

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 MARCH 26, 2026 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN**
5 **THE *HENRICO CITIZEN* MARCH 9, 2026 AND MARCH 16, 2026.**
6

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

14 Also Present: Ben Sehl, Assistant Director of Planning
15 Benjamin Blankinship, Secretary
16 Paul M. Gidley, County Planner
17 Sara Rozmus, County Planner
18 Kayla Shelton, Accounting Clerk
19
20
21

22 Mr. Lawrence - Good morning, and welcome to the March 26, 2026, meeting
23 of the Henrico County Board of Zoning Appeals. For those who are able, please stand
24 and join us in the Pledge of Allegiance.
25

26 **[Recitation of Pledge of Allegiance]**
27

28
29 Mr. Lawrence- Thank you. Mr. Blankinship will now read our rules.
30

31 Mr. Blankinship- Good morning, Mr. Chair, members of the board. Good morning to
32 everyone in the room with us today. I'd also like to welcome those who are joining us
33 remotely on Webex. If you wish to observe the meeting, but you do not intend to speak,
34 welcome and thank you for joining us. For those of you on Webex who would like to
35 speak, we need to know that in advance so we can connect you at the appropriate time.
36 So, if you are an applicant or if you have questions or comments on one of the cases,
37 please press the chat button now. It's located in the bottom right corner of the screen, and
38 when the chat window opens, please select Janaya Poarch from the list of participants
39 and let her know your name and which case you're interested in. The chat feature will
40 only be used to identify speakers, so please do not type questions or comments into a
41 chat, but please send a chat to Janaya Poarch now. So, for those of us in the room, as
42 the secretary, I will call each case, we will ask everyone in the room who intends to speak
43 to that case to stand and be sworn in. Then a member of the Planning Department's staff
44 will give a brief presentation, and then the applicant will give their presentation. Then
45 anyone else who wishes to speak will be given the opportunity. We'll hear from those in
46 the room first and then from those on Webex. After everyone has had a chance to speak,

the applicant and only the applicant will have an opportunity for rebuttal. There is one appeal on the agenda, and the procedure is a little different for that. For that case, the Assistant County Attorney will speak on behalf of the Planning Director, and then the appellant will present their case. Each side will have a limit of ten minutes. Then anyone else who wishes to speak will be given the opportunity with a time limit of three minutes. We'll hear from citizens in the room first, again, and then from those on Webex, and there's no summation or rebuttal on the appeal. This meeting is being video recorded, and the video will be posted online. We will also be transcribing minutes. So, for those of you in the room, we will ask you to speak directly into the microphone on the podium there in the back of the room. We'll ask you to state your name and please spell your last name to make sure we get it correctly in the record. And once your case is over, you're free to leave. There's no need for you to stay till the end of the meeting. And with that, Mr. Chair, I think we're ready to begin.

Mr. Lawrence- Yes, please call our first request, Mr. Blankinship.

CUP-2026-100321 Anne Miller for Lavega Itzae Farm: conditional use permit to operate a restaurant and equestrian facility at 3801 Darbytown Road, Varina. Parcel 826-690 8089. Zoning: A-1, Agricultural District. Code Section: 24-4303.E.3.

Mr. Blankinship- First case is **CUP-2026-100321 Anne Miller for Lavega Itzae Farm:** conditional use permit to operate a restaurant and equestrian facility at 3801 Darbytown Road, in the Varina Magisterial District. Would everyone who intends to speak to this case, 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? Thank you. Ms. Rozmus.

Ms. Rozmus- Thank you, sir. The subject property is located at 3801 Darbytown Road in the Varina Magisterial District. Property is 114.26 acres and is zoned A-1, Agricultural. The current owner, Lavega Itzae Farms, LLC, purchased the property in 2020. The property had been used for an extraction and processing site for sand and gravel. In 1992, use permits for excavation and processing were approved and those use permits were renewed in 1994, 1995, and 1997. After the excavation was complete, the operator spread topsoil and ground cover. In 2018, Liesfeld Contractor applied for a conditional use permit to deposit soil as a fill material on thirty-seven acres of the subject property, which was denied by the Board of Zoning Appeals. Since purchasing the property in 2020, Lavega Itzae Farm has invested significant time and resources into transforming the property. This includes building a 3,456-square-foot barn, clearing, grading, and planting groundcover for pastures, and constructing a 2,442-square-foot dwelling, which is still underway, and, installing various other agricultural farm structures. The owner has applied for a conditional use permit to allow a restaurant and equestrian use of this property. The applicant intends to have the property open to the public for dining and horseback riding four days per week, Thursday through Sunday from 08:00 a.m. to 11:00 p.m. The restaurant will be located in a proposed 3,000-square-foot structure located to the northwest section of the property, over 300 feet from Interstate 295. The main barn, residential structure, and proposed restaurant building are over .22

93 miles from the nearest residential home on Darbytown Road. To the west, across
94 Interstate 295, the Castleton subdivision is over seven-hundred feet from the subject
95 property. The south and east ends of the property consist of more wooded areas, pastures
96 for livestock associated with subject property use and a power easement. Deer Lick
97 Branch runs along the entirety of the eastern portion of the property, which is heavily
98 wooded. The county encourages preservation of agricultural and rural character by
99 allowing farms to create alternative revenue systems, such as agritourism. Article Four
100 allows agriculture by right and allows an equestrian facility as a permitted use of the
101 property with an approved conditional use permit. A restaurant as an accessory use, may
102 also be approved by CUP. Because the adjoining land is also zoned A-1, animals may
103 graze up to the property line. The barns, pens, and feed lots, and similar animal
104 enclosures associated with the equine center and all areas where animal waste is stored,
105 must be four-hundred feet from nearest residential district, which is seven-hundred feet
106 away across Interstate 295. The property is well screened with dense woods and a few
107 manmade lakes. If the property is well maintained and the horses are cared for, staff does
108 not anticipate any substantial detrimental impact to the surrounding areas. We did have
109 one change to the applicant's requested hours of operation until 11:00 p.m. Staff has
110 proposed 10:00 p.m. for closing time as suggested in condition five. Since staff does not
111 anticipate any substantial detrimental impacts, therefore we recommend approval subject
112 the conditions included in the staff report. I can answer any questions, and I'll go pull up
113 the layout.

114
115 Mr. Lawrence- Does anyone from the board have any questions for Ms. Rozmus? I
116 do have one question. The staff report indicated that the BZA denied a conditional use
117 permit in 2018...

118
119 Ms. Rozmus- Yes.

120
121 Mr. Lawrence- To deposit soil and fill material on part of the property. Do you recall
122 why that was denied? Because it looked like there has been a long history on that site of
123 mining. And I know Liesfeld is a pretty well-known company in the county. So, I'm just
124 kind of curious if you have any information on why that was denied?

125
126
127 Mr. Blankinship- Ms. Rozmus was not here then, but I was. That was really a victim
128 of poor timing. There were several of those requests that came up in consecutive months
129 before the Board, and each time there were questions and concerns about truck traffic. It
130 was just sort of a matter of reaching a limit, of thinking we have approved too many of
131 these too close together, let this market settle out a little bit and come back to this.

132
133
134 Mr. Lawrence- Okay, well that leads me to a follow-up question then. I appreciate
135 that background. So, traffic was an issue then, is that an issue now?

136
137 Mr. Blankinship- That would have been truck traffic. You know. Two hundred or three
138 hundred truckloads of soil coming to the site every day for a matter of years, so that kind

139 of truck traffic is always a little bit of concern. The curious thing about this site is that it is
140 accessed by a frontage road in the interstate. It was constructed by VDOT, it is maintained
141 by VDOT, and it is the access to the home on this site, which has already been approved.
142 So, we have been in contact with Public Works, and they have been in contact with VDOT
143 for us. And there we do have some specific conditions from VDOT that will have to be
144 met with when they come back in for plan review. If this use permit is approved, the next
145 step will be for them to develop an engineered plan showing you exactly how all the
146 improvements are going to be constructed. And at that time they'll have to work directly
147 with VDOT on the permits.

148
149 Mr. Lawrence- So, the road and traffic issues will be addressed at that point in the
150 progress?

151
152 Mr. Blankinship- Yes.

153
154 Mr. Lawrence- Okay, alright, thank you. Anyone else on the board have questions
155 from Ms. Rozmus before we move on? Okay, I think we're ready to hear from the
156 applicant.

157
158 Ms. Miller- Good morning, Mr. Chairman, members of the board. My name is
159 Anne Miller. I am a planner with Westwood representing the applicant this morning. I want
160 to thank staff for their presentation and report and are pleased to bring this forward with
161 their recommendation for approval to you all this morning. So, thank you for your time. I
162 did want to say that Harold Vega is here. He is the property owner. He's owned it since
163 2020. He's also a local business owner. He owns Chicken Fiesta, which is a successful
164 food chain for the region, and I think beloved by a lot of people in the area. So, as noted
165 by staff, he's owned this property for the past six years and he has invested a lot of time
166 and resources into making it a beautiful agricultural property. As you can see from the
167 pictures, there's a beautiful barn and residential structure on the property, and he has
168 done that for his personal use and for his family and his friends to really enjoy this property
169 in Henrico. Mr. Vega, with his experience in operating restaurants, and the property that
170 he owns, the overall vision for the property is to expand the existing agritourism activities
171 and create a destination where visitors can learn about the farm, interact with animals,
172 and participate in those experiences. To support these activities, the applicant is
173 proposing to construct this additional building for the restaurant. That would be to have a
174 commercial kitchen and both indoor and outdoor dining, but it's really to support the
175 agritourism events on the property. It's not meant to be kind of a standalone, high intensity
176 commercial restaurant; that's not the intent is and as staff has indicated, it's really a
177 support use. It's an accessory use in the A-1 district. So, to the hours of operation, they're
178 in full agreement with all of the proposed conditions from staff. So, completely fine with
179 the proposed public open hours of operation Thursday through Sunday until 10:00 p.m.
180 So, we do believe this is compatible with the surrounding area, and that's been a priority
181 from the start because of the location of this property and where we're showing the
182 restaurant and the equestrian facility to be located. It is more than 700 feet from the
183 nearest residential district, which is across I-295, but we also understand there are, you
184 know, larger lot A-1 subdivisions to the east of the property, and so we are also several

185 hundred feet from that as well. As noted, there is a Resource Protection Area along the
186 stream that runs on the east side of the property and over to the south, so it's very heavily
187 protected and wooded in that area, and we are not showing any disturbance in that area
188 or land disturbance at all. Everything would be concentrated to where the existing barn
189 and residential structure are located and where the existing entrance that is gated. As Mr.
190 Blakenship also noted, it's serviced by a paved service road by maintained VDOT, and
191 there's also an existing turn lane along Darbytown Road that serves the service road. So,
192 there's already a turn lane in place to kind of help with the traffic, but to the point, you
193 know, we will definitely work with traffic engineering and VDOT to address any traffic
194 concerns or improvements that are needed during the site plan review process. So, with
195 that I just want to say, you know, we do believe this proposed use is consistent with the
196 county's comprehensive plan. It supports agritourism in the agricultural district and is
197 designed to respect the rural character of the area. Mr. Vegas sees this as a community
198 focused asset. One that allows him to share his property with people and also be a good
199 neighbor. So, with that, we respectfully ask for your approval this morning and we are
200 happy to answer any questions you may have

201
202 Mr. Lawrence- Thank you, Ms. Miller. Does anyone from the board have any
203 questions for Ms. Miller? Any questions? Okay, hearing none then we will open up the
204 public hearing, and we will ask at this time if there's anyone that wishes to speak and
205 support the request either in the boardroom or on Webex. And do we have anyone here
206 who wishes to speak an opposition to this request? Yes. Can you go up to the podium,
207 please ma'am?

208
209 Ms. Bobbio- Hello, so I'm Kathleen Bobbio. I am Mr. Vegas neighbor across the
210 stream and I was, I love the property that he's on, he's done a tremendous job with it. It's
211 beautiful. I was so worried we were gonna get like a big neighborhood and have to deal
212 with that. So, it's been such a pleasure to know that this gentleman has purchased the
213 property and he's done a really good job transforming it cause it was kind of like a rocky,
214 weedy mess and he's done a nice job with it. I have horses across the stream, so, you
215 know, as enthusiastic as I am to have like a restaurant I can walk to and like, you know,
216 be my local hangout. I have one question. I noticed the name of it was a famous Pasadena
217 trainer, and I didn't know if you were planning on importing horses or not. Yes. Okay. The
218 only thing I worry about that is the screwworm is a big problem, so biosecurity from South
219 America is something I have worries about. You know, that's not my job, but it's just
220 something that we talk a lot about in the horse industry with horses being imported from
221 Latin America into the United States. Screwworm affects all animals, humans, pets, and
222 wildlife. They're trying really hard in Texas right now to keep it out and Department of
223 Agriculture is like red flagging it, so just importing horses is the only thing I'm a little
224 worried about.

225
226 Mr. Lawrence- Thank you. Does anyone have any questions? Okay, thank you
227 ma'am. I Appreciate your comments. Okay. Is there anyone else here that wishes to
228 speak to the case?

229
230 Mr. Blankinship- There is no one on Webex.

Mr. Lawrence- Okay, we will now close the public hearing, and is there any discussion by the board? Hearing no discussion. Do we have a motion?

Mr. Blankinship- Your mic is muted, sir. Thank you.

Mr. Johnson- You mentioned that the traffic was caused not from the people but from the people working from that area.

Mr. Blankinship- That was a previous case from several years ago. Traffic was a concern, yes. We don't have any traffic concerns on this request.

Mr. Johnson- Okay.

Mr. Lawrence- Thank you, Mr. Johnson, are you ready to make a motion on the case?

Mr. Johnson- Oh yes. I move that we approve this conditional use permit subject to conditions recommended by staff and is consistent with the comprehensive plan and the zoning ordinance. There are no neighbors close to the property. And the site plan review will allow staff to resolve other issues as well.

Mr. Lawrence- Okay, we have a motion by Mr. Johnson. Do I hear a second?

Mr. Broadway- Second.

Mr. Lawrence- Second by Mr. Broadway. All in favor say "Aye."

Board- Aye.

Mr. Lawrence- All opposed say "No." Motion carries. Thank you. I'd just like to make one comment too. My daughter and son-in-law's favorite go-to restaurant is Chicken Fiesta. And they have introduced my wife and I to it as well, and great food there. So, I'm confident your new restaurant will be as delicious. Okay Mr. Blankinship, I guess we're ready to move on to the next case.

On a motion by Mr. Johnson, seconded by Mr. Broadway, the Board **approved case CUP-2026-100321** subject to the following conditions:

1. This conditional use permit authorizes an equestrian facility and restaurant. All other applicable regulations of the County Code remain in force.

2. This conditional use permit applies only to the improvements shown on the plot plan and building design titled "Lavega Itzae Farm" prepared by Westwood Professional Services and dated 1/28/2026, filed with the application. Any substantial changes or additions to the design or location of the improvements will require a new conditional use

permit. Any additional improvements must comply with the applicable regulations of the County Code.

3. The applicant must obtain all necessary permits from the Department of Building Construction and Inspections, the Virginia Department of Health, and the Virginia Department of Transportation. The applicant must maintain compliance with all applicable building code, fire code, and health code regulations at all times.

4. A construction plan prepared by a professional engineer, certified land surveyor, or professional landscape architect must be submitted to the Planning Department for review and approval. The plan must include, at a minimum, details concerning parking, landscaping, and lighting that comply with the requirements of the Zoning Ordinance.

5. The capacity, location, dimensions, design, landscaping, lighting, and maintenance of the parking lot must comply with the applicable requirements of the Zoning Ordinance. Fire lanes must be marked and maintained in accordance with the Fire Prevention Code.

6. The property must retain its rural character as viewed from Darbytown Road and neighboring property. No buildings, structures, signs, lighting, attention-getting devices, or other changes to the property will be allowed to detract from the established character of the surroundings. The applicant must maintain the property so that odors, noise and other impacts are controlled.

7. Hours of operation are limited to Thursday through Sunday, 8:00 am to 10:00 pm when Daylight Saving Time is in effect, and 8:00 am to 9:00 pm when Eastern Standard Time is in effect.

8. The applicant must obtain a building permit and food service permit for the proposed restaurant within two years of the date of approval (by March 26, 2028), or this conditional use permit will expire. If either permit is cancelled or revoked after that date due to failure to diligently pursue compliance, this conditional use permit will expire at that time.

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

Mr. Blankinship- Mr. Chair, the next two cases are companions. There's a conditional use permit that includes a variance request, if you want to look at it that way. So, with your permission I'll call both together. We can hold one public hearing for both cases, but then we will need separate motions for the two different approvals.

CUP-2026-100389 Amari Wright for Greater Richmond Aquatics Partnership: amend a conditional use permit to expand a recreation facility at 317 N Wilkinson Road, Fairfield. Parcels 792-753-6169 and 792-753-8870. Zoning: R-2A, One-Family Residence District. Code Section: 24- 1406.C.

VAR-2026-100411 Amari Wright for Greater Richmond Aquatics Partnership: variance from the rear yard setback to expand a recreation facility at 317 N Wilkinson Road, Fairfield. The applicant has 10 feet rear yard setback where the Code requires 45 feet rear yard setback. The applicant requests a variance of 35 feet rear yard setback. Parcel 792-753- 8870. Zoning: R-2A, One-Family Residence District. Code Section: 24- 3308.D.

Mr. Blankinship- The first is **CUP-2026-100389** Amari Wright for Greater Richmond Aquatics Partnership: amend a conditional use permit to expand a recreation facility at 317 N Wilkinson Road, in the Fairfield Magisterial District. The other half of it is the **VAR-2026-100411** Amari Wright for Greater Richmond Aquatics Partnership: variance from the rear yard setback to expand a recreation facility at 317 N Wilkinson Road, in the Fairfield Magisterial District. Would everyone who intends to speak to this case please stand and be sworn in. Do you swear the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God. Thank you, Ms. Rozmus.

Ms. Rozmus- As Mr. Blankinship said, this is a companion case to variance case 2026-100411. I'm going to speak to both, kind of interchangeably, just to warn you on that. The property fronts North Wilkinson Road near its intersection with Wilkinson Road. It is surrounded to the northwest and south by Lake Colony, Chamberlayne Hills, Frostick, and Three Mountains North subdivisions. To the east, it adjoins Klehr Field County sports complex. The board approved a conditional use permit for a noncommercial recreation facility at this location in 1958. The approval included a swimming pool, a small building, an active play area and parking. In 1961, a conditional use permit was approved to add a snack bar. The next year the board approved construction of the North Chamberlayne Civic Association Building on part of the property. The building was later subdivided as a separate parcel. It's over here and is addressed 319 North Wilkinson Road. In 1992, the board approved a small communication facility along the Wilkinson Road frontage. In 2021, the board approved a conditional use permit for SwimRVA to lease the property and expand the nonprofit recreation facility. The conditions of approval addressed hours of operation, landscape buffers, light fixtures, parking and minor site plan changes. The applicant is seeking a new conditional use permit to modify the conditions previously approved by the board. They're also seeking a variance to expand the swimming facility, which includes encroaching on the rear yard setback. The plan showed two buildings, a large family pool, a separate pool for swimming and diving competitions and a play area. The new competition pool will be covered by a transparent structure with a roof that can be open in the summer and closed in the cold weather. It would be up to thirty-five feet in height and would be located approximately thirty feet from the side lot line adjoining 8001 Frostick Court and ten feet from the rear lot line at joining Klehr Field. I'm going to pull up the aerial again, so it'll be thirty feet from this property right here. The property is designated Open Space and Recreation on the 2026 Future Land Use Map that

368 designated and supports the continued use of the property as a noncommercial recreation
369 facility. The property complies with a lot area, height and setbacks of the R-2A, One-
370 Family Residence district, and it complies with the lot width, as measured at the time the
371 property was developed. The proposed use of a non-commercial recreational facility is a
372 continuation of the established use on this property. The property has been approved on
373 this site since 1958. Looking at the variance analysis, staff looked at the evaluation of
374 threshold requirement required by the Code of Virginia. And looking at these conditions,
375 staff determined that the application does meet the legal court requirements for a
376 variance. The rear yard setback is reasonable abutting residential property but is not
377 necessary abutting a public park. The applicant did not cause the hardship. Staff is not
378 anticipating any detrimental impacts of the proposed expansion to the recreational facility
379 to the rear. The conditions are specific to this lot. The use is allowed and no other relief
380 is available.

381
382 However, when evaluating the conditions for the conditional use permit, staff was
383 contacted by some adjacent neighbors. The adjacent neighbors that are in question are
384 three residents that are the closest to the facility. And one of the neighbors had a lot of
385 concerns about the current conditions of the property and how operations were being
386 handled. Because of this, and considering the history of this parcel, they've had some
387 issues in the past with getting neighborhood involvement, getting the surrounding
388 neighborhood on board with the changes. And because of the close proximity to adjacent
389 neighbors, staff recommends deferral of this request so the applicant can conduct a public
390 meeting and work with their neighbors to resolve ongoing conflicts with the use. And as
391 you can see, I'm just going to show a couple of these pictures. It says thirty feet from the
392 new proposed pool, but the distance between the lot lines is fairly close, and the closest
393 neighbors are looking directly at the pool. So, there is a little bit of concern voiced from
394 these neighbors. I think that some of the kinks can be worked out between the applicant
395 and the neighbors, hence the recommendation for deferral, and I can answer any
396 questions.

397
398 Mr. Blankinship- In the email from the neighbor, and also the applicant's response to
399 those concerns, were left on the table for you this morning. There were also, I'm just going
400 to pick up from there if you don't mind, Ms. Rozmus. There were also some questions
401 about the suggested conditions. Because this is a little bit more complicated than typical
402 cases. So, we've had a little back and forth with the applicant and we have proposed
403 some minor changes to the conditions, which are also on the table before you. In condition
404 number three, we set the expiration at two years, which is, as you know, your standard
405 condition. We expect applicants to begin construction within two years. And when you're
406 building a screened-in porch that's plenty of time, but obviously this is a much larger and
407 more complex operation. And so, they requested that we change that to five years and
408 staff doesn't have any objection to that. In condition number eight, there was mention of
409 a right turn lane. That was carried forward from the 2021 case, which was done before
410 the road plans were drawn up and approved. We weren't sure if a right turn lane would
411 be required, so we added that to the conditions. Since then, I understand the road plans
412 have been approved without a right turn lane. DPW was okay with that. So, we've
413 removed the specific reference to a right turn lane from the condition and just said they

414 have to build in accordance with DPW approval. On the hours of operation, there was
415 one, I apologize, a typo on my part. I had put 08:00 p.m. as the ending time for outdoor
416 activities in the summer and it has always been 09:00 p.m. That was just a mistake by
417 me. And do you remember the fourth change? There was one other. Oh, the height of the
418 light fixtures. At one point we thought they were going to increase the height of the light
419 fixtures because of the covered pool and the applicants said, "no" they were okay with
420 the previous limit of twenty feet. So that has actually been reduced in the conditions from
421 thirty-five to twenty. And the distance from the property line stays the same as well. Are
422 you ready to hear from the applicant?

423
424 Mr. Lawrence- Yes. Well, does anyone have questions from the board before we
425 hear from the applicant? Okay, hearing none we'll hear from the applicant now, please.
426

427 Ms. Starling- Good morning, members of the board, and thank you staff for your
428 presentation. My name is Amari Wright Starling. I'm with Hirschler, and I am here on
429 behalf of the applicant, Greater Richmond Aquatics partnership, also known as Swim
430 RVA. So, these are the two parcels of the subject of the case. We have 317 North
431 Wilkinson Road and 323 Wilkinson Road. And as you may know, the Chickahominy
432 Aquatics Association has operated this location as a neighborhood pool since 1958.
433 About six years ago, the association partnered with swim RVA to reinvest into the
434 neighborhood pool to teach the community how to swim and to become summer
435 lifeguards. This board previously approved CUP 2021-12 authorizing the reinvestment
436 and expansion of the recreational facilities. The CUP requires substantial conformance
437 with the submitted illustrations and conditions. For the last six years, the applicant has
438 engaged with the community, the neighborhood and the county on changes to the
439 planned reinvestment. As a result, swim RVA returns before the board to update the CUP
440 request and request a variance to implement the updated vision for the neighborhood
441 recreational facilities. So, here is the original layout that was submitted back in 2021, and
442 you can see there are two pool areas, one building and a small grass area. Here is the
443 updated vision for this facility. This includes a family area located approximately here,
444 where kids can play. We have a grilling area here that would have picnic tables and a
445 place for members and guests to eat. A leisure pool here for kids and their family
446 members, two buildings, and a larger lap pool with a deep end that would be enclosed by
447 a retractable glass enclosure that would allow for year-round use. These upgrades allow
448 SwimRVA to provide more recreational play areas for the community, provide diving
449 training and host both diving and swim meets. And so here are some renderings of the
450 new vision. This is the leisure pool, as you can see the family is hanging out by the pool
451 and the larger lap pool in back with the glass enclosure, and this is another view of the
452 play area, and as you can see in the back the picnic area with the people sitting. And then
453 here's another view of the larger lap pool with the glass enclosure opened. And then a
454 view of what the glass enclosure would look like open and closed. So, to implement this
455 vision, we are requesting these changes to the approved 2021 CUP conditions. Number
456 one, the ability to host swimming and diving meets. Number two, we previously requested
457 seasonal tents, but now we want to request an upgraded glass enclosure. And number
458 three, the hours of operation. We are just simply trying to simplify the hours to have two
459 time periods instead of three. And in the winter season, we'd like to be able to be open

on Sundays, so the community can continue to use the recreational facilities on the property. And the hours for May 1st to September 30th will remain the same, as in the approved 2021 CUP conditions. In addition to our CUP amendment request, we are requesting a variance to modify the rear yard setback next to the county owned park. The ordinance requires a forty-five-foot minimum setback, and we are requesting a ten-foot setback. According to the Virginia Code, a variance shall be granted if the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property, or granting a variance would alleviate a hardship due to a physical condition relating to the property or improvements they are on. While both standards may apply based on the five conditions that I will outline for you, we believe the first standard applies. So under the test, to obtain a variance SwimRVA must meet the five conditions, number one, a good faith acquisition, and SwimRVA formed this partnership with the association in good faith. And the pool has been there since the late 1950s; the infrastructure is set in stone and forcing SwimRVA to dig up the pool and move it to conform with the current setbacks will create an extreme hardship. Number two, there is no substantial detriment. Approving the variance will not affect any adjacent residential parcels. The rear setback abuts a county-owned park, which is another recreational facility. And moving the rear yard setback will not affect the park since any...fields are nearly two-hundred feet away. And number three, no general or reoccurring. This is a unique situation, as this is one of the only neighborhood pools next to a county-owned park in this area. Number four, there will be no change in the zoning as a result of this variance. This has always been used as a recreational facility and pool, and we will continue to use it for the same use. And number five, a special exception or modification is not available for this request. So, we feel that this circumstance of this situation meets all five conditions to approve a variance. So, as far as community outreach, SwimRVA has built a strong relationship with the Northern Henrico Civic Association in the last six years. SwimRVA attended the association's meeting on March 10th, hosted by Ms. Delta Bowers, where an estimated twenty to thirty members attended and gave unanimous support for the project. And I do understand that you have concerns from one neighbor, and I hope you have had time to read my response letter clarifying the facts, but if you did not, or if you have any questions about the letter, or if you'd like me to review that now, I will be happy to do so. But all in all, SwimRVA has had very strong contacts with the community. We have been speaking with those neighbors that staff has pointed out. Those homes over there, we've spoken with Ms. Vaughn. She is supportive of the project. We have spoken to Ms. Royal who submitted the letter, although we have not heard back from her. So, I'm happy to answer any questions.

Mr. Lawrence- Thank you, Ms. Wright, Mr. Massie, go ahead.

Mr. Massie- I think you answered the question I had. You know, you presented something that's really nice here and it's really amazing for the community. My only concern is communication with immediate neighbors. So, have you spoken with them?

Ms. Starling- Yes, we have been in contact with the immediate neighbors. Like I said, the homes that staff pointed out, we've been in contact with Ms. Vaughn, and she is supportive of the project. The woman who submitted the letter, Ms. Royal, we have

506 contacted her, but she has not contacted us back. And then throughout the six years of
507 SwimRVA being in partnership with the association, the applicant has built strong ties
508 with the community and has been in constant communication with the neighbors.
509

510 Mr. Massie- So, there's only one neighbor who might have some concerns, and
511 when did you contact her?
512

513 Ms. Starling- You said when?
514

515 Mr. Massie- Yes.
516

517 Ms. Starling- Yesterday, someone from SwimRVA called her and left a voicemail,
518 but we have not heard back from her.
519

520 Mr. Massie- Okay, that's all the questions I have.
521

522 Mr. Lawrence- Does anyone else on the board have questions for Ms. Wright?
523

524 Mr. Johnson- I was just noticing, do you have a fence around the entire facility?
525 Around the entire area?
526

527 Ms. Wright- The entire facility?
528

529 Mr. Johnson- Yes.
530

531 Ms. Starling- I believe that it is fenced in.
532

533 Mr. Lawrence- Does that answer your question, Mr. Johnson?
534

535 Mr. Johnson- Yeah.
536

537 Mr. Lawrence- I had a couple questions. SwimRVA, is that a non-profit
538 organization?
539

540 Ms. Starling- Yes, that is a non-profit organization.
541

542 Mr. Lawrence- Okay, I wasn't familiar with the organization prior to getting the
543 information on this case. Would you say it's similar to Nova? I'm familiar with Nova, which
544 operates out of Western Henrico. Is that the same type of organization?
545

546 Ms. Starling- I'm going to have a representative from SwimRVA come up and
547 speak more to their business.
548

549 Mr. Lawrence- I'm familiar with Nova because they now operate out of the old
550 Macy's building at Regency, which is probably where I brought this sports coat, so, just
551 as an aside, but go ahead, sir.

552
553 Mr. Kennedy- Mr. Chair, thank you. My name's Adam Kennedy. K E N N E D Y. I'm
554 the executive director of SwimRVA and yes, we're a non profit. We started operating in
555 the region in 2012 and our mission is to change lives through aquatics. The question that
556 you've asked is, are we similar to Nova? If you look at SwimRVA and Nova side-by-side,
557 you could draw some similarities, but SwimRVA's mission is teaching kids to swim. So,
558 we work within six different school divisions from Colonial Heights, Hopewell, and Prince
559 George County to Hanover County, up and down the Interstate 95 corridor. And our
560 mission is to teach second graders to swim. So, we started to work with the YMCA in
561 2012. We are really proud that when Regency opened, as well as the Thornton Aquatic
562 Center, those two allowed Henrico to join in as well. All in we have thirteen contiguous
563 jurisdictions within Central Virginia. We want to eradicate unintentional drowning. That's
564 our mission at SwimRVA. It's a little bit different, but we do have a competitive team. It's
565 not our focus.

566
567 Mr. Lawrence- I understand. Thank you for that background. So, prior to your
568 ownership of the property, it was actually a community pool that was under the auspice
569 of the North Chamberlayne Civic Association. Is that correct?
570

571 Mr. Kennedy- The ownership of the property hasn't changed. The ownership of the
572 property is Chamberland Rec Association doing business as a Chickahominy Aquatic
573 Association, and we have a seventy-eight-year lease on the property with development
574 rights.
575

576 Mr. Lawrence- Is the North Chamberlayne Civic Association now Northern Henrico
577 Civic Association?
578

579 Mr. Kennedy- Yes, sir.
580

581 Mr. Lawrence- So, they've changed names. Do the residents have access to that
582 facility or how does that work?
583

584 Mr. Kennedy- They have access to the facility if they choose to become members.
585

586 Mr. Lawrence- Okay. All right. Thank you, sir. Any other questions from the board to
587 the applicant?
588

589 Mr. Broadway- Yes sir. This is a very impressive proposal, very thorough, but I'm
590 wondering, what is the cost of this going to be?
591

592 Mr. Kennedy- Yeah, the cost is significant. The cost of everything in front of you is
593 not fully known. What we do propose is phase one of the project, which would include the
594 new entrance from off Wilkinson, which goes up through the trees on the 323 Wilkinson
595 property line. Our history with the property goes back to 2020. Coming out of the
596 pandemic, this association couldn't keep itself financially afloat. So, they reached out to
597 SwimRVA because they know what we do in the community and part of our mission is to

598 protect aquatic infrastructure and community resources. So, we took a look at it and we
599 decided to get involved. And, when we did so, we drew up a lot of plans to make
600 amendments to the property, and we forgot to do one thing and that was to talk to the
601 neighbors. In 2020, we learned a hard lesson, that is not how to do business, and we
602 learned it the hard way. For five years, I've been working directly with Dr. Bowers in the
603 Northern Henrico Civic Association on the use of the property. The primary mission is to
604 build trust. And I'm pleased to report that we have. I'm also pleased to report that Dr.
605 Bowers and I are, how we characterize our relationship as close friends. And at the end
606 of the day. I think SwimRVA has really built a lot of trust in the community and the
607 surrounding areas. What we've also brought to the property is not just a summer
608 membership for a recreation pool. We've also brought our swimming lesson program that
609 does not require a membership that has been wildly successful. We hit capacity in second
610 year that we started. We started the program in 2023. We've also brought to the region
611 summer camp opportunities for kids and families that has never existed before. We do
612 that in partnership with the civic association building that's across the parking lot. That is
613 home-based for the kids, there's air conditioning there, and we're also the largest rent
614 payer for the civic association, which helps them maintain the building and serve the
615 community. The summer camp program is ten weeks long. Last summer we served 333
616 children. Our capacity is 345. So, it's wildly successful in terms of the demand and how
617 some SwimRVA has been able to serve the community on the site. If I could address Mr.
618 Royal's concerns directly. The neighbors on Frostick Court, and Mr. Royal is one of the
619 neighbors to the north. They have become very supportive of the project in the pool. At
620 our start in 2021, they were not. We had some considerable objections, particularly from
621 Ms. Williams, who's on the left side of the driveway, Ms. Mary Depillars, who is across
622 the driveway on Cavendish, and Ms. Vaughn, which is the last house on the cul-de-sac
623 to the south. More to the left. I'm sorry with my directions. Nope, the other way. Come all
624 the way around the cul-de-sac and down. Nope, down and over.

625
626 Ms. Rozmus- Sorry.

627
628 Mr. Kennedy- So, Ms. Sherry Vaughn, her deck overlooks the parking lot and the
629 property, and she and I are on, we have a bat phone to each other, and so anything that
630 has happened at the property over the years, Ms. Vaughn calls me and, and we solve the
631 problem almost immediately. And in talking with Ms. Vaughn recently about Ms. Royal's
632 concerns, you know, I learned a few things, no doubt. One of which was in August of last
633 year, our swim team coaches ran a couple of practices. Our main site was shut down for
634 renovations for a week, and we had a couple of morning practices in the lap pool. Our
635 coaches made some severe errors that I learned about from Ms. Royal's letter, and I'm
636 not proud of that. And, it was very disturbing to hear, but when they went to practice at
637 five in the morning, they brought a speaker and they played loud music. And, I could not
638 be more disappointed in my staff, and they know that now. But that is a correction. It
639 happened just the one time, police from a noise complaint from Ms. Royal, arrived on
640 scene. Our staff stopped doing what they were doing. In terms of playing music. I can't
641 apologize enough to Ms. Royal and all of the neighbors that that took place and that
642 misstep is something that we will regret for a long time. But it is not something that
643 happens on a regular basis. It happened just once in six years of operation at the site.

644 The other three concerns that Ms. Royal brings up, one in relation to parking. So, the site
645 here talks about, and the application talks about swimming meets and diving meets. This
646 site is not prepared to host anything at the scale that a Regency would host or even a
647 Thornton Aquatic Center would host. This site is designed to host three summer lake
648 championships a year, or three summer league swim meets a year. This site has
649 traditionally had a summer league program of about twenty-five children. And there are
650 three meets. They participate in a league called J-rack that happens on this site. So, that
651 is the extent of swimming meets. Three summer league swim meets a year. This site has
652 traditionally had a summer league program of about twenty-five children. And there are
653 three meets. If the dome is created, I think that it could host potentially a high school dual
654 meet, you know, Varina and Hermitage or something. But it wouldn't be able to do
655 anything beyond that. There just simply isn't enough deck space, and it's not designed
656 for that purpose. It is designed with a diving well. So, one of the things when we've been
657 creating the vision for this property that was identified by county staff, was that there is
658 no competitive diving opportunity in the region in all of Central Virginia. There are two
659 one-meter diving boards at St. Catherine's School and there is a one meter and a three-
660 meter diving board at the University of Richmond in terms of indoor space. So, county
661 staff asked us to take a look at this site and how could we bring competitive diving to the
662 region? Now, competitive diving is small in stature, it's not 500 people for a diving event.
663 It's twenty or thirty. But it is impactful and it's necessary if we want to host as a region,
664 anything at Regency in terms of swimming and diving championships at the high school
665 level or at the college level. And so, we did that and a lot of why we're here today is
666 because the lap pool needed to turn ninety degrees and the dome got a few feet taller in
667 order to accommodate a three-meter diving board and people going off from it. We're
668 really excited to bring that to the region at this property. I think it will only enhance, not
669 only sports tourism for the county and the region, but also the offering that we'll bring to
670 the community year-round for opportunities. I'm hopeful one day we're watching the
671 Olympics, and we see somebody from the Fairfield District on the TV winning Olympic
672 Gold. The other thing that Ms. Royal brought up was parking at the summer league swim
673 meets on both North Wilkinson and Frostick Court. I've talked to the neighbors,
674 particularly Ms. Sherry Vaughn, and she confirmed, and I've been the announcer at every
675 single one of the summer league swim meets, which are two to three of summer. And I've
676 never seen street parking. But Ms. Vaughn has confirmed, and I truly believe her, that
677 there's been three or four cars at times on North Wilkinson and three or four cars that will
678 park on Frostick Court during those meets. And those are the only times that we over
679 capacitate the parking, and we're talking about just a handful of cars. The...

680
681 Mr. Blankinship- Mr. Kennedy, we're running a little over time here.

682
683 Mr. Kennedy- The proposal is to expand the parking lot, which would solve for
684 them. The last thing I want to address is the walking across private property. What Ms.
685 Royal is referring to is Ms. Vaughn's property. I talked to Ms. Vaughn. This was a problem
686 prior to SwimRVA being there. Since SwimRVA has been there, it has only happened
687 one time in five years, and Ms. Vaughn is not concerned about it.

688
689 Mr. Lawrence- Okay. Thank you, sir. I appreciate that. You have another question?

690
691 Mr. Broadway- Well, back to my question. Yeah. What's your guess on how much
692 this will cost?
693
694 Mr. Kennedy- Thank you. I didn't answer your question, sir. Our first phase of
695 development is a \$13 million dig. It will start with the new driveway coming up from
696 Wilkinson, which has been our promise since day one to the neighborhood that any traffic
697 would be eliminated from North Wilkinson and would come off from the...
698
699 Mr. Broadway- Alright, so is the funding in place for that?
700
701 Mr. Kennedy- The funding is underway, and we have secured almost half of the
702 funding that's needed.
703
704 Mr. Broadway- Okay, so when would you plan to start, do you think?
705
706 Mr. Kennedy- We had a very ambitious goal to be digging this fall.
707
708 Mr. Broadway- I'm sorry.
709
710 Mr. Kennedy- We had a very ambitious goal to be digging this fall.
711
712 Mr. Broadway- Okay.
713
714 Mr. Kennedy- And our timeline is obviously highly accelerated.
715
716 Mr. Lawrence- Any further questions for the applicant before we open the public
717 hearing? Okay, thank you sir. Hearing none, is there anyone else in the audience that
718 was on Webex that wishes to speak in support of this case? Is there anyone in the
719 audience or on Webex that wishes to speak an opposition to this case?
720
721 Mr. Blankinship- There is no one on Webex.
722
723 Mr. Lawrence- Okay. Alright, hearing no comments then we will close the public
724 hearing and does the board wish to have any further discussion or are we ready to have
725 a motion?
726
727 Mr. Massie- A motion.
728
729 Mr. Lawrence- Go ahead, Mr. Massie.
730
731 Mr. Massie- Well I was concerned about the neighbors and the communications,
732 so what I plan to do is move forward with this and approve it, but I will need you guys to
733 do this. If the one person who had not had contact with you because she just contacted
734 her yesterday, I believe he said. So, make sure you talk to her about what's going on and
735 just alleviate her fears. Besides that, I approve it. I move that we approve the conditional

use permit subject conditions recommended by the staff. It is consistent with the comprehensive plan and zoning ordinance. This swimming pool is an important asset to the community. SwimRVA has worked hard to earn the trust of the community.

Mr. Green- Second.

Mr. Lawrence- Okay, we have a motion by Mr. Massie to approve the case, a second by Mr. Green. All in favor say "Aye."

Board- Aye.

Mr. Lawrence- All opposed say "Nay." The motion carries.

On a motion by Mr. Massie, seconded by Mr. Green, the Board **approved case CUP-2026-100321** subject to the following conditions:

1. This conditional use permit authorizes the continued use of the property for a noncommercial recreation facility. All other applicable regulations of the County Code remain in force.

2. This conditional use permit applies only to the improvements shown on the plot plan and building design titled "SwimRVA North Expansion" prepared by Baskervill, plan dated February 9, 2026, and illustrations dated February 12, 2026, filed with the application. Any substantial changes or additions to the design or location of the improvements will require a new conditional use permit. Any additional improvements must comply with the applicable regulations of the County Code.

3. Any new or reconstructed building on the property must be constructed in substantial conformance with the illustrations submitted with the application in size, shape, materials, and color. No building will have painted or unfinished concrete block exposed to view. Any new mechanical equipment must be screened in accordance with Section 24-5311 of the Zoning Ordinance. The buildings may be constructed or reconstructed in phases. The applicant must obtain either a building permit for the first phase or the land disturbance permit for the new entrance within five years (by March 26, 2031), or the authorization to construct new buildings will expire.

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 and approval of a construction plan by all County development agencies.

5. At the time of building permit application, a detailed lighting plan must be submitted to the Planning Department for review and approval. Lights beamed only on the swimming pool, and operated on a timer, must be provided whenever water is in the pool. The existing exterior lighting may be maintained, and the fixtures may be replaced, in conformance with Article 5, Division 4 of the Zoning Ordinance. Any new exterior lighting must be no taller than 20 feet, must be located at least 50 feet from the nearest property

line of a dwelling, and must be shielded to direct light away from adjacent property and streets.

6. At the time of building permit application, a detailed landscaping plan must be submitted to the Planning Department for review and approval. The existing landscaping adjacent to 8001, 8005, and 8009 Frostick Court must be supplemented where necessary to meet the planting requirements of a TB25 transitional buffer. All landscaping must be maintained in a healthy 1. condition at all times. Dead plant materials must be removed promptly and replaced during the next planting season.

7. Before requesting a certificate of occupancy for any new or reconstructed building on the property, the property must be served by public water and sewer, including provision of fire protection meeting the standards of the Division of Fire Safety and the Department of Public Utilities, separation of the water meters for 317 and 319 N Wilkinson Road, and connection of all sewage lines to the public sewer system.

8. Before requesting a certificate of occupancy for any new or reconstructed building on the property, a new entrance onto Wilkinson Road must be constructed. The design and construction of the entrance must be approved by the Department of Public Works. All required signs and pavement markings must be installed, and fire lanes must be marked and maintained in accordance with the Fire Prevention Code.

9. The existing entrance onto N Wilkinson Road may be improved and the existing parking lot may be reconfigured as illustrated on the plans submitted with the application. Any other expansion of the parking lot, and any new parking lot, must meet all standards for new parking lots, including perimeter and interior landscaping, raised planting areas, curb and gutter, and pavement markings.

10. Hours of operation will be limited as follows. Between 5:00 and 7:00 am, the only outdoor activity allowed on the property will be lap swimming limited to a maximum of 40 participants.

May 1 to September 30 of each calendar year:

Indoor activities: 5:00 am to 11:00 pm

Outdoor activities: 5:00 am to 9:00 pm

October 1 to April 30 of each calendar year:

Indoor activities: 5:00 am to 11:00 pm

Outdoor activities: Monday-Friday, 5:00 am to 8:00 pm; Saturday, 7:00 am to 7:00 pm; Sunday, 8:00 am to 6:00 pm.

11. The property may be used for swim meets and dive meets during the permitted hours of operation in Condition #10. Prior to each swim meet or dive meet, the owner or operator must communicate to all participating organizations that access to the property through nearby residential property is strictly prohibited.

12. Public address systems, starter guns, and similar equipment may be used at swim meets and dive meets and for emergency purposes, but at no other time.

13. The property must be operated and maintained in a clean and sightly manner. All trash must be in closed containers with regular pickups, the containers must be properly screened, and litter must be picked up daily.

14. The snack bar must be oriented internally towards the pool facility and must primarily serve members and guests participating in aquatic activities.

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

Mr. Blankinship- And we need a motion on the variance.

Mr. Lawrence- Oh, I'm sorry. that's on the conditional use permit. Now if we can have another motion, Mr. Massie, on the variance.

Mr. Massie- I move that we approve this variance subject to the conditions recommended by the staff. The rear yard setback of forty-five feet is not needed next to a county recreation facility. The design is necessary because it's the unusual shape of the lot. The other tests are met as stated in the staff report.

Mr. Green- Second.

Mr. Lawrence- Okay, we have a motion by Mr. Massie to approve the variance, and second by Mr. Green. All in favor of the motion, say "Aye."

Board- Aye.

Mr. Lawrence- All oppose say "Nay." Motion carries. Thank you.

On a motion by Mr. Massie, seconded by Mr. Green, the Board **approved case VAR-2026-100411** subject to the following conditions:

1. This variance applies only to the rear yard setback requirement for a noncommercial recreation facility only. All other applicable regulations of the County Code remain in force.

2. This variance applies only to the improvements shown on the plot plan and building design titled "SwimRVA North Expansion" prepared by Baskervill, plans dated February 9, 2026, and illustrations dated February 12, 2026, filed with the application. Any substantial changes or additions to the design or location of the improvements will require a new variance. Any additional improvements must comply with the applicable regulations of the County Code.

3. This approval is subject to the conditions applicable to CUP-2026-100389, including the provision for expiration of that conditional use permit. If CUP-2026-100389 expires, this variance will expire at the same time.

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

VAR-2025-101300 Jesus Alvarez: variance from the public street frontage requirement to build a single-family dwelling at 9104 Mayfair Avenue, Fairfield. The applicant has 0 feet public street frontage where the Code requires 50 feet public street frontage. The applicant requests a variance of 50 feet public street frontage. Parcel 770-758-8369. Zoning: R-3, One-Family Residence District. Code Section: 24-4306.E.1.

Mr. Blankinship- Alright, the next case is **VAR-2025-101300 Jesus Alvarez: variance from the public street frontage requirement to build a single-family dwelling at 9104 Mayfair Avenue, in the Fairfield Magisterial District. Would everyone who intends to speak to this case, 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? Thank you. Mr. Gidley.**

Mr. Gidley- Thank you, Mr. Secretary. Good morning, Mr. Chairman, members of the board. The subject property is located just south of Hungary Road and east of the railroad tracks. Dating back to 1926, this was a two-acre parcel that extended from Hungary Road down on the western side of Mayfair Avenue approximately 500 ft. In 1998, these two acres were divided into a total of four lots. And these are the lots one, two, three, and four. This is a view down Mayfair. The property subject to today's request is the one most distant from Hungary Road. And it is a 29,000-square-foot lot zoned R-3, One-Family Residence District. The applicant would like to construct a single-family home here, however, Mayfair has a public right-of-way that is only sixteen feet in width. Code defines a public street as having a right-of-way of at least thirty feet. As a result, Mayfair Avenue does not count as a public street, and therefore the lot lacks public street frontage, which is why the variance has been requested today.

These are pictures of the proposed house right here. As you know, the property was previously being used as a storage lot for a roofing company, which is why this was deferred. This material and the two commercial shipping containers have been removed from the property. Infill material, however, was previously brought into the site resulting in an increased runoff onto neighboring properties. Because of this, the Public Works Department issued a stop work order. The applicant will need a building permit for the proposed home, and this will provide Public Works with an opportunity to address these drainage concerns. In evaluating this request, looking at the requirements for a variance staff believes the first threshold test is met. The lot complies with the minimum lot area

921 and lot width standards of the R-3 district but may not get a building permit due to lack of
922 public street frontage. At the time of the lot's creation, it was common practice to obtain
923 a variance for such lots, and as noted in your staff report we believe the subtests are met
924 as well. So, in conclusion, the property is suitable for a dwelling but may not be used for
925 that purpose due to the lack of public street frontage. The owner did not create the
926 hardship, and staff is unaware of any other relief. As a result, we recommend approval of
927 this request subject to the conditions in your staff report. One of those conditions does
928 include a requirement that the roofing company and the commercial shipping containers
929 do not return to the property, and that it be used solely for residential purposes. If you
930 have any questions, I'll be happy to answer those. Thank you.

931
932 Mr. Lawrence- Thank you, Mr. Gidley. Any questions for Mr. Gidley?

933
934 Mr. Massie- Mr. Gidley, so the property is all cleaned up now?

935
936 Mr. Gidley- Yes sir, it is.

937
938 Mr. Lawrence- I have a question, Mr. Gidley. So, if this variance is approved, the
939 county is requiring the applicant to connect to county water but not to county sewer, is
940 that correct?

941
942 Mr. Gidley- Let me see what Public Utilities...

943
944 Mr. Blankinship- Yes, that is correct.

945
946 Mr. Lawrence- And so, I guess the follow-up question to that is the other houses on
947 this street, do they have public sewer or are they, do they also have on-site sewage
948 disposal systems?

949
950 Mr. Gidley- I don't know the answer to your question.

951
952 Mr. Blankinship- The nearest public sewer is about half-a-mile away, so every house
953 within a half-mile is on some kind of an individual system.

954
955 Mr. Lawrence- Okay, so they'd have to get a permit from the Health Department. Is
956 making sure the property perks beyond our purview?

957
958 Mr. Gidley- Yes, you're correct.

959
960 Mr. Lawrence- I guess the cost of connecting to sewer, they'd have to bear that
961 expense if it was extended to their property, which would be monumental, I guess?

962
963 Mr. Blankinship- Right, if they were building a ten-lot subdivision, we might require
964 half-a-mile of sewer but for one house it's not possible.

965
966 Mr. Lawrence- Okay.

967
 968 Mr. Gidley- That says 2,600 feet here and typically we make them hook up if
 969 they're within three-hundred feet.
 970
 971 Mr. Lawrence- Thank you. Any other questions for Mr. Gidley? Hearing none, we'll
 972 hear from the applicant now, please.
 973
 974 Mr. Craver Hello, good morning. My name's Randy. I'm actually with the
 975 applicant.
 976
 977 Mr. Lawrence- Can you raise the microphone up sir, so your voice isn't carrying?
 978
 979 Mr. Gidley- And spell it too, please.
 980
 981 Mr. Lawrence- Can you spell your last name too for us, please?
 982
 983 Mr. Craver- Last name's C R A V like victory E R Randy.
 984
 985 Mr. Lawrence- Thank you.
 986
 987 Mr. Craver- Now, I was just going to note that, as they said, there are other
 988 properties that use Mayfair Avenue as access to the property. When we bought it, we
 989 thought we could access it, no problem, because the other houses were... And as far as
 990 your question there about the septic, yeah, the other houses are on septic systems. And
 991 we bought this house, or this property to build it for a family member. It would kind of suck
 992 if we can't get it approved because, you know, we're trying to do it for family, and the fact
 993 is that other houses are using that road also. I don't think we're asking for anything that's
 994 maybe unusual or, you know, shouldn't be considered. Thank you.
 995
 996 Mr. Lawrence- Okay, thank you. Any questions for the applicant? Okay, hearing
 997 none, we will open the public hearing. Is there anyone else in the audience or on Webex
 998 that wishes to speak in support of this case?
 999
 1000 Mr. Blankinship- There's no one on Webex.
 1001
 1002 Mr. Lawrence- Is there anyone in the audience or on Webex that wishes to voice
 1003 opposition of the case? Hearing none, we'll close the public hearing, unless there's further
 1004 discussion. Will the board entertain a motion?
 1005
 1006 Mr. Massie- I move that we approve the variance subject to the conditions
 1007 recommended by the staff. There is no other reasonable use for the property. There are
 1008 several other houses on Mayfair Avenue. The hardship was not created by the applicant.
 1009 The other tests have met as stated in the staff report.
 1010
 1011 Mr. Johnson- Second.
 1012

Mr. Lawrence- We have a motion from Mr. Massie, second by Mr. Johnson. All in favor of the motion, say "Aye."

Board- Aye.

Mr. Lawrence- All opposed say "Nay." The motion carries. Thank you, sir.

On a motion by Mr. Massie, seconded by Mr. Johnson, **the Board approved case VAR-2025-101300** subject to the following conditions:

1. This variance applies only to the public street frontage requirement for one dwelling only. All other applicable regulations of the County Code remain in force.

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

3. 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.

4. Any dwelling on the property must be served by public water.

5. At the time of building permit application, the applicant must provide evidence of Health Department approval of an onsite sewage disposal system applying current VDH standards, including identification of primary and 100% reserve drainfield areas.

6. At the time of building permit application, the applicant must obtain a waiver from the Department of Public Works to use the existing driveway. Otherwise, Mayfair Avenue must be constructed to County specifications.

7. At the time of building permit application, the applicant must bring the existing fence into compliance with the height requirements of 3.5 feet in the front yard.

8. The property may not be used for a roofing business or any other use in the Commercial or Industrial use classifications. At the time of building permit application, any outstanding requirements of the stop work order must be addressed.

9. The applicant must obtain a building permit for the proposed dwelling within two years of approval (by March 26, 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, Johnson, Lawrence, Massie	5
Negative:		0
Absent:		0

VAR-2026-100291 Christopher Robbins for Melissa Poccia: variance from the rear yard setback to replace a deck with a screened porch at 6008 Maybrook Way, Maybrook at Wyndham, Three Chopt. The applicant has 30 feet rear yard setback where the Code requires 35 feet rear yard setback. The applicant requests a variance of 5 feet rear yard setback. Parcel 737-779-3240. Zoning: R-4C, One-Family Residence District (Conditional). Code Section: 24-3311.D.

Mr. Blankinship- Alright, Mr. Chair. The next case is **VAR-2026-100291** Christopher Robbins for Melissa Poccia: variance from the rear yard setback to replace a deck with a screened porch at 6008 Maybrook Way, at Maybrook and Wyndham, in the Three Chopt Magisterial District. Would everyone who intends to speak to this case, please stand and be sworn in? Do you swear the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God? Thank you. Ms. Rozmus

Ms. Rozmus- Thank you, sir. The site is a lot in Wyndham, a planned community in the northwest corner of the county. It is part of Maybrook at Wyndham, which was rezoned in 1989 and developed in 1993. The two-story colonial-style-dwelling, which includes 1,934 square feet of floor area, a two-car garage, a front porch, and a deck to the rear, was built in 1995. The applicant acquired the property in February of 2025. The subdivision is zoned R-4C, One-Family Residence District (Conditional), which requires a rear yard setback of thirty-five feet. A deck is allowed to extend up to ten feet into the rear yard, but a screened porch must meet the same thirty-five-foot setback as the dwelling. The subject dwelling was built approximately forty feet from the rear lot line, with a deck extending into the setback. Most of the lots in the Maybrook at Wyndham subdivision are 135 feet deep. Because it is located on the bulb of a cul-de-sac, the subject property is only 121 feet deep along its southern, left side lot line. For this reason, the rear yard setback is more restrictive on this lot than a lot of the other lots in the subdivision. The applicant would like to replace an existing deck with a new screened porch, and the proposed porch would extend along the rear of the dwelling for a width of thirty-one feet and would extend twelve feet from the main rear wall of the dwelling. It would appear to extend approximately five feet into the required yard setback of thirty-five feet.

Staff evaluated the threshold requirements for a variance and determined that the application does not meet the three initial tests for the variance. The variance is not requested on behalf of a person with disability. The rear lot setback was established before the subdivision was built and is reasonable when applied to this lot. Staff also evaluated additional statutory requirements for the variance. The existing dwelling and deck constitute a reasonable and beneficial use of the property. If there is a hardship, it

1105 is created by the applicant's desire to build a screened porch that does not fit within the
1106 setbacks. Granting a variance will not be of a substantial detrimental impact to the
1107 surrounding properties. So, this test does appear to be met. The situation of the property
1108 is not general or recurring, so this test also appears to be met.
1109

1110 In conclusion, this case does not meet the legal requirements for a variance. The rear
1111 yard setback is reasonable as applied to the property. There's no hardship due to a
1112 change in the zoning ordinance, there is no request for an accommodation for a person
1113 with a disability and the hardship, if any, is caused by the applicant's desire to add a
1114 screened porch that does not fit within the setback. Because the tests required by state
1115 law are not met, staff recommends denial of this variance. And I can answer any
1116 questions.
1117

1118 Mr. Lawrence- Do we have questions from the board for Ms. Rozmus? Okay,
1119 hearing no questions at this point, we will hear from the applicant, please.
1120

1121 Mr. Robbins- Good morning and thank you for taking time to hear our request this
1122 morning. My name is Christopher Robbins. I'm the contractor working with them. We
1123 actually feel like the condition of this lot just makes it a little difficult, but the current deck
1124 is approximately fourteen feet deep, so we were actually taking that into consideration in
1125 the design phase, and we shrank it a little bit, down to twelve feet. We don't feel like it
1126 impacts negatively any of the neighbors. It'll only enhance the neighborhood, the value of
1127 this home, therefore we're hopefully benefiting the ones around it. The neighbor on the
1128 right side of the property currently has a screened porch, because they're not in the cul-
1129 de-sac as we are. Basically, you know, we just want to be able to use this property to its
1130 fullest potential. They've got a small child with them, you know, that way the screen porch
1131 gives them an area in the shade and also free from bugs, to where they can enjoy the
1132 property. So, basically that's it. You know, we don't feel like it's impacting anyone. We do
1133 have neighborhood association approval to build this, if this is granted. Thank you.
1134

1135 Mr. Lawrence- Thank you Mr. Robbins. Does anyone from the board have any
1136 questions for Mr. Robbins? I had one question. You said the association had given their
1137 blessing to this. Is that the Wyndam Foundation Board of Directors?
1138

1139 Mr. Robbins- Correct.
1140

1141 Mr. Lawrence- Okay. As I recall, they have pretty restrictive architectural standards.
1142 In fact, I can remember a case about an American flag some years ago that went to court
1143 because of their strict architectural standards, but this has been reviewed by their board.
1144

1145 Mr. Robbins- Yes, correct.
1146

1147 Mr. Lawrence- And approved from their standpoint, but we have to make our
1148 decision. That's all I had, I believe. Oh, I did have one or two other questions. So, is this
1149 the only house on the block that has this type of configuration in terms of the lot?
1150

1151 Mr. Robbins- I believe that I haven't measured the lots from the next couple like
1152 going, I guess to the left of the house. I would assume it's a similar situation because of
1153 the way the lots are designed in the cul-de-sac. But I have not...
1154
1155 Mr. Lawrence- You said there are other screen porches on houses on the same
1156 block?
1157
1158 Mr. Robbins- Oh yeah, right next door. You can see it right there. They have a
1159 second story above it as well.
1160
1161 Mr. Lawrence- They have more setback because of the way the lot was configured
1162 in the cul-de-sac.
1163
1164 Mr. Robbins- Correct, they were able to pull their house forward toward the road
1165 more than we could.
1166
1167 Mr. Lawrence- Thank you sir. Any other questions? Hearing none, we'll go ahead
1168 and open up the public hearing. Is there anyone here that wishes to speak in support of
1169 this case? Do we have anyone else here or on Webex that wishes to speak in opposition
1170 of the case? We do have someone. Yes ma'am. Go ahead, I'm sorry.
1171
1172 Ms. Patia- Hi, my name is Melissa Patia. I am one of the homeowners
1173 requesting this variance. We moved into the house about a year ago and we have three
1174 small children. We do feel like you're saying, so the neighbor up on the picture there is
1175 not on the cul-de-sac, which is how they're able to have their screened porch. Our
1176 neighbor to the other side wants one also. When I was talking to him, he said like I hope
1177 you get this approved, it would be awesome, and I also want the same thing. And like
1178 Christopher was saying, just the shape of our property and because the deck is on the
1179 left side where it's the shortest, makes it more restrictive and tougher to build this. And
1180 like he was saying, it'll have a smaller imprint into the yard because we are taking two
1181 feet off of it so that it's less going into the setback. But we do have email confirmation
1182 from the HOA saying we approve all of your designs, pending the county approval for the
1183 permit. And we have to replace the deck anyway when we got the inspection, when we
1184 purchased the house, the inspector noted that it's rotting in a bunch of places, and we
1185 should replace the whole thing. So, we would like to improve the overall property and take
1186 down the rotting deck. Make it a really nice screened-in porch for the family and the kids
1187 to play in. Thank you.
1188
1189 Mr. Lawrence- Thank you, ma'am. Any questions? Okay, thank you. And I'll ask one
1190 more time, do we have anyone on Webex or in the audience that wishes to speak in
1191 opposition this case?
1192
1193 Mr. Blankinship- There's no one on Webex.
1194
1195 Mr. Lawrence- Okay, Hearing none, we're going to close the public hearing, and
1196 unless there's further discussion by the board, we'll have a motion if we're ready for one.

1197
1198 Mr. Green- Yes, I'd like to make a motion, but before I do that I'd like to say I am
1199 a proponent of individuals who want to make significant improvements to the homes.
1200 Across the county, we're seeing more and more individuals who are wanting to enclose
1201 their decks and so this is not unusual. The other thing that's important to note is that the
1202 HOA approved it, which is significant. There are NO neighbors here to voice any concerns
1203 about it. The family has three children that they want to use the porch. It adds value to a
1204 house. Once you add a porch, it raises the property value, more taxes, and it encourages
1205 others to do it. So based on that, I move that we approve the variance subject to the
1206 conditions recommended by the staff. The rear yard setback is unreasonable as applied
1207 to this lot. The proposed addition would improve the value of the property, the other tests
1208 are met as stated in the staff report. And more importantly, the HOA gave approval.

1209
1210 Mr. Lawrence- We have a motion by Mr. Green. Do we have a second?

1211
1212 Mr. Massie- Second.

1213
1214 Mr. Johnson- Second

1215
1216 Mr. Lawrence- We have two seconds. I guess Mr. Massie was first. Motion by Mr.
1217 Green, second by Mr. Massie. All in favor of the motion say "Aye."

1218
1219 Board- Aye.

1220
1221 Mr. Lawrence- All opposed, say "Nay." Motion carries.

1222
1223 On a motion by Mr. Green, seconded by Mr. Massie, the Board **approved case VAR-**
1224 **2026-100291** subject to the following conditions:

1225
1226 1. This variance applies only to the rear yard setback requirement for a screened
1227 porch only. All other applicable regulations of the County Code remain in force.

1228
1229 2. This variance applies only to the screened porch shown on the plot plan and
1230 building design filed with the application, as amended by condition #3 below. Any
1231 substantial changes or additions to the design or location of the screened porch will
1232 require a new variance. Any additional improvements must comply with the applicable
1233 regulations of the County Code.

1234
1235 3. The new construction must match the existing dwelling as nearly as practical in
1236 materials and color and must comply with the conditions proffered with rezoning case C-
1237 29C-89. The piers must be constructed of brick or brick veneer. If the screened porch is
1238 enclosed in the future, the proffered conditions require the foundation to be a solid wall of
1239 brick or brick veneer at that time.

1240
1241 4. The applicant must obtain a building permit for the proposed screened porch within
1242 two years of the date of approval (by March 26, 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, Johnson, Lawrence, Massie	5
Negative:		0
Absent:		0

VAR-2026-100344 Ken Felts for Ravi Vachhani: variance from the rear yard setback to build an addition at 5705 Averys Court, Covington, Three Chopt. The applicant has 42 feet rear yard setback where the Code requires 45 feet rear yard setback. The applicant requests a variance of 3 feet rear yard setback. Parcel 743-776-6419. Zoning: R-2AC, One-Family Residence District (Conditional). Code Section: 24-3308.D.

Mr. Blankinship- The next case is **VAR-2026-100344** Ken Felts for Ravi Vachhani: variance from the rear yard setback to build an addition at 5705 Averys Court, Covington, in the Three Chopt Magisterial District. Would everyone who intends to speak to this case please stand and be sworn it. 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? Thank you. Mr. Gidley.

Mr. Gidley- Thank you, Mr. Secretary. As you can see, the subject property is located northwest of the intersection of Shady Grove and Nuckols roads. The property contains a two-story home with a two-car garage and a screened porch. A member of their family is under doctor's care for mobility related issues, and the doctor has written a letter indicating a ground floor living arrangement with an ADA compliant bathroom would be needed by the applicant. Plans show a two-story addition on the right, rear corner of the home, that would add a bedroom and a bathroom on each floor and would be sixteen feet in depth and extend 1.2 feet into the setback. A slight reduction in size, however, would enable it to comply with setbacks. The other addition would be the expanded kitchen. This space would measure 29.5 ft in depth and encroach two feet in this setback. Reducing it down to 27 feet in depth would allow it to meet setbacks. At the present time, the applicant does not provide any information on how this kitchen is needed to accommodate a person with a disability.

In evaluating this request, one of the three threshold tests must be met. The most applicable is the third dealing with an accommodation for a person with a disability. As noted, they have a doctor's note for the first-floor bedroom and bathroom. If they reduced it just over a foot, however, they would not need a variance, and again as noted, the kitchen at a 29.5-foot depth has not been addressed by the applicant at the present time. As for the five subtests, staff questions whether the first one, dealing with a self-created hardship and the third, dealing with a general and reoccurring situation are met. Mainly, because both additions could be reduced slightly and comply with setbacks. In conclusion, while the first floor bedroom and bathroom are needed, there appears to be

1289 enough room to accommodate them within the setbacks. The kitchen does not appear to
1290 be medically necessary and could be reduced slightly to comply with setbacks as well.
1291 For these reasons staff recommends denial of the request. This concludes my
1292 presentation. If you have any questions, I'll be happy to answer those.

1293

1294 Mr. Green- So, Mr. Gidley, if they reduced it by one foot, you'd be okay? And
1295 address the kitchen issue.

1296

1297 Mr. Gidley- Yes, sir.

1298

1299 Mr. Green- So, when they get up, if they could address the kitchen issue, and I
1300 suspect that they would want to the kitchen because they want that individual to have
1301 some sense of independence, but they can address that when they get there.

1302

1303 Mr. Gidley- I think it's the main kitchen for the house, but. Yeah, they haven't
1304 addressed it as of this report.

1305

1306 Mr. Green- Okay, go back. I'm confused. When you said the main kitchen, what
1307 are you trying to...

1308

1309 Mr. Blankinship- Show the building plan.

1310

1311 Mr. Gidley- Yeah, I'm sorry. Here's a proposed kitchen here. This isn't a second
1312 kitchen for the person. This is the main kitchen for the house, that would be expanded.

1313

1314 Mr. Blankinship- If you read across the top there's a dashed line going at an angle.
1315 That's the setback line. So, if they just brought the kitchen in by two feet and the bedroom
1316 addition by about a foot and nine inches, they would meet the setback.

1317

1318 Mr. Green- So what they're doing, they were adding on but now also using that
1319 to improve the kitchen.

1320

1321 Mr. Blankinship- Right.

1322

1323 Mr. Green- Okay. If they could address that, then we'll see. But I hate to say it,
1324 but one-foot doesn't really matter.

1325

1326 Mr. Gidley- It's not a lot.

1327

1328 Mr. Green- I mean in the grand scheme of things, does one foot matter.

1329

1330 Mr. Blankinship- Are you ready to hear from the applicant?

1331

1332 Mr. Lawrence- Does that answer your question, Mr. Green? Anybody else from the
1333 board have questions for Mr. Gidley? Hearing none, will hear from the applicant then.
1334 Thank you.

1335
1336 Mr. Goodman- Good morning, sir. I'm Ben Goodman. I'm the building planner for
1337 James River Construction. I know, at a glance, it appears we simply drop it back a foot
1338 and that would solve our problems. The kitchen already extends out as far as it can, and
1339 we're kind of adding to it. It will create a jog in that kitchen, in the middle of the kitchen,
1340 which doesn't allow his mother to get around in the scooter if we do that and not get
1341 around the table. It also makes the addition look not so good because there's a jog in the
1342 middle of it. So, in this iteration, we're only asking for a variance of a very minor amount
1343 which buys us a very significant benefit.

1344
1345 Mr. Green- What's a jog?

1346
1347 Mr. Goodman- It's if we were to do as you're suggesting and take our addition and
1348 bring it down and out, then it doesn't look very attractive from the outside, and it cuts off
1349 the area of the kitchen where they really want to put the table so that she can get around
1350 and have her meals with the rest of the family. And the same thing really in the bedroom,
1351 we can shorten it, but then we can't quite, it just becomes extreme. I don't know if you've
1352 ever lived in a house with somebody in a scooter, but you really can't have enough room.
1353 And we're in adherence just because of the harsh angle of the setback line. We're in
1354 adherence on one corner. We're just going over on the other corner by a little bit. And that
1355 little bit is a lot, both aesthetically and in convenience for his mother. It's not harming
1356 anyone and we also have HOA approval to do so.

1357
1358 Mr. Lawrence- Okay. Do you have any more questions, Mr. Green?

1359
1360 Mr. Green- No, I appreciate you breaking in fact, my mother's in a scooter in a
1361 house and I understand the challenges and she's always bumping into something,
1362 because she lives in Northside and we've done as much as we can to open up the space,
1363 but she's still going to bump and knock stuff. I have to send someone over to fix some
1364 things now. Scooters beat up walls. My mother is 93. So, I appreciate what you're saying,
1365 and I hope everybody else appreciates that. You know, you need to make it as convenient
1366 as possible for someone who is who's elderly.

1367
1368 Mr. Lawrence- Anyone else on the board have questions for Mr. Goodman before
1369 we move to the public hearing? Hearing none, we will now ask if there's anyone else in
1370 the audience or on Webex that wishes to speak in support of this case? Okay, hearing
1371 none, is there anyone in the audience or on Webex that wishes to speak an opposition to
1372 this case? Or wishes to comment on the case? Yes sir.

1373
1374 Mr. Vachhani- Good morning, committee members, and thank you for your time for
1375 looking into this request. I hope you can see it but if you enlarge the figure a little bit, my
1376 parents have been living with me since we bought the house like 2012. They have been
1377 in reasonably good health, but now age is taking its toll. My mom's mobility is a little bit
1378 limited, so we basically want to maximize the permissible limit of the setback. While we
1379 do that there's a bit of an area that obviously comes in a contradiction of maximizing it
1380 and because of odd angle, we want to just maximize the best possible way that we can

1381 use the property. The kitchen part, there's already an existing kitchen in the screened
1382 poach area. So, when we extend that line, it's just cutting across the angle, that's where
1383 it creates a jog and we want to keep it a straight line which already exists right now. So,
1384 thank you for consideration.

1385
1386 Mr. Lawrence- Thank you, sir. Any, any questions? Okay, hearing no questions, and
1387 if there's no other comment, we will close the public hearing. If there's discussion from
1388 the board, we'll have it at this time. Otherwise, we'll entertain a motion.

1389
1390 Mr. Green- Once again, I'd like to say before I move that, once again, we're
1391 seeing that in addition to decks, we're seeing in the accessory dwelling units, we're seeing
1392 that folks are adding onto homes to accommodate parents, children and others. I think
1393 that this adds value to the house, it brings revenue into the county. It creates the ability
1394 for builders and others to have jobs, but more importantly, I appreciate what you're doing
1395 for your parents. I move we approve this variance, subject conditions recommended by
1396 staff, they're asking for less than three feet over a forty-five-foot setback. The proposed
1397 addition would improve the value of the property, the other tests are met as stated. Also
1398 important, the HOA you said has approved it and in the grand scheme of things one foot
1399 does not appear to be that significant, but also importantly is the builder who has the
1400 expertise, seems to think that to keep it from looking awkward, it needs to be the way it
1401 is. That's my recommendation.

1402
1403 Mr. Massie- I second.

1404
1405 Mr. Lawrence- Okay, we have a motion by Mr. Green to approve the variance and
1406 a second by Mr. Massie. All in favor say "Aye."

1407
1408 Board- Aye.

1409
1410 Mr. Lawrence- All opposed, say "Nay." Motion carries. Thank you.

1411
1412 On a motion by Mr. Green, seconded by Mr. Massie, the Board **approved case VAR-**
1413 **2026-100344** subject to the following conditions:

1414
1415 1. This variance applies only to the rear yard setback requirement for an addition. All
1416 other applicable regulations of the County Code remain in force.

1417
1418 2. This variance applies only to the addition shown on the plot plan and building
1419 design titled "Vachanni Residence" prepared by MB Design Services, LLC, filed with the
1420 application. Any substantial changes to the design or location of the addition will require
1421 a new variance. Any additional improvements must comply with the applicable regulations
1422 of the County Code.

1423
1424 3. The new construction must match the existing dwelling as nearly as practical in
1425 materials and color.

4. The applicant must obtain a building permit for the proposed addition within two years of the date of approval (by March 26, 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, Johnson, Lawrence, Massie	5
Negative:		0
Absent:		0

VAR-2026-100351 Michael Anderson: variance from the rear yard setback to build a sunroom at 1606 Delma Drive, Middleton, Fairfield. The applicant has 28 feet rear yard setback where the Code requires 40 feet rear yard setback. The applicant requests a variance of 12 feet rear yard setback. Parcel 782-759-1229. Zoning: R-3, One-Family Residence District. Code Section: 24-3309.D.

Mr. Blankinship- Alright, Mr. Chair, the last of the variances for this morning is number **VAR-2026-100351** Michael Anderson: variance from the rear yard setback to build a sunroom at 1606 Delma Drive, Middleton subdivision, in the Fairfield Magisterial District. Would everyone who intends to speak to this case raise your right hand, please. Do you swear the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God? Thank you. Mr. Gidley.

Mr. Gidley- Thank you, Mr. Secretary. The subject property is located west of the Intersection of Mountain and Brook roads. This property is zoned R-3, it is wider than it is deep, whereas most lots in the subdivision are between 140 and 180 feet deep, this lot has an average depth of only 111 feet. In 2003, a ranch-style dwelling was constructed on the property following the approval of a variance for both front and rear yard setbacks. This allowed for a 35-foot front yard setback and a 25-foot rear yard setback, so a home could fit onto the property. Today the applicant would like to construct a sunroom onto the back of the house that would extend to within 28 feet of the rear lot line. Although this is within the 25 feet approved by the previous variance, because the sunroom was not shown on the initial plans and we have the standard condition in there that says only the improvement shown on the plans are subject to this variance, the applicant has come back to apply for a new variance to show the sunroom coming to within the 28 feet of the rear lot line.

In reviewing the standards for variance, staff believes the first threshold test dealing with unreasonable restriction is met. The board's granting of the 2003 variance found the shallowness of the lot made the setback too restrictive. The proposed sunroom would be on one of the wider parts of the lot, 28 feet from the rear lot line, as compared to 25 feet for parts of the existing home. So, it only needs a variance because it wasn't shown on the original plans from 2003. This is a picture looking towards the side neighbor and you see they actually extend out further and have their own screened porch or sunroom right here. The most impacted neighbor in reviewing the standards for this, as noted, the rear

neighbor would be the most impacted. They too received a variance because their yard also is rather shallow. In addition, they have constructed a sunroom onto the rear part of their home, and that appears to be closer to the rear lot line than any portion of the applicant's home. This is looking at the rear neighbor right here. So, in conclusion this lot is rather shallow, so the setback established by the 2003 variance is reasonable. The sunroom will be further from the rear lot line than parts of the existing home. Therefore, staff does not anticipate a substantial detrimental impact on the neighbors, especially since the most impact the neighbor has his own sunroom. As a result, staff recommends approval of this request, subject to the conditions in your staff report. If you have any questions, I'll be happy to answer those. Thank you.

Mr. Lawrence- Thank you, Mr. Gidley. Any questions from the board to Mr. Gidley? I have one or two, Mr. Gidley. The site plan shows a sixteen-foot alley easement along the rear of the subject property. Is that part of the setback? Does the setback include the alley easement?

Mr. Gidley- Yeah, the alley easement, the sixteen-foot alley easement, as you can see right here, it's going to have eight feet on either side of the property line. So, eight feet onto the applicant's property. The applicant has a twenty-five-foot rear yard setback requirement currently per the variance that was initially approved, and those eight feet would be part of those twenty-five feet.

Mr. Lawrence- It's not from the alley line; it's from the actual property line...

Mr. Gidley- Yes sir.

Mr. Lawrence- ...which divides that ally. So, is this one of those alleys that the County abandoned over the years?

Mr. Blankinship- Actually, this is from a period of time where subdivisions were required to show an easement for an alley, if the county wanted to create one. But there has never been an alley here, just looking at the subdivision.

Mr. Lawrence- I think my mother-in-law, she had that in her backyard. She actually ended up purchasing it from the county, I think, for, you know, probably next to nothing, but widened her backyard, but at some point, I guess they thought there needed to be that sort of access for emergency purposes or something?

Mr. Blankinship- They were required to show it in case the county decided an alley would be appropriate.

Mr. Lawrence- Okay. Alright, but that...

Mr. Blankinship- We don't require that anymore.

1518 Mr. Lawrence- ...but there's no prospect or a chance that alley would ever be used
 1519 by the county?
 1520

1521 Mr. Blankinship- I don't think so because it would run into the house next door. If you
 1522 put the site map back up, an alley coming down that common lot line now would just end
 1523 right there, because there's a house right before you get to the corner, so...
 1524

1525 Mr. Lawrence- Okay. So really, it's just a paper...
 1526

1527 Mr. Blankinship- Just a little left over.
 1528

1529 Mr. Lawrence- Okay. Thank you. Are there any more questions from the board? If
 1530 not we'll hear from the applicant.
 1531

1532 Mr. Anderson- Morning, I'm Michael Anderson, A N D E R S O N, and I am the
 1533 owner, my wife, Olivia, at 1606 Delma Drive. And, as of 2020, we both came down with
 1534 some medical conditions, and we cannot sit on our front porch now as you go back to the
 1535 front... if you want to show that picture.
 1536

1537 Mr. Gidley- Yes, I can show that.
 1538

1539 Mr. Anderson- We have to move to the rear and that's why I'm requesting a sunroom
 1540 to go on the back of the house, where we can enjoy the sunlight.
 1541

1542 Mr. Lawrence- Okay, thank you, sir. Anyone from the board have any questions for
 1543 Mr. Anderson?
 1544

1545 Mr. Johnson- Would that be at the entrance coming from the back?
 1546

1547 Mr. Anderson- Yes, if you see where the porch, I mean the stoop, is on the back,
 1548 we're going to, right between the two A's, I'm going to put the sunroom.
 1549

1550 Mr. Lawrence- Does that answer your question Mr. Johnson? Okay, any other
 1551 questions? Okay, hearing none, thank you, sir. We'll, open the public hearing up. Is there
 1552 anyone here in the audience or on Webex that wishes to speak in support of this case?
 1553

1554 Mr. Blankinship- There's no one on Webex.
 1555

1556 Mr. Lawrence- Is there anyone in the audience or on Webex that wishes to speak in
 1557 opposition to this request? Hearing none, any discussion by the board? If not, we'll
 1558 entertain a motion.
 1559

1560 Mr. Massie- I move that we approve this variance subject to the conditions
 1561 recommended by the staff. A rear yard setback of twenty-five feet was established by
 1562 variance in 2003. The sunroom would be no closer to the property line than the existing
 1563 dwelling. The other tests are met as stated in the staff report.

1564 Mr. Lawrence- We have a motion by Mr. Massie, is there a second?

1566 Mr. Green- Second.

1568 Mr. Lawrence- Second by Mr. Green. All in favor say "Aye."

1570 Board- Aye.

1572 Mr. Lawrence- Anyone opposed say "Nay." Motion carries.

1574 On a motion by Mr. Massie seconded by Mr. Green, the Board approved case **VAR-2026-100351** subject to the following conditions:

1576 1. This variance applies only to the rear yard setback requirement for the proposed sunroom. All other applicable regulations of the County Code remain in force.

1580 2. This variance applies only to the improvements shown on the plot plan and building design filed with the application. Any substantial changes or additions to the design or location of the improvements will require a new variance. Any additional improvements must comply with the applicable regulations of the County Code.

1584 3. The new construction must match the existing dwelling as nearly as practical in materials and color.

1588 4. The applicant must obtain a building permit for the proposed sunroom within two years of the date of approval (by March 26, 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.

1593	Affirmative:	Broadway, Green, Johnson, Lawrence, Massie	5
1594	Negative:		0
1595	Absent:		0

1598 **APP-2026-100155 John Gregorio for Mosab al Kofahi: appeal of an administrative decision regarding the property at 5100 Richmond Henrico Turnpike, Meadowood, Fairfield. Parcel 794-744-4156. Zoning: B-1, Business District. Code Section: 24-2320.**

1604 Mr. Blankinship Okay. Alright, the last case on this morning's agenda is an appeal. It is **APP-2026-100155 John Gregorio for Mosab al Kofahi: appeal of an administrative decision regarding the property at 5100 Richmond Henrico Turnpike, Meadowood, in the Fairfield Magisterial District.** I mentioned before, the attorney was not present, the procedure for appeals is that the Assistant County Attorney will make his

1610 presentation first, then you will be invited to make your presentation. You will each have
1611 ten minutes. After the two of you have spoken, anyone else who wishes to speak will be
1612 given the opportunity with a time limit of three minutes, and at the end there is no
1613 opportunity for summation or rebuttal. So, Mr. Gagnon, if you're ready.

1614
1615 Mr. Gagnon: Thank you, Mr. Blankinship. Good morning, may it please the board.
1616 My name is Abram Gagnon, Assistant County Attorney representing the director in this
1617 appeal. This involves a property located at 5100 Richmond Henrico Turnpike. The
1618 property is zoned B-1 which is a business district. The use is classified as a recreational
1619 substances retail store. Quickly, this would be a smoke shop, head shop or vape shop,
1620 and it's operated by an entity called Village Tobacco and Vape Two LLC, which is the
1621 appellant.

1622
1623 The appellant was issued a notice of violation for operating a drive-through window at the
1624 vape shop. This is not a permitted accessory use at a vape shop, because that's not
1625 customarily accessory to a vape shop, and that's what the director's asking the board to
1626 affirm today. On several occasions, and these are the pictures that were in your packet,
1627 a county code inspector witnessed the drive-through window in use in the vape shop. The
1628 notice of appeal did not dispute the allegations. So today really, it's just about
1629 the interpretation of the ordinance rather than the facts.

1630
1631 So, the key issue in this appeal, did the director correctly determine that the drive-through
1632 facility is not customarily accessory to a vape shop. A quick reminder of the standard of
1633 review, as always, an administrative decision by the director is presumed to be
1634 correct. Appellant has the burden of proof to rebut. If the appellant does not meet the
1635 burden, the board must affirm the determinations of the director and dismiss the appeal.

1636
1637 One additional one today, the BZA is not to question the validity of a zoning ordinance.
1638 That's been considered the sole province of the judiciary. So, today, it's really
1639 just whether the determination was correct under the zoning ordinance. The zoning
1640 ordinance does require that all accessory uses and structures be customarily accessory
1641 and incidental to the principal use and structure. The drive-through window is not
1642 customarily accessory to a vape shop, thus the operation is not permitted at the property.
1643 These terms are defined in the zoning ordinance. We do need to use these definitions.
1644 Accessory uses and structures are defined as land uses and structures that are
1645 customary, incidental and subordinate to the principal uses, and in the context of
1646 accessory uses and structures, the zoning ordinance defines customary as quote
1647 "established by common use in relation to the principal use," and that's in multiple places
1648 in the zoning ordinance as you can see. Reading these definitions in context, the
1649 director determined that customarily accessory means the accessory use must be a
1650 common practice of the principal use in the community. In short, it must be commonly
1651 seen with that principal use. And Virginia Courts give great weight to the zoning director's
1652 interpretation of the terms in the zoning ordinance. In addition, the zoning ordinance does
1653 put citizens on notice, as to what principal uses a drive-through facility would customarily
1654 be accessory to as established by common use. First of all, the definitions of a drive-
1655 through facility identifies banks and drug stores, which you can see throughout the county,
1656 as having drive-throughs. In their definitions of other principal uses, there are other

indications of where a drive-through might be customarily accessory by principal use. Those would include ATMs, gas stations, drug stores, pharmacies, and financial institutions, banks. All of those have established drive-throughs as customarily accessory by common use, and you can see them across the county. The director is unaware of any other vape shops that have drive-throughs in the county. It is clear that drive-through facilities are not going to be permitted at all principal uses, specifically at stores that sell beer wine for off-site consumption in Virginia, drive-throughs are not allowed by state law. I will also note the retail cannabis bill that just passed through the General Assembly we're expecting to be signed by the governor also includes a provision prohibiting the sale of marijuana products, as defined in that statute, at a drive-through. And that same rationale is going to exist for vape shops as well, which sell age restricted products, some sell hemp, cannabis, kratom, things like that. The vape shop in this case is distinct from the stores that appellant points to in its appeal. It's not a pharmacy, it's not a medical marijuana facility, it's not a bank, drug store, gas station or ATM. And the use of a drive-through facility is not customarily accessory to the operation of a vape shop, because it's not established by common use, again, as defined in the ordinance... and so this as an accessory use is not permitted in Henrico County. I would ask the board for the motion that was provided. And if there are any questions, I'm happy to answer them.

Mr. Lawrance- Are there any questions from the board for Mr. Gagnon. Is that how you pronounce your name?

Mr. Gagnon- Yes, sir

Mr. Lawrence- Gagnon. Are there any questions for Mr. Gagnon?

Mr. Massie- Out of curiosity, what is the public policy against these? What problems do you think this will create?

Mr. Gagnon- Yes sir, maybe a little bit of speculation, but I would anticipate it would be... there's incentive for the government to not have folks purchasing intoxicating materials while in their cars. And I would think it would also be easier to enforce age restrictions while they're in the store rather than in a vehicle.

Mr. Massie- Underage people for instance.

Mr. Gagnon- Exactly.

Mr. Green- Can I add to that? The other concern I would have about a drive-up is when you go into a store, typically you have cameras, so if there's something going on, you can watch it, but if someone is driving up, you don't know necessarily who's in the car. So, I could see why the director and others would make that determination, because you don't know if some 18 year old is just driving up there checking ID to see if they can purchase. Just going into a store, because cameras are everywhere, even if they don't have them, there's cameras everywhere that will catch it. I think it's a safety issue.

1703
1704 Mr. Lawrence- You gave examples of some businesses that have drive-throughs
1705 that were considered... how'd you characterize it as an accessory?
1706
1707 Mr. Gagnon- Yeah, drive-through as an accessory use. And again, accessory use
1708 to be permitted must be a customarily accessory.
1709
1710 Mr. Lawrence- For instance, at Starbucks. You can drive through to get coffee at
1711 Starbucks. Some would probably argue that coffee is harmful for you also, but I drink it
1712 every day, so I'm not one of those. Are they classified more along the line of a restaurant?
1713 Is that how they can have drive-through business like that?
1714
1715 Mr. Gagnon- Yes sir. And actually, there's a principle, I don't exactly know how it
1716 would work with a Starbucks, but there's a specific principle use that is drive-
1717 through restaurant. And so I would assume that's typically how those are permitted, but
1718 those would be permitted in the county.
1719
1720 Mr. Lawrence- We don't have them, I don't think in this area, maybe they are not
1721 permitted under state law, but I know at least it used to be down in the Outer Banks of
1722 North Carolina, you can go to a brew thru, and you could order beer and cigarettes from
1723 your car, which would be kind of along the same lines, I guess is what they're requesting,
1724 but I'm not really aware of any other type of situation like that in the Richmond area or
1725 probably in Virginia. Do you know is there a state law that prohibits that in Virginia?
1726
1727 Mr. Gagnon- Yeah, the state regulations that have to do with the sale of alcohol
1728 prohibit drive-throughs.
1729
1730 Mr. Broadway: I think the ABC regulations regulate that.
1731
1732 Mr. Lawrence: The ABC regulates that?
1733
1734 Mr. Broadway: I know in Florida they have drive-through liquor stores. But
1735 I don't think that we're likely to have that anytime soon.
1736
1737 Mr. Lawrence: And I guess my last question is, does this store sell marijuana?
1738
1739 Mr. Gagnon: You know, I'm not sure exactly what the percentage is for each of the
1740 products in the store. I don't think there's any allegation that they're selling anything
1741 illegal.
1742
1743 Mr. Lawrence: Because I thought I saw something in the staff report, or the
1744 attorney's report that mentioned hemp. Is that different from marijuana? I'm not really
1745 familiar with the terminology.
1746
1747 Mr. Gagnon: You know it can be very technical. A lot of the vape stores in the
1748 county do sell legal hemp.

1749
1750 Mr. Green: Is it that TCB stuff?
1751
1752 Mr. Gagnon: THC products like that, and again it's a...
1753
1754 Mr. Lawrence: How is that different from marijuana?
1755
1756 Mr. Gagnon: From my understanding, it's a legal distinction based on the
1757 percentage.
1758
1759 Mr. Lawrence: A legal distinction based on what the General Assembly has passed
1760 in recent years. Is that right?
1761
1762 Mr. Gagnon: And the federal government.
1763
1764 Mr. Lawrence: Yeah, okay.
1765
1766 Mr. Green: It's not like the stuff you used to smoke 20 years ago!
1767
1768 Mr. Lawrence: I don't think anyone up here inhaled!
1769
1770 Mr. Blankinship: Of course not.
1771
1772 Mr. Lawrence: Any other questions from the board? Okay, thank you.
1773
1774 Mr. Gagnon: Thank you.
1775
1776 Mr. Green: Had to get that dig in.
1777
1778 Mr. Lawrence: Okay, we can hear from the appellant now.
1779
1780 Mr. Gregoria: Good morning, gentlemen. I'm Paul Gregoria. I represent the
1781 business in question here, and I can answer some of the questions that just came
1782 up. They do not sell marijuana at this store. If there's anything that they need a license
1783 to sell it is THCA. The state has an authorized license they have to apply for as part of
1784 the registration requirements and then they're allowed to sell those particular
1785 products that are purchased from wholesalers in these kinds of vape shops. Again, our
1786 objection to this, is that the application in this particular situation is vague and overly
1787 broad in the meaning of the statute. If we apply the customary definitions to the words in
1788 the statute, I have a question. When can any business ever have a drive-through?
1789 If there's not already a business that has a drive-through that's been common
1790 practice within the community, you can never have that. The statute or this ordinance is
1791 designed to prevent anybody from ever having a drive-through if you're a vape shop,
1792 because they can never allow the first vape shop to have a drive-through. So, it can't be
1793 customary in the community.
1794

1795 So, there's an arbitrary application that's overly broad. They're dumping everything into
1796 certain requirements and then carving things out saying, well, this is a pharmacy or this
1797 is alcohol. The application, I think in this particular situation, was misapplied. There is a
1798 business in the County of Henrico that sells vape products through a drive-through
1799 in almost the very same fashion as my client. And I'm sure we've all been
1800 there. There's four Sheetz in Henrico County and they all have drive-throughs. Now
1801 they sell other things, just like my client sells drinks and snacks and things of that nature,
1802 but they also sell vape products. And on the actual menu sheet, when you drive through
1803 the Sheetz, there's an actual menu board, just like you go through McDonald's, and
1804 it says cigarette packs, cigarette cartons, chewing tobacco, nicotine pouches, cigars, and
1805 cigarillos, and vape products. The exact same products that my client sells in his vape
1806 shop. Now he bought this, it was a repurposed building. It was a bank and it's located in
1807 the Azalea area. They repurposed the building and made it into a vape shop. It was an
1808 abandoned building at that point that wasn't being used, so they've now taken something
1809 that was an eyesore in that community and made it into a viable
1810 business. They're employing people from the community in that business. If we use the
1811 Sheetz example, saying they're selling the exact same products, in the exact same
1812 fashion as my clients, well then, it is common practice within the community. There is
1813 another business that's doing the exact same thing. It doesn't have these special
1814 regulations like the dispensaries are considered pharmacies because they sell
1815 mind altering or hallucinogenic products like marijuana and THC, psychedelic
1816 mushrooms and things like that. This does not. They're not selling anything like
1817 that. They're selling vape products and cigars and cigarettes and snacks and drinks, just
1818 like my client. They have a drive-through, just like my client. Now my client was in
1819 operation for approximately a year-and-a-half. After he applied for the registration,
1820 applied for the license, the business operated without incident regarding the drive-
1821 through. And then it wasn't until December of 2025, when there was an inspection
1822 done, that he got cited for having the drive-through saying it wasn't customarily incidental.
1823 Well, none of the businesses that have drive-throughs is it the primary purpose of the
1824 business. It's all incidental to the operation of a bank, to a Starbucks, to a dispensary, to
1825 a McDonald's, to a Sheetz. The main purpose of the business of Sheetz is to sell
1826 gasoline. That's what they're designed for. The secondary part of that business is to go
1827 inside and buy snacks, cigarettes, cigars, vape products, chewing tobacco, things of that
1828 nature. That's exactly what my client does. For a year and a half, he's been in business.
1829 I don't know when the most recent Sheetz was installed. I think it was in the last two or
1830 three years, but some of these Sheetz have been here for ten to fifteen years in the
1831 county, operating in this fashion with the drive-through, selling the exact same products
1832 that my client is selling through the drive-through. And they actually have a menu
1833 board. Now, to alleviate some of the concerns, as far as the problems are concerned,
1834 there are no intoxicating products that are being sold. I'm not a cigarette smoker,
1835 never have been. I know some people can get a high from smoking cigarettes, from
1836 smoking cigars, but it's not the same mind altering illegal high that you would otherwise
1837 get from illegal substances. The age restrictions, anytime anybody buys a product that's
1838 age restricted, they have to scan the back of the driver's license or an identification card,
1839 just like you do at Wawa or 7-Eleven, when you go buy a pack of cigarettes, buy a packet
1840 of Skoll. They scan it and they scan your license. That's the same thing that happens

when they go through the drive-through in this particular situation, so there are age protections. They can't buy it unless they scan the identification card. As far as safety and cameras, it was a bank. So, there's a building and then there's a parking lot and around the side of the building that we've seen, you know, a hundred times. There is a, it's not recessed, but it doesn't protrude. It's just a window on the side of the building. It's kind of an old-fashioned bank that they would drive up. He didn't have to change anything. It was already in existence. They can put cameras on the outside of the building. They could put cameras on the lights that are in the parking lot to identify the people that are coming in, get their drivers, the license plate numbers and whatnot. But for a year and a half, from the time they opened until the time they got cited in December, there haven't been any incidents, there haven't been any fights, there haven't been any police calls to the property regarding the drive-through? There doesn't appear to be any age problems related to the drive-through. So, some of those concerns I think are red herrings. But we think the application of this, when you take into consideration that there's a Sheetz that does the exact same thing for the exact same purpose, and they've been doing it for a number of years. That would create a common practice within the community. And if that's the case, then I think my client should be protected under that theory to say this is a customary, customarily accessible, accessory and incidental to the principal use. The principal use is to sell vape products. This is just a convenience just like all these other stores. Banks originally didn't have drive-throughs or walk-up windows. Starbucks, McDonald's, Sheetz, none of these places had drive up windows. And I have to presume, because there's no way for my client to ever become customary and common practice within the Henrico County community, unless there is a business that is granted this privilege to use a drive-through to sell products, in this particular instance a vape shop. Because if that doesn't ever happen, then it never can be customary or common practice within the community for the second business to say, well, I'm going to jump on the back of the first one. We'd like to jump on the back of Sheetz. Sheetz has been in business for a number of years doing the exact same thing. And if that were the case, then I think it is customary within this industry, within the common practice within the community, for them to do exactly what they've been doing, which is sell legal products in a more convenient way through the drive-through window. So, I'd ask that the application as it pertains to my client using this drive-through be reversed.

Mr. Lawrence- Does anyone from the board have questions?

Mr. Massie- I have a question. So, the fact that there are four Sheetz in the County of Henrico, you believe that makes it customary.

Mr. Gregoria - According to the definition of the county? Yes. Absolutely.

Mr. Massie- Explain that.

Mr. Gregoria - If a business has been in operation for a number of years, let's just take an arbitrary number, ten years that Sheetz has been in operation. It had the drive-

throughs, and they're selling the same exact products, it becomes common practice in the industry. 365 days a year for ten years.

Mr. Massie- Is that common practice in Sheetz or common practice in the industry?

Mr. Gregoria - I think it's common practice in the community. I think that's the definition. Within the community, is there another business that's doing the exact same thing, in the exact same manner? Yes, there is. It doesn't have a special designation like for instance, a dispensary has one on Broad Street, G Leaf has a, it's an old Kentucky Fried Chicken. They have a drive-through and you can see the car is driving by and I'm guessing getting their products through the drive-through. But that's designated as a pharmacy, that's a special designation. Even though they're doing almost the exact same thing. If they didn't have the special designation yes, that would be common practice within the community to allow products to be sold through a drive-through. Just like a bank. Well, there had to be the first bank. They had to be granted that privilege of using a drive-through, in order for second bank to rely on the first bank to say it's customary practice in the, in the community. So, if they're doing it, we should be allowed to do it, which is precisely the argument here. If Sheetz has been granted the privilege to do it. It is customary within the community to sell through a drive-through to sell vape products. Sheetz is doing that. They've been doing it for years. It's common practice now. My clients should be able to do that. That's why I think the application, as it pertains to my client's business, is inappropriately applied. Not taking into consideration that there are other businesses, not specifically labeled vape shops, but a business that sells vape products that are similar in nature to the products that my client sells.

Mr. Massie- I have this question for you. So, we know Sheetz sells gas, you said at that beginning, they sell snacks and they sell, I guess tobacco products. What's the percentage of the tobacco products and the vapping products they sell versus what your client's percentage is? You see your clients sell snacks? They might sell 95% vaping products and tobacco versus 5 % snacks. Sheetz might sell 98% gas and snacks versus 2% vaping products and tobacco. You don't think that's a difference?

Mr. Gregoria - It's a distinction without a difference because they're not selling gas as the primary use of the business through the drive-through.

Mr. Blankinship- Well everybody who buys gas drives there.

Mr. Gregoria - Correct, they have to drive up to the pump and pump the gas. They're not getting their gas, which is the principal use of a Sheetz through the drive-through. It's secondary in nature. They're selling the secondary products. They can go inside and pay for their gas, but they still gotta get their gas outside. So, all the other products that are being sold, including the vape products, are being sold through the drive-through. So, it is permissible, it is common practice. That's what my clients want to do. They just don't have the gas component in their business.

1932 Mr. Lawrence- Any other questions from the board?
 1933
 1934 Mr. Green- Well sir, I'm healthcare. So, I always err on the side of caution. And
 1935 the problem that I have is that these vape shops, while they quote unquote sell legal
 1936 things, and no offense to your client at all and I'm not directing this, there have also been
 1937 a number of shops that have been found to sell illegal things. That's why the City of
 1938 Richmond and I guess the counties are really looking at this whole issue, you know, the
 1939 massage parlors, are there, but then you read there's a lot of activity that should not be
 1940 going on in them that's going on. So, to err on the side of caution, until the state really
 1941 works out this whole marijuana TCB or what was it? TLC use, ... I hear what you're saying
 1942 about what Sheetz does and with others, but Sheetz, I guess is a franchise regulated by
 1943 a larger corporate entity, whereas these vape shops are independent and potentially
 1944 could do a host of things. I'm sorry, but I'm on the side of supporting the recommendation
 1945 of the director until the state legislature figures all of this out.
 1946
 1947 Mr. Gregoria- I can understand that it's a legitimate concern, but I think you're
 1948 imputing some conduct to my client.
 1949
 1950 Mr. Green - No, I did not. If you heard me, I said I am not seeing that. I'm only
 1951 going by what I have read and am seeing. My brother owns a facility on Chamberlayne
 1952 Avenue that has a vape shop next to it and there are things going on in that vape shop,
 1953 next to a physician's office, that should not be going on. And so yes, I've raised concerns
 1954 about vape shops in general until there's some better way to regulate them, you know,
 1955 because when... I live in Short Pump, and I pass a vape shop every day and I decided
 1956 I'm going to go into that vape shop just to see what's in there, and clearly, they had all
 1957 those little things with marijuana in it that people were coming in buying. Folks were
 1958 coming in and buying that stuff left and right. I don't, you know, whether they take it home
 1959 and smoke it or where ... what I consider stuff that I say smells like skunk, you know, like
 1960 I said, I don't know what that stuff is. I don't know, until there's better regulations on it, I
 1961 just want to err on the side of caution. Me personally.
 1962
 1963 Mr. Gregoria - The regulations are pretty severe right now. And in the City, they are
 1964 taking steps to bust all the vape shops. Anyone selling marijuana, they are prosecuting
 1965 them.
 1966
 1967 Mr. Green- Point in fact, if they are taking the steps to bust them that means
 1968 there's something going on. I haven't heard you say anything about anybody busting
 1969 anything in Sheetz.
 1970
 1971 Mr. Gregoria - It doesn't, that doesn't apply to my clients. If my clients had a
 1972 legitimate concern and they were being investigated or they had previously been charged
 1973 with selling marijuana illegally, then I'd say it's a legitimate concern. They've been in
 1974 business for a year and a half without any problems, without any investigations, without
 1975 any search warrants being executed on their property like some of the places in the city.
 1976 I would hope that the County of Henrico is running the businesses better than what they're
 1977 doing in the city because they have a whole host of problems. And I think that's why they

1978 get away with it and that's why the investigations continue. I represent some of those
1979 vape shop owners that are being charged with those offenses. This is like, you know, it's
1980 black and white. We don't have that here, and it's unfair to look at my clients under the
1981 cloud of, well, the other vape shops are selling marijuana. These guys are not selling
1982 marijuana.

1983
1984 Mr. Green- Yet.

1985
1986 Mr. Gregoria - At all. Again, you're speculating on my clients because what we have
1987 in front of us is a determination that the use of the drive-through is improper because it's
1988 not common practice. I'm showing you that it is common practice in the community and
1989 they should fall under that. And that's why this determination, we believe, is incorrect.

1990
1991 Mr. Green- Okay, thank you.

1992
1993 Mr. Lawrence- Mr. Gregoria, a question for you. You mentioned that they were
1994 operating a drive-through for a period of time, year, year and a half, and then there was
1995 an inspection. Do you know what precipitated that inspection?

1996
1997 Mr. Gregoria- I do not. I think it was just a random inspection that may have been
1998 after a year and a half. I don't believe there was any complaint. There was a violation as
1999 to the signage, violation as to the drive-through and I believe there's one other violation.
2000 The two have been corrected. This obviously couldn't be corrected unless they just shut
2001 it down, that's why they appealed it.

2002
2003 Mr. Lawrence- So there are three violations that were, that came out in the
2004 inspection.

2005
2006 Mr. Gregoria- I believe so.

2007
2008 Mr. Lawrence- And this is the one that's in dispute. The other two were resolved.

2009
2010 Mr. Gregoria- I believe they were.

2011
2012 Mr. Lawrence- Okay. All right. Thank you. Anybody else have any questions for Mr.
2013 Gregoria? Mr. Broadway, I think had a question for Mr. Gagnon if you don't mind coming
2014 back to the podium, sir. Thank you, sir.

2015
2016 Mr. Broadway- Yeah, Mr. Gagnon, I'm just wondering how the county will distinguish
2017 the difference between Sheetz and the vape shop as far as selling these products?

2018
2019 Mr. Gagnon- Yes, sir, I think that's a good question. Mr. Gregorio did state that the
2020 main purpose of the Sheetz is to sell gasoline and that's correct. I do want to point you
2021 very quickly back to the definitions here. I really focused a lot on this established by
2022 common use part of it, but the second part is in relation to the principal use. And so, the
2023 determination of the principal use is really important here. A gas station is a different

2024 principal use than a vape shop, and gas stations are specifically allowed to have drive-
2025 through facilities as an accessory. So that would be generally be considered established
2026 by common use. But again, it's different per principal use. So, if there's a different principal
2027 use, it would not be customarily accessory.

2028

2029 Mr. Broadway- Alright, and when we say this is county code section 24-8501, that
2030 corresponds to the state code, right? Is this the same?

2031

2032 Mr. Gagnon- This is in the zoning ordinance, which we have authority to pass
2033 under state laws.

2034

2035 Mr. Broadway- Okay.

2036

2037 Mr. Green- The only thing I'd like to say is I think we need more statistics on
2038 Sheetz, Wawa, because a lot of times I've gone into Wawa, not necessarily for the gas,
2039 but because you're going there for some breakfast, some lunch and some other products.
2040 So, I don't know if the primary purpose is gas, and it'd be interesting to see, you know,
2041 what's outselling, is gas outselling the food or the food outselling the gas. And a lot of
2042 times people have the gas, but the sales are higher in some other areas, because like I
2043 said, I'll stop by a couple of those places because, you know, sometimes the food is
2044 better.

2045

2046 Mr. Lawrence- I'll be honest with you, I wasn't aware that Sheetz had drive-through.
2047 I don't think Wawa does, but I could be mistaken. Can I ask a quick follow-up question,
2048 Mr. Gagnon?

2049

2050 Mr. Gagnon- Yes sir.

2051

2052 Mr. Lawrence- So did I understand you correctly to say that the county's zoning
2053 ordinance explicitly allows drive-throughs for establishments that sell gas? Did I
2054 understand that correctly?

2055

2056 Mr. Gagnon- Let me pull that up. Yes sir.

2057

2058 Mr. Lawrence- So that would put them in a different category from a vape shop then,
2059 they had an explicit authorization under the ordinance.

2060

2061 Mr. Gagnon- Yes sir, it's one of those categories that I pointed out, which includes
2062 banks and ATM's and pharmacies, where the ordinance specifically points to this
2063 generally going to be considered customarily accessory.

2064

2065 Mr. Lawrence- Okay. Alright, thank you. Any other questions for Mr. Gagnon before
2066 we move forward? Okay, thank you, sir. This is a public hearing, and the public hearing
2067 is not on the issue of good or bad of vape shops for what they sell, but on the narrow
2068 question of whether or not the Planning Director made the correct decision in determining
2069 that drive-throughs were not a common use for vape shops. Is there anyone here in the

audience that wishes to speak on this case? Either way, in favor of the appellant's position or in favor of the County Attorney's or Planning Director's decision. Okay, I don't hear anyone that wishes to speak.

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

Mr. Lawrence- Does the board wish to have further discussion, or Mr. Massie, are you prepared to make a motion?

Mr. Green- The only discussion I have is what I've heard from the county, is that they weren't looking at the vape shop issue. They were just looking at the rules. So, they didn't seem to, to me pass judgment on the legality of a vape chop on what they sell, but the specific rules that have guided in there. So, thank you for keeping it specific like that.

Mr. Lawrence- Mr. Johnson, do you have a comment?

Mr. Johnson- Was there any time that someone would go by to see what's going on just once in a while?

Mr. Green- You mean a random inspection?

Mr. Johnson- Once, some years ago, I heard about something happening, you know, personally with that. And it was some things that was taken that shouldn't be coming through. I was wondering if officers or someone was going through and just checking once in a while.

Mr. Blankinship- There are different reasons why we would inspect a store like this. Of course, if there is a complaint, that's the main reason. If there is a similar violation nearby. So, for example, if there was a store next door that had a sign violation, the inspector would normally observe any other illegal signs that are, you know, clearly in view from where he's standing and would notify those businesses as well. Hey, I was out here doing a sign violation, and I noticed you have the same violation. Specifically, to vape shops, there have been some specific conversations about, I know that the police division has done quite a bit of investigation into several vape shops. As was mentioned earlier, there have been vape shops where there were specific issues to be addressed by them. So, there are many different reasons why stores like this would be visited. Also, fire code and building code issues, you know, have been a common concern lately with some of these businesses.

Mr. Green- Mr. Blankinship, point of clarification. This has nothing to do with the vape shop itself. This just has something to do with the drive-through. This is only applicable to the drive-through. The vape shop will continue to operate until some other reason, it's just the drive-through.

Mr. Blankinship- Yes sir, that is the question before you this morning.

2116 Mr. Lawrence- Do you have any other questions, Mr. Johnson?
 2117
 2118 Mr. Johnson- Nope, that's it.
 2119
 2120 Mr. Lawrence- All right, so are you ready for a motion?
 2121
 2122 Mr. Massie- Yes sir. I move to affirm the decision by the county. For the reasons
 2123 stated by the Assistant County Attorney in his presentation letter to the board. I move that
 2124 the board find the director correctly determined that a drive-through window is not a
 2125 customary accessory use for a vape shop. For that reason, I move that we affirm the
 2126 decision of the director and dismiss the appeal.
 2127
 2128 Mr. Green- Second.
 2129
 2130 Mr. Lawrence- Okay, we have a motion to affirm the Director of Planning's decision.
 2131 We have a second by Mr. Green. All in favor say "Aye."
 2132
 2133 Board- Aye.
 2134
 2135 Mr. Lawrence- Anyone opposed, say "Nay." The motion carries.
 2136
 2137 On a motion by Mr. Massie seconded by Mr. Green, the Board **affirmed the decision of**
 2138 **the Director of Planning and dismissed the appeal** in case APP-2026-100155.
 2139
 2140
 2141 **Affirmative: Broadway, Green, Johnson, Lawrence, Massie 5**
 2142 **Negative: 0**
 2143 **Absent: 0**
 2144
 2145
 2146 Mr. Blankinship- Alright, thank you everyone. That brings us to the minutes. As you
 2147 know, we had two months worth of minutes for you to read this month. January and
 2148 February. We do have, I provided on the table this morning for you some corrections, a
 2149 few substantive corrections that Mr. Lawrence brought to our attention, in addition to
 2150 some typographical corrections that will also be addressed.
 2151
 2152 Mr. Green- Mr. Blankinship, you brought forward a correction that you caught
 2153 earlier, and I was wondering if Mr. Lawrence, was he okay with that? Because he usually
 2154 catches them. Are you okay, Mr. Lawrence?
 2155
 2156 Mr. Lawrence- Oh yeah, we are good. We had a lot to read this month though.
 2157
 2158 Mr. Blankinship- Appreciate you taking the effort.
 2159

2160 Mr. Lawrence- And there's a little different twist this time because we had a court
 2161 reporter that actually transcribed the appeal from the last meeting, which was probably
 2162 prudent practice.

2163

2164 Mr. Broadway- I was glad you clarified the wording on the passive.

2165

2166 Mr. Blankinship- A basic app.

2167

2168 Mr. Lawrence- Alright, so do we have a motion to approve the minutes? The minutes
 2169 from both the January and the February meetings.

2170

2171 Mr. Green- So moved.

2172

2173 Mr. Johnson- Second.

2174

2175 Mr. Lawrence- Motion by Mr. Green, second by Mr. Johnson. All in favor say "Aye."

2176

2177 Board- Aye.

2178

2179 Mr. Lawrence- All opposed, "No." The minutes are approved.

2180

2181 On a motion by Mr. Green, seconded by Mr. Johnson, the Board approved the minutes.

2182

2183

2184	Affirmative:	Broadway, Green, Johnson, Lawrence, Massie	5
2185	Negative:		0
2186	Absent:		0

2187

2188

2189 Mr. Blankinship- Alright, the only other news is that I will not be here next month. I'm
 2190 allowed to miss one meeting each decade. This will be the third meeting that I have
 2191 missed since 1999. Mr. Sehl will be sitting in my seat, and we have the cases for you. It
 2192 doesn't look like there's anything too hairy, but there is another appeal. So, we're going
 2193 to continue to have fun with appeals.

2194

2195 Mr. Lawrence- This is the third one this year?

2196

2197 Mr. Blankinship- Yes.

2198

2199 Mr. Green- Mr. Sehl are you going to be nicer than Mr. Blankinship?

2200

2201 Mr. Blankinship- He's going to buy you all lunch. He's already offered.

2202

2203 Mr. Sehl- I think he waited for me to be in this role to take this vacation.

2204

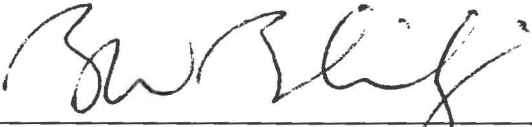
2205 Mr. Blankinship- A motion to adjourn will be in order.

2206
2207 Mr. Lawrence- Do we have a motion to adjourn.
2208
2209 Mr. Broadway- So moved.
2210
2211 Mr. Johnson- Second.
2212
2213 Mr. Lawrence- A motion to adjourn by Mr. Broadway. Second by Mr. Johnson. We
2214 are adjourned.

2215
2216 On a motion by Mr. Broadway, seconded by Mr. Johnson, **the meeting adjourned.**
2217

2218
2219 **Affirmative:** Broadway, Green, Johnson, Lawrence, Massie 5
2220 **Negative:** 0
2221 **Absent:** 0
2222

2223
2224
2225
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2227 
2228 Barry R. Lawrence, Chair
2229

2230
2231
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2233 
2234 Mr. Benjamin W. Blankinship, Secretary