105. Zoning: R-3, One-Family Residence District. Code Section: 24-4406.

Mr. Blankinship- Thank you, Ms. Cofield. The next case is CUP-2026-101050, Damon Murphy, a conditional use permit to convert a pool house to an accessory dwelling unit, at 1030 Berryhill Road, in the Richmond Heights subdivision, in the Varina Magisterial District. Is there anyone here, would everyone who intends to speak to this, please stand and be sworn in? Raise your right hands, please. Do you swear the testimony you're about to give is the truth, the whole truth, and nothing but the truth so help you God?

Mr. Murphy- Yes

Mr. Blankinship- Thank you. Ms. Rozmus?

Mrs. Rozmus- Thank you Mr. Secretary. The subject property is located at 1030 Berryhill Road approximately 0.41 mile east of Osborne Turnpike in the Varinia magisterial district. The property is 1.64 acres in area, improved with this 3,466-square-foot colonial style home, swimming pool, attached garage, and a storage building, which we can also refer to as a pool house. Although the property and the surrounding area are zone R-3A, One-Family Residence District, the lots range from one to five acres in size. The principal dwelling and accessory structure are located in the front-center of the lot, 80 feet from Berryhill Road. The rear portion of the lot is wooded. The storage building was constructed in 2005 by the previous owner; the applicant purchased the property in 2018. Community Maintenance did receive a complaint about the structure, a complaint that someone was living in the structure. The inspector came out, reviewed the case, and then Mr. Murphy applied for the conditional use permit to have everything come up to legal compliance.

The proposed ADU measures 768 square feet in size. This is actually an error in the staff report, the staff report says 384 square feet. That was my mistake, it's two stories, so it is 768 square feet, but it's still in compliance with the allowed 800 square feet for an ADU on this property. The building is on the east side of the lot and connected to the driveway. The adjacent lot to the right, on the east side, is a wooded and unimproved parcel. The building has existed on the property for at least 20 years. The structure is subordinate to the principal dwelling, and there should be no detrimental impact on the surrounding neighborhood. You can see some pictures of the structure; it's existing, and Mr. Murphy, if this application is approved, will have to apply for a building permit to make sure all of the work that has been done is up to code. Staff recommends approval subject to the conditions included in the staff report. We found no detrimental impact to the surrounding

596 area. And I can answer any questions. Oh, we did receive some comments. I'm sorry, I
597 should have mentioned that. We have received four emails in opposition to this request.
598

599 Mr. Blankinship- Those were left on the table for you this morning.
600

601 Mr. Lawrence- Thank you, Ms. Rozmus. Do you have questions, Mr.
602 Johnson, for Ms. Rozmus? Okay. Anyone else on the Board have questions?
603

604 Mr. Green- Yeah, I have a question. The fact that it's in such a rural area
605 with pretty consistent acreage, how does somebody know that they're staying in there? I
606 mean, whose business is that but the property owner?
607

608 Mrs. Rozmus- I mean, that's a great question. I don't know the answer to
609 that.
610

611 Mr. Green- And, you know, how would they monitor that? I mean when
612 you got the complaint, how did it come in? Is somebody... was it a loud noise, dogs
613 barking, partying?
614

615 Mrs. Rozmus- I mean there were some details on it just that the complainant
616 said that there was someone living in the structure, so I'm not entirely positive how they
617 knew that. I didn't inquire further.
618

619 Mr. Green- Thank you.
620

621 Mr. Johnson- There have been some concerns about the place and about
622 the neighbors to it.
623

624 Mrs. Rozmus- Yes, yeah, the neighbors feel... kind of our standard
625 comments that we get on ADU applications. Folks just don't like the idea of two dwellings
626 on a single-family lot. I think that, compared to some other applications that we've gotten,
627 this is a pretty good lot for this use, it's a lot larger than some of the other ADU's in the
628 county. The adjoining neighbor is an unimproved lot, he has a lot of, you know, wooded
629 area in the rear, so I think that the detrimental impact in that was minimal.
630

631 Mr. Blankinship- There was also some confusion, Mr. Johnson, that this might
632 be a third unit because some of the neighbors knew there was a house and knew that
633 this building had been converted to an ADU and the term "pool house" was used in the
634 application and some people thought that was a third structure that was being converted
635 to a dwelling. So that was also mentioned.
636

637 Mrs. Rozmus- The structure is the furthest from the pool, which I think is a
638 little bit confusing, but the three-car garage is not what's being converted into this. It's this
639 additional structure over here.
640

641 Mr. Lawrence- Where are they gonna change into their bathing suits, Ms.
642 Rozmus, when they convert the pool house?
643
644 Mrs. Rozmus- Maybe just out in the open, I don't know.
645
646 Mr. Lawrence- You may get some more complaints. Maybe not. Any other
647 questions?
648
649 Mr. Green- For the record, because this was, we are just now seeing this,
650 if you go through and you read the June 22nd email to us in reference to that, you know,
651 item number three addresses some concerns. I think I'm not gonna necessarily publicly
652 say but I would ask us to look at it, so I guess I can see now why people have been
653 concerned about that.
654
655 Mr. Massie- I understand that but...
656
657 Mr. Green- I know.
658
659 Mr. Massie- That's a concern, but they could do that without the dwelling
660 unit.
661
662 Mr. Lawrence- Any other questions before we hear from the applicant?
663
664 Mr. Green- Please.
665
666 Mr. Lawrence- Thank you, Ms. Rozmus. At this time, we'll hear from the
667 applicant, Mr. Murphy, I guess.
668
669 Mr. Murphy- Good morning, sir. Good morning, board. This is pretty,
670 straightforward. Sara, I think answered most of the questions, but...
671
672 Mr. Lawrence- Can you please state your name too for us?
673
674 Mr. Murphy- I'm sorry it's Damon Murphy. Last name M U R P H Y. Now I
675 also got some of the copies of the opposition. They are extraordinarily disconcerting to
676 me. But rather than maybe addressing some of the other issues, I feel like it might be best
677 if I just answer any questions that you have. This structure would be occupied by family
678 only. It would never be used as an Airbnb. It would be strictly used for family. But I know
679 that people are watching and I'm sure that they'll keep me honest.
680
681 Mr. Blankinship- This is in the staff report, but how long have you lived in the
682 house?
683
684 Mr. Murphy- I bought the house in 2018.
685
686 Mr. Blankinship- Okay, and do you know when the structure was built?

687
688 Mr. Murphy- Yes, it was built in 2005.
689
690 Mr. Blankinship- And at that time, at the time that you bought the property, what
691 shape was the building in?
692
693 Mr. Murphy- It was in really good shape. It had been, I mean it was livable
694 in 2018.
695
696 Mr. Blankinship- So, the kitchen and bathroom, all of that was already in place.
697
698 Mr. Murphy- We definitely improved it without even thinking or having any
699 idea. And I think most people in the neighborhood, based on the confusion that exists
700 here, also knew that it was, you know, a livable structure. I think the people that lived
701 there before us had pretty much done that and everyone sort of assumed it.
702
703 Mr. Blankinship- Yeah, you asked a minute ago, Mr. Green, if you had to get a
704 building permit for these, and I said you're required to, but not everyone does. The
705 previous owner of this property converted that to a dwelling without any building permits.
706
707 Mr. Green- If he then improved it, just modernized it, would he necessarily
708 need to have gotten a building permit?
709
710 Mr. Blankinship- Well, he bought it, so it's now his violation. So that's why he's
711 here. That's why he's here this morning because he was notified that that was not lawful
712 and he owns it now. So, it's his responsibility to cure it.
713
714 Mr. Green- No, I guess what I'm asking is that if it was, he bought it, he
715 just wanted to do a slight renovation of the kitchen, put in a new...
716
717 Mr. Blankinship- Would he need a building permit?
718
719 Mr. Green- Yeah, put in new cabinets, put in a new dishwasher, sink, and
720 all that, I mean...
721
722 Mr. Blankinship- Yeah, it depends on exactly what you're doing. If you're
723 running new electrical, you certainly would, or new plumbing.
724
725 Mr. Green- Okay
726
727 Mr. Broadway- How many people live on the property now?
728
729 Mr. Murphy- Four.
730
731 Mr. Broadway- Okay.
732

733 Mr. Lawrence- Anyone else have questions for Mr. Murphy? Okay, hearing
734 none, we will then hear from the public. If there's anyone that wishes to speak in support
735 of this case, please let us know at this time. No one on Webex, Mr. Blankinship?

736
737 Mr. Blankinship- Not for this case.

738
739 Mr. Lawrence- Okay, and do we have anyone here in the audience or on
740 Webex that wishes to speak in opposition to this case? I do not hear any. So, hearing
741 none, is there any further discussion from Board or are we ready for a motion? Are you
742 ready for a motion, Mr. Johnson, or do you have some more questions?

743
744 Mr. Johnson- Consistent to what we have just mentioned, I move we
745 approve the conditional use permit subject to the conditions recommended by our staff.
746 It is consistent with the comprehensive plan and the zoning ordinance, and the building
747 has been there for many years. And it will allow the owner to bring the property into
748 compliance.

749
750 Mr. Green- Second.

751
752 Mr. Lawrence- We have a motion by Mr. Johnson and a second by Mr.
753 Green, all in favor of the motion say "Aye". Is there anyone opposed? Hearing none, the
754 motion is approved and this permit is granted.

755
756 Mr. Murphy- Thank you.

757
758 Mr. Lawrence- Thank you.

759
760 On a motion by Mr. Johnson, seconded by Mr. Green, the Board **approved case CUP-**
761 **2026-101050** subject to the following conditions:

762
763 1. This conditional use permit authorizes a detached accessory dwelling unit. All other
764 applicable regulations of the County Code remain in force.

765
766 2. This conditional use permit applies only to the improvements shown on the plot plan
767 and building design filed with the application. Any substantial changes or additions to the
768 design or location of the improvements will require a new conditional use permit. Any
769 additional improvements must comply with the applicable regulations of the County Code.

770
771 3. The accessory dwelling unit must be served by the same well and sewage disposal
772 systems as the principal dwelling, which must be reviewed and approved by the Virginia
773 Department of Health as part of the building permit review.

774
775 4. The applicant must obtain a building permit for the proposed accessory dwelling unit
776 within two years of the date of approval (by June 25, 2028), or this conditional use permit
777 will expire. If the building permit is cancelled or revoked after that date due to failure to
778 diligently pursue construction, this conditional use permit will expire at that time.

Affirmative:	Broadway, Green, Massie, Lawrence, Johnson	5
Negative:		0
Absent:		0

Mr. Blankinship- As mentioned earlier, the next two cases have been withdrawn. I don't think anybody else has joined us since then, but 101093 and 101260 have been withdrawn. So, we are finished with conditional use permits.

VAR-2026-100864 Remnant Real Estate Solutions, LLC: variance from the lot area requirement to build a single-family dwelling at 4307 3rd Street, Windsor Place, Varina. Parcel 809-721-1027. Zoning: R-4, One-Family Residence District. Code Section: 24-6402.A.2. The applicant has 5,000 square feet lot area where the Zoning Ordinance requires 6,000 square feet lot area. The applicant requests a variance of 1,000 square feet lot area.

We have five variances this morning. The first is VAR-2026-100864, Remnant Real Estate Solutions LLC, a variance from the lot area requirement to build a single-family dwelling at 4307 3rd Street, in Windsor Place, in the Varina Magisterial District. Would everyone who intends to speak to this case please stand and be sworn in? Oh, I'm sorry, the applicant is on Webex for this one as well. Yeah, sorry. We have the applicant on Webex. No one else is standing, so Mr. Gidley, proceed.

Mr. Gidley- Thank you, Mr. Secretary. The subject property is located... First of all, at your desk is a floor plan that came in. (Inaudible) The subject property is located in the Windsor Place subdivision, which, as you can see here from the aerial, is across from the Masonic Home. This neighborhood was developed in 1921, and it's one of those with a number of 25-foot-wide lots that typically get combined so you can build a home on them. The subject property in this case consists of five 25-foot-wide lots and contains a dwelling that you can see here. The applicant would like to divide the property. The house in the picture would be on three lots. Those three lots, combined, would meet the lot area and lot width requirements. The other two lots are being proposed to build a new home on it, and these are the other two lots here. Once the detached garage is removed, the two lots would meet the lot with requirement of 50 feet, but at 5,000 square feet, they would be shy of the 6,000-square-foot lot area requirement. As a result, they are applying for a lot area variance.

In reviewing the tests for a variance, as you know, one threshold test must be met. The second test is met in staff's opinion. The remaining two lots were buildable until the adoption of lot area and lot width requirements in 1945. So, there was a change in code that rendered these two lots unbuildable. Since the threshold test is met, all five subtests need to be met. We believe those are met. We've seen several cases in this neighborhood that are pretty similar to this. Some we've recommended approval for, some we've recommended denial. It really depends upon what's in the immediate area because it

825 does vary. In this case it was kind of a mixed picture, as you can see here, the homes
826 beside it are large lots but across the street, immediately across the street are much
827 narrower lots. So, it was kind of a mixed picture. But the lot does meet the lot width
828 requirement, and we went ahead and decided to go ahead and recommend approval in
829 this case based on the mixture of lots. There is room for a home on the site to meet
830 setbacks, so that's another plus in this case. So as a result, staff is recommending
831 approval subject to the conditions in your staff report. If you have any questions please
832 let me know and I'll be happy to answer them. Thank you.

833
834 Mr. Lawrence- Does anyone from the Board have questions for Mr. Gidley?
835 Hearing none, we will now hear from the applicant.

836
837 Mr. Blankinship- Staff, can we connect Joanna Lowe, please? We are not
838 hearing anything in the room. Ms. Lowe, are you with us? Staff we're still not hearing
839 anything from Ms. Lowe. Okay, I am getting a message now: "Applicant was trying to
840 unmute." Miss Lowe, we're still not hearing you. If you're speaking, I'm sorry, we're not
841 hearing you. We've all been there, haven't we?

842
843 Mr. Lawrence- We have.

844
845 Mr. Green- Can we hear from the folks who are in favor or opposed?

846
847 Mr. Lawrence- Yeah, that may be best. Do you want to go ahead and proceed
848 with the public hearing?

849
850 Mr. Blankinship- Ms. Lowe, you continue to try to get your sound working and
851 let us know as soon as you do and we'll proceed with you.

852
853 Mrs. Lowe- Okay, Hello

854
855 Mr. Blankinship- We got her!

856
857 Mrs. Lowe- I'm sorry I was I was waiting for permission to be unmuted.

858
859 Mr. Blankinship- Oh, sorry about that.

860
861 Mrs. Lowe- Yeah. Yes. So

862
863 Mr. Blankinship- What's your name, please?

864
865 Mrs. Lowe- I'm Joanna Lowe with Remnant Real Estate Solutions. And
866 yes, as you've said, I want to take two of these five lots to build a new home. It does
867 appear that there's other new construction going on in the area right on the next street
868 over, and those lots are smaller as well as the lots directly across from my property. I will
869 keep the main house that is existing as a rental and then build new construction on lots
870 14 and 15. That is the plan.

871
872 Mr. Lawrence- Okay, thank you Ms. Lowe. Do we have questions for Ms.
873 Lowe from anyone on the Board?

874
875 Mr. Green- The only question I have is, when we build... It's not for Ms.
876 Lowe, it's for staff. Do you remember we ran into that thing, when you build you may have
877 to change the address, all those neighbors' houses have to change. Is this gonna happen
878 here?

879
880 Mr. Blankinship- Yes sir, I did look into that and her house, 4307, which she
881 just purchased, is the one that will have to be renumbered. As you can see, the numbers
882 go from 4305, then there's some space and then 4307, and then a little space and then
883 4317. So, the house that she owns, the existing house, will be bumped up to probably
884 4313, and then this new house will be 4309 or 4311. I did ask staff about that. So, there
885 will be one person inconvenienced, and it will be the applicant.

886
887 Mr. Green- Okay.

888
889 Mrs. Lowe- Okay, that's an easy fix.

890
891 Mr. Blankinship- I was prepared for your question.

892
893 Mr. Lawrence- Can you understand that, Ms. Lowe, and are ok with that?

894
895 Mrs. Lowe- I do, yes.

896
897 Mr. Johnson- So you will be doing that as well. Making sure that's done.

898
899 Mrs. Lowe- Oh, of course.

900
901 Mr. Lawrence- Any other questions for Ms. Lowe before we open it up for the
902 public?

903
904 Mrs. Lowe- No, I don't have any further questions.

905
906 Mr. Lawrence- Thank you, Ms. Lowe. Is there anyone here in the audience
907 or on Webex that wishes to speak in support of this case? Other than Ms. Lowe? Is there
908 anyone in the audience or on Webex that wishes to speak in opposition of this case?

909
910 Mr. Blankinship- There's no one else on Webex.

911
912 Mr. Lawrence- Okay, hearing none then, unless there's further discussion
913 from the board, we'll entertain a motion.

914
915 Mr. Johnson- And if you condition, through the conditions you just
916 mentioned, then I will move that we approve this variance subject to the conditions

917 recommended by the staff. There is no other reasonable use for the lot, the property is
918 otherwise suitable for a dwelling, and the proposed dwelling will fit into the neighborhood.
919 The other tests are met as stated in the staff report. So again, I move approval.

920
921 Mr. Lawrence- We have a motion by Mr. Johnson, is there a second?

922
923 Mr. Broadway- Second.

924
925 Mr. Lawrence- Second by Mr. Broadway, all in favor say "Aye".

926
927 Board- Aye

928
929 Mr. Lawrence- All opposed, "No". Hearing none, the motion carries and the
930 conditional, I'm sorry, the variance is approved.

931
932 Mrs. Cofield- Thank you all, so very much.

933
934 Mr. Blankinship Thank you.

935
936 Mr. Lawrence- Thank you.

937
938 On a motion by Mr. Johnson, seconded by Mr. Broadway, the Board **approved case**
939 **VAR-2026-100864** subject to the following conditions:

940
941 1. This variance applies only to the lot area requirement for one dwelling only. All other
942 applicable regulations of the County Code remain in force.

943
944 2. Any dwelling on the property must be compatible with the surrounding dwellings, must
945 meet the required setbacks, and must not exceed 1.5 stories in height.

946
947 3. Any dwelling on the property must be served by public water and sewer.

948
949 4. Before beginning any clearing, grading, or other land disturbing activity, the applicant
950 must obtain approval from the Department of Public Works. The applicant may be
951 required to analyze and provide solutions to minimize drainage impacts on downstream
952 properties. Corps of Engineers and DEQ permits may be required.

953
954 5. The applicant must obtain a building permit for the proposed dwelling within two years
955 of the date of approval (by June 25, 2028), or this variance will expire. If the building
956 permit is cancelled or revoked after that date due to failure to diligently pursue
957 construction, this variance will expire at that time.

958
959
960 **Affirmative:** Broadway, Green, Massie, Lawrence, Johnson 5

961 **Negative:** 0

962 **Absent:** 0

VAR-2026-101029 Jennifer Radakovic for Bryan and Erin Fratkin: variance from the accessory structure setback to build a swimming pool at 5 Cedaridge Road, Cedar Ridge, Tuckahoe. Parcel 748-733-2739. Zoning: R-1, One-Family Residence District. Code Section: 24-4404.A.9. The applicant has 28 feet accessory structure setback where the Zoning Ordinance requires 50 feet accessory structure setback. The applicant requests a variance of 22 feet accessory structure setback.

Mr. Blankinship- The next case is VAR-2026-101029, Jennifer Radakovic for Brian and Erin Fratkin, a variance from the accessory structure setback to build a swimming pool at 5 Cedaridge Road, in the Cedar Ridge subdivision, in the Tuckahoe Magisterial District. 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?

Ms. Radakovic- Yes

Mr. Blankinship- Thanks. Ms. Rozmus?

Mrs. Rozmus- Thank you, sir. The subject property is located south of River Road in the Cedar Ridge subdivision. It is bounded by Cedaridge Road, Greentree Drive, and Herndon Road. The front of the lot faces Cedaridge Road, making Herndon Road the rear lot line. Because the rear yard of the subject property abuts a public street, any detached accessory structure must meet the same setback as the front yard, which is 50 feet. This regulation is intended to maintain a consistent character along the street, rather than having one rear yard in the middle of several front yards.

The applicant has submitted documentation from a physician that a lap pool in the rear yard is necessary to accommodate a person with a disability. The concept plan shows a lap pool, a pool house, and a seating area. The pool house and seating area and a portion of the lap pool would meet the 50 feet setback from Herndon Road. However, part of the lap pool would extend into the setback. The rear yard of the property slopes steeply down to the street and is screened by mature landscaping. You can see that this is where the pool will be located, and then the yard does slope. There are no dwellings directly across Herndon Road from the subject property. And it's easier to see in an aerial map, but I'm gonna show you a photo as well. This is the photo from Herndon, and this is the subject property driveway. But the pool cannot meet the 50 feet setback required at this location, it will be set back 28 feet from the rear lot line, which would be more than adequate in most situations. One part of the three-part threshold test has been met, and because the variance is necessary to make a reasonable modification for a person with a disability, staff recommends approval subject to the conditions included in the staff report. Thank you. Are there any questions?

1007 Mr. Lawrence- Thank you, Ms. Rozmus. Does anyone from the board have
 1008 any questions? I just had one, Ms. Rozmus. Will the pool house that's shown on the plans
 1009 require a separate conditional use permit?
 1010

1011 Mrs. Rozmus- No, it's located in the rear yard.
 1012

1013 Mr. Lawrence- So that doesn't require...
 1014

1015 Mr. Rozmus- No it would be allowed by right.
 1016

1017 Mr. Lawrence- Okay. Alright. Thank you. Go ahead, Mr. Johnson, I'm sorry.
 1018

1019 Mr. Johnson- I was just... I was looking at the scene before. Was that way
 1020 back another road or something?
 1021

1022 Mr. Rozmus- Yeah, so it's, the aerial is a little easier to see. So, the subject
 1023 property has two driveways. There's this driveway up here and they kind of have like a
 1024 second driveway that goes to the back. So, this is Greentree, and then Herndon kind of
 1025 like comes, oh, sorry Herndon comes over here. So, this photo, I was standing in this
 1026 corner right here, taking a photo, taking the picture, facing the house. So. Herndon is kind
 1027 of behind me and then this is the way to the driveway, and you can see the house is a
 1028 little bit over here, so it's very wooded. There are not any direct neighbors in the rear, so
 1029 the detrimental impact is pretty minimal, if any.
 1030

1031 Mr. Lawrence- Okay. Thank you. Any other questions for Ms. Rozmus?
 1032 Okay, hearing none. Thank you, Ms. Rozmus. We will now hear from the applicant,
 1033 Jennifer Radakovic, I guess, for Brian and Erin Fracking. Is that correct? If you could
 1034 restate your name too, just for the record.
 1035

1036 Mrs. Radakovic- Good morning, my name is Jennifer Radakovic. I'm here on
 1037 behalf of my clients Brian and Erin Fratkin. Do you need me to spell the last name?
 1038

1039 Mr. Blankinship- No.
 1040

1041 Mrs. Radakovic- Not an easy one. My clients purchased this property at the
 1042 end of 2025. They're moving from their current home in Henrico to a home that would
 1043 allow for one-level living to accommodate my client, who had just been diagnosed with
 1044 Huntington's disease. Really serious. And so, they purchased this property in good faith,
 1045 with the intention, we have over an acre size lot, it's a big backyard, there's enough room
 1046 for a pool. And we had to break the news to them that we have the additional rear yard
 1047 setback because of the street frontage, and so in any other case, this would, I think, this
 1048 swimming pool would be allowed by right if there weren't a street behind it. And the
 1049 neighborhood is fairly small, it's a wooded lot. We've read the conditions that staff
 1050 recommends, with the additional landscaping to help screen the property, and we're
 1051 willing to accommodate all of those requests. Do you have any additional questions for
 1052 me?

1053
1054 Mr. Lawrence- Thank you, Mrs. Radakovic. Any questions from the board for
1055 Mrs. Radakovic? Okay, hearing none, we will then open up the public hearing. Is there
1056 anyone in the audience or on Webex that wishes to speak in support of the case? Is there
1057 anyone in the audience or on Webex that wishes to speak in opposition to the case?
1058

1059 Mr. Blankinship- No one on Webex for this case.
1060

1061 Mr. Lawrence- Okay. I don't hear anyone, so we will close the public hearing,
1062 and we will see if there's any further discussion by the board and if not, we'll entertain a
1063 motion.
1064

1065 Mr. Broadway- Alright, well, Mr. Chairman, based on the, on the staff
1066 analysis, the 50-foot setback seems unreasonable, but the 28-foot setback is reasonable.
1067 The pool is a necessary accommodation for a person with a disability, and I also noticed
1068 there are several emails from neighbors in support of the application. So, on that basis I
1069 would move that we approve the variance.
1070

1071 Mr. Lawrence- We have a motion by Mr. Broadway.
1072

1073 Mr. Green- Second.
1074

1075 Mr. Lawrence- There's a second by Mr. Green. All in favor of the motion say
1076 "Aye".
1077

1078 Board- Aye.
1079

1080 Mr. Lawrence- Aye. Opposed to say "No." Hearing none, the motion carries.
1081 This variance was approved. Thank you, ma'am.
1082

1083 On a motion by Mr. Broadway, seconded by Mr. Green, the Board **approved case VAR-**
1084 **2026-101029** subject to the following conditions:
1085

1086 1. This variance applies only to the accessory structure setback requirement for the
1087 proposed lap pool. All other applicable regulations of the County Code remain in force.
1088

1089 2. This variance applies only to the pool shown on the design titled "Fratkin Residence"
1090 prepared by Jennifer Radakovich Design and dated April 21, 2026, filed with the
1091 application. Any substantial changes or additions to the design or location of the pool will
1092 require a new variance. Any additional improvements must comply with the applicable
1093 regulations of the County Code.
1094

1095 3. Before beginning any clearing, grading, or other land disturbing activity, the applicant
1096 must obtain approval from the Department of Public Works. The applicant may be
1097 required to analyze and provide solutions to minimize drainage impacts on downstream
1098 properties. Corps of Engineers and DEQ permits may be required.

1099
1100 4. After construction is complete, the applicant must replace any trees that were removed
1101 along Herndon Road and must supplement the landscaping as necessary to provide
1102 screening equivalent to the conditions before construction.

1103
1104 5. The applicant must obtain a building permit for the proposed pool within two years of
1105 the date of approval (by June 25, 2028) or this variance will expire. After that date, if the
1106 building permit is cancelled or revoked due to failure to diligently pursue construction, this
1107 variance will expire at that time.

1108
1109
1110 **Affirmative:** Broadway, Green, Massie, Lawrence, Johnson 5
1111 **Negative:** 0
1112 **Absent:** 0

1113
1114
1115 **VAR-2026-101039 Lee Shadbolt: variance from the rear yard setback to build a patio**
1116 **roof over an existing deck at 3909 Shae Place, Shae Place, Brookland. Parcel 767-**
1117 **774-4730. Zoning: R-2, One-Family Residence District. Code Section: 24-3307.D.**
1118 **The applicant has 35 feet rear yard setback where the Zoning Ordinance requires**
1119 **45 feet rear yard setback. The applicant requests a variance of 10 feet rear yard**
1120 **setback.**

1121
1122 Mr. Blankinship- Alright, the next case is VAR-2026-101039, Lee Shadbolt, a
1123 variance from the rear yard setback to build a patio roof over an existing deck at 3909
1124 Shae Place, in the Shae Place subdivision, in the Brookland Magisterial District. Would
1125 everyone who intends to speak to this case, please stand up to be sworn in? Raise your
1126 right hands, please. Do you swear the testimony you're about to give is the truth, the
1127 whole truth, and nothing but the truth, so help you God?

1128
1129 Lee Shadbolt- I do.

1130
1131 Mrs. Shadbolt I do.

1132
1133 Mr. Blankinship- Ms. Rozmus.

1134
1135 Mr. Rozmus- Thank you, sir. So, the subject property is located at 3909
1136 Shae Place, one-quarter mile from Interstate 295 in the Brookland magisterial district. The
1137 property is a corner lot with a 2,962-square-foot colonial style home built in 2005. The
1138 applicant has an existing 25-by-15-foot rear deck in the rear of the home that extends
1139 within 35 feet of the rear lot line. Because uncovered decks are allowed to extend up to
1140 10 feet into the required 45-foot rear setback, the existing deck complies with code. The
1141 applicant proposes replacing the existing deck with building a patio roof overhead.
1142 Because the covered porch would be required to meet the same setbacks as the rest of
1143 the house, this would encroach 10 feet into the rear yard setback. As a result, the
1144 applicants are requesting a 10-foot rear yard setback variance.

1145
1146 No part of the three-part test appears to be met. Staff concluded that this case does not
1147 meet the legal requirement for a variance. The threshold test is not met. The rear yard
1148 setback is reasonable and has not changed since the house was built. In addition to the
1149 threshold test, the code of Virginia requires all five subtests to be met. And because this
1150 is a general and reoccurring situation, subtest three is not met. I will point out that the rear
1151 yard does have a tall privacy fence and is located directly along a fairly busy road, Mill
1152 Road. So, the rear yard detriment is minimal, if any, so that is a positive for this, but the
1153 case as we see many of these rear yard covered decks does not meet the legal
1154 requirements for a variance. So, staff recommends denial and I can answer any
1155 questions.

1156
1157 Mr. Blankinship- We have also received emails?
1158

1159 Mrs. Rozmus- Oh yeah, six, I think emails?
1160

1161 Mr. Blankinship- Yeah, a total of six.
1162

1163 Mr. Lawrence- Any questions from the board?
1164

1165 Mrs. Rozmus- In support, yeah, six.
1166

1167 Mr. Lawrence- Anyone have questions for Ms. Rozmus? I just have one, Ms.
1168 Rozmus.

1169
1170 Mrs. Rozmus- Sure.
1171

1172 Mr. Lawrence- So they don't technically meet the setback requirement under
1173 the ordinance, but it does back up to a road and I've eyeballed the property. In addition
1174 to a privacy fence, there is some property between the fence and the road, which I guess
1175 is probably part of the right-of-way. So it's a little unusual in this case because they have
1176 rear yard footage but it's not technically part of their footage. Do you understand the point
1177 I'm trying to make?
1178

1179 Mrs. Rozmus- Yeah, we would not consider that part of their property so it
1180 would not go into the setback calculation, but you know, in theory, looking at it, they do
1181 have a little extra.
1182

1183 Mr. Lawrence- If you look, if you look at the properties in that neighborhood,
1184 I would argue, and I have the deepest respect for staff in your evaluation, I would argue
1185 that there is an unusual configuration of the lot that you could consider a physical
1186 hardship. If you look at the other lots in the neighborhood, they have more rear yard
1187 frontage. This lot is kind of oddly configured the way it comes in, but when you come into
1188 the neighborhood, you don't even really see their backyard because they have a privacy
1189 fence, and the neighbor on the other side of them, that house is askew. So this would
1190 have absolutely zero effect, it appears to me, in terms of visual, which is a concern that I

1191 have on these cases. And you know I tend to be more judicious on these cases than my
1192 colleagues probably, but I just want to make those points. I understand where staff came
1193 to that conclusion. But I would, I would probably make the argument that there is a
1194 physical aspect of this property that could be used to meet the first test.

1195
1196 Mrs. Rozmus- Yeah, I can see why you, why you would say that. I mean the
1197 properties that we look at in the evaluation are, you know, mostly in this case the ones
1198 that are immediately beside it. So, I would say as far as you know, similarities in the rear
1199 yards, I think that this is not out of the ordinary for what is on this cul-de-sac, even if they
1200 are all kind of a little wonky.

1201
1202 Mr. Lawrence- And I don't know how the ordinance reads, but the other thing
1203 is, this is not really an enclosed porch, they're just putting a roof over an existing deck.
1204 So to me that has less visual impact than if you're talking about putting in an enclosed
1205 screen porch.

1206
1207 Mrs. Rozmus- Sure.

1208
1209 Mr. Lawrence- Am I, am I correct on that point? They're just simply putting a
1210 patio roof now?

1211
1212 Mrs. Rozmus- They are, but there's nothing that can stop them from
1213 enclosing it.

1214
1215 Mr. Lawrence- That's not their plan right now, though.

1216
1217 Mrs. Rozmus- That's not the plan right now, but they could, you know, put up
1218 some screens or put up some walls at any time.

1219
1220 Mr. Lawrence- Okay. Alright. Thank you. Any other questions for Mrs.
1221 Rozmus?

1222
1223 Mr. Green- For them to put those up will they need a building permit?

1224
1225 Mr. Blankinship- As with the previous case.

1226
1227 Mrs. Rozmus- Maybe.

1228
1229 Mr. Blankinship- In a perfect world they would apply.

1230
1231 Mr. Lawrence- Okay, I think they've heard the discussion here and would be
1232 vigilant

1233
1234 Mr. Green- No, just make sure, just because if they decide to sell and
1235 somebody else decides to come in, they would go for a building permit and it would be
1236 caught. I don't think people are being sneaky. I think that, I think folks just, they just don't

1237 necessarily understand the process. And that's why you help, you all, we help catch
1238 something.

1239
1240 Mr. Lawrence- Yeah, I think so. I think in 90 percent of cases.

1241
1242 Mr. Green- Yeah. I think so. People are well intended

1243
1244 Mr. Lawrence- Okay, any other questions for Ms. Rozmus before we hear
1245 from the applicant? The applicants, I'm sorry. Yeah, can we hear from the applicants now
1246 and that's Mr. Shadbolt, Mr. and Mrs. Shadbolt.

1247
1248 Mr. Shadbolt- Yes, good morning. My name is Lee Shadbolt. Shadbolt S H
1249 A D B O L T. And my wife Christy and I are homeowners of the property. I do have a
1250 couple of comments. I'd also like to request that there was an additional document that
1251 we sent in that had setback requirements from the adjacent neighborhood. I don't know if
1252 there's any way, Ms. Rozmus, you could pull that up.

1253
1254 Mr. Blankinship- It is on the table before the board.

1255
1256 Mr. Shadbolt- They have it. There was also an additional letter that we
1257 submitted, and I don't know if you wanted me to go through that again or just give an
1258 overview of it. Do you have that one?

1259
1260 Mr. Blankinship- Yes. Yeah, that was also submitted.

1261
1262 Mr. Shadbolt- So maybe what I'll do is just a couple of summary comments.
1263 What we are looking to do is to kind of get a little more use out of our back deck. We
1264 absolutely love it. We are out there all the time. I ate breakfast this morning on the back
1265 deck, you know, without the rail yet, I was back from the edge, but I have a Koi pond in
1266 the back, which I also love, and we spent a good amount of money and effort literally my,
1267 you know, backbone to put the plants in, but we, they added 43 plants, and I think we're
1268 spending some money in the backyard to make it a really nice, enjoyable neighborhood.
1269 The other thing is, we're trying to just get what kind of everybody else in the neighborhood
1270 has. The house directly across the street is the same house, opposite hand. And they
1271 went in, put a pool and the roof over the deck, and so that extended use is really what
1272 we're looking for. And I think you did bring out the point that as an architect, I appreciate
1273 when design is well done. I do not understand why this property, why our house on this
1274 kind of oddly shaped property wasn't shifted a little bit to give the backyard a little space.
1275 We have plenty of front yard and I'm like, you know, you could have pulled the house
1276 forward a little bit. So that's our hardship, is the original design. I know that's typically not
1277 what you would consider a hardship, but that's what we're being hampered by. And that's
1278 all I really have to say is that, you know, it's an odd condition and we're asking your
1279 permission.

1280
1281 Mr. Blankinship- Mr. Chair, can I ask a question?

1282

1283 Mr. Lawrence- Sure can.
1284
1285 Mr. Blankinship- Following up the previous discussion, the drawing that's on
1286 the screen now appears pretty clearly to show a screened porch.
1287
1288 Mr. Shadbolt- No, there is no screened porch.
1289
1290 Mr. Blankinship- Those are not... that's not screened between those?
1291
1292 Mr. Shadbolt- That's not, I think that's a shadow line.
1293
1294 Mr. Blankinship- Okay.
1295
1296 Mr. Shadbolt- The partner at Commonwealth Architects. So yeah.
1297
1298 Mr. Blankinship- Looking at posts and a roof and a railing, steps coming down...
1299
1300 Mr. Shadbolt Right.
1301
1302 Mrs. Rozmus A rail.
1303
1304 Mr. Blankinship- Yeah, but not screened
1305
1306 Mr. Shadbolt- Right, those are round posts so to do a screened porch would
1307 have to be kind of an independent structure inset that would show up a lot more. Yeah,
1308 we do not, I don't really want a screened porch.
1309
1310 Mr. Lawrence- It looks like part of your house, too, and from what, from when
1311 I eyeballed the property and also from the drawing here, it looks like the porch would
1312 actually abut part of the house that actually extends into the right backyard too. You have
1313 a wing on the house that ...
1314
1315 Mr. Shadbolt- Yeah there is, that's kind of a dining area in the back that you
1316 know the kitchen, not the kitchen itself, but the dining room table or the kitchen table is in
1317 that back area. That is existing and it makes the setbacks...
1318
1319 Mr. Lawrence- So this extends probably what? I mean. Yes, another five or
1320 ten feet beyond that.
1321
1322 Mrs. Rozmus- Ten feet.
1323
1324 Mr. Shadbolt- Well, we're ten feet into the setback, but on the right-hand
1325 side.
1326
1327 Mr. Lawrence- The corner, yeah.
1328

1329 Mr. Shadbolt- Yeah, it only extends about seven feet.
1330
1331 Mrs. Rozmus- It's a little easier to see.
1332
1333 Mr. Shadbolt- Yeah, I think that's only seven feet.
1334
1335 Mrs. Shadbolt- That's a good picture.
1336
1337 Mr. Lawrence- And if I, if I were not mistaken, you have what, seven homes
1338 in the neighborhood, is that right?
1339
1340 Mrs. Shadbolt- Seven.
1341
1342 Mr. Shadbolt- Yes.
1343
1344 Mr. Lawrence- And there's no HOA, right?
1345
1346 Mr. Shadbolt- No, there is not.
1347
1348 Mr. Lawrence- We would like to hear if there's an HOA. We would like to have
1349 them weigh in on these cases, too, but I think...
1350
1351 Mr. Blankinship- We did hear from the neighbors.
1352
1353 Mr. Lawrence- Yeah, we heard from the neighbors, I believe they said out of
1354 seven houses, four either have patio roofs or porches already, is that correct?
1355
1356 Mr. Shadbolt- Yes
1357
1358 Mr. Lawrence- Like you said they didn't have to go through this process,
1359 probably, because they have shallower front yards and deeper backyards.
1360
1361 Mr. Shadbolt- Right, but we're close friends with everybody, so we've been
1362 in everybody's porches and houses.
1363
1364 Mr. Lawrence- It's a nice neighborhood, and I will say you have a nice dog,
1365 too. I was, when I was checking out the property...
1366
1367 Mrs. Shadbolt- Was that you? I think I waved.
1368
1369 Mr. Lawrence- Yeah. I was trying to be discreet, but I'm sure you saw me
1370 drive through, so I saw you out in the yard with your dog. Okay, that's all the questions I
1371 have. Anybody else on the Board?
1372
1373 Mr. Green- I just want to reinforce that we're beginning to see more and
1374 more of screened in porches, enclosures and it's just interesting that at the end of, you're

not going in the total route of the eleven-month, twelve-month room or whatever they call it, that you're gonna keep it open like that.

Mr. Lawrence- If you'd had a house behind you, I probably would have, I would have opted differently. My colleagues may not have. But anyway, in my mind, we've got tests that we can set our variance on this. But let's hear from the public if there's anyone who wishes to speak. Is there anyone here? We have the six emails, is there anyone here in the audience or on Webex that wishes to speak in support of the case?

Mr. Blankinship- There's no one on Webex.

Mr. Lawrence- Is there anyone who would like to speak in opposition? Okay. Hearing none, I'm gonna make a motion that we approve the variance subject to the conditions recommended by the staff. The setback is unreasonable in our determination and there would be no detrimental impact on nearby property. Is there a second to that motion?

Mr. Broadway- Second.

Mr. Lawrence- Mr. Broadway seconds the motion. All in favor say "Aye".

Board- Aye.

Mr. Lawrence- Is there anyone opposed? Hearing none, the motion carries and the variance is approved. Thank you very much.

Mrs. Shadbolt- Thank you so much.

Mr. Shadbolt- Thank you.

On a motion by Mr. Lawrence, seconded by Mr. Broadway, the Board **approved case VAR-2026-101039** subject to the following conditions:

1. This variance applies only to the rear yard setback requirement for the existing deck and screened porch only. All other applicable regulations of the County Code remain in force.

2. This variance applies only to the screened porch and deck shown on the plot plan and building design filed with the application. Any substantial changes or additions to the design or location of the screened porch and deck will require a new variance. Any additional improvements must comply with the applicable regulations of the County Code.

3. No later than September 1, 2028, the applicant must obtain a building permit for the covered porch and deck. If the building permit is cancelled or revoked due to failure to diligently pursue construction, this variance will expire at that time.

Affirmative:	Broadway, Green, Massie, Lawrence, Johnson	5
Negative:		0
Absent:		0

VAR-2026-101086 Jhovanny Velazco: variance from the rear yard setback to build additions and a detached accessory structure at 4774 Hepler Ridge Way, Smith Grove at Bacova, Three Chopt. Parcel 736-768-7764. Zoning: R-5AC, General Residence District (Conditional). Code Section: 24-3313.D. The applicant has 20 feet rear yard setback where the Zoning Ordinance requires 35 feet. The applicant requests a variance of 15 feet rear yard setback.

Mr. Blankinship- The next variance is number 2026-101086. Jhovanny Velazco, variance from the rear yard setback to build additions and a detached accessory structure at 4774 Hepler Ridge Way, Smith Grove at Bacova, in the Three Chopt Magisterial District. Would everyone who intends to speak to this case please stand to be sworn in? Please stand. Raise your right hand. Do you swear the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God? Mr. Gidley?

Mr. Gidley- Thank you, Mr. Secretary. The subject property is located near the intersection of North Gayton and Kain Roads. I'm sorry. This is a zero-lot line neighborhood where each home is located along one of the two side lot lines. This type of development is designed to help increase density on an original parcel and that does tend to result in smaller lots. This is a picture of the home here. The applicants own a home that was built in 2020. As you can see here, this is their site plan. They propose construction of both a sunroom and a screened porch onto the rear of the home, each of which will encroach 14 feet into the required 35-foot rear yard setback. As a result, the applicant is requesting a rear yard setback variance.

Reviewing the threshold test, staff doesn't believe any are met. The home was built only six years ago and meets setbacks, so staff doesn't believe it's unreasonably restricted. And the lot is larger and deeper than some of the ones down here near the entrance to the neighborhood. The zoning ordinance requirement took effect prior to the construction of the home, and this doesn't involve a disability. So, because none of the threshold tests are met the staff is recommending denial of this request. If you have any questions, I'll be happy to answer. Thank you.

Mr. Lawrence- Does anyone from the Board have any questions for Mr. Gidley? I have a couple, Mr. Gidley. Just for clarification, is the applicant applying for two screened porches or is... The detached structure shown on the plan, is that a pavilion? I was a little confused by what I saw on the schematics, I guess. Can you describe exactly what's being requested?

Mr. Gidley- There's a sunroom here and a porch here.

1467 Mr. Lawrence- Are those existing?
 1468
 1469 Mr. Gidley- No.
 1470
 1471 Mr. Lawrence- Okay. And there's also a detached structure it looks like. Does
 1472 that require a conditional use permit?
 1473
 1474 Mr. Blankinship- It does not require conditional... Let me speak to this if you
 1475 don't mind, Mr. Gidley. Thank you for bringing it up. It does not require a conditional use
 1476 permit, but it cannot be approved in the location where it's shown. Fire code is gonna
 1477 require that to be ten feet away from the principal structure.
 1478
 1479 Mr. Lawrence- Okay.
 1480
 1481 Mr. Blankinship- So he can have it if... Can you bring up our site map, please,
 1482 Mr. Gidley? Our site map shows it, in that location it could be allowed, but it would have
 1483 to be ten feet from the principal structure, and that is addressed in your proposed
 1484 conditions.
 1485
 1486 Mr. Lawrence- Is that accessory, is that an accessory dwelling or not?
 1487
 1488 Mr. Blankinship- No, it's just a detached, like a pergola or a gazebo.
 1489
 1490 Mr. Lawrence- Yeah, no living quarters.
 1491
 1492 Mr. Blankinship- No, just a roof over posts.
 1493
 1494 Mr. Lawrence- Okay. All right, that answers my question. Thank you.
 1495 Anybody else on the Board? Okay, hearing none, we will now hear from the applicant.
 1496 Mr. Velazco, please come to the podium, and if you could restate your name just for the
 1497 record, please, sir.
 1498
 1499 Mr. Santiago - Yes, sir. My name is Jhovanny Santiago, and I just request
 1500 this additional sunroom and screened porch, I guess try to get more useable for my two
 1501 boys and they sometime trying to play outside, but they... The space is there, but you
 1502 know we just need permission from you guys to approve this and I guess that's it for now.
 1503
 1504 Mr. Lawrence- Okay, thank you, sir. Are there any questions? Velazco, is that
 1505 correct how to pronounce that?
 1506
 1507 Mr. Santiago- Yeah, Velazco is my last name
 1508
 1509 Mr. Lawrence- Yeah. Okay. Yeah.
 1510
 1511 Mr. Green- Can we go back to the picture?
 1512

1513 Mr. Lawrence- Yeah, what is, what is that?
1514
1515 Mr. Broadway- On the lower...
1516
1517 Mr. Lawrence- On the lower picture it looks like the house extends out
1518 beyond the porch, the upper picture looks like there's no extension there. I'm a little
1519 confused by that as well, I think. It looks like two different constructions here.
1520
1521 Mr. Gidley- This is the new construction here.
1522
1523 Mr. Blankinship- Right. Mr. Velazco, maybe you can address this though. That
1524 picture shows a window all the way to the left.
1525
1526 Mr. Velazco- Yes, it does.
1527
1528 Mr. Blankinship- The drawing above it does not appear to leave room for that
1529 window, so is that just a trick of the perspective?
1530
1531 Mr. Gidley- I think they're comparing, here to here.
1532
1533 Mr. Velazco- Yeah, that's kind of confusing, but this section right here is
1534 gonna stay, but the roof starts from here to all the way. It's gonna be like open door all
1535 the way here.
1536
1537 Mr. Blankinship- So there is a window there.
1538
1539 Mr. Velazco- Yes.
1540
1541 Mr. Blankinship- And you're not planning to cover that window with the siding.
1542 The bottom drawing is more accurate, then.
1543
1544 Mr. Lawrence- The bottom drawing and then what's being requested is the
1545 porch and then it looks like a screened porch.
1546
1547 Mr. Blankinship- The screened porch and a sunroom.
1548
1549 Mr. Lawrence- Sunroom, and it said that the structure next to the sunroom is
1550 a screened porch.
1551
1552 Mr. Green- Is it screened or is it open?
1553
1554 Mr. Blankinship- Yeah, I couldn't tell.
1555
1556 Mr. Green- Is it open?
1557
1558 Mr. Gicley- It's open.

1559
1560 Mr. Lawrence- Yeah, this application said screened, but it looks open so
1561 you're seeing screens where there wasn't any screen.
1562
1563 Mr. Blankinship- Yeah, the title of the drawing is Addition-Screen Porch. So, it's
1564 not just screen.
1565
1566 Mr. Lawrence- Okay. Any other questions? Mr. Velazco. Okay, hearing none,
1567 we will open up the public hearing. Is there anyone in the audience that wishes to speak
1568 for the case?
1569
1570 Mr. Blankinship- There's no one on Webex.
1571
1572 Mr. Lawrence- Okay, anyone in the audience or on Webex who wishes to
1573 speak in opposition to the case? Okay, hearing none unless there's any discussion, we
1574 will entertain a motion.
1575
1576 Mr. Green- Well, all y'all's questions then, you think have been
1577 addressed?
1578
1579 Mr. Lawrence- I think so. Just to clarify also, Mr. Velazco, I have one more
1580 question. You back up to the street, right? There are no houses behind your property.
1581
1582 Mr. Velazco- Just street.
1583
1584 Mr. Lawrence- And it looks like your lot is in a similar situation to the last case
1585 we had here. Your lot looks like it's more oddly configured than the other houses in the
1586 neighborhoods. You have less rear yard?
1587
1588 Mr. Velazco- I guess there's a lot of space on this house patio on the, that's
1589 the only house on this neighborhood has this space to, you know, build it up something
1590 or may look better, you know. Usable.
1591
1592 Mr. Lawrence- Right, okay is there an HOA in your neighborhood, do you
1593 know or...?
1594
1595 Mr. Velazco- Yes.
1596
1597 Mr. Lawrence- Homeowners Association.
1598
1599 Mr. Velazco- Yes. They approved this.
1600
1601 Mr. Lawrence- They haven't raised any objection?
1602
1603 Mr. Velazco- No.
1604

1605 Mr. Lawrence- Okay, alright, thank you. Mr. Green?
 1606
 1607 Mr. Green- You have a question.
 1608
 1609 Mr. Massie- No. No.
 1610
 1611 Mr. Green- Appreciate the drawing. The way it looks is very beautiful.
 1612 I like it backs up to a street. With that, I move we approve this variance subject to
 1613 conditions recommended by the staff. Setback is unreasonable, there would be no
 1614 detrimental impact on nearby property.
 1615
 1616 Mr. Lawrence- We have a motion by Mr. Green. Is there a second to the
 1617 motion?
 1618
 1619 Mr. Massie- Second.
 1620
 1621 Mr. Lawrence- Second by Mr. Massie, all in favor of say "Aye".
 1622
 1623 Board- Aye.
 1624
 1625 Mr. Lawrence- Anyone opposed? Hearing none, the motion carries and the
 1626 case is approved.
 1627
 1628 Mr. Velazco- Thank you very much.
 1629
 1630 On a motion by Mr. Green, seconded by Mr. Massie, the Board **approved case VAR-**
 1631 **2026-101086** subject to the following conditions:
 1632
 1633 1. This variance applies only to the rear yard setback requirement for the proposed
 1634 addition only. All other applicable regulations of the County Code remain in force,
 1635 including the 10-foot setback from a principal dwelling to a detached accessory structure.
 1636
 1637 2. This variance applies only to the addition shown on the plot plan and building design
 1638 filed with the application. Any substantial changes or additions to the design or location
 1639 of the addition will require a new variance. Any additional improvements must comply with
 1640 the applicable regulations of the County Code.
 1641
 1642 3. The new construction must match the existing dwelling as nearly as practical in
 1643 materials and color.
 1644
 1645 4. Before beginning any clearing, grading, or other land disturbing activity, the applicant
 1646 must obtain approval of an environmental compliance plan from the Department of Public
 1647 Works. The applicant may be required to analyze and provide solutions to minimize
 1648 drainage impacts on downstream properties. Corps of Engineers and DEQ permits may
 1649 be required.
 1650

5. The applicant must obtain a building permit for the proposed sunroom and screened porch within two years of the date of approval (by June 25, 2028) or this variance will expire. After that date, if the building permit is cancelled or revoked due to failure to diligently pursue construction, this variance will expire at that time.

Affirmative:	Broadway, Green, Massie, Lawrence, Johnson	5
Negative:		0
Absent:		0

Mr. Blankinship- All right, Mr. Chair, that leaves us with one variance and two appeals. One of the variances and one of the two appeals are very closely related. There are many cases as you know, where we will call two cases together. Where they're companion cases because they're interrelated. In this case, after discussions between the county attorney and the applicant's attorney, we don't think that's the wise move here. We think the appeal and the variance should each have their own public hearing, their own presentations. There are very different decisions that the Board is being asked. However, the applicant has asked you to hear the appeal first and then the variance. And I, I don't believe the County Attorney's Office has any opposition to that order yet. So, that is a request before you. The agenda has the variance first. The applicant or appellant has asked you to take up the appeal first.

Mr. Lawrence- Is there anyone on the board that has any objection to reverse the order of those cases? Okay, we'll honor that request and we'll start with the appeal.

APP-2026-101000 Andrew Condlin for Staples Mill Land Trust: appeal decisions of the director of planning at 2100-2116 Staples Mill Road, Mayfield, Brookland. Parcels 774-738-9392, 774-738-9586, 774-738-9680, 774-738-9875, 774-738-9946, 774-738-9952, 774-738-9958, 774-738-9964 and 774-738-9970. Zoning: R-5, General Residence District. Code Section: 24-2320.

Mr. Blankinship- Okay. Paul, would you mind switching the presentation while I speak? So, the first, the next case will be appeal 2026-101000 Andrew Condlin for Staples Mill Land Trust appealing a decision of the director of planning regarding the property at 2100 through 2116 Staples Mill Road, in the Mayfield subdivision in the Brooklyn magisterial district. Would everyone who intends to speak to this matter, please stand to be sworn in. Raise your right hands, please. Do you swear the testimony you're about to give us the truth, the whole truth and nothing but the truth, so help you God? Thanks.

Mr. Murphy- Good morning. May it please the Board. Ryan Murphy with the County Attorney's Office, which represents the Planning Director, Mr. Emerson, in these consolidated appeals. The matter today involves R-5 zoned property located between 2100 and 2116 Staples Mill Road. In its current layout, which is shown in the Mayfield subdivision plat, the property consists of nine individual lots that front on Staples

1697 Mill. The owner of Staples Middle Land Trust submitted a concept plan, proposing a
1698 multifamily development called the Massie with a 16-unit multifamily building, 34 parking
1699 spaces and a walking trail. The current layout must be vacated so that there's a single lot
1700 before the Massie can proceed. In other words, instead of nine lots fronting on Staples
1701 Mill Road as shown on the Mayfield plat. The Massie requires a single lot that fronts on
1702 Massie Road. The zoning ordinance requires multifamily developments in the R-5 district
1703 to have street side yards of 25 feet. However, because The Massie has its street side
1704 yard adjacent to Staples Mill Road, and that road is about a hundred feet wide and it's
1705 classified as a major arterial road, an additional setback of 15 feet is required. This
1706 additional setback that is at the heart of the appeals. At a high level, there's two questions
1707 I presented to the Board for decision today. As in all appeals, the presumption of
1708 correctness attaches to the Directors' determinations. If the appellant does not rebut the
1709 presumption of correctness by preponderance of the evidence, the Board must affirm the
1710 Director's determinations.

1711
1712 So, starting with the first question, appellant has offered two arguments for why the
1713 additional setback does not apply, but neither is persuasive. First, Section 24-3105(D),
1714 appellant argues that the additional setback does not apply because the property
1715 currently consists of lots that were shown on a plat that was reported in 1940. This
1716 argument fails because the additional setback applies to development, and the relevant
1717 development is The Massie, which cannot be developed in accordance with the existing
1718 subdivision. As the appellant acknowledges in his June 15 submittal to this Board, the
1719 existing layout must be vacated. The Appellant suggests that it would pursue a minor
1720 subdivision to accomplish the required vacation, and a minor subdivision is one method
1721 for vacating the existing layout. And while I agree that a minor subdivision is not a
1722 subdivision under the county's subdivision ordinance, just talk through the vacation, it's
1723 clear. Black's Law Dictionary defines vacate to mean nullify or cancel, make void or
1724 invalidate. However, appellant chooses to accomplish the vacation, whether by minor
1725 subdivision or some other means the effect is the invalidation, nullification, and voiding of
1726 that part of the Mayfield subdivision that created the existing lots. In fact, The Massie
1727 cannot proceed without nullifying the relevant part of the Mayfield subdivision so that the
1728 nine lots that fronts on Staples Mill, become one that fronts on Massie Road. But another
1729 way there's no recorded subdivision that depicts a layout for The Massie, where that's
1730 even arguably consistent with The Massie. The Massie is a development without a
1731 subdivision. Next, citing Section 24-3105 (E) appellant argues that the additional setback
1732 does not apply because the 1940 plat depicted single family lots. Again, those lots must
1733 be nullified for The Massie to proceed, and the effective lot will be a multi-family lot
1734 because The Massie is a multi-family development. Therefore, the exception in 24-3105
1735 (E) does not apply to The Massie. Now the appellant describes the Director's
1736 interpretation of this section as untenable because the R-5 district does not permit single
1737 family homes and that leaves the appellant in something of a quandary. In other words,
1738 though, appellant's argument really boils down to if the Director is correct, then appellant
1739 cannot pursue the appellant's preferred development, and so in that case, the Director
1740 must be incorrect. But there are single family lots with continuing non-conforming uses in
1741 the R-5 district, including several in the Mayfield subdivision directly behind appellant's
1742 lots. It's those lots with continuing non-conforming uses that benefit from Section 24-

1743 3105(E). There's nothing unusual about the Director's interpretation. Meanwhile,
1744 appellant's interpretations of these sections require the board to interpret multifamily as
1745 single family.

1746
1747 Moving to second question, appellant asked the Planning Director to waive the additional
1748 setback on October 23rd, 2025. The Planning Director denied that request on March 3rd,
1749 2026. When appellant appealed the determination that the additional setback applied,
1750 appellant expressly did not appeal the denial of the waiver request to this Board within
1751 the 30 days that are allowed by Virginia code in Section 15.2-2311. Therefore, the
1752 Planning Director's decision on the waiver is final as Virginia codes section 15.2-2311
1753 dictates. Instead, appellant saw to present the waiver request to the Planning
1754 Commission first by appealed and then directly. But there is no appeal to the Planning
1755 Commission under the zoning ordinance and as shown in Section 24-3105(D)(3), waiver
1756 requests must be presented in an application for a development permit or approval, which
1757 a concept plan is not. To proceed with the development of The Massie, appellant must
1758 obtain approval of a site plan and appellant has not applied for that approval. Moreover
1759 in 2025, the General Assembly enacted legislation that supersedes the authority that the
1760 Planning Commission once had under the county's own ordinance to act on site plans
1761 and plans that develop. Accordingly, the Planning Commission cannot consider or act on
1762 the waiver requests submitted in connection with a concept plan, even if a concept plan
1763 submittal is a site plan, a plan of development or some stage in a site plan or plan of
1764 development process. Appellant suggests that if the Planning Commission could not
1765 consider the request because it was not presented in an application for a site plan or a
1766 plan of development, then the Planning Director should not have responded either. This
1767 ignores the Planning Director's independent authority to issue interpretations as shown
1768 in Section 24-2101. By contrast, the Planning Commission is not authorized under the
1769 zoning ordinance to issue interpretations or hear appeals from interpretations. Moving
1770 back to the 24-3105(D)(3) as the clause as applicable. This section makes clear appellant
1771 cannot pick and choose its preferred decision maker. The clause as applicable plainly
1772 means that the decision maker assigned by the zoning ordinance to act on a development
1773 application or approval will consider the waiver request in connection with that
1774 development application for approval. Appellant has not submitted an application that the
1775 Planning Commission can act on, but Appellant has asked the Planning Director to
1776 interpret multiple sections of the zoning ordinance relating to the additional setback, and
1777 appellant received a determination from the Planning Director in response. Finally,
1778 appellant contends that because the Planning Director did not issue the decision within
1779 90 days, appellant's arguments should be deemed approved. State law does not make
1780 that an available remedy. No less than seven sections of the zoning and subdivision
1781 chapter of the Virginia code expressly state that a failure to act under those sections within
1782 a specified period in those sections results in deemed approval. Virginia code Section
1783 15.2-2280 684, which directs the Planning Director to respond to a request for a
1784 determination within 90 days, is not one of those sections. As the Virginia Supreme Court
1785 regularly holds, when the General Assembly uses specific language in one instance, but
1786 omits it elsewhere, the omission is intentional. In quote, an unambiguous manifestation
1787 of contrary intention. In short, the General Assembly knows how to make deemed
1788 approval a remedy when it finds that it is appropriate. In this case, it does not, it has not

determined that that remedy is appropriate. And this reading is bolstered by the Virginia Supreme Courts Analysis of Virginia code is Section 15.2-2312. In a case called Tran. In that case, the court determined that 15.2-2312, which gives this Board and other BZA's across the Commonwealth 90 days to render a decision is procedural and directory. In the words of the Virginia Supreme Court, we have repeatedly stated that the use of the word shall in a statute requiring action by a public official is directory and not mandatory unless the statute manifests a contrary intent. And this is not to say there's no remedy in the event that a zoning administrator or a planning director simply refuses to render a decision, for example, someone may may apply to Circuit Court for a Writ of Mandamus. But here, the Planning Director has rendered a decision, so the question is moot.

In sum, The Massie is clearly subject to the additional setback under the county's zoning ordinance, the request waived the additional setback cannot be presented to the Planning Commission. The board should uphold the Planning Director's determinations, and the board should adopt the motion making the findings on this slide, which are required by local ordinances, state statutes, case law. Happy to answer any questions.

Mr. Lawrence- Any questions from the board for our staff here. I did have a question, couple questions. You mentioned that the properties behind this parcel are zoned R-5 and are residential homes. This property is zoned R-5, but it appears that R-5 does not permit single family, only apartments and townhomes.

Mr. Murphy- This property is vacant while the other lots have already been improved.

Mr. Lawrence- So are they grandfathered in or...

Mr. Murphy- It would be non-conforming uses.

Mr. Lawrence- Do you know when the ordinance changed to prohibit residential in R-5 districts?

Mr. Murphy- I don't recall. It's not...

Mr. Blankinship- 1992, I'm pretty sure.

Mr. Murphy- But these have been vacant for well, well before that. VDOT acquired this strip and widened Staples Mill Road back in the seventies and demolished the houses at that time.

Mr. Lawrence- And this may be a question for the appellant, but I don't understand why the Planning Commission is even a factor here. Didn't the county change our ordinances several years ago?

Mr. Murphy- It was last year.

1835 Mr. Lawrence- Plans of development are no longer reviewed by the Planning
 1836 Commission as an administrative function.
 1837
 1838 Mr. Murphy- It was last year in response to that legislation.
 1839
 1840 Mr. Lawrence- I thought it was earlier than that. Just last year?
 1841
 1842 Mr. Blankinship- We had taken most of them out of the Planning Commission
 1843 hands before last year and then when the General Assembly said they can't review them
 1844 anymore, we took the last references out.
 1845
 1846 Mr. Lawrence- So I thought we had stopped having POD meetings three or
 1847 four years ago.
 1848
 1849 Mr. Blankinship- That's correct. Yeah, it was just an occasional...
 1850
 1851 Mr. Lawrence- So that predated the General Assembly action that the county
 1852 action did.
 1853
 1854 Mr. Blankinship- Yeah.
 1855
 1856 Mr. Lawrence- Was that because we saw it was coming down, just out of
 1857 curiosity, down the pipeline or did we just feel like that was a function that the Planning
 1858 Commission didn't need to be burdened with, with all their other responsibilities in terms
 1859 of rezoning cases.
 1860
 1861 Mr. Blankinship- It actually started during COVID. We were trying to cut back
 1862 on face-to-face meetings as much as possible and that was one thing that we were able
 1863 to do at that time because the state laws from for many years allowed for administrator
 1864 approval for Planning Commission approval. And during COVID the decision was made,
 1865 make them administrative during the emergency just to prevent, you know, one more
 1866 meeting. And then it worked so well and everyone liked it better and the Board of
 1867 Supervisors decided to make that change permanent.
 1868
 1869 Mr. Lawrence- And the previous local, district supervisor was deceased.
 1870
 1871 Mr. Blankinship- That may have been a factor.
 1872
 1873 Mr. Lawrence- I'm sure it was. That's all I had at this time. Anybody else for
 1874 the board have any questions? Thank you, sir. And we'll now hear from Mr. Condlin,
 1875 representing the appellant.
 1876
 1877 Mr. Murphy- That's what I'm, just the mouse, I'm trying to exit out for you.
 1878
 1879 Mr. Lawrence- Thank you, Mr. Murphy.
 1880

1881 Mr. Murphy- I think you just be able to double click and then while you...
1882 So, this should be a good presentation, and then you should be able to scroll down.

1883
1884 Mr. Condlin- Alright. Thank you, Mr. Chairman, members of the board. My
1885 name is Andy Condlin here on behalf of the applicant. The property that we're dealing
1886 with is about 1.2 acres, and as you pointed out, it's vacant property and is as Ryan has
1887 pointed out a number of times he's correct and is certainly in the fact stated before it's
1888 nine lots. Lots five through 14 of the Mayfield subdivision. The subdivision was created in
1889 1940, you can see the circle that we've got on there of where those properties are along
1890 a two lane Staples Mill Road. Obviously, I don't know what happened on this slide. In our
1891 zoning, which is R-5, which everybody already understands. And as has been pointed
1892 out, the only use we can make of the property, and there's some like dormitory uses and
1893 children home uses, but really it's just multifamily and townhomes. I believe it was 2022
1894 that we were allowed to do duplexes. That got taken on, I might be wrong on that in the
1895 exact date, but it was in that timeframe that we had another choice to do duplexes and
1896 we're in the process as you'll hear of working with staff to put duplexes on the property as
1897 opposed to multi family or townhomes, but because we can't put townhomes or
1898 multifamily on here without a variance, which I know this is not a variance application, but
1899 this property cannot be built practically speaking and we can answer that question and
1900 go through that as needed. Ultimately, as Mr. Murphy has pointed out, it's exactly right
1901 that the R-5 zoning and what we're talking about is ultimately we're looking for not just the
1902 setback and we're talking, I know we're talking about the, the appeal and not the variance,
1903 but I have the same fact pattern for both of them the same PowerPoint. And so we're
1904 talking about a hundred-foot lot width, but in this case we're also talking about, on Staples
1905 Mill Road, we have to have 25 feet of setback and because of the major thoroughfare
1906 plan requirement an additional 15 feet. So, we can meet the 25. It's the additional 15 feet
1907 again as Mr. Murphy has pointed out, which is there you can see right out of the code,
1908 the use is under permitted townhome, multifamily, and a smattering of other uses. VDOT
1909 did take this property between 73 and 76, they acquired all nine lots, they widened the
1910 road, and they took about 41 to 51 feet off of these properties depending on which
1911 property is, which is a pretty significant grabbing the property. They actually did send it
1912 back or sold it back and I'm gonna disagree with staff. The deed from VDOT to the first
1913 owner did not say, did not say as is whereas. I'm gonna say it doesn't really matter what
1914 it said, but it did not say in that instance when it wasn't, so we've got the plan and I've got
1915 copies for the variance we can talk about that, the proposal plan for the multi family.
1916 There's a little bit more detail if we got. So let me just go forward with respect to the appeal
1917 itself and what we're talking about. Does the applicant have a right with respect to code
1918 section 24-3105, does that apply to the property? The answer is no, and do we have a
1919 right to go to the Planning Commission? We believe the answer is yes. So, with respect
1920 to the additional setback, the Director's response, I'm a little surprised at the at the
1921 statement that's made with respect to the state law. The Director, you know, can basically
1922 avoid complying with the state law because there's no consequences, what it's basically
1923 said. State law is clear that he has responsibility to respond in ninety days. He took a
1924 hundred and thirty-one days. State law says shall, and also says the applicant shall have
1925 thirty days to apply. We're held to that standard, but it turns out that the government gets
1926 to apply but played by different rules, and it's unfortunate and there's the coach section

that says the zoning administrator shall respond within ninety days. It's already been stated that they didn't respond until March 3rd, which is over a hundred and thirty-one days. But if there's no consequence here because the state's statute didn't say. It did say "shall" and that you have to respond, but there's no consequence therefore, we don't have to comply with it. You know, and ultimately, I get that it's hard to say well then whatever you said isn't good, but I've got a property owner that's trying to develop the property and you'll hear a lot of history here, and we're waiting for a response and we're constantly running into roadblocks in trying to get that. The code itself also allows for 24-3105 D that the property has certain exemptions, and those exemptions are applied with respect to the 15 feet doesn't apply to residential development and subdivision prior to 2022. Bottom line is, no matter what I do to this property, it's still within the Mayfield subdivision. It doesn't say it has to be a single-family lot. This code section does not say single family lot. It says, are you within the subdivision. I'm proposing to you that the only standard you have to look at for me not to have to comply with this extra 15 feet because it's in the Henrico Code that says, are you still in a subdivision that was prior to 2022? When I build that multifamily property and create one lot, it's still a lot in the subdivision. When VDOT took that lot, and widened Staples Mill Road, it's still within the subdivision. When we go ahead and vacate those property lines, it's still a lot within the subdivision that was created or that is in a subdivision that's been in existence since 1940.

The only thing that's required is that it be in a subdivision and that it had residential development where R-5 multifamily is residential, we're permitted and only permitted to do that. So, I think that's why we comply with that exemption that we have otherwise set forth in the Henrico code. And it really there's nothing more, more nefarious than that, it's nothing more complicated than that. And that's why I read the code all the time and we sat down with Mr. Blankinship. I have had many conversations and it's difficult. This is very complex, but it comes down simple. If you're in a subdivision that was prior to 19 or 2002, then you don't have to comply, and you do not have to meet that extra 15 feet. I also believe that we are, benefit from the different standard with respect to 3105(E) They apply different standards and when we get, apply those different standards, we can still, we can then meet the setback along Staples Mill Road, and we think we comply with that because it says that any lot created before January 1, 1960, gets to avail themselves with those standards, and if we can, we then can meet the setbacks on Staples Mill Road. Those lots were created in 1940 and will continue to be in Mayfield. That's the bottom line, is with respect to those lots themselves. And my vacation through a, and I appreciate the county attorney agreeing that we can go through the minor subdivision cause as you know we've talked about that, that's not a subdivision, it's not a re-subdivision, when I vacate those lot lines, they're still part of the Mayfield, and they still just merge those lots. Instead of lots five through 14, I can just call it lot five. It's still a lot and it's a single-family residential lot that's still part of that. It's still part of the overall Mayfield subdivision. So that's why we believe we continue to be in Mayfield, and we continue to be able to get the benefit of that alternative calculation. Finally with respect to the Planning Commission, I get that there's a lot of nuance with respect to the Planning Commission and what happens. If you read the exact language, it says approving an application for development permit or approval. The county attorney told you the State General Assembly wanted to say something different about the 90 days, they could have said something about the

consequence. I would propose to you all over the code are the terms plan of development and site plan approval. It's not in this code section Henrico County Board intended this to apply only to PODs, then they should put it in here. It turns out our conceptual plan happened to get a POD number, still don't understand how I can get a POD number and not be deemed a POD. But beyond that, this language says application for development permit or approval. And it doesn't say you get to go to only the Planning Commission and if you are Planning Director and then that's exclusive and you can't go to the Planning Commission, it actually says we can go to either one. We went to the Planning Director. He did not consider all the factors. We had a conversations, we thought we could go to the Planning Commission instead. We preferred to go to the Planning Commission as it allows for it to do. It may be contrary to state law regarding PODs. If it's contrary to state law, why is the Henrico board approving if it really is contrary to state law? Why are they approving code sections that are contrary to state law? If this was intended to say POD, then they should amend the code instead of leaving it out there. I'm advising my client, my client's reading the code, my client is actually discussing this with the Planning staff and literally says I can go to the Planning Commission, or I can go to the Planning Director. Why hasn't it been amended? Why if we're not allowed to go to the Planning Commission, why is this still in the code? And that that's the real question that we have and that's real beef that we have with this. Doesn't say a POD and it doesn't say that I can't go to the Planning Commission, but that seems to be contrary to state law. And to me that seems to be contrary to what the intent is in order to follow state law. So, with respect to that, there's a specific provision that allows for the waiver and the reason we wanted to go to the Planning Commission was because, and again, part of my slide has got left off... and zoomed in on there, but there's some office building literally 20.5 feet off of Staples Mill Road, was never addressed by the Director of Planning in his waiver level. Never addressed. We asked him to address it and you never did, and that's one of the standards of a waiver that we feel like we could, in a public forum avail ourselves at the public forum and forum of the Planning Commission. So that's why we think that we have the right to ask for the waiver to the Planning Commission we feel like we've been successful because that would be considered and I'd be able to present it like I am today, so. But with that, I believe that's everything I've covered. The Planning Director should have to follow state law. He's required to follow state law within ninety days and he didn't. We think we are exempt from the 15-foot because we are a subdivision and will remain in a subdivision, that's all it requires at residential subdivision within that's done before 2002 and we think we also have the alternative to be able to apply for an alternative calculation based on section (E) Because we are within a subdivision, that's a lot that was created prior to 1960. With that, I'll be happy to answer any questions at this time, I appreciate your time.

Mr. Lawrence- Are there questions from the Board for Mr. Condlin?

Mr. Green- Yeah, you stated that you don't have to meet the 15 setbacks but explain that in lay terms.

Mr. Condlin- Yeah, so the Henrico County code itself says, under these circumstances next to Staples Mill Road, it has different standards for different roads, you

2019 have to an extra 15 feet. But what I've highlighted there is right now with the code section,
2020 these requirements apply to all residential developments, multifamily residential residents
2021 that did not as of 2002 have a recorded subdivision. So, I think in the reverse, what Mr.
2022 Blankinship can correct me on this one, is that if you're in a recorded subdivision before
2023 2002, you don't have to meet the extra 15 feet, the extra stuff, and that's what I'm saying.
2024 I'm in a recorded subdivision from 1940. And therefore, I don't have to comply with this
2025 extra 15 feet, it's in the code, the supervisors drafted it and they must have meant
2026 something and that's why we, we haven't we're not like again we're not being nefarious,
2027 we're not trying to trick anyone, it's right in there that says if I'm in the subdivision, and
2028 this is a residential development that's in a subdivision. Nothing changes with vacating
2029 the property line. Multifamily, it doesn't say single-family. I'll give them that the county
2030 attorney on the other, the section (E) specifically says single-family lots. This doesn't say
2031 anything, it just says residential development. And that's why we think we have the right
2032 to build and not have to meet that 15 feet. We can meet the 25 that's required by the
2033 code. It's the extra 15 that says you don't have to if you're in the subdivision prior to.

2034
2035 Mr. Green- And then the other question I have, did you get any
2036 explanation from the Director why you did not meet the 90 day.

2037
2038 Mr. Condlin- No, and I have a number I didn't bring with me. I had a number
2039 of emails and like all of us, they're busy and this is not a I've got a which for the variance
2040 will I'll be handing out an email from Mr. Michael Kennedy from 2022. Where the question
2041 regarding a waiver was already put forth, so it's not like it was a new issue and it was
2042 complicated that they hadn't anticipated. I didn't get any explanation. And it's just unfair
2043 to play by different rules. To hold us to 30 days and say, I missed that thirty days, I'm
2044 done. But when they missed the 90 days, you know, it's okay. We're the government, we
2045 can do it differently. Not right. More questions?

2046
2047 Mr. Lawrence- Just to follow up on that point, Mr. Condlin, my understanding
2048 is that the reason that the response was not given within 90 days was because the
2049 Planning Director was waiting for comments from VDOT on the road issue. And I believe
2050 there is a provision in the state code that, I may be mistaken, maybe I'm confusing two
2051 different provisions, that there's some flexibility built in if there's a road issue involved
2052 where VDOT is involved, and I am I wrong on that point?

2053
2054 Mr. Condlin- I'm not aware of that and I will just say with respect to that one,
2055 we never heard that. It sure would have been nice if somebody picked up the phone and
2056 called. It's not like I don't have a relationship or they didn't know. Number two, when you
2057 talk about the road issue. If you can see the, so you can't see it, but these are the nine
2058 lots, we're not allowed to access this property off Staples Mille Road. VDOT will not permit
2059 that. But as a property owner I have the right to access. The question is Massie Road. I
2060 can turn on Massie Road and get this access. They've got to be able to grant me access.
2061 You can't prohibit me access and I don't know what that has to do with it. I understand
2062 what you're saying and I'm not saying that's not, I don't know what VDOT has to, has
2063 anything to do with whether I should get the waiver or not. I mean those two provisions
2064 seem to be...

2065
2066 Mr. Lawrence- Well, they have something to do with it because if you're
2067 talking about a waiver on a major arterial that's maintained by VDOT, they are going to
2068 have to, I believe I'm not mistaken on that point, they're going to have to approve where
2069 the access is to the property and the traffic issues involved.

2070
2071 Mr. Condlin- They don't have to approve the waiver and they would
2072 approve this as part of the overall plan, and they do have exceptions in talking with our
2073 engineer to allow for access management exception and this would qualify when there's
2074 no other available, but that's more of a site plan process or the POD process as you go
2075 through the old plans. I don't know. I'm not saying you're wrong. I just don't know what
2076 that has to do with the waiver. It sure would have been nice. I've never gotten an
2077 explanation as to why and I'm not sure what you know VDOT has to do with that. I
2078 understand they take time to return, but would have been nice to extend that time for that
2079 purpose.

2080
2081 Mr. Lawrence- Well I understand that. Let me ask you this question. Why did
2082 you all not submit a site plan? You've submitted a concept plan. Why did you submit this?

2083
2084 Mr. Condlin- Interesting. I'm gonna, I'm pulling everybody into this County
2085 in this one, poor Mr. Gidley. He had to email me, and we had submitted a zoning
2086 conformance letter to ask these very specific questions to interpret the code sections as
2087 we were asked to. And Mr. Gidley sent me back... I just read it this morning but sent me
2088 back an email that said we can't. The Director, Mr. Emerson, said we can't accept your
2089 zoning conformance letter, you're better off asking for a concept plan review. Not
2090 approved, but a review by the staff. So, we refunded maybe \$25 or \$35 or whatever it
2091 was. So based on the Director's direction, we were trying to get a zoning conformance
2092 letter, getting a determination, they said go through the concept plan process. So, we did,
2093 and it was a little frustrating. We put together a full plan of development site plan approval
2094 plans, you're talking somewhere \$200,000 plus 300 to do a conceptual plan, 30 to
2095 \$50,000 to get that done, the work that's necessary the client had paid. Big difference.
2096 This is not a big developer, he's a gentleman that bought this property in, you know,
2097 probably regrets it now, but bought it and was trying, we're trying to come up with a cost
2098 effective way to figure out how to this is a difficult bit. Don't get me wrong. We certainly
2099 meet the standard that this is an unusual property. This is a really hard property to develop
2100 and the code changed in the middle of all of our discussions, they got rid of duplexes,
2101 they added another 15 feet, you know, and I've had to go back and redo everything with
2102 the staff and so as a client, and so we were just trying to be cost effective so we didn't go
2103 through it. I mean we're talking \$100,000 to \$150,000 more than you already spent to get
2104 that to be done, and the answer might be... Right here anyway. We were gonna get a no
2105 anyway, so it just didn't seem...

2106
2107 Mr. Lawrence- Surely the property owner when he purchased the property
2108 realized the constraints on it, particularly since the fact that it was property that had been
2109 owned by VDOT was taken for a road project and had been sitting vacant for several

2110 decades? I mean that should have signaled, I think, there were some challenges in
2111 developing it.

2112
2113 Mr. Condlin- Well, there was, but don't forget, the question we're really
2114 pushing here because he bought it, what year was it, 2013? The code changed in 2022
2115 to add this extra 15 feet at the time he bought it. And as you know, when we're not talking
2116 about a variance, but as you know, that doesn't relate to the question of good faith. He
2117 bought the property and was developed, could have done duplexes. I think those came
2118 out in 2022 and this addition was added.

2119
2120 Mr. Blankinship- Yeah, let me just correct you there if you don't mind. Your
2121 previous slide had the 2002 date on it. That's correct. If you had had a plan on the table
2122 when this was adopted in 2002, it would not have applied to this and that was the purpose
2123 of that being in there. So that that was added to the code in 2002.

2124
2125 Mr. Condlin- I'm sorry.

2126
2127 Mr. Blankinship- The additional setback from major thoroughfare one.

2128
2129 Mr. Condlin- Oh I got that wrong. I apologize. But the previous owners had
2130 that as well, so there's some...

2131
2132 Mr. Lawrence- I know there's some legal nuances in terms of interpreting the
2133 code, but, it certainly seems to me to be a stretch to call this a residential subdivision. It's
2134 gonna be a commercial development, I mean, it's gonna be an apartment...

2135
2136 Mr. Condlin- All due respect, Mr. Chairman.

2137
2138 Mr. Lawrence- You're not developing nine subdivision lots that were provided
2139 back in the, back before 1940. I think you'll agree on that.

2140
2141 Mr. Condlin- Well, with all due respect that R-5 is in the residential section
2142 of the code and R-5 only allows for multifamily and townhomes. Previously, now my dates
2143 are all wrong and I apologize, but previously allowed for duplexes, which we were going
2144 for and then we're told, and I've got, if I may, can I can this email up?

2145
2146 Mr. Blankinship- I can clarify that if you want me to.

2147
2148 Mr. Condlin- But in 2022 when you're saying we should have known, we
2149 gotta... from the standpoint if you want to answer that... Mr. Blankinship, I don't believe...
2150 Mr. Page, the landowner has not been sworn in, but he wants to say something with
2151 respect to what we should have known. But this was an email from Mr. Kennedy that
2152 talked about really the third highlight. That says the standard was satisfied with regarding
2153 a reduced setback, so even though in 2022, you know, here we are having private,
2154 informal conversations with staff, you know, the first thing which we'll talk about in the
2155 variance that has to do with the hundred-foot lot width and whether we're not conforming

2156 but talking about what 3105 (D) says. We agreed that the basic standard for reduced
2157 setback was satisfied. This whole conversation has been going on before we went
2158 through any formal applications. At that time, we were going forward with a duplex and a
2159 duplex standard based on this based solely on this email and the conversations that came
2160 from this. He converted everything to a multifamily, he said scrap the duplex, let's go for
2161 a multifamily at the suggestion of staff that we would meet the standards. And that's what
2162 we based it on and that's why we went forward, so when you say it's a commercial
2163 development, I would have to disagree that it's within a residential district. Multifamily is
2164 residential. We're not even allowed to build homes or single-family detached homes or
2165 duplexes. We can only build townhouses which we can't fit in on multifamily, which we
2166 can't fit in without a variance. I've got a couple of slides that shows for townhomes I can
2167 have a two-foot line, a two-foot deep townhome by the time I meet all my setbacks and
2168 all the other standards. I have a two-foot deep townhome. I mean, yeah, I can technically
2169 build it, but obviously I can't have a two-foot-deep townhome. I don't know. I think Mr.
2170 Kennedy, Mr. Blankinship, has now been sworn in. He did not stand.

2171
2172 Mr. Kennedy- I thought we were doing a variance so I did not stand, I'm
2173 sorry. So, I just swear to tell the truth or however.

2174
2175 Mr. Blankinship- Whole truth, nothing but the truth.

2176
2177 Mr. Kennedy- Yeah, exactly. Exactly. I just wanted to take...

2178
2179 Mr. Blankinship- State your name for the record.

2180
2181 Mr. Kennedy- Zach Kennedy. I wanted to address the comment about I
2182 should have known or I knew what I was getting myself into when I purchased the property
2183 in 2013. First, it was a foreclosure property at that point. It wasn't owned by VDOT, it was,
2184 it had gone into foreclosure. We bought it directly from the bank. I think Mr. Conklin has
2185 clearly stated or shown here that there are statutes and code ordinances that can easily
2186 be interpreted so that we could have built something. And I ended up getting confirmation
2187 from the county that I could. I'll mention in the variance later that I was directed and told
2188 that by right I could build four duplexes in 2022, in 2022 before we had to go to the
2189 variance process or the BZA process. So, when I purchased this, there was clear
2190 information through the ordinances that I was able to build something on here and at that
2191 point it was duplexes. So, I was very confident that I did my due diligence, I used to do
2192 some development in the area, and I understand how important it is to do due diligence
2193 before purchasing anything. And based off the code at that time, there was a clear path
2194 to build on this land that had been changed in the middle of our process of getting
2195 approval for the four duplexes, which we do have in writing that we were allowed to do.
2196 We're going through that process, the county changes the ordinance at that time while
2197 we're going through that process and then because we're denied a variance because we
2198 can't meet the use, now of the new ordinance. We shifted, and the only reason we shifted
2199 to a new plan was because Mr. Kennedy and Mr. Blankinship kindly sat down after that
2200 meeting because we showed the County Attorney the email stating we could do four
2201 duplexes. And he was unhappy to see that email. He was not, I guess he wasn't aware

2202 of it, I'm not sure. But they came back graciously, the Planning Department came back
2203 graciously to us and showed us a path to build. And that path to build was to front on
2204 Massie Road. Mr. Blankinship and Mr. Kennedy said we can waive that a lot width
2205 problem. We can work with you on the additional setback requirement because of what
2206 Mr. Condlin had displayed already. So, we built that out. We asked for more information.
2207 We tried to hammer it down in good faith. And unfortunately, they then told us no, again
2208 and again and again. The goal post has been moved multiple times. And I, I appreciate
2209 the effort that we had at one point with them, but when we spend the money and try to
2210 achieve that, to come back and then be said, you know what, you're taxpaying citizen,
2211 we've paid over like \$30,000 in taxes on something you were now telling us we cannot
2212 develop. When I bought it, we could develop. During the process of planning this out, I
2213 could develop it. Plans changed. I'm denied. I changed the plan again, I'm denied, and it
2214 wasn't because I created something out of thin air. It was because the Planning
2215 Department offered a solution to us. And to me, that doesn't seem very fair. We've spent
2216 a lot of money on it. We want to build something that would be very valuable to the
2217 community, and I will repeat myself a little bit in the variance process, but this is an urban
2218 residential part of the comprehensive plan. We're meeting the needs of that area, adding
2219 diversity, not only with people, but also the options that people have to live in. They don't
2220 have to have just a town home or a piece of, a single-family home. We're giving them an
2221 option to live in something that maybe be a little bit more affordable, that's gonna be close
2222 to the public transportation and within walking distance to Willow Lawn Shopping Center,
2223 grocery stores. And so, at the end of the day, the process has changed multiple times.
2224 And, I'll leave it at that right now, but I do have some other information to share in the
2225 variance that, that proves that this wasn't that the duplexes were at the time that they
2226 were denied as we were developing that process that it wasn't a by right option. So, thank
2227 you for listening to my comments.

2228
2229 Mr. Lawrence- Thank you sir.

2230
2231 Mr. Kennedy- And here's the, here's the comprehensive plan that shows this
2232 property, the dots on our corner lot, as much as I could do. It's urban residential. Let's
2233 play for, you know, multifamily up to 3,460 to eight units and eight acres. It's consistent
2234 with the comprehensive plan.

2235
2236 Mr. Lawrence- So do you want to discuss townhouses?

2237
2238 Mr. Kennedy- Yeah, we discussed, here's...

2239
2240 Mr. Condlin- We were told we weren't allowed to.

2241
2242 Mr. Kennedy- Yeah, this is what's...

2243
2244 Mr. Lawrence- It's zoned for townhouses, right?

2245
2246 Mr. Condlin- It's zoned for multifamily and townhouses. Right. So, here's,
2247 here's examples. We had put together a couple of examples. We put together a lot of

2248 examples of what we did. We've worked with a couple of engineers, and this is our
2249 attempt. So, this is a lawyer's attempt at math, so hang with us a little bit. We got Staples
2250 Mill Road and Massie Road right here. If we have the buildings facing Staples Mill Road,
2251 we've got to put a ten-foot buffer in, a 24-foot drive aisle, and 18 feet parking. We're fifty-
2252 two feet into the site already, then with the thirty-foot rear foot setback. We're talking about
2253 townhouses under 17 feet deep and 18 feet wide. It's like 300 and some square feet, I
2254 mean that's just the market just can't call for that. I mean that's, I don't even know what
2255 the building code required, and here's the next one. If they're facing the rear, this is where
2256 we get the building spaces two feet because we've got to comply with the 30-foot and 15-
2257 foot. And then we've got the 10-foot buffer drive aisle and parking, and then we're left two
2258 feet, so we'd have a 17x2. I mean, that's why. Can we do it? Well, sure, I guess technically
2259 we can, but it's not very practical, you know, to do a townhouse. We'd have to get a
2260 variance of the 15 feet for a townhouse. We'd have to get a variance for a multi-family,
2261 you know. And it's a town home and you still have to consolidate the lot, you're still stuck
2262 in the same place. We must get a variance and based on our interpretation of particularly
2263 the fact that it's a residential development in a subdivision prior to 2022 that we're not
2264 subject to that 15, additional 15 feet. That's really, that's the main point of what we're
2265 relying on, and that applies to both the townhouse and the multifamily. I don't think it's the
2266 county's direction. If you want to say we'd like the townhouses better than the multifamily,
2267 we'd probably say, great, we'll take it, but I don't think it's the county's right to say you
2268 have the right to build multifamily, you have the right to build townhouses, you need a
2269 variance for both of them or a code interpretation applies to the both, but we prefer you'd
2270 have one and not the other.

2271
2272 Mr. Lawrence- I'm not trying to imply, to understand that, you know, you might
2273 be able to reduce the density in terms of townhouses and also reduce your parking
2274 footprint, but obviously I'm not the one making the financial decisions.

2275
2276 Mr. Condlin- Interestingly, I think parking is one per unit. I'm going on
2277 memory, I may be wrong, one per unit multifamily it's one-and-a-half per unit in
2278 townhomes. So, I mean, it's a lot of balancing, right? It's a lot of give and take on all this
2279 stuff.

2280
2281 Mr. Lawrence- I guess this may be more relevant to the variance request, but
2282 I eyeballed the property, but you're gonna be right up against those single-family homes
2283 right behind.

2284
2285 Mr. Condlin- Interesting. Yes. Yes, you say that, but I'm not asking for in
2286 the variance and in the code interpretation. I'm not asking to change that rear property
2287 building line. That rear building line meets code. If I have to get the 15 feet I'm moving it
2288 closer to the residence than I am. I meet code with this development. I'm not asking to be
2289 any closer than what the code allows. That rear property line is what it is. I'm asking you
2290 to waive an additional 15 feet. If I have to meet that 15 feet, I've gotta take that 48 feet of
2291 that unit width, I gotta reduce that down to 30 feet, and again that is the rear set back.

2292
2293 Mr. Lawrence- What is the rear setback for this property.

2294
 2295 Mr. Condlin- The rear setback is our front, well hang on here...
 2296
 2297 Mr. Kennedy- It's a side yard, but I've got the...
 2298
 2299 Mr. Lawrence- I guess it wouldn't be side yard because It's actually fronting
 2300 Massie, right?
 2301
 2302 Mr. Condlin- Yeah, so I've got there. So that's what I was looking for when
 2303 you look at it. So, townhomes and multifamily have slightly different, but yes, it is a side
 2304 yard because what they call an interior side yard or a street side yard. And for that interior
 2305 side yard requirement is 25 feet, which we need for multifamily, so that interior in the
 2306 backside, we're not asking to change that. We're not any closer to those residents under
 2307 any of these proposals and any of these requests. That changes, that does not change
 2308 that building line at all.
 2309
 2310 Mr. Lawrence- I've got a question about the 15 feet and how that's applied,
 2311 but is that more appropriate for a variance or is it appropriate for this time?
 2312
 2313 Mr. Blankinship- I have found myself in the very awkward position. I'm normally
 2314 a Planning department employee and also, the Secretary to the BZA, but today I'm both
 2315 a fact witness and an expert witness because you know my name is on some of these
 2316 old emails and conversations with me are being recalled. So, I really feel the need to kind
 2317 of step back and let Mr. Murphy speak for the Planning Director.
 2318
 2319 Mr. Lawrence - Mr. Murphy, can you address for us the 90-day issue that Mr.
 2320 Condlin brought up, and then also the 15-foot variance, well not variance. I guess it
 2321 depends on how you term it, but it's a code provision that gives the Planning Director
 2322 flexibility. It is a code requirement that the Planning Director has flexibility to waive that
 2323 additional 15 feet. Is that something we should be discussing here or is that something
 2324 more appropriately discussed during the variance?
 2325
 2326 Mr. Murphy- The substance of the waiver request is not before us.
 2327
 2328 Mr. Lawrence- That's what I thought. I mean, it doesn't matter whether we
 2329 think it's good or bad, we're just simply determining whether the Planning Director had
 2330 the authority to make this decision.
 2331
 2332 Mr. Murphy- I think the question is whether the Planning Director erred by
 2333 not presenting it to the Planning Commission.
 2334
 2335 Mr. Lawrence- Correct.
 2336
 2337 Mr. Murphy- I would say that he did not err, that it needed to present the
 2338 development applications for approval. The only thing that's been submitted is a concept
 2339 plan and I have to respectfully disagree with Mr. Condlin. The letters that were sent in

January presented, yes, requested a zoning conformance letter, but presented it in conjunction with a concept plan. And it asked for feedback on a concept plan. And so, Mr. Gidley, I think appropriately directed him to the concept plan process. The concept plan is just a preliminary review of a concept; that's in the name. It's not a formal POD submission. You heard Mr. Condlin explain the difference between a POD and a concept plan. It's just for that preliminary feedback, and in those January letters, appellant did not request a waiver at that point. The letters explicitly say that they will, if required. So, then I think turning to some of the questions about the Planning Director's ability to waive that additional setback, and I have I have to disagree with their reading of the 3105(D)1. It says that the development must have... It's not a question of whether they are in a subdivision. They must have a subdivision. The subdivision that they have does not show The Massie. It shows nine individual lots. So then...

Mr. Lawrence- That's still a subdivision of record, is that correct?

Mr. Murphy- It is, and it will be vacated. That layout will be vacated. So, they will not have, they do not have a subdivision of record that matches their layout. As of 2002.

Mr. Lawrence- About 15 feet, but that's really more of a variance issue than a, than...

Mr. Murphy- At this point I think that's correct. Now, I think. You hit the nail on the head when you said that there's discretion, right? They presented you an email that says that the basic standard... So, you know, on its face, it could be granted, but the Planning Director has discretion, way of that. And I'd say there's some very obvious differences between an office building, which is close to Staples Mill, and which I think also fronts Pinetree instead of Staples Mill. I think Staples Mill is the rear yard of that office building and some multifamily.

Mr. Lawrence- I may give you a couple of examples that may bring that into question, but maybe that's, it's more appropriate for the variance case. I think our decision here is whether or not staff made the appropriate decision, the Planning Director followed the process appropriately, and we must have overwhelming evidence to overturn that. I'm not sure we have that here. I think there's some questions that have been raised and we can address those further in the variance case, but do you want to comment on the 90-day issue though?

Mr. Murphy- I'm sorry, I meant to say that as well. I think there's a fundamental difference in that the code recognizes that the Planning Director has been directed to respond within 90 days. I agree. But the consequence of a public official not taking action within a specified time period could be significant. And as I pointed out there, it's not as though the appellant or other parties do not have a remedy if the Planning Director does not respond within ninety days. You go to circuit court, you ask for a writ of mandamus. A writ of mandamus, if issued, would compel the Planning Director to issue the decision. Even if a writ of mandamus compels the Planning Director to issue a

2386 decision, the writ of mandamus does not exercise discretion. It's not gonna decide the
2387 case. It's not gonna tell the Planning Director how to decide. It's just going to tell the
2388 Director you need to respond now.

2389
2390 Mr. Condlin- He didn't get a chance to respond and I'm just trying to, and I
2391 do agree that before you now is not the substance of the waiver and we're specifically not
2392 asking for you to review that. That's a, that's absolutely 100 percent correct. But we do
2393 think that with respect to that 15 feet, again, we're not asking. I know you said it's not a
2394 variance and it's not like we're asking the Director to give us a waiver of that 15 feet. It's
2395 specifically with respect to what is permitted that Mr. Green had asked the question. The
2396 code allows us. If we're in a subdivision, and I know the term was used must have a
2397 subdivision, it says all residential development, has a subdivision that did not have a
2398 subdivision prior to 2022. We're specifically, we are following the code by not having to
2399 meet the 15 feet. It's not whether the Director rightfully granted the waiver or not. That's
2400 not the question, it is this interpretation of this specific provision that says, are we doing
2401 a residential development in a subdivision and our development, whether it's on nine lots
2402 or one lot. Is still within the Mayfield subdivision. It doesn't say that you can't change lots.
2403 It doesn't say that when we did duplex, we're gonna change lots, townhouse, we're gonna
2404 have to change lots, it says are you in a subdivision? And we will continue to be subject
2405 to the Mayfield subdivision even when we vacate the lots and even when we build any
2406 building out there, nothing changes, and that's what we're not asking for anything for this
2407 not...

2408
2409 Mr. Lawrence- It's not a Mayfield subdivision it's a Mayfield apartment
2410 complex.

2411
2412 Mr. Condlin- It's within a subdivision; it is not single family detached homes.
2413 Most people think of it that way. A subdivision under the, under the county code, is a
2414 division of lots of two or more lots. In this situation, lots five through fourteen happen to
2415 be nine lots and we're reducing it to one lot. We're reducing it to two lots or be an
2416 additional lot that we're not subdividing, or not doing the lot vacation. And when you
2417 vacate lot lines, you're not vacating the subdivision. It doesn't say lots, doesn't say lot
2418 lines, it says are you still in the subdivision, and we are still stuck to there's plenty of
2419 examples where you have duplexes and condominiums within a subdivision in Henrico
2420 County. We are still within the subdivision. That's the key here, and that's really what
2421 we're basing around. And with respect to the 90 days, I'm not disagreeing with the County
2422 Attorney as to this, but he's basically asking landowners to say, the government says,
2423 hey, by the way, I didn't appeal, I did not appeal the waiver to this board within 30 days,
2424 and I talked to him, I'm done. I'm done. I can't, I have to live by those rules. The county
2425 Planning Director does not. And because the consequences are, well, just go to court and
2426 make the court give you an answer. That seems a little bit aggressive to tell a citizen or
2427 property owner saying, we're not going to comply unless you take us to court, and I did a
2428 reply until he takes us to court. I think that's inappropriate.

2430 Mr. Lawrence- Thank you, Mr. Condlin. My colleagues wish to comment or
 2431 weigh in on this? Do you have any thoughts? I guess we need to hear from the public,
 2432 too.
 2433
 2434 Mr. Blankinship- Yes, that's the public hearing.
 2435
 2436 Mr. Lawrence- Yeah. For anyone here that wishes to speak, not to the
 2437 variance case, but this is to the, to the appeal case.
 2438
 2439 Mrs. Ruano- Yes. I would like to speak.
 2440
 2441 Mr. Lawrence- Sure, yes ma'am. Come forward, please.
 2442
 2443 Mrs. Ruano- Good morning, we are still in morning technically. My name is
 2444 Shelly Ruano and I would like to see our opposition to the appeal. My husband and I own
 2445 one of the properties adjacent to the property in question and for the record, we support
 2446 the original determination of the Henrico County Planning Director and therefore we
 2447 oppose the appeal.
 2448
 2449 Mr. Lawrence- And where do you live in conjunction to the property ma'am?
 2450
 2451 Mrs. Ruano- We are at 2115 Pinetree Drive. That is the property adjacent to the
 2452 commercial building.
 2453
 2454 Mr. Lawrence- Thank you. Appreciate that. Anybody else in the audience?
 2455
 2456 Mrs. Hudson- Hello my ladies and gentlemen. I'm Karen Hudson. I'm from
 2457 Mayfield. I'm here in opposition. We'd have over a thousand apartments being built on
 2458 Libbie now and 262 over there in Tapestry. Is there really a need for this to be developed?
 2459 That's within a quarter mile of our area. It says reasonably compatible. They're three-story
 2460 apartments. It's up to three stories with what I was told. Is that compatible with single-
 2461 level single homes? And the entrance side, just found out today is gonna be on Massie
 2462 Road, that's a pretty small strip there, that exit and entrance. And then there's a light right
 2463 there at Staples Mill that's gonna back up into the area. And as the need to change
 2464 consistently with the orderly development of the growth of the community, I think not.
 2465 We've already got enough apartments down there, at Libbie Mill. They're already building
 2466 more foundations from what they've already got, and then we've got that at Tapestry,
 2467 which is a big luxury area. And do we need a change? No, we don't need to change, the
 2468 developer wants to change. And then finally, last but not least, this area is an ozone sink.
 2469 It's gonna help with lowering the temperatures in our county, gonna help with storm water
 2470 runoff and lower our temperatures. There are six lanes of traffic on Broad, two blocks
 2471 away, and six lanes of traffic right there on Staples Mill, in our face, please don't let this
 2472 happen. Thank you. Any questions?
 2473
 2474 Mr. Broadway- Ms. Hudon, where do you live?
 2475

2476 Mrs. Hudson- Clover. One block over.
 2477
 2478 Mr. Broadway- Okay,
 2479
 2480 Mr. Lawrence- So you're not adjoining the property.
 2481
 2482 Mrs. Hudson- No.
 2483
 2484 Mr. Lawrence- Okay. Thank you. Any other questions? Anyone else in the
 2485 audience like to speak? Thank you, ma'am.
 2486
 2487 Mr. Witte- Okay, my name is Bob Witte. W I T T E. I need to verify before
 2488 I speak. This is about a variance, correct?
 2489
 2490 Mr. Lawrence- Well, actually there's two different cases sir. We're gonna have a
 2491 separate public hearing on the variance case. This is currently just determining whether
 2492 the Planning Director made the proper determination, so this is a narrower focus I guess
 2493 is best way to put it. We're not really...
 2494
 2495 Mr. Witte- It's not about a variance.
 2496
 2497 Mr. Blankinship- That'll be next.
 2498
 2499 Mr. Lawrence- That'll be the next, that'll be next on the agenda.
 2500
 2501 Mr. Witte- I'll just give my little spiel and you all make the determination.
 2502 Excuse me. My understanding is zoning variance and appeals must determine that a strict
 2503 application of zoning ordinances causes unreasonable restriction or severe hardship.
 2504 approaching confiscation. Now, I don't believe that, that this is the case, it says that it
 2505 often is only authorized to grant a variance, if it finds all of the following conditions are
 2506 met. All of the unique property characteristics, which would be peculiar compared to other
 2507 lots in the area. No self-created hardship. Well, I say he did create his own hardship
 2508 because he had somewhat verbal approval for four duplexes and then decided to double
 2509 the amount for profit. Well, more profit is not a reason for a variance. So, in strict
 2510 application, the third thing, practically, prohibits or unreasonably restricts the use of the
 2511 property. Well, I don't think any of those three, and you only need to miss by one to get
 2512 denied a variance. Well, I think they missed out on all three. Now, I've been a Brookland
 2513 District resident since 1969. I've been on a lot of different cases. I'm not an attorney. But
 2514 this just doesn't fit the bill. It's not a personal opinion; it's just the three facts. They have
 2515 to meet all three. If they don't meet one, it's a denial. Quasi-judicial doesn't have anything
 2516 to do with feelings or personal opinions. So, I'll be happy to answer any questions. I'll
 2517 keep this short and sweet, but it just doesn't, it doesn't meet it.
 2518
 2519 Mr. Lawrence- Question for Mr. Witte, do you have experience in this area?
 2520 You used to sit in this seat, I think. I understand your position on the variance, the one
 2521 right immediately in front of us is whether the Planning Director followed the proper

2522 procedure and determined that they didn't have the proper frontage. What's your position
2523 on that? Do you feel like the Planning Director and the planning staff followed the proper
2524 procedure or if we're not?

2525
2526 Mr. Witte- I don't have enough information to make a determination.
2527 Unfortunately, or fortunately, I'm not in a position to and I haven't discussed why these
2528 decisions were made, but personally, just my personal opinion, he had the opportunity for
2529 four duplexes. He opted not to take it. That would have solved all his problems at the very
2530 beginning. And now with those decisions making it work, this is unnecessary. So, he
2531 produced his own hardship.

2532
2533 Mr. Lawrence- Thank you, sir. Any questions before...?

2534
2535 Mr. Sehl- Mr. Chair, if I might. I did want to note one thing with regards
2536 to, you know, I know the timeline has been brought up by Mr. Condlin. Yeah. This was an
2537 ongoing conversation. You know, I came in late to the process, but my understanding is,
2538 you know, there had been an ongoing conversation throughout the winter, between the
2539 Director and staff and Mr. Condlin. That's certainly something where we have to try to
2540 have that working relationship. We work with Mr. Condlin regularly on that. So certainly,
2541 the timeline was fluid through that period. So, I would like to at least get that out there as
2542 well as that, you know, those conversations, Mr. Emerson and Mr. Condlin speak
2543 regularly, so certainly the timeline was not as discreet as that with regards to making sure
2544 that the consideration was ongoing during that time frame just with regards to the 90 days.

2545
2546 Mr. Lawrence- Okay, thank you, sir.

2547
2548 Mr. Witte- You done with me?

2549
2550 Mr. Lawrence- Yes sir. Thank you. You can speak again if you want during
2551 the next public hearing, but I'll leave that up to you. Anyone else wish to speak? Okay,
2552 are there any other questions to the Board? I think Mr. Condlin raised some good points.
2553 Oh, I've closed the public hearing. Public hearings closed. I think Mr. Condlin, you know,
2554 raised some valid points, but I think, you know, there's different interpretations of the code.
2555 I think it's stretching this to call it a subdivision, there's gonna be an apartment complex
2556 and I'm a little concerned about the 90-day time frame. But I do feel like there were
2557 conversations going on, and I feel like there was a lot of information exchanged. The
2558 property has difficulties. I eyeballed the property and it's got difficulties and obviously it
2559 could be to the county's advantage to develop it. We can determine that in the next
2560 hearing. We think talking about the merits of the case, but this, this hearing is to
2561 determine whether or not the Planning Director made the decision according to the code.
2562 And having said that, I'm gonna make a motion to affirm for the reasons stated by the
2563 Assistant County Attorney in his presentation letter. I'm gonna move that we affirm the
2564 determination and make the following findings. Number one, the additional 15-foot side
2565 yard setback required by Henrico code section 24-3105 (D) applies to The Massie, and
2566 therefore the total street side yard setback applicable to The Massie is 40 feet. Henrico
2567 code section 24-3105(E) does not apply to The Massie. Three, a concept plan is not a

2568 development permit or approval, for state law has superseded the portion of the Henrico
2569 code that allowed the Planning Commission to consider a waiver request. And finally,
2570 number five, the Director's denial of the waiver request is final. Do I have a second to that
2571 motion?

2572
2573 Mr. Massie- Second.

2574
2575 Mr. Lawrence- Okay second by Mr. Massie. All in favor of the motion say
2576 "Aye".

2577
2578 Board- Aye.

2579
2580 Mr. Lawrence- Is anyone opposed? Okay, the motion carries, the Planning
2581 Director's decision is affirmed.

2582
2583 On a motion by Mr. Lawrence, seconded by Mr. Massie, the Board **affirmed the decision**
2584 **of the Director of Planning and denied the appeal.**

2585
2586
2587 **Affirmed: Broadway, Green, Massie, Lawrence, Johnson 5**
2588 **Denied: 0**
2589 **Absent: 0**

2590
2591
2592
2593
2594 Mr. Blankinship- Alright, we will now proceed with the variance from this case,
2595 which is variance 2026-100843, Andrew Condlin, for Staples Mill Land Trust. A variance
2596 from the street side yard setback and lot width requirement to build a multifamily
2597 residential building at 2100 to 2116 Staples Mill Road, Mayfield subdivision in the
2598 Brookland Magisterial District. Are there any other parties who were going to speak that
2599 did not speak previously? Okay, so everybody's still under oath. Mr. Gidley.

2600
2601 Ms. Ruano- I'm sorry. Just to clarify, we're allowed to speak again.

2602
2603 Mr. Blankinship- Yeah, but you're still under oath.

2604
2605 Mr. Lawrence- Alright, let's wait just a moment.

2606
2607 Mr. Gidley- Maybe close to the break, too.

2608
2609 Mr. Lawrence- Let's take a five-minute break if you need to go to the
2610 bathroom or get some water, we'll start up again at 11:30.

2611
2612 *****5 Min Break*****
2613

Mr. Lawrence- We're going to reconvene the meeting, it's 11:35, and we are now going to ask Mr. Blankinship to call our next case.

VAR-2026-100843 Andrew Condlin for Staples Mill Land Trust: variance from the street side yard setback and lot width requirement to build a multifamily residential building at 2100-2116 Staples Mill Road, Mayfield, Brookland. Parcels 774-738-9392, 774-738-9586, 774-738-9680, 774-738-9875, 774-738-9946, 774-738-9952, 774-738-9958, 774-738-9964 and 774-738-9970. Zoning: R-5, General Residence District. Code Section: 24-3105.D and 24-3315.D. The applicant has 99 feet lot width and 25 feet street side yard setback where the Zoning Ordinance requires 100 feet lot width and 40 feet street side yard setback. The applicant requests a variance of 1 foot lot width and 15 feet street side yard setback.

Mr. Blankinship- Yes, that is variance 2026-100843 Andrew Condlin for Staples Mill Land Trust, variance from the street side yard setback and lot width requirement to build a multifamily residential building to 2100 to 2116 Staples Mill Road, Mayfield subdivision, in the Brookland Magisterial District.

Mr. Gidley- Thank you, Mr. Chair. Since you heard the appeal, some of this may be a little bit repetitive. As you heard previously, this was part of the Mayfield subdivision that was recorded back in 1940. At the time the property contained ten lots, nine of which had houses back when Staples Mill Road was only two lanes. Between 1973 and 1976, VDOT purchased each of these lots and demolished the homes that were on them. Staples Mill Road was subsequently widened, and once this work was completed, roughly half of each lot was left and then VDOT sold or auctioned off these lots. The applicant, Staples Mill Land Trust acquired the property in 2013. No warranty was provided for that property. As was noted in the last hearing, a concept plan was submitted by the property owner that shows the 16-unit apartment building on the property. They do need to combine the lots into one lot, and they were also told they would not meet the lot width requirement and setback off Staples Mill Road. The applicant is requesting one, a lot width variance and more importantly a 15-foot variance to be setback requirement off Staples Mill Road. As you know, at least one threshold test needs to be met for a variance. Staff doesn't believe any are met. First, is the property being reasonably restricted? You know, you had houses on each of these lots except for one, so you have a lots with houses and VDOT acquired those. VDOT paid the property owner for the house and the lot. The property owner was made whole, VDOT, the new property owner got what they wanted, two more lanes of Staples Mill Road on them, so they were happy. Then you just had this little bit of land that was left over that was auctioned off. You know, two sets of property owners were compensated here, not every residual piece of land from a road widening project is necessarily buildable. I don't think the zoning ordinance is treating it unfairly, again, there were originally houses on the original platted lots. Okay, the applicant could suggest there was a hardship and it was caused by VDOT, but again the left-over land has been sold more than once and they widened Staples Mill Road, use was made, and the property was sold as is and ultimately without any warranty to the property owner. As to the third threshold test, this doesn't involve a person who's disabled or anything like that. So, from staff's perspective, we don't believe any of the

threshold tests are met as required by code. Even if a threshold test was met, one of the subtests concerns detrimental impact. Yeah, it may be code, but the reality is you have these people who have houses here now, they're going to have a parking lot basically backing up into the property and a large apartment building going there, so that would be detrimental in staff's opinion to the property back there. So, for those reasons staff doesn't believe this subtest is met.

In conclusion, I'll just kind of summarize on my own. Again, the use was the houses that were on these lots, and those property owners were paid for those. VDOT was able to put two more lanes on Staples Mill Road. So, two sets of owners made use of this property, a waiver was asked of the Director of Planning for the additional 15 feet, and that was denied. I think there's safety reasons for that. Staples Mill Road carries, I believe it's 21,000 trips per day. The speed limit is 45 miles an hour, so there's people whizzing down there pretty fast and that's a lot of traffic. There's a reason the Board of Supervisors adopted that additional requirement. And I think for public safety reasons the Director, when he reviewed it concluded, concluded that it needed to be retained. Otherwise, you're going to have, you know, people potentially 25 feet off where the cars are zooming down the road quite fast, so there is a public safety and health reason for that. Secondly, as noted and you heard one of the ladies who was immediately behind it, they view it as detrimental to their property. It's residual land, there's not necessarily going to be a use for that. And when you try to make something out of it that isn't necessarily there, why should the property owners behind it who have their homes or why should they bear the cost of that impact by having a parking lot right behind them. So, for those three reasons, staff is recommending the denial of the variance. The original owners were compensated. There's a public safety reason for that enhanced setback, and the Director of Planning reviewed that and decided there are reasons to keep that and it is detrimental to the people behind. So, we're recommending denial. If you have any questions, I'll be happy to answer that.

Mr. Lawrence- I think Mr. Broadway has a question for you.

Mr. Broadway- Having affirmed the decision of the Director in our previous action, what are the consequences of that on our ability to consider this application for a variance?

Mr. Gidley- Yeah Mr...

Mr. Murphy- I think these are separate.

Mr. Gidley- Can you step up to the microphone so you're in our minutes.

Mr. Murphy- I think they're separate cases, sir, and I think they have separate decisional standards. Variance has its own specific statutory standard for making a decision that Mr. Gidley explained, there's the threshold and then there's the subtests, and they have to meet one of the threshold tests to meet all of the subtests. So,

2705 I don't think that you are precluded from acting on the variance in any way, if that's the
2706 question.

2707
2708 Mr. Broadway- Okay, Thank you.

2709
2710 Mr. Green- Could you all in very lay terms, assuming I'm sitting in the
2711 audience, explain what is really going on? I mean, we understand the subtests, the
2712 variance, the Director's decision, but in lay terms, if I'm sitting in the audience because
2713 I'm confused now because we heard the appeal before we heard the variance, could you
2714 just explain very simple lay terms? What, if, if we denied one, but if we, if we affirmed one
2715 but if we approve this, what does that mean for the for the person who doesn't want this
2716 at all in their neighborhood?

2717
2718 Mr. Murphy- Certainly, you've denied the appeal. There are two variances
2719 that are in front of the board right now. One is the lot width, the other is the additional
2720 setback, the additional 15 feet. Both would have to be approved for the plan to move
2721 forward. So, I think you have a question of the lot width, which is I think off six inches and
2722 then the variance for the setback, which we are talking about 15 feet there. So, I think you
2723 must apply the threshold tests and each of the subtests to each of these. Does that help?
2724 And I won't speak for Mr. Condlin. He may disagree with me, but...

2725
2726 Mr. Green- You know, just as if someone's listening to a lay person. If we
2727 affirm the Director's request and someone could can potentially think, well, the project is
2728 off the table now, but this

2729
2730 Mr. Kennedy- I think you still have a decision to make here.

2731
2732 Mr. Green- Absolutely.

2733
2734 Mr. Broadway- I have a question, Mr. Gidley. In your opinion, what other
2735 viable use is there in this property?

2736
2737 Mr. Gidley- At this stage I can't answer that. I'm not in the division of the
2738 department that does that. The point I was trying to make at the end and provide a little
2739 bit of a lay person's term is, not all land that's residual from a road widening project
2740 necessarily has a use available. The original property owners had full lots. They had
2741 houses on those lots. They were compensated for that. They were made whole and the
2742 idea of a variance is to make sure a property owner is not left in a situation where within
2743 certain reasons or certain bounds; that you can make reasonable use of your property.
2744 But the original property owners were compensated. VDOT who bought the property, they
2745 got what they wanted out of it, two lanes of Staples Mill Road. So, you have two sets of
2746 owners who in effect achieved what they wanted. And then you just had a residual piece
2747 of property that was acquired for \$3,500, and now people were left trying to find some
2748 sort of a use for it, and maybe there's not a use. And someone at one of these auctions
2749 the other day called me wanted a billboard on their property. They bought half of a

2750 drainage ditch. Sometimes there's property that just is left with limited use and that's
2751 maybe one reason it sold for such little land.

2752
2753 Mr. Broadway- So if nothing is approved, it just sits there along Staples Mill
2754 Road in perpetuity.

2755
2756 Mr. Gidley- Unless, and again, and maybe Mr. Blankinship's a little more
2757 up to date as far as the discussions are concerned on whether any of these lots can be
2758 combined in maybe the single-family homes. Of course, zoning would have to change at
2759 that point, but there may be some avenues going forward. But my point was, it's hard to
2760 say the property taken as a whole using the old State Supreme Court test is unreasonably
2761 restrictive when the original lots had houses on them. And those houses were bought and
2762 paid for and the land bought and paid for by VDOT. And then again VDOT obtained what
2763 they wanted out of the land when they bought it. Two more lanes of Staples Mill Road
2764 that are out there as we speak. So, when effect twice you've had property owners get
2765 what they wanted out of this land, and this is the third set of owners trying to find
2766 something to do with the residual. But the property taken as a whole, I think, had
2767 reasonable beneficial use that originally had the houses and now it has two lanes for
2768 Staples Mill Road on it and then get into the detrimental impact, which I think from the
2769 lady spoke about to try to push something in there now that doesn't meet code standards,
2770 why should they be the ones bearing the impact of that?

2771
2772 Mr. Green- You have a better picture of this. A real picture. We can move
2773 to the goods team.

2774
2775 Mr. Blankinship- Aerial.

2776
2777 Mr. Lawrence- Aerial. Yeah.

2778
2779 Mr. Gidley- Why should these folks be the ones who bear the price of
2780 trying to squeeze in a multi-family development here right on Staples Mill Road?

2781
2782 Mr. Blankinship- With the existing R-5 zoning, there are probably no uses that
2783 could be made without at least a variance from the lot width. But they could apply to
2784 rezone the property to a category that doesn't require the same lot width so they we're
2785 not really in a position to address all of the possible uses that could be made.

2786
2787 Mr. Green- Mr. Gidley, with all due respect, and you know, I have a lot of
2788 respect, and he said, why should they bear, you know, have to bear that? Well, that's
2789 anybody who can ask that question anytime something goes up when we see all these
2790 apartments going up everywhere and new subdivisions coming in and, and, you know, I
2791 live in Short Pump when they built up West Broad Village. So why should I have to bear
2792 the responsibility of West Broad Village when I was out there before? That's just the way
2793 things are, some things just happen, you know, but I understand, I understand, you know,
2794 just a space limit, but we just need the visual. So, based on the visual, where would these

2795 units be versus the house? I mean, that's what we really need to see. You got that thing
2796 kind of turned sideways. And it's still hard to see.

2797
2798 Mr. Blankinship- The aerial and the site map are on the same scale though and
2799 they should be the same orientation, so if he clicks from one it would just see where that
2800 is and then Paul, click back to the aerial again. And just imagine that red blob not moved.

2801
2802 Mr. Green- So, again the lady that spoke earlier about her house right
2803 there.

2804
2805 Mr. Blankinship- Just to the north, the first to speak.

2806
2807 Mr. Green- So the proposed Massie property is in front of this house.
2808 What is that, that's not a house. That's a pool or something back there?

2809
2810 Mr. Lawrence- It's a shed.

2811
2812 Mr. Green- So that whole Massie thing would be just in front of you. And
2813 where would they have to enter, where?

2814
2815 Mr. Gidley- Here. Yeah.

2816
2817 Mr. Green- Yeah, could you go back to that. So, where's the street?

2818
2819 Mr. Blankinship- Just at the bottom of the page.

2820
2821 Mr. Gidley- Yeah, here's Staples Mill. It would come in right off of Massie
2822 here, assuming VDOT allowed that and then you have this building right behind these
2823 houses and then parking lots going up to here.

2824
2825 Mr. Blankinship- Yeah, now you have changed orientations.

2826
2827 Mr. Green- So go back again.

2828
2829 Mr. Blankinship- Back to the aerial, you'll see the street is right at the bottom of
2830 the page.

2831
2832 Mr. Green- Where's the street?

2833
2834 Mr. Blankinship- Right at the bottom of the page.

2835
2836 Mr. Green- Right, so they would have to cut another street in.

2837
2838 Mr. Blankinship- Yes. Right between Staples Mill Road and the fence.

2839
2840 Mr. Green- So would VDOT have allowed them to do that?

2841
 2842 Mr. Blankinship- Yes.
 2843
 2844 Mr. Green- And that's not guaranteed.
 2845
 2846 Mr. Blankinship- VDOT has expressed a lot of concerns from a safety
 2847 perspective.
 2848
 2849 Mr. Green- So why would they come, I guess why wouldn't you wait until
 2850 you got under, let's say we approve this thing, then VDOT could still say no, so why
 2851 wouldn't you have gotten a strong sense from VDOT to get that rolled in?
 2852
 2853 Mr. Lawrence- Good question.
 2854
 2855 Mr. Green- This seems tight. I mean, looking at the area I mean, you
 2856 could look at this, this doesn't...
 2857
 2858 Mr. Lawrence- I've looked at the property, a hundred feet, you know, sounds
 2859 like more than it is. You actually look at it. It looks pretty tight, yeah.
 2860
 2861 Mr. Blankinship- And the red square on our site map or the red rectangle
 2862 reflects only the building. It doesn't reflect the proposed parking. The proposed parking
 2863 lot is shown in gray.
 2864
 2865 Mr. Lawrence- So how far is it, how far would the parking lot be off the rear,
 2866 of the residential property lines, Mr. Gidley?
 2867
 2868 Mr. Gidley- I believe it's ten feet to the line.
 2869
 2870 Mr. Lawrence- Ten feet?
 2871
 2872 Mr. Gidley- Yes.
 2873
 2874 Mr. Lawrence- Which is what the ordinance allows.
 2875
 2876 Mr. Gidley- Yes.
 2877
 2878 Mr. Green- And then these are these are up to four stories?
 2879
 2880 Mr. Blankinship- Three stories.
 2881
 2882 Mr. Green- So, they're looking directly in the backyard for those...
 2883
 2884 Mr. Gidley- And you're going to have people, you know, coming and going
 2885 during different hours, closing their doors, by having their headlights on and off right
 2886 behind these people.

2887
 2888 Mr. Green- Right, and then folks who are on the street. When they come
 2889 out their backyard, they're looking directly at somebody, potentially looking at them. Yeah.
 2890 Okay. That's what we need to see.
 2891
 2892 Mr. Blankinship- Cars and headlights.
 2893
 2894 Mr. Green- That's what we need to see.
 2895
 2896 Mr. Gidley- Yeah, that's the detrimental impact when you try to give
 2897 somebody value. You don't want to harm somebody else and that's why I said that.
 2898
 2899 Mr. Green- Can you say this property is bought for \$3,500?
 2900
 2901 Mr. Gidley- Yes sir. \$3,500.
 2902
 2903 Mr. Green- Oh wow. Okay.
 2904
 2905 Mr. Broadway- I'm sorry what was that?
 2906
 2907 Mr. Lawrence- The property was purchased for \$3,500. Mr. Gidley, let me
 2908 ask you a couple questions. Does anybody else on the Board have any questions for Mr.
 2909 Gidley before I weigh in?
 2910
 2911 Mr. Broadway- Mr. Gidley, you might not know the answer, but if it cost
 2912 \$3,500 what are the real estate taxes on it?
 2913
 2914 Mr. Lawrence- Yeah, that's a good question too.
 2915
 2916 Mr. Blankinship- Each lot is listed separately, so it would take a minute to put
 2917 all that together.
 2918
 2919 Unidentified speaker- It was valued at ...
 2920
 2921 Mr. Broadway- How much?
 2922
 2923 Mr. Green- \$27,000.
 2924
 2925 Mr. Lawrence- Mr. Gidley, one of the points that was made by Mr. Condlin,
 2926 and he'll be speaking, too, but was that there's a property adjacent to this that has a much
 2927 smaller setback from the road, and it does appear that way when I look at the property, I
 2928 think it's a different, it's a commercial, it's not residential, it's commercial. The lot is
 2929 configured a little differently. I think he also mentioned something about properties across
 2930 the street, but I couldn't really tell those as much. I do know there is an apartment complex
 2931 that was constructed next to the Glen Allen Post Office. The land was cleared back in the
 2932 mid, like 2005 era maybe. And then we had the real estate market collapsed and nothing

happened, and then the property was developed, and an apartment complex was put there about three years ago. I can't remember the name of the complex now, but it's right at the intersection of Nuckols Road and Sadler Road. And I've observed and had people comment, how could those be built so close to the road? They looked like maybe they were ten feet off the road. And there's another complex up near the intersection of Woodman Road and Hungry Road. I don't know if those are condos or apartments, and I remember hearing folks talking about that, too. Gosh, it looks like they built it right down to the road. Now granted Woodman's a two-lane road, I think. Nuckols is also a two-lane road. Staples Mill is three lanes, maybe that's the difference, but how are they able, do you know how those developments were able in the not-too-distant past to build that close to the road? Were those mixed-use developments? Do they have different development standards?

Mr. Blankinship- We could do some research into that and bring those answers back to you.

Mr. Gidley- On Staples Mill Road, a lot of those buildings have been there a long time and predated the Board of Supervisors adoption of the additional setback requirements, so that's one reason some of those buildings are where they're at, if I'm picturing the right property off of Nuckols Road. And again, this is from right on the zoning letter. We had one parcel with a lot of different aspects to it, but the old POD went back quite a ways and may have predated some of those requirements there.

Mr. Lawrence- I know our ordinance has changed. We've had a number of changes, substantial changes just in the last several years too.

Mr. Gidley- I'm not real familiar with the zoning up at the Woodman Road site.

Mr. Lawrence- Let me ask you this because this property is zoned R-5. Could it be rezoned to say R-4 and they could develop the lots that are already there as residences? I'm not sure, given the location, if it would be appropriate for a residential subdivision, but would that be an option? Could the property be rezoned for commercial purposes or, you know, a small doctor's office or something like that.

Mr. Gidley- Mr. Blankship said if he rezoned it, then you would open up other potential uses, but as he noted the site is pretty constricted of just portions of the original lot, so I don't want to go ahead and state they can or can't do this at this point without seeing actual plans for that.

Mr. Lawrence- And something I saw in the staff report, too, said that basically the applicant, I guess is appellant in the last case, applicant in this case, was actually advised by staff in 2019 that this case would not meet the standards of the variance. Is that correct? Did I read that correctly? That there was correspondence or discussions with the county and the applicant as far back as 2019 saying that this property would not be suitable for a variance?

2979

2980 Mr. Gildey- Cochran was in effect then, and my understanding of Cochran
2981 is the court would have said that the use was originally the homes. The property owner
2982 was compensated, provided money for their homes by VDOT and then VDOT made use
2983 with two more lanes of pavement and this is what's left over. There was a case years ago
2984 in Short Pump where the land was, where the Goodwill store is there. And there was a
2985 little bitty piece on the other side of 64, I think it was or 295, that was part of that original
2986 property. The Board turned down that variance request because a use was there in Short
2987 Pump. You had two commercial buildings or parts of commercial buildings on the other
2988 parcel and what was on the other side of the interstate now is just a small remnant of that
2989 original parcel. You don't get to look at that as somehow a new lot entitled to its own use
2990 when the original parcel had a use.

2991

2992 Mr. Lawrence- Okay. Alright. Anybody else on the Board have questions for
2993 Mr. Gidley. Thank you, Mr. Gidley. Let's move on and hear from the applicant now.

2994

2995 Mr. Condlin- Okay, Mr. Chair, members of the board. My name again is
2996 Andy Condlin here on behalf of the applicant this time. If I may, I feel like I'm gonna be
2997 doing a little rebuttal before I go into the presentation and I'm gonna go past all the facts
2998 that we had otherwise. And I do want to take an attempt, and I appreciate the County
2999 Attorney taking an attempt as well. I think it was correct trying to describe what happened
3000 in the past. I just came before you and said, I don't agree with the County Attorney. I think
3001 I interpreted the code this way and the BZA unanimously said, nope, we're gonna agree
3002 with the Director of Planning, and you do have to comply with the code. That's where we
3003 are today. I have to comply with the code and I understand that. Now I'm going to a
3004 different code section that allows for variances that we find create an unreasonable and
3005 undue hardship onto the property, and what I'm asking has nothing to do with the waiver.
3006 I only brought up the waiver in my other information and the 25 feet in the adjacent
3007 buildings because the staff brought it up and the County Attorney referenced it as well
3008 because based on the staff has nothing to do with the variance. Zero to do with the
3009 variance, nothing to do with The Massie. Now we're saying what is happening, why we
3010 want to come forward specifically with respect to and we qualify for a totally different part
3011 of the code to qualify for a variance under two components. We must meet the 100-foot
3012 width and we have 99.5 feet. This is what we're missing, seven inches, and this is seven
3013 inches. I found a ruler that's exactly seven inches, that's what we're missing. That's what
3014 we're asking for, and we're also asking for the other variance being with respect to the
3015 additional street side yard. So, I'm gonna do a little bit of a different than I usually do, and
3016 I'm gonna reference. I'll respond to the conversation that just happened. With all due
3017 respect to staff, it doesn't matter what we paid for the property. Absolutely zero. If I came
3018 before you and said, oh, it's going to cost too much money to comply, the Supreme Court
3019 has said I can not use financial for a hardship. You shouldn't use it against me. Secondly,
3020 the fact that VDOT paid for the property, that there was homes on it and that landowner
3021 or landowners received money, and that VDOT got what it wanted. I'm going to provide
3022 to you, if I may, this is the deed from VDOT to the first landowner for \$50,000. Not only
3023 did VDOT get two lanes, they got \$50,000, and that landowner sold it to another
3024 landowner or sold it to another landowner or sold it to another landowner who then went

through and had the property foreclosed. That's what we're talking about. Did he buy for \$3,500? Absolutely he did. Does it mean anything with respect to the variance? It means absolutely zero, but you know what it does mean, too? Each one of those lots is being assessed by the county based on a value of \$27,500 to \$30,500. Different lots are getting different assessments, and the best I can figure out is I went through probably about 20 of the lots that have homes on them and did an acreage pro rata on what their land is assessed for versus what ours is assessed for, and it all comes out to almost exactly the same. Our lots happen to be smaller, as you know, because VDOT took 40 to 50 feet from us. But on a pro-rata basis, they've been, he's been assessed and has been paying taxes based on the value exactly like the homes before him. So, I wanted to make sure we clarified on that and I'm happy to go through all the deeds if you want to, but people have been paying consideration at the end of the day. Right, it's immaterial to what we're talking about. And yes, we could rezone the property. Every single one of those variances that came before you today, they probably, and I don't know that for a fact, they probably could rezone to a different area and be able to enclose and get a different setback because every different zoning district has different setbacks. Again, not a criteria that's before this Board just said, well, they could rezone and do something different. That's not the criteria that we have to look at. As a matter of fact, we did go to the Board of Supervisor member and the previous Planning Commission member and said we'd like to rezone it to something else. Guess what? The comprehensive plan calls for Urban Residential. This calls for townhomes and multifamily. Guess what we can use on this property under R-5? Only thing we cannot use is single-family. We cannot do duplexes, which is what we provided for and I gave you the email from Mr. Kennedy in the multiple discussions that went and that was in 2022 that said, we think you can go ahead and meet the multifamily, you should go ahead and look at multifamily. So, we didn't do it because, oh, we want to get more money. Again, it is not an issue, but we did it because of the suggestion of staff. And we can talk about the impact, I wanted just to address real quickly the impact. Multifamily has a 25-foot setback against the single-family homes behind us. Townhomes? Zero. Let me repeat that. As a multifamily, and I can pull up the chart if you wanted to, the interior side yard setback from townhomes is N/A.

Mr. Blankinship- But for townhomes, the interior side yard setback is the common wall.

Mr. Condlin- Well, but when you look at the code, and I don't need to get into...I'll lose this conversation every time when I get into a code conversation with you.

Mr. Blankinship- Go there if you want or you could say, sorry, that was a misunderstanding.

Mr. Condlin- Well, I guess we could go to the code interpretation.

Mr. Blankinship- You could not build a townhouse at the common lot line between this property and the adjoining properties, you could not be within 20 feet.

Mr. Lawrence- 20 feet?

3071
3072 Mr. Condlin- This is the only reason I'm gonna bet you
3073
3074 Mr. Blankinship- See the footnotes there.
3075
3076 Mr. Condlin- No, I can't because I'm too far ahead. If I were a betting man,
3077 I'd always bet on Ben Blankinship in interpreting the code. When I read this and you see
3078 there it says interior side yard, which is four up, it says N/A. With a footnote. There's no
3079 footnote in the N/A.
3080
3081 Mr. Blankinship- Between two townhouses, there is no interior side yard.
3082
3083 Mr. Condlin- I apologize. I know you guys laugh at me. This is what we do
3084 the rest of the week, the two of us get into these conversations. And I'm looking, if you
3085 look at the interior side yard minimum feet. Under multifamily it says 25 feet. I guess that
3086 probably means in between interior buildings versus what I was considering next to the
3087 residential between multifamily buildings?
3088
3089 Mr. Blankinship- No, for multifamily, it would be from any building on the Massie
3090 property to the common lot line.
3091
3092 Mr. Condlin- All I'm saying, well here we are, you wonder why I'm confused
3093 in this case. You're seeing it live action. Interior side yard N/A doesn't have a footnote for
3094 a townhouse that says N/A. I was taking that to mean I can build right up to the 10 feet
3095 right up to the property, it doesn't matter. The height of a townhouse is 45 feet in a R-5.
3096 The height of a multifamily is 45 feet. We can be concerned about looking over and
3097 across, looking over and across to the next-door neighbors, but the same thing would
3098 happen with townhomes. You can only use it for these two things. And then both of them
3099 I need a variance because I don't have a hundred feet, but I don't need that for
3100 townhouses, I understand depending on how you look at that, but I don't need it for the
3101 multifamily. Either way I cannot meet the 15-foot. And when we talk about the headlights
3102 and the practical effect, we are meeting the code on the rear side. We actually have
3103 parking underneath the building. It's kind of like a 1970s era office building where they
3104 parked underneath the building in order to fit everything and we fit everything up for lot
3105 width and the 15-foot Major Thoroughfare Plan additional setback. But there's parking
3106 underneath the building, the access road is underneath that. We can do the same thing.
3107 I cannot, we've talked to engineers and we looked for it, we cannot build otherwise without
3108 a variance in either circumstance. That to me, and I know Mr. Gidley has made the
3109 statement that says everybody's gotten the benefit. This client's been paying taxes. This
3110 client wants to use the property, and it doesn't matter that it's residual land and VDOT
3111 sold it for \$50,000 and recouped their money. We gotta be able to use it for something,
3112 and then the government says you can't use it for anything, that's what qualifies for a
3113 variance or it's a taking, one or the other. Those are our two choices, it's not fair to tell a
3114 landowner they can't use it for anything. And we can talk about VDOT. We have talked to
3115 VDOT. And there's literally no other access to this property. We cannot access off Staples
3116 Mill Road. We have to access it off of Massie and yes, it's close by, but they have said

3117 that they have to grant that and our engineers have talked to them specifically about that.
3118 So, with that I will go through quickly into the variance and why I think we do qualify for it.
3119 So, the proposed plan as we talked about, I will go again to the plan and the fact that Mr.
3120 Kennedy had otherwise provided, and he specifically provided, and I handed this to you
3121 in the previous case if we can pull it up again, I'll read it to you with respect to the lot
3122 width. First, the good news, Ben Blankinship indicated there's no need to request a
3123 variance for the lot width as the orientation of the property for multifamily development
3124 forces the front yard to Massie Road, therefore the property would have legal non-
3125 conforming lot width. That was in 2022, and we said, great, let us start putting plans
3126 together for a multifamily building. And that's what we did, and that's why we're here. And
3127 we relied on them and then there's the information that literally I copied and pasted from
3128 there from that standpoint. I'd also propose to you that there is a code section in the
3129 Henrico code that says if there's a government acquisition of land that results in the lot
3130 becoming non-conforming, government, VDOT, acquisition of land. They did it. They
3131 became non-conforming. We cannot conform to the lot width, then you get to get the
3132 benefit of 10 percent. We're at seven inches out of a hundred feet, that's less than 10
3133 percent, you become legally non-conforming. I think that's why that email was sent. It's
3134 right there in the code. I don't know how else to read that and why we're not qualifying for
3135 a variance. I think we're legally non-conforming at this point, I think from our standpoint,
3136 so I think we meet that basic standard with respect to the lot width. With respect to the
3137 setback itself, we cannot build either townhomes or can we build multifamily without a
3138 variance from that specific code section itself. Staff says that we have not met three of
3139 the seven, including the two thresholds, which are an unreasonable restriction of the use
3140 of the property. I don't know what an unreasonable restriction on the use of the property
3141 is. Sometimes I don't think the Supreme Court necessarily knows. You know it when you
3142 see it, but we literally cannot use this property for anything else. Our only choices are
3143 multifamily and townhome and we've hired engineers, I've talked with staff, Mr. Kennedy
3144 has talked with staff multiple times and we can only, we cannot build on this property and
3145 there's no other specific use. We do believe that this ordinance that was passed with
3146 respect to Mr. Blankinship, 2022 I believe the ordinance was passed in 2002. That was
3147 still, even though we bought the property, Mr. Kennedy's entity bought the property, even
3148 knowing about it, the state law is clear that even if we know about it, if we didn't cause it,
3149 VDOT caused it, we still can ask for a variance. So that doesn't keep us from having good
3150 faith or asking for a variance. I think that's very important to have. We do think that the
3151 VDOT take of 40 to 50 feet is an unreasonable restriction on the property, but for that
3152 take, we would have the seven inches, but for that take, we would have 15 feet for the
3153 Major Throughfare Plan, and it doesn't bring it back any closer to the neighbors. Without
3154 a variance, we cannot build on this property. We also think that it, with respect to the staff
3155 response, that talking about granting variances would crowd the proposed residents in
3156 nearby, on a wider lot, there's more room, yes, that's what the variance does. That's the
3157 whole reason for a variance. And talking about, I've already addressed about VDOT
3158 paying full value that has nothing to do with this and a variance. Also, the other threshold
3159 standard that we can meet is that with the variance alleviated hardship due to physical
3160 condition in the property as of the effective date of the ordinance. VDOT took the property
3161 in the seventies, sold it in the eighties. The ordinance came about in the nineties. I'm
3162 gonna assume that it's easy to say we meet the six inches and that it's unreasonable, and

3163 that's not gonna have a great impact. With respect to the 15 feet, we certainly qualify from
3164 the standpoint as of the effective date of the ordinance in 1990 or 2002. This situation
3165 had already occurred and VDOT had already taken it. Again, we can't put single family.
3166 We wish we could. We can't put duplexes here. At one time we were looking, and we
3167 came before this Board to try to put duplexes, and we were denied that request. I forget
3168 the year, but a few years ago another attorney handled that. We can't do it. We can only
3169 put multifamily and townhomes and they both fit within those 45 feet and whatever that
3170 setback is in the back, and you can see why we struggle with what, what the code says
3171 and how to put that in. But for the VDOT take and Major Thoroughfare Plan, again, I say
3172 2022, got my years all wrong in this. So, prior to that, there was no need for a variance,
3173 and we could have met it otherwise. The final thing that I would say with respect to the
3174 staff response again, the fact that VDOT owned the property has nothing to do with the
3175 variance, the fact that they created the hardship actually goes to the point of we did not
3176 cause it. And, and there was a reference about the VDOT being as is whereas I gave that
3177 to you. I just want to make one quick comment. There was a deed and the change of title
3178 when the bank took it. Every foreclosure deed I have ever done on behalf of a bank when
3179 they sell it, they use this language. It has nothing to do with zoning, it has to do with the
3180 title itself saying, I don't know what I'm giving you, I don't know what I received, but I'm
3181 giving it to you and you're at the risk from a title standpoint. There could be easements
3182 on it, somebody else could have a claim. That's what a no warranty deed is, a special
3183 warranty deed and a general warranty are all different legal, nothing to do with zoning.
3184 So, to bring that up in a zoning context has nothing to do with the evaluation with respect
3185 to whether this creates a variance or not. So, we believe we do meet all the necessary
3186 standards necessary to meet the threshold on both cases from that standpoint. Then the
3187 final issue, and I'm not gonna address all the issues that we agree on, might be the course
3188 on that one, but would be the question of whether it would have a substantial detriment.
3189 This property can be developed, it should be developed and it can be kept there without
3190 any development, that would be the ultimate no detriment to the neighbors. The fact that
3191 it's in in the comprehensive plan for Urban Residential, the fact that it's being assessed
3192 as a we'll just call it an average of \$30,000 per lot, regardless of what he paid for it means
3193 that the county's saying we should develop it for something and we're asking for
3194 something. Anything, we wanted to do duplexes. The answer was no by the BZA and
3195 staff. We could do townhomes. And I guess I guess we could come forward and present
3196 a townhome plan to you and say we'd like a variance, but we were told by staff in 2022,
3197 you'll be alright with the multifamily, including in Mr. Kennedy's email saying we agreed
3198 that the basic standard for reduced setback was satisfied. That is 15 feet. We were given
3199 all the green lights to go, knowing that we would still have to go through the process, so
3200 we started going through the process and now we're being told by staff, you don't meet
3201 the standards, so do we impact the neighbor? Yes, any development impacts the
3202 neighbor, but that back line is no closer. We're not asking for a variance to come closer
3203 to the neighbor. That back line, if we had the 15 feet in front and we are asking for it would
3204 be exactly where it is today. There's no difference, and it's at the same height as a
3205 townhome or anything else would be. It's got the same distance, so we think we do meet
3206 that and that's not an unreasonable detriment to the neighbors, we're putting a fence up
3207 as part of the plan. We put that in there in order to meet the standards for that distance
3208 and the buffers we're having to put a fence up and that'll shield the headlights from that

standpoint. So, we've tried to achieve everything from a practical standpoint. So, in summary, I appreciate your time as I've worked myself into the frenzy, we do feel like we've met all standards at this point and I'll be happy to answer any questions. I wrapped up.

Mr. Kennedy- Am I allowed to go now? I'm Zach Kennedy again, if I know it would be this long I would have brought y'all lunch, sorry for all the chaos, but I too would like to make a couple comments before kind of reading some of the history of where we are. Forgive me for any redundancy. You know, not privy to how these meetings go and I know a lot of stuff has gone back and forth. First, I'd like to comment on the residual property. This residual property just a few years ago actually had a use, and it was the use that was told to us in that email, it was a use that was told to us in conversations that we had with the county. So, someone can define it in all due respect as residual, it wasn't residual. It was a usable piece of property. So that's one thing. The other thing that I'd like to mention real quick is I can't read most of the notes that I made during all the comments was the comment on it being tight or being packed in as and I think Mr. Condlin made some great points, but the county has defined this multifamily 400 feet minimum. We were very close, right? We're getting this amazing demonstration of what that would be. So, the county's already told us that a hundred feet is viable. It's reasonable for a multifamily piece of property to go within those hundred feet. We're just meeting those needs. And lastly, I'll just mention before reading this is that we had a separate plan. Years ago, in 2022, one gentleman mentioned that we didn't go with that plan so we could get more density. That was not our plan. Our plan was to do something completely different based off the county. Eight units. Moving, combining lots, which we argued earlier was not something that could be done, but they said take lots, combine them and do duplexes, and that's what we intended to do until they told us we couldn't do it any longer. So, with that said, you know, I appreciate y'all's time. I know there is lots going on here. I hope we can kind of synthesize through this well because I know there's a lot of different details, but, you know, this has been obviously a frustrating process. There's been a lot of hard work, a lot of contradictory statements have been made and a significant amount of money has been outlaid just in tax expenses. It's been roughly about \$30,000, and taxes have been paid. So, throughout this multiyear quest to develop this property, I've exchanged dozens, maybe with Mr. Condlin, probably a hundred emails with the county, and all its departments. And we met with almost each department. We had all departments, like 15, whatever, 15 departments, we had VDOT, we had police, we had everybody in a meeting at one point to try to consolidate and meet all the needs. And we had gotten very close other than these two finer points. And on two occasions we had a meeting of the minds, where an acceptable project had been agreed to in writing. I think you've seen both of those emails. One was in 2019 and one was in 2022. And one of those development ideas was actually offered by the county Planning Department, which I am very grateful, and Mr. Blankinship was part of that and we discussed so thoroughly that we engaged an engineer to meet the exact proposal we were presented with. Unfortunately, even with written confirmation of these two plans viability, we were denied after months of work, expenses, and when we came back to the county for approval. At every turn, a new roadblock never mentioned previously had been ushered in at the last minute that prevented a successful conclusion of this exhausting, and as we probably all

see here today, aggravating experience. Our first plan consisting of four duplexes, so eight units was acknowledged as by right, literally by right by employees of the Planning Department, only to be rejected by the department. Get this with one member who was a member of the Planning Commission was sitting in that meeting. Mr. Sehl had mentioned to everybody that this is a by-right use, this is the duplexes. And I quote, this gentleman said, "I don't care if it's by right, I would never allow that to be built". I'm not gonna mention who that is out of respect. But that was actually said, to me in that meeting. I don't care if it's by right, I'll do everything I can basically not to allow this to happen. By the time the dialogue had eroded to a point that we're not making progress, we applied for a variance to the BZA only to be rejected because the zoning ordinance has changed. That's that 2002 transition or 2022 transition we just talked about. Upon sharing emails with the County Attorney that showed we received in writing that duplexes were allowed, we had a follow up meeting where it was presented to us from Mr. Kennedy and Mr. Blankinship that we should pursue a multifamily building and that this was by right use in the new ordinance. They further shared that we should front the building on Massie Road. And again, I was very grateful for this because they kind of helped us brainstorm what we needed to do, where a variance would not be needed because it has legal non-conforming lot width status. Secondly, there was an uncertainty about our subdivision plat not being exempt from the major thoroughfare additional setback requirement. I think we kind of went through that, but nothing stated we shouldn't be exempt. It was just simply ambiguity based on statute interpretation. However, after that they end up saying in the same email that they clearly state that the reduced setback was satisfied based on following the consistency of the block. The northern building just above that little roundedness on the right here, is five feet. That's a five feet setback. Well, I know we've mentioned it being 20.5. It's five feet. If you look on the GIS, it says it is five feet from the front entry and the front of that building is facing Staples Mill Road. That's the main front entrance. It's not off the side; it's not off the back. It's the front entrance. There's five feet to the property line and then there's a sidewalk. Again, after months of work and engaging professionals, we were flat out rejected with new, never before discussed reasons for the rejections some of what we have talked about today. So, for six years we've been struggling to aim correctly at what appears to be an ever-moving goalpost. With my understanding, the zoning ordinance on the statute's written created objectivity in the development of the county. However, all we have received is ambiguity and contradictions. I'm not a rich guy. However, I was fortunate enough to purchase this property and the circumstances of that purchase kind of fell in my lap, not gonna go into the purchase price again I don't think it's relevant to the situation, but I got very lucky to be able to purchase this property. And so, I come to the county in good faith to identify a plan that would fit into the county's development vision and have wasted at this point. \$30,000 in taxes, \$25,000 plus attorney's fees, not to include engineer fees, survey fees, architect fees, and this is where we are. And so, that doesn't even include the hundreds of hours that I've spent that's not billable time in order to do the due diligence and meet with everybody to make this a potentially viable project. So, it doesn't seem right and it certainly doesn't seem fair that we would be getting this guidance from the county and then get rejected later. How can my representative, I don't understand this, my representatives read the code in one way that appears to be reasonable and objective and then we can have a wildly different approach from the county. It seems to be a lack of objectivity. It just doesn't make sense

3301 to me. It is my understanding that the development is good for the growth of the county
3302 and to simply put a residential building on this lot would be good for the county and good
3303 for the residents of this building and the surrounding area. It would bring in more diversity,
3304 not only of the people, but also housing offerings. We talk about all these apartments that
3305 are being built all over the place, what about somebody who can't afford a home, wants
3306 to live in a walkable, good community, but doesn't want, doesn't want to or can't afford to
3307 live around a hundred or a thousand other people in an apartment building? If this was
3308 me, I'd rather live with 16 people than I would with 150 or 200 people. So, it gives another
3309 option that isn't out there right now. In the area, as we've mentioned many times, is
3310 designated as Urban Residential in the county vision. And the size and shape of this lot
3311 lends itself uniquely to this type of development. I have built some houses in the City of
3312 Richmond before. I built a home that's 14 feet wide on a 20-foot lot with three feet
3313 setbacks and the house inside is comfortable. People love it, it's beautiful, it's easy to live
3314 in. So, the size doesn't really matter, it's the thoughtfulness and how you design it so that
3315 people can actually consist there and enjoy their living experience. But as frustrated as
3316 I've been, I will say I'm optimistic, because approving this variance does not need to call
3317 out either side for being wrong or right. We don't have to have a winner or a loser per se.
3318 The framework of the variance process allows us to acknowledge the difference of opinion
3319 within our interpretations of the zoning ordinance while still approving a variance simply
3320 by applying the four decision-making criteria, some of which we've talked about. First, the
3321 variance shall be granted if the evidence shows that the strict application of the terms of
3322 the ordinance would unreasonably restrict the utilization of the property or that the
3323 granting of the variance would alleviate a hardship due to a physical condition relating to
3324 the property, et cetera. While both criteria do not need to be met, we meet both of them.
3325 It is unreasonable that roughly six inches would preclude development of this property
3326 especially since the county already addressed this issue as solvable in previous
3327 conversations and emails. Furthermore, the same standard can be applied to the
3328 additional setback requirement. We meet the 25 feet that's required. The county has
3329 acknowledged previously that this is enough, but yet we are still constrained. Moreover,
3330 there is a sincere financial hardship. When we are being taxed it rates consistent with
3331 developable full land, but we personally cannot develop ours. Next, the property interest
3332 was acquired in good faith, and there was no hardship created by the applicant. We
3333 purchased this property to create a public good. Okay, I know we'll make money off of it,
3334 but we're also here to promote something that's gonna be a viable and good place for
3335 people to live. And we're not gonna make money if we create something that nobody
3336 wants to live in. So, we're motivated to make that happen. So, to build interesting and
3337 beautiful housing to fit into the fabric of the county. Three, the granting of the variance will
3338 not be a substantial detriment to the adjacent properties. By developing this land, this
3339 building becomes a valuable light and sound buffer to the neighborhood behind us.
3340 There's a lot of traffic and noise on that road, on Staples Mill Road. And there's a lot of
3341 lighting. This building would block it for at least a handful of people and then you'd have
3342 a little bit of a park area and everything down below, I think near where the nice lady over
3343 here lives near the commercial building. So, we also aren't asking to build something
3344 bigger than what we could do with townhomes. Not only that, it's not our fault that would
3345 have to build this. It was the county's ordinances that have required us to do it. Then four,
3346 and I'll be wrapped up soon. I know there's been a long day, so I apologize. The condition

or situation the property is not of so general or reoccurring nature is to make reasonably practicable the formulation of a general regulation to be adopted as an amendment, you know, et cetera. Essentially what I'm assuming that's saying is it's not gonna set a precedent. This is a unique piece of property. It's not something that you that ten more or 20 more or even probably another person can come in here and argue because it's that unique. The granting of the variance does not result in a use that is not otherwise permitted. We got rejected because the ordinance changed when we were gonna do the duplexes through new use. We then shifted to meet the use, so we met that as well. And finally, the relief of remedy sought is not available through a special exception. The county's made it clear they're not willing to provide one of those, and that's why we're here today. In conclusion, I appreciate your time and your deep consideration. I'm not here to create contention with the county, the board or staff, I'm simply here to shine a light on an unfortunate disagreement on how we interpret the code and the beautiful fact that, regardless of our perspectives, there is a clear path to approval if we simply put y'all's criteria in place and consider that for our application. I really appreciate it. I'm sorry to go so long. Thanks for all your time and if you have any questions, I'm happy to answer them as well.

Mr. Lawrence- Does anyone have questions? Okay, hearing none, thank you sir. We will go ahead and open for the public hearing. Is there anyone here who would like to speak in support of the variance request? Webex, anybody on Webex Mr. Blankinship?

Mr. Blankinship- Oh, no.

Mr. Lawrence- Is there anyone here that would like to speak in opposition to the variance request?

Mrs. Ruano - Hello again. My name is Shelley Ruano. On behalf of my husband and myself, I would like to state our opposition to the variance request. For the record, we appreciate the proceedings of this public hearing today. This time has provided valuable information, nuance, and context. It seems that zoning regulations, building codes, and variances for that matter are the legal tools we have to both provide development opportunities and also to protect the interests of property owners. That said, we are concerned that the nature of the building proposed in the concept plan will not be an aesthetic improvement to the built landscape along Staples Mill Road. It is currently unclear if the concept plan is binding as a result of the ruling on this particular variance request. The concern being that even if this variance request is granted, that the concept plan can be changed in the future, once the variance has been requested. Considering these concerns and the complex nature of this particular property. We support the recommendation of the Henrico County staff to deny the variance request. Thank you.

Mr. Lawrence- Thank you, ma'am. And could you clarify again where your, where your home is located?

Mrs. Ruano - Yes, it's 2115 Pine Tree drive, which per the concept plan would be the top right-hand side on the screen there. So, were this concept plan to stand,

3394 we would be minimally impacted. It appears there would be a walking path, unclear if we
3395 would have personal access to that walking path. However, our personal concerns are
3396 that this is indeed only a concept plan and it's unclear that the decision on the variance
3397 binds this concept plan in any way shape or form to the to the ruling on the variance.
3398 Restating, we would be further concerned that the building might migrate towards our
3399 property in future plans that come before, building permit or any submissions.
3400

3401 Mr. Lawrence- And you've had conversations with others. Other neighbors
3402 too, I suspect.
3403

3404 Mrs. Ruano - Limited. I'm not sure I would characterize them as
3405 conversations, but these are, these are the thoughts of myself and my husband.
3406

3407 Mr. Lawrence- Okay. Thank you, ma'am. Appreciate it. Any questions from
3408 the Board? Anyone else in the audience that would like to speak? Okay, does anyone
3409 else on the Board?
3410

3411 Mr. Muphy- Yeah.
3412

3413 Mr. Lawrence- Can you make it brief?
3414

3415 Mr. Condlin- I just want to summarize them and respond to that question
3416 regarding particularly the concept planning, you know. Remember the standard is
3417 substantial detriment on adjacent properties and I just wanted to reiterate again that back
3418 property line without asking for a variance. And yes, our intent and we're fine with a
3419 condition that said that it has to be generally, substantially consistent with this concept
3420 plan if you're willing to grant the variance and the property doesn't work because it pinches
3421 down and we can't meet all the setbacks of the backside, but we're trying to meet if the
3422 property goes. So finally, just with respect to the, do we meet the standard that the staff
3423 has raised, but I continue to go back to the email and the code section that says that if
3424 there's government acquisition, you get the benefit of 10 percent and they become legal
3425 non-conforming. We had an email that responded to it ...by staff, but at the end of the
3426 day, you know, you can compare any of these requests to the request that you had
3427 previously and that one particular variance request regarding the covering of the deck
3428 that a lot was strangely configured. It was designed that way. It was part of the subdivision
3429 and strangely configured where the house was placed. Here, this property, these lots
3430 were properly subdivided and properly designed, and then VDOT came and took it. And
3431 that's really what causes the issue here. VDOTs the one that caused the issue and
3432 caused these lots from a physical nature, that's where the property suffers from a physical
3433 condition, changes where we cannot any longer meet it. We are proposing to you that
3434 through our various engineers we have looked at both townhomes and multifamily and
3435 with the encouragement of staff to look at multifamily that we cannot build either without
3436 a variance. Excuse me, we're proposing this, we think there's a reasonable suggestion.
3437 And it does meet the standards necessary to grant the variance. Again we'll be happy to
3438 answer any questions.
3439

3440 Mr. Lawrence- Any comment? Any questions for Mr. Condlin? Any other
3441 discussions? Thank you all for your time. This is a difficult case. This one and in both
3442 these cases, Mr. Witte, who spoke earlier today told me how much I'd aged in the past
3443 three years time since I went on the Board of Zoning Appeals. So, maybe that answers
3444 that question. I'm hopeful that staff can work with, I think this developer has good
3445 intentions. I would like to see use of this property. I understand the point raised by a staff
3446 that there was a residual property from VDOT and that's true, there were a lot of
3447 properties, and I will say in this case VDOT did something that they haven't always done,
3448 they actually purchased the lots and made the landowners whole. We have other
3449 incidences in the county and other places in the Commonwealth where VDOT has gone
3450 in and taken, I think some on Staples Mill Road. They've gone in and taken a piece of
3451 property and left the house there. Standing there, you know, ten or 15 feet from the road.
3452 So, in my mind, you know, the fairer way to go is to buy out the property owner and take
3453 the property. You know, what VDOT planned to do with this property I don't know what
3454 the previous landowners planned to do. I don't know, I guess that's immaterial. But I'm
3455 gonna make a split motion here on this case. Can we do that in one motion Mr.
3456 Blankinship?

3457
3458 Mr. Blankinship- Yes, sir.

3459
3460 Mr. Lawrence- I'm gonna move that we approve part of this variance and that
3461 is the lot width variance. I think that's such a small piece, those six inches. I don't think
3462 anybody would notice the difference and I do think it's reasonable to allow this property
3463 owner to have a variance for a lot width. However, I'm very concerned about traffic safety
3464 issues and I put a lot of faith in our staff in making the decisions on setbacks and this
3465 proposed development as it's on the table now does not meet the setback requirement,
3466 and the Planning Director has determined that it would not be in the benefit of the
3467 property, or the road or the surrounding residents to grant that variance at his level, and
3468 I don't believe that the BZA should step into that arena either. So, I'm going to deny the
3469 setback requirements. So, we're going to approve the width variance requirement in my
3470 motion and deny the setback requirement. I will say I think the hardship was self-created
3471 in this case and the additional setbacks on major thoroughfares are very important to
3472 protect the residents in the larger community. So, having made that motion is there any
3473 discussion or is there a second?

3474
3475 Mr. Green- So what does this mean or is there a second?

3476
3477 Mr. Lawrence- Well, he's gotten a variance that they've been asking for six
3478 or eight years. They felt like staff told them they didn't need to have a variance to get the
3479 lot width requirement. They do have that now. But they're gonna have to go back with
3480 staff I think and figure out another way to develop the property to meet that additional
3481 setback. I'm not comfortable overriding a public safety decision that was made by our
3482 Planning Director.

3483
3484 Mr. Gidley- Public hearing's over.

3485

3486 Mr. Condlin- I don't even have to speak so they can, you know, if the BZA
3487 asked me to speak, I certainly can speak.

3488
3489 Mr. Green- Yeah.

3490
3491 Mr. Blankinship- I'm sorry, I didn't realize I mean can.

3492
3493 Mr. Green- I say yes, you agree.

3494
3495 Mr. Massie- Yeah, I say what does this mean to you?

3496
3497 Mr. Condlin- That means that they can't build this concept without a
3498 variance from the additional 15 feet, and I pulled up examples of the, of the townhome. I
3499 mean, we got two feet of building space. There's no practical ability to build on this
3500 property without that 15-foot variance. And you talk about public safety. We are asking
3501 for a waiver. We're not just, we're not asking to overturn the Director of Planning, we're
3502 asking for a variance for reasons that we meet the variance, which means there's no other
3503 reasonable use of the property because of the physical condition of the property. So,
3504 that's different and I know it's confusing because we have...

3505
3506 Mr. Lawrence- In my opinion, Mr. Condlin, I think there could be reasonable
3507 use of the property. We're gonna grant you one variance if my motion passes and that
3508 will alleviate the width problem and then I'm confident that you all can get back with our
3509 staff and come up with a proposal.

3510
3511 Mr. Condlin- I appreciate that.

3512
3513 Mr. Lawrence- And if that doesn't happen, then you're welcome to come back
3514 here a year from now and maybe we'll have a different view of it.

3515
3516 Mr. Condlin- And ultimately, it's a viable use of the property, it's no longer
3517 the Cochran rule and we're looking at a less than 30-foot... apartment that we could build
3518 on there if otherwise and that's just not viable on the marketplace to have such a small
3519 unit stuff that's ultimately where we are.

3520
3521 Mr. Lawrence- That's my motion. Does anyone want to second that?

3522
3523 Mr. Broadway- Will they have to wait a year to come back?

3524
3525 Mr. Blankinship- If a variance is denied, then you have to wait a year before
3526 applying, submitting essentially the same application. They can have a substantially
3527 different application.

3528
3529 Mr. Lawrence- I'm not sure another year makes a lot of difference in this
3530 case, it's been going on for quite a while now, it sounds like.

3531

3532 Mr. Blankinship- Well, except he's paying another year in taxes.
3533
3534 Mr. Lawrence- I understand.
3535
3536 Mr. Broadway- Can we can we grant them the ability to come back sooner?
3537
3538 Mr. Green- No, what could happen is the motion could be pass or fail. A
3539 vote and then another motion would then have to be made to do something else but
3540 because his motion is out there, what did you, was it a second or first motion?
3541
3542 Mr. Massie- Is this his second motion or first?
3543
3544 Mr. Lawrence- This is the first motion.
3545
3546 Mr. Massie- First motion.
3547
3548 Mr. Lawrence- Yeah, the first motion was to...
3549
3550 Mr. Blankinship- It's all one motion.
3551
3552 Mr. Lawrence- Yeah, one motion, it's actually one motion. The motion was to
3553 approve the lot width variance and to deny the setback requirement. Okay, do I hear a
3554 second? Is there a second?
3555
3556 Mr. Johnson- Second.
3557
3558 Mr. Blankinship- Mr. Johnson.
3559
3560 Mr. Lawrence- Mr. Johnson seconded, okay? We have a motion by Mr.
3561 Lawrence, second by Mr. Johnson. All in favor of the motions say "Aye." Opposed say
3562 "No."
3563
3564 Mr. Lawrence- Aye.
3565
3566 Mr. Broadway- No.
3567
3568 Mr. Green- No.
3569
3570 Mr. Massie- No.
3571
3572 Mr. Johnson- Aye.
3573
3574 Mr. Lawrence- Alright. The motion fails. Do we have another motion?
3575
3576 Mr. Massie- This is one. I'm going to move to approve the variance subject
3577 to the conditions recommended by staff. There is no reasonable use for the property. The

lot width variance is so small, no one will notice the difference. The setback is unreasonable as applied to the property.

Mr. Lawrence- So let me clarify your motion, Mr. Massie. Your motion is to deny both variance requests, is that right?

Mr. Massie- My motion is to approve, to approve the...

Mr. Lawrence- Approve the variance.

Mr. Massie- Yes, to approve the variance.

Mr. Lawrence- Yeah, okay. Is there a second to Mr. Massie's motion?

Mr. Broadway- Second.

Mr. Lawrence- Second by Mr. Broadway. All in favor say "Aye." Opposed "No."

Mr. Lawrence- Okay. Motion carries, three ayes and two noes. The variance is approved. Thank you very much.

On a motion by Mr. Massie, seconded by Mr. Broadway, the Board **approved case VAR-2026-100843** subject to the following conditions:

1. This variance applies only to the lot width and street side yard setback for multifamily dwellings. All other applicable regulations of the County Code remain in force.

2. This variance applies only to the multifamily dwellings shown on the concept plan titled "The Massie" filed with the application, as amended by these conditions. Any substantial changes or additions to the design or location of the multifamily dwellings will require a new variance. Any additional improvements must comply with the applicable regulations of the County Code.

3. The applicant must obtain approval of a plan of development or site plan within two years of the date of approval (by June 25, 2028), or this variance will expire. This variance is subject to all requirements of the Virginia Department of Transportation, the Department of Public Utilities, the Department of Public Works, and all other review agencies.

4. Before beginning any clearing, grading, or other land disturbing activity, the applicant must obtain approval of an environmental compliance plan from the Department of Public Works. The applicant may be required to analyze and provide solutions to minimize drainage impacts on downstream properties. Corps of Engineers and DEQ permits may be required.

5. Before beginning any development (man-made change) within or adjacent to the Special Flood Hazard Area (SFHA), the applicant must obtain approval of a Floodplain Development Permit from the Department of Public Works. The development must comply with all applicable requirements of Chapter 10, Article 1

Affirmative:	Broadway, Green, Massie	3
Negative:	Johnson, Lawrence	2
Absent:		0

APP-2026-100767 Duncan H. MacPherson: appeal a notice of violation at 10748 and 10798 Greenwood Road, Fairfield. Parcels 777-768-9356 and 778-768-2615. Zoning: A-1, Agricultural District. Code Section: 24-2320.

Mr. Blankinship- At long last that brings us to appeal 2026-100767, Duncan H. MacPherson, appeal a notice of violation regarding the property of 10748-10798 Greenwood Road in the Fairfield Magisterial District. Would everyone who intends to speak to this case please stand and be sworn in. Raise your hand, please. Do you swear the testimony you're about to give us is the truth, the whole truth and nothing but the truth, so help you God?

Mr. MacPherson Yes

Mr. Blankinship- Are you ready for Mr. Gagnon?

Mr. Gagnon- Bear with me one second. Thank you, Mr. Secretary, members of the board. I think this one will be a little bit simpler for you today. My name is Abram Gagnon, Assistant County Attorney representing the Director in this appeal. This case involves a set of parcels located on Greenwood Road. The property is three parcels here, all together. I apologize. Two parcels where the NOV's have been issued and then the parcel in the middle is also owned by the appellant. To give you a little bit of background in this case, the facts in this case you may remember are essentially identical to a case that was heard three years ago in July 2023, same appellant, same parcel. Back in 2023, appellant was using this northernmost parcel here on this map to store trucks, trailers, boats, and other items in violation of the zoning ordinance. During that BZA appeal appellant did not contest any of the violations other than raising a non-conforming use defense. The Board heard that defense and ruled against the appellant. He then appealed this Board's decision to circuit court, which upheld the board's ruling and further ordered the appellant to comply with his zoning ordinance. Despite those several decisions over the last three years, he failed to comply with the zoning ordinance, the decision of this board or the circuit court's order. Without any progress being made, another set of notices were issued, and the appeal was based on the same grounds, which is a nonconforming use. These notices are from February 2026. They assert that appellant was storing commercial trucks, trailers and other items in closed truck beds on the properties. I'm using it for outdoor storage as a principal use, storage of commercial

trucks and trailers as principal use. My understanding is that appellant since last month's hearing was deferred has begun to comply. He has removed several of the items, but there are some items that are still there on the property. The Director asks the Board to affirm the determinations from February 2026. As you know, the standard of review is that an administrative decision by the Director is presumed to be correct. The appellant has the burden to rebut that presumption. Otherwise, the Board must affirm the determinations of the Director. Very briefly, I'll run through the violations themselves, which again were not disputed in the response, I also suggest that removal of a number of the items, like the boats and some of the trailers, acts as partial admission of that. Number one, the zoning ordinance prohibits parking any commercial vehicles exceeding 10,000 pounds gross weight as accessory to a dwelling, unless it's being loaded, unloaded or working at the location. The zoning ordinance also prohibits outdoor storage as a principal use, and that is the keeping in an open or roofed but unenclosed area of any goods, materials, merchandise, or vehicles in the same place, in the same place for more than 24 hours where it's the principal use of the lot. The problem with this lot up at the top here is that there used to be a dwelling on the lot that has at some point in the past either burned down or been demolished. So, there's no longer a principal use on this lot. So, the storage of all of these items is being considered the principal use and that's not permitted in this district, which again is the same violation, sets of violations, that was before this Board in 2023. Very quickly, I do want to note, and I put this in the Director's response. Again, this set of facts was litigated in the 2023 case. This board had already determined that he was storing items on the property in violation of the ordinance and rejected the nonconforming use defense. And then the circuit court, their order, said quote," he must comply with the notice of violation issued on or about March 31, 2023, with respect to 10798 Greenwood Road and he shall not park or repair commercial vehicles in excess of 10,000 pounds at the property, he shall not park or store commercial vehicles on the property". And so, it's a failure to really show any progress from 2023 until these violations were issued in February 2026. As I do go into in the response, the violations from 2023 are things decided. He can't come back later on and attack those in this proceeding and any issues that were litigated in that proceeding, including the nonconforming use defense, can't be relitigated now because of the administrative preclusion doctrine, which I reference. I do want to briefly talk about the non-conforming use defense because that is the meat of this appeal. Appellant is incorrect when he asserts that his use is lawfully non-conforming. Lawfully nonconforming use does not mean because there's been a farm on this parcel, for many years. I think there's evidence that a farm has been on this parcel since at least the 1980s. I'm not sure exactly what the date is because it's been there on the parcel, he can just do whatever he wants on the parcel and it's not applicable to zoning ordinance, is not applicable to that parcel. It's much narrower than that. So, there's two, before we even get into exactly how long the use has been going on. There are two reasons that a non-conforming use defense would not apply in the situation. First of all, Virginia courts are very clear that a lawful non-conforming use must be in lawful existence on the effective date of any ordinance that it violates and then continue forward. So, the problem is that his parking of the commercial trucks and other items has never been lawful on that parcel. By his own admission in the 2023 case, he referenced that the trucks that were on the parcel had to do, at least some of them had to do with his trucking company where he would bring him home. He would bring a truck

home from time to time and work on it. Truck maintenance has certainly not ever been a lawful use in the A-1 district, outdoor storage as the principal use was never permitted in the A-1 district and so the non-conforming use defense would not apply. The second reason he can't get into nonconforming use is that Virginia courts are also clear, an accessory use cannot then become a nonconforming principal use. Had to have been the principal use all along. There's a case from the 1990s called Quinn, which is somewhat similar to this, there was an accessory use, previously which was a parking of a dump truck on a residential lot next to a dwelling. Once the dwelling no longer was on the lot, the parking of the truck became the principal use and because of that, it was then kicked out of being able to be grandfathered in through a nonconforming use. So similarly in this case, even if appellant was able to prove that these vehicles and trailers and boats and all of these items have been stored here since before the 1990s, certainly at some point they became the principal use and thus are no longer eligible to be non-conforming. As I said before, this defense of non-conforming use was already relitigated, so I would also argue that that cannot be brought forward again as a defense in this case, but largely the facts are the same. It's the same orange truck on the property as it was in 2023. There just wasn't any progress in the last three years. We do understand this parcel probably doesn't fit neatly into the zoning ordinance since that principal use has been removed, but there have been several solutions that have been offered. He could consolidate the parcels; he could move the items to a different parcel. You could sort of establish a new principal use of the property. But I think given the amount of time that he's had to fix these, at this point I would ask the Board for the motion. Number one, that the Director correctly determined appellant was storing a commercial trailer exceeding 10,000 pounds on the parcel at 10748 Greenwood, that the parcel at 10798 Greenwood Road was being used for outdoor storage as a principal use, storage of trucks and storage of trailers, and then number three that it was being used for storage of truck beds as well and affirm the determination of the Director and dismiss the appeal. I'm available for any questions.

Mr. Massie- I have a question.

Mr. Gagnon- Yes?

Mr. Massie- '23 and we're now in '26, what's different? Haven't these same issues been litigated? Highlight the differences.

Mr. Gagnon- So, I think that's part of the argument. Between 2023 and 2026, there was essentially no progress being made. The same trucks were there until very recently, the same boats were there, the same truck beds. There was turnover about a year. Maybe in 2024 there was turnover in staff, otherwise, I think potentially further enforcement action would have been taken based on the prior decision of the BZA and the circuit court appeal to potentially... the litigation in a general district court would have been moved forward at that time, but it was not. So that's why another NOV was issued.

Mr. Massie- So basically the same set of facts.

Mr. Gagnon- Yes sir.

3762
3763 Mr. Lawrence- Anybody else have questions? I've got just a couple. What's
3764 the acreage of this site?
3765
3766 Mr. Gagnon- Let me see if I could find that. I don't have it off the top of my
3767 head.
3768
3769 Mr. MacPherson - All told was just short of 14.
3770
3771 Mr. Gagnon- Three parcels.
3772
3773 Mr. MacPherson - It goes in a back two..
3774
3775 Mr. Gagnon- Okay.
3776
3777 Mr. MacPherson - It's just showing a 14.
3778
3779 Mr. Gagnon- I do think there's an additional parcel,
3780
3781 Mr. MacPherson - There's two additional parcels.
3782
3783 Mr. Gagnon- Two additional parcels behind these three that front...
3784
3785 Mr. MacPherson - These three that border 295.
3786
3787 Mr. Lawrence- The property is zoned A-1.
3788
3789 Mr. Gagnon- A-1.
3790
3791 Mr. Lawrence- Have you determined whether there are actually agricultural
3792 activities ongoing on the properties?
3793
3794 Mr. Gagnon- My understanding is that there are agricultural activities at
3795 least on the middle parcel. At some point there were boats, but he could certainly speak
3796 to that.
3797
3798 Mr. MacPherson - I can address anything. I mean I don't want to take his time.
3799
3800 Mr. Lawrence- I'll get to you in a minute, sir. Thank you. I didn't participate in
3801 the last discussion on this, I abstained in that case. But I'm going back and refreshing my
3802 memory from the minutes, it looked like we had some folks that spoke on that case, in
3803 support of the property owner talking about how it added to the aesthetics of the
3804 community. So apparently there was some perception that it had common agricultural,
3805 pastoral aspects to the property, but have we heard from any of those folks this time
3806 around or...?
3807

3808 Mr. Gagnon- I have not heard. I know this sort of came back up. We've been
3809 monitoring it again since 2023, but my understanding is there were further complaints that
3810 brought us to this point. I can imagine that there were neighbors who like the idea of it
3811 being used for agricultural property, but the problem again is the storage of all these
3812 additional items. You can see in the exhibits, six or seven boats, big trailers, big
3813 commercial trucks. So, that would be a separate use than the agricultural, which I think
3814 A-1 is certainly intended to be agricultural, right?
3815

3816 Mr. Lawrence- Okay. Alright. Thank you, sir. Anybody else have more
3817 questions? Okay, we'll now hear from the applicant, Mr. MacPherson then. Thank you.
3818

3819 Mr. Blankinship- Thank you for your patience.
3820

3821 Mr. MacPherson - Well, first off, you, it was mentioning boats and all, I wasn't
3822 written up for boats. It's not on any of my write ups. I did have a couple boats out of there
3823 that I did have back in the back of the property over the years, that was never an issue.
3824 But I was doing some work in the pasture. I brought them up front. Mark and I discussed
3825 it, and I told him they were just there temporarily. Pulling them out of the woods, gonna
3826 go, they're gone. Like I said they would be. As far as the question of whether the land is
3827 farmed land, it's his contention that owning this middle property is, I think myself and Mr.
3828 Blankinship were the only ones in the meeting back in 2011 that are in this room today.
3829

3830 Mr. Blankinship- Well, Mr. Gidley was here.
3831

3832 Mr. MacPherson - Oh, Okay. Yeah. I forgot he was there. And during that, we
3833 had that meeting. Then we had the appeal and all that and that 2011 appeal, it was ruled
3834 all of my property was nonconforming farmland that became in use. All of it.
3835

3836 Mr. Blankinship- Continued to use for keeping goats and horses.
3837

3838 Mr. MacPherson - Well, it was also after that.
3839

3840 Mr. Blankinship- In 2011, there was no mention of commercial trucks or any
3841 outdoor storage.
3842

3843 Mr. MacPherson - Well commercial trucks are there. They just won't on me about
3844 them at that point. It's progressed, I've been getting written up since 1999. Come on. It's
3845 every six months or every couple of years. Commercial trucks have been parked there
3846 since '99.
3847

3848 Mr. Blankinship- It has never been lawful to park commercial trucks. Well, I'm
3849 tired. I apologize. This is your time.
3850

3851 Mr. MacPherson - I am too. I am too. But here's the problem, commercial trucks
3852 were lawful to be parked there. The problem is because of the way the code keeps being
3853 referred to or implied is that commercial trucks couldn't be parked on a farm. The code

specifically, and I'm quoting because I was called out that I've quoted it wrong last time. It says.. no area in any A-1, I mean any A or R district except on a farm, shall be used for parking any truck or commercial vehicle exceeding 10,000 pounds gross weight, any commercial trailer or any wrecker except while loading blah blah, blah or working in your location. It says, except on a farm, you may park them on a farm. The problem we've had is that's the way the code's written and only written. It doesn't say commercial trucks used for this, that application, anything. The commercial trucks are described by county code by weight and weight alone. Not by what they do, and the argument has been a commercial truck that hauls any commerce can't be parked on a farm because it should be for farm only use. That's not what the code says. And I've been farming all my life. Every farm that I grew up on worked on, that's how I learned how to drive trucks. I was 13, 14 years old driving a tracker trailer; you used the farm truck during farm season, whether it be for grain or hauling hay or hauling livestock. The rest of the year they haul commerce, because you pay to park those. If they aren't moving, it isn't earning. And that's been the problem. That's where we butted heads and I actually went along a couple times because I thought I was missing something in the code when I would quote that code because actually at one point, actually the last hearing, I quoted it off from a brochure that I had been given years ago. And it was brought up that wasn't the whole code. There were other pieces and legalities to it, which I'm not saying were untrue, but they're not written. If don't say a commercial truck may be parked on the farm. And the only classification for a commercial truck is the weight. The ironic thing is the truck that I was written up for down at the corner, the corner lot, actually has farm tags on it, has only had farm tags on it. And that's been there for years, and I don't think that trucks ever been written up because that's one that was behind the garage. The only reason I moved it out is because it was raining so dag gone much it was starting to sink in the ground every time I came in and out with it. The one over at the far property, it's all connected, you know, it's all one big lump, it just has three different addresses. The one over at the other property is, was used mainly for commercial, for commerce. I would use it for farming sometimes because actually with farm tags, I have a limited radius I can operate in and if I have to go get hay out in Shenandoah Valley somewhere or something, I can't take the farm tag truck, I have to take the other truck, and sometimes one works and one don't. As far as me repairing trucks at the house, I've never done major repairs at the house. I'm not out there stripping down motors and having oil and grease all over the ground. I might come by there and change a tire. I might come by there and fix a light. The last time I got written up and I brought up that I'd bring a truck by once in a while is I had a broken bracket and I had to come by and use a cut torch to cut it off. In, out easy peasy, not messing with no oil because I don't want that crap, excuse me, I don't want that mess on my ground because it's going out where my animals have to eat and drink and everything. What else are we addressing here? I got wrote up for farm equipment being stored outside. That was the one that's written up for outdoor storage. The equipment is attachments for my tractor. Extra bucket, the tiller, the disc, the bush hog. They're traditionally stored outside, and they've been stored outside since I've been living there. I might move them to different places, but they've been stored outside, and I moved them. They're not, I know you checked, we have a fine relationship. I don't know it's business, I know it's his job. I think that addresses it all. Oh, as far as the...what they call containers and all, down by the by the corner building and the use of the corner building for storage.

3900 In 2013, I have an email where Mr. Blankinship was questioned on the legitimacy of me
 3901 storing stuff down there, and his reply in the email was it was used as accessory use for
 3902 the farm, it's legal. I also have an email from, Robin? Was it Robin? Her named Robin
 3903 D'Amore?
 3904
 3905 Mr. Blankinship- Yes.
 3906
 3907 Mr. Ballos- Yeah, I haven't been sworn in, I apologize.
 3908
 3909 Mr. Blankinship- Robin D'Amore is a...
 3910
 3911 Mr. MacPherson - Yeah, that's why I was trying to remember her name. Back in,
 3912 I think it was '11 or '12 not long after we've settled all the farm use argument and all that.
 3913 She sent out an email that actually stated all of Mr. MacPherson's land, all his land, all of
 3914 his property there on Greenwood is now considered working agriculture, farm, and that
 3915 the storage will continue down there at the corner place and that the containers did not
 3916 have to be moved. And there's only one container you can see from the road. Cause the
 3917 other two are behind my haybarns, and it's obvious it's used for agriculture accessory to
 3918 the farm because that's where my haybarn is. And actually, that property, that corner lot
 3919 goes out into the pasture 30 or 35 feet. So, I have horses and goats, and everybody
 3920 grazing on it and has been since I've had it. And we proved back to when the setback
 3921 requirements came in with a distance requirement for livestock and all came in in 1960,
 3922 had people come in and testify, we proved it back til then, so it has been non-conforming
 3923 with animals and farm use without any setback requirements or any distancing, that was
 3924 the original issue.
 3925
 3926 Mr. Blankinship- Mr. MacPherson, that's ten minutes if you can summarize.
 3927
 3928 Mr. MacPherson - I'm good.
 3929
 3930 Mr. Lawrence- Okay, anybody have any questions for Mr. MacPherson?
 3931
 3932 Mr. Green- Mr. MacPherson, how long have you owned that property?
 3933
 3934 Mr. MacPherson- How?
 3935
 3936 Mr. Green- How long have you owned that property?
 3937
 3938 Mr. MacPherson - Going on 20, this is my 26th, going on 27 years,
 3939
 3940 Mr. Green- So were the houses built after you...?
 3941
 3942 M. MacPherson- No, the one in the middle...
 3943
 3944 Mr. Green- I'm talking about across the street.
 3945

3946 Mr. MacPherson - Oh, across the street, they've been there. They were built
 3947 before I came. Well, there's one little one that was built while I was there. The rest of the
 3948 Greenwood Glen and all, that's...and they don't have a problem. The homeowners
 3949 association actually over there circulated a petition on my behalf. There are 98 houses
 3950 over there. 98 signatures agreed that they liked me over there. Not to mention I have kids
 3951 over there riding ponies when birthdays and all,
 3952
 3953 Mr. Green- With respect, just give us some of your perspective on what
 3954 you're seeing.
 3955
 3956 Mr. Lawrence- Yeah.
 3957
 3958 Mr. Blankinship- Yeah.
 3959
 3960 Mr. Lawrence- Can you swear them in there?
 3961
 3962 Mr. Blankinship- Yeah. Raise your right hand, please. Do you swear the
 3963 testimony you're about to give is the truth, the whole of truth and nothing but the truth, so
 3964 help you God?
 3965
 3966 Mr. Ballos- Yes sir. All right. So yeah, my name is Mark Ballos, B A L L O
 3967 S, and I'm a code compliance inspector with the county who did issue the notice of
 3968 violations regarding these two properties. I'm happy to answer any direct questions.
 3969
 3970 Mr. Green- What are you seeing?
 3971
 3972 Mr. Ballos- Yes.
 3973
 3974 Mr. Green- What are you seeing?
 3975
 3976 Mr. Ballos- Okay, yeah. So, what I'm seeing here is essentially we've got
 3977 multiple parcels, and what the problem that that we're seeing from the county's
 3978 perspective is that there's no principal use on this northern most parcel. So, without the
 3979 principal use right there, storing of trucks becomes the primary or our principal use which
 3980 is prohibited here. The further problem that we are understanding is that there's no clear
 3981 identification that says this is part of or, it appears to be part of the farm, but it's a separate
 3982 parcel. If they would consolidate it easily, we would, we would say yes, all these uses are
 3983 associated with what else you're doing over here.
 3984
 3985 Mr. Green- When you say consolidated, what do you mean by that?
 3986
 3987 Mr. Ballos- I guess the term would be to vacate the property lines. And
 3988 make it one larger parcel, so at, add that acreage onto the greater parcel right there that
 3989 he is conducting or has been determined to be a farm.
 3990
 3991 Mr. Massie- How does a lawyer do this?

3992
3993 Mr. Ballos- I don't know the process for that.
3994
3995 Mr. Blankinship- A surveyor.
3996
3997 Mr. Ballos- Yeah. Yeah. I believe that would be an ideal situation for this.
3998
3999 Mr. Green- So is it unsightly when you've out there?
4000
4001 Mr. Ballos- I wouldn't say necessarily unsightly, you know, it is more of an
4002 agricultural appearance to it. You know, you've got this big open, accessory structure for
4003 storing hay and things like that. He's got farm implements, which it... The parcels do
4004 slightly blend, but it's what I wouldn't necessarily say unsightly.
4005
4006 Mr. Massie- But if he combined everything, everything looks the same. It'd
4007 just be legal, right?
4008
4009 Mr. Ballos- Yes, to an extent there would be some other concerns on the
4010 property that would still need to be addressed such as like setbacks of accessory
4011 structures. You're still gonna need to meet setbacks and things like that. But yes, the
4012 general aspect of it. I would assume would be...
4013
4014 Mr. Massie- Trucks?
4015
4016 Mr. Ballos- Trucks can be used for a farm, so having his trucks there
4017 associated with it, yes, they can't be on that northern parcel without it being consolidated.
4018
4019 Mr. Massie- So my question to him is, why aren't you consolidating? Sir.
4020 Sir. Why don't you just consolidate it?
4021
4022 Mr. MacPherson - Two reasons. One I have to get approval, which should fly,
4023 and I mean, as much as they want me to do it.
4024
4025 Mr. Massie- Okay.
4026
4027 Mr. MacPherson- But. I was already under my impression from the emails that I
4028 read, that property used as accessory use to the farm shouldn't have to be and also it's
4029 kind of foolish, in my mind, I mean I've I'm not a legal person, but it kind of is foolish in my
4030 mind to go to the county, fill out all these requests, pay these fees, everybody's gonna
4031 talk and argue and, and then somebody's gonna go in the office somewhere, erase a line
4032 on a map, and while, everything's settled. The place looks exactly the same. Yes. I mean
4033 it looks, not a thing is gonna be moved, but you can see if the line's going to be erased.
4034
4035 Mr. Massie- But you're gonna be in compliance.
4036

4037 Mr. MacPherson - Well, I felt like I was in compliance now because I've got
 4038 emails saying that it's legally used as accessory use to the farm because it's all
 4039 considered farm. It's almost like we agreed on one thing and then well kind of, sort of,
 4040 maybe not. So, and the other problem is, too, I'm finishing up another house on the
 4041 property that I'm rebuilding. When I finish that one, I want to come down to that property
 4042 and build another house. If I consolidate it, then I gotta go back and get it broke off again.
 4043
 4044 Mr. Green- So would you build a house to sell or live in? What are you
 4045 trying to?
 4046
 4047 Mr. MacPherson - Living. I've got two houses over there now; I only live in one.
 4048 I'm retired. It helps my portfolio, you know what I mean?
 4049
 4050 Mr. Green- I got you. Is it possible you just got to move it somewhere,
 4051 move all that somewhere else back and move it?
 4052
 4053 Mr. MacPherson - Well. Go ahead. You answer that one?
 4054
 4055 Mr. Ballos- Would it be best for Abram to answer or me?
 4056
 4057 Mr. Gagnon- I'd be happy to take a stab. Okay. So, I think one option is to
 4058 move some of the materials that are being stored on that parcel onto a different parcel. I
 4059 will make very clear the zoning ordinance is very clear on this. An accessory use cannot
 4060 be accessory to a principal use on another parcel. So that's, that's mostly the issue here
 4061 is that there's only accessory uses here or or things that would be only legal as accessory
 4062 uses, so they can't be accessory to the parcel the next door. But yes, certainly I think
 4063 anything that's related to the farm, and could be accessory to the farm, I think could be
 4064 moved to a different parcel. There are a number to date of these violations, there were a
 4065 number of items that were not accessory to the farm, including trailers, commercial trucks,
 4066 items like that.
 4067
 4068 Mr. Green- So that picture shows a commercial truck, but does that, does
 4069 that have a farm tag or does it have...?
 4070
 4071 Mr. MacPherson - Yeah, a farm tag.
 4072
 4073 Mr. Green- And does it have...?
 4074
 4075 Mr. MacPherson - Yeah. Farm tag. That white truck right there?
 4076
 4077 Mr. Gagnon- Yeah. And there were other trucks on the parcel as well.
 4078
 4079 Mr. Green- But they have farm tags on them.
 4080
 4081 Mr. Gagnon- I don't believe so.
 4082

4083 Mr. MacPherson - The one I replaced with that one had a farm tag.
4084
4085 Mr. Lawrence- Mr. Gagnon, so are we essentially back here today for the
4086 same things we were discussing three years ago?
4087
4088 Mr. Ballos- That's my contention is that the facts have not changed.
4089
4090 Mr. Lawrence- So the violation was approved by the BZA three years ago. I
4091 mean upheld by the BZA. We got, I guess, some further complaints is why we're back
4092 here today.
4093
4094 Mr. Ballos- Yes sir, and after it was upheld by the BZA, he appealed it to
4095 circuit court, and the circuit court denied his appeal and ordered him to comply.
4096
4097 Mr. Lawrence- Okay.
4098
4099 Mr. Green- So what's the solution?
4100
4101 Mr. Massie- Have him comply.
4102
4103 Mr. Green- I mean, but I'm saying if he...he's not, so how do we fix this?
4104
4105 Mr. Massie- He has to fix it. County can fix it by putting a lien on the
4106 property, whatever they do.
4107
4108 Mr. Blankinship- Your choice is to uphold the notice.
4109
4110 Mr. Green- If we uphold the notice, what's next, he gets fined.
4111
4112 Mr. Massie- Same things starts all over again if he is not gonna comply. It
4113 starts all over again. We'll be back here in a couple years.
4114
4115 Mr. Ballos- Yeah, and it would allow us to take him to court.
4116
4117 Mr. Lawrence- It was appealed to the circuit court three years ago and they
4118 upheld the BZA. Okay, we got, we do have a public hearing. Is there anybody here to
4119 speak on Webex or in the audience?
4120
4121 Mr. Blankinship- There is no one else on Webex
4122
4123 Mr. Lawrence- Okay. No one here to speak? So, I think we're ready for a
4124 motion unless there's any other discussion.
4125
4126 Mr. Massie- I move we affirm the decision for the reasons stated by the
4127 Assistant County Attorney in his presentation to the Board. I move the Board finds that
4128 the Director correctly determined the storing the commercial vehicles to exceed 10,000

pounds on the parcel at 10748 Greenwood Road in the violation of county code, 24-4425(C) and found that the Director correctly determined that 10798 Greenwood Road was being used for outdoor storage as a principle use in violation of county code, 24-4205 and affirm the decision of the Director and dismiss this appeal.

Mr. Green- Second.

Mr. Lawrence- Okay, we have a motion by Mr. Massie and a second by Mr. Green. All in favor say "Aye", all opposed "No." I hear none, motion carries. The decision of the notice of violation is affirmed. Thank you, Mr. MacPherson.

On a motion by Mr. Massie, seconded by Mr. Green, the Board **affirmed the decision of the Director of Planning and denied the appeal.**

Affirmed:	Broadway, Green, Massie, Lawrence, Johnson	5
Denied:		0
Absent:		0

Mr. Blankinship- Mr. Chairman, we do not have minutes for you to review today, so there is no further business.

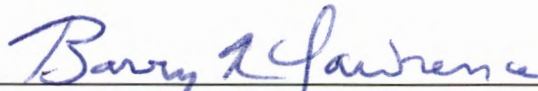
Mr. Broadway- Mr. Lawrence, I want to comment. So, some of you have wondered when I'll be gone, I was actually reappointed by the Judge virtually.

Mr. Massie- Oh, okay. Great.

Mr. Green- That's great.

Mr. Broadway- Yeah, five more years.

Mr. Lawrence- Meeting's adjourned, by the way.


Mr. Barry R. Lawrence, Chair


Mr. Benjamin W. Blankinship, Secretary