

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE GOVERNMENT CENTER AT PARHAM**
4 **AND HUNGARY SPRING ROADS, ON THURSDAY AUGUST 27, 2015 AT 9:00**
5 **A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH AUGUST 10, 2015, AND AUGUST 17, 2015.**
7

Members Present: Gentry Bell, Chairman
Greg Baka, Vice Chairman
Dennis J. Berman
Helen E. Harris
Mark W. Romers

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

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

13 Thank you.

14
15 Before we begin this morning's meeting, I would like to welcome Mr. Mark
16 Romers at the end. He is the Varina District's newly appointed Board of Zoning
17 Appeals representative.
18

19 Mr. Romers - Thank you.

20
21 Mr. Bell - Mr. Blankinship, please read the rules.
22

23 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
24 ladies and gentlemen. The rules for this meeting are as follows: Acting as
25 secretary, I will call each case. And as I'm speaking, the applicant should come
26 down to the podium. We will then ask everyone who intends to speak to that
27 case to stand and be sworn in. Then a member of staff will give a presentation on
28 the case. Then the applicant will present their side of the story. Then anyone else
29 who wishes to speak will be given the opportunity. After everyone has had a
30 chance to speak, the applicant, and only the applicant, will have an opportunity
31 for rebuttal. At the end of that, the Board will proceed to the next public hearing
32 on the agenda. They will render all of their decisions at the end of the meeting.
33 So if you wish to hear their decision on a specific case, you can either stay until
34 the end of the meeting, or you can check the Planning Department website this

35 afternoon—we usually get the website updated within the hour of the end of the
36 meeting—or you can call the Planning Department this afternoon.

37
38 This meeting is being recorded, so we will ask everyone who speaks to speak
39 directly into the microphone on the podium, state your name, and please spell
40 your last name so that we get it correct.

41
42 Mr. Chairman, before we actually begin with the cases, we have asked the
43 County Attorney's Office to make a brief presentation in the manner of a work
44 session for the Board to discuss recent changes to the state code and the
45 County code regarding the Board's powers.

46
47 Mr. Tokarz - Mr. Chairman, members of the Board, my name is
48 Tom Tokarz, the deputy county attorney. The reason I'm here today is because
49 the 2015 General Assembly made substantial changes to the law regarding the
50 granting of variances by the Board of Zoning Appeals. Given the fact that there
51 are some uncertainties with the way this law is going to be applied, we thought it
52 would be prudent to give an overview of the changes to the state legislation, as
53 well as the ordinance amendments that have been adopted by the Board of
54 Supervisors to implement that legislation.

55
56 I'll just briefly describe the ordinance amendments that were adopted by the
57 Board of Supervisors on August 11th. There are four types of changes that were
58 made. First were the changes that were required by the 2015 legislation, which
59 I'll describe in more detail in just a second.

60
61 The second was a change to conform the County code to the provisions of state
62 law regarding the terms of you as member of the Board of Zoning Appeals.
63 Current County code—or previous County code provided that the term was three
64 years. State code provided that it was five years. The County code has now been
65 changed to say that the term of BZA members is five years in conformance with
66 state law.

67
68 The third, there were a series of changes in the law, in the ordinance, because
69 the Zoning Ordinance was originally adopted in 1959. It has some language
70 which is old and antiquated, and so we made modernization changes to that. And
71 we eliminated some redundancies in the ordinance.

72
73 The fourth was three changes that were not required by state law, but which we
74 changed in order to make the cases coming before you flow in a better way. The
75 first of that was that we changed the provision addressing the period for
76 beginning construction after the issuance of a conditional use permit; that was
77 extended from one year to two years in case there were difficulties for folks who
78 had obtained a conditional use permit in actually getting work started. It was our
79 understanding that was something that had come in cases before the Board of
80 Zoning Appeals. So the Board of Supervisors agreed to that change.

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The second was the addition of a provision which is similar to the provision related to rezoning cases in which it provides there will be no consideration of substantially the same application that you've already heard for a period of one year after that application has been considered.

The third is that there would be a bar on either the extension or renewal of a temporary use permit after twenty-four months. The idea behind that change is to say the conditional use permit language is designed to allow temporary uses. Allowing it past twenty-four months really is something that would be done by coming to the Board of Supervisors for a rezoning change.

So those were the three changes not required by state law, but which the Board of Supervisors made as part of these ordinance amendments.

Now, just to give a little overview, particularly since you have a new member, and just as a refresher, under the state law, the BZA has a series of powers. One is to hear appeals of determinations of the Planning director and other administrative officials. These occur from time to time when notices of violation have been given and there is an appeal to the Board of Zoning Appeals. You are the body under state law for hearing that appeal.

The second is to grant applications for variances. And it's the variance powers that I'll be talking about more because that was the subject of the legislation.

Third is to grant applications for conditional use permits. And conditional use permits are special exceptions to the Zoning Ordinance that the Board of Supervisors has authorized you to grant based on applications. And those are specific in the Zoning Ordinance. Those conditional use permit provisions are there from the Board of Supervisors.

The fourth is the related power to revoke conditional use permits if somebody is not complying with the conditions that the Board of Zoning Appeals has placed upon a conditional use permit.

The fifth is one that comes up rarely, but sometimes. And that is to interpret district map boundaries in case there's a question whether a property falls within this zoning district or that zoning district. Under state law, the BZA is the body that interprets that.

Now, the legislation that the General Assembly passed in this session dealt primarily with the variance powers of the Board of Zoning Appeals. The members that have been on the Board for a number of years know that the Board has been guided by the Supreme Court decision in the *Cochran* case, the 2004 case. There has been some interest in amending the variance powers to make it more

126 liberal in terms of the Board's power to grant variances. And so that was the
127 focus of what the General Assembly did in this legislation.

128

129 Now the reason for variances is that the Zoning Ordinance covers 244 square
130 miles of the County. It divides it into districts. But it's impossible for an ordinance,
131 even as long as ours, to cover the individual characteristics of each individual
132 property. And so in certain cases, the Zoning Ordinance, which is neutral on its
133 face, may unreasonably prohibit the use of the property. And so what the
134 General Assembly has done is provided the variance as a sort of relief valve, an
135 escape hatch to allow the Zoning Ordinance to be tailored to the characteristics
136 of a particular property. The initial purpose of the variance was to avoid an
137 unconstitutional taking by application of the Zoning Ordinance.

138

139 What has happened is as the General Assembly has considered the application
140 of the variance over a number of years, they've made changes at various times
141 to the legislation. Until July 1, 2015, state law defined the variance as a
142 reasonable deviation from the ordinance provisions that regulated the size or the
143 area of a parcel, or the size, area, bulk, or location of a building or structure on
144 that parcel. Very specific definition. In the legislation that became effective July 1,
145 2015, variances now can include deviations from the ordinance regulating the
146 shape of a parcel, as well as the height of a structure. That is new. Height of a
147 structure has never been allowed as a variance provision before.

148

149 In addition, they changed the criteria for granting a variance. Prior to July 1st, the
150 BZA could grant variances for an unnecessary hardship, a clearly demonstrable
151 hardship, or an undue hardship, or when the ordinance would effectively prohibit
152 or unreasonably restrict the utilization of the property. Now, the first question is
153 well what's the difference between "unnecessary hardship," a "clearly
154 demonstrable hardship," or an "undue hardship." And standing here as one of
155 your lawyers, I'll tell you it's not totally clear; it depends on the facts of the case.
156 But that is what the General Assembly has done in the legislation. And BZAs
157 have been dealing with this language for a number of years.

158

159 What the 2015 General Assembly did was to delete the language that is at the
160 end of what had been the previous set of criteria. Deleted the language that said
161 that the ordinance must effectively prohibit the utilization of the property. So one
162 of the standards—the basic standard that had been used prior to July 15, 2015,
163 was that you would evaluate an ordinance as to whether the ordinance prohibited
164 the owner from using the property at all. If they could build a house, but couldn't
165 build a house as big as they wanted to, that would not be a grounds for a
166 variance under the Cochran decision. That language has now been deleted. And
167 they've replaced it with a new standard which is—and I will say this tongue in
168 cheek—crystal clear.

169

170 The new standard is whether the ordinance would unreasonably restrict the
171 utilization of the property or whether the granting of the variance would alleviate a

172 hardship due to a physical condition related to the property. Now there's no
173 definition in the statute as to these terms. And so what the BZAs and the
174 attorneys advising the BZAs are left with is language that—I think it's going to be
175 developed case by case over a period of years.

176
177 And as with the previous variance decisions of various BZAs around the state,
178 there will probably be court decisions that will help flesh out what the parameters
179 of this new language are. It's way too early for any court cases to have
180 interpreted this. So what we're going to be faced with—everybody in the state is
181 going to be faced with is trying to fit particular facts of particular cases to this new
182 language. But they have specifically provided "unreasonably restriction" and
183 "alleviation of a hardship due to physical condition" as the criteria in this new
184 definition.

185
186 Now this is not the only guidance that you have. I think the reason I point this out
187 is the General Assembly has also included five main criteria for granting a
188 variance. So you're not left totally without guidance in interpreting the new
189 language.

190
191 Under the legislation—and this is contained in the ordinance amendments that
192 were adopted by the Board of Supervisors—the Board of Zoning Appeals must
193 find that the property satisfies these five conditions:

- 194
- 195 1 The property was acquired in good faith, and the applicant did not
196 create a hardship. And I'll talk about that more in just a second.
 - 197
 - 198 2. There's no substantial detriment to nearby properties. We don't want to
199 grant a variance if there is going to be problems with adjacent
200 properties.
 - 201
 - 202 3. The hardship is not general enough to require an ordinance
203 amendment. The variance is really designed to be aimed at particular
204 parcels of land, not to general things that the Board of Supervisors
205 should address with an ordinance amendment to Chapter 24.
 - 206
 - 207 4. A variance will not allow a use that requires a rezoning. And really the
208 theory about this is that the decision about whether a property is going
209 to be allowed to be used for certain things is something reserved to the
210 Board of Supervisors through the rezoning process. So while folks can
211 come to you and say we'd like a variance from, say, setback
212 requirements or now height requirements that are set forth in the
213 Zoning Ordinance, they still may not apply to, say, for example, put a
214 factory in a residential neighborhood. That's prohibited by the Zoning
215 Ordinance. It does not allow a use that requires a rezoning.
 - 216

217 5. This is new, this language is new. The relief is not available through a
218 conditional use permit. The theory of that is this: There is a different
219 standard for the granting of a variance than there is for the granting of
220 a conditional use permit. Where the Board of Supervisors has specified
221 that certain uses may be granted by conditional use permit, that
222 decision is one that has been made by the Board of Supervisors. And
223 the Board of Zoning Appeals is not authorized to go around that
224 particular decision by granting a variance. So if someone applies for a
225 variance for a use that is permitted by conditional use permit, I would
226 expect and hope that the staff would advise the Board of Zoning
227 Appeals that this one may not be in conformance with the Zoning
228 Ordinance and the variance criteria.

229
230 I will say at this point that because this is a new statute and this is new
231 language—as I told you before, it's not totally clear how this is all going to be
232 interpreted by Boards of Zoning Appeals around the state and by the courts, I
233 would strongly recommend that as you do each variance case, that you make
234 findings on the record as to whether the case either fits or does not fit these
235 criteria for granting a variance. And the reason for that is to create, number one,
236 information for the applicant and the Board of Supervisors, who's responsible for
237 the ordinance, and number two, to provide a record for any subsequent court
238 appeal because any decision you make on variances can be appealed to the
239 circuit court. So I would recommend that in order to create that record, that the
240 Board of Zoning Appeals specially consider and put in the record their decision
241 about how the application either met or failed to meet the criteria for granting a
242 variance.

243
244 Let me touch back on one of the subjects, one of the criteria here, and that is the
245 first one, that the property was acquired in good faith and the applicant did not
246 create a hardship. That's language that's in the current ordinance. But for a
247 second, I wanted to give you a little more information about that because that has
248 been the subject of some controversy in some decisions that have gone to
249 various circuit courts around the state.

250
251 I would like to just tell you that in the case of Spence versus Board of Zoning
252 Appeals for the City of Virginia Beach, which comes from 1998, the Supreme
253 Court of Virginia discussed the specific criteria. And basically what they said in
254 that case is that a property is acquired in good faith and the applicant doesn't
255 create a hardship if the applicant buys the property knowing that a variance is
256 needed, but does not do anything to violate the ordinance prior to applying for the
257 variance. So they can buy the property. They can know it can't be used for what
258 they want it to be used for and that they have to get a variance. And as long as
259 they don't do anything to violate the ordinance before getting the variance, that is
260 not the creation of a hardship. On the other hand, if somebody purchases
261 property and say, for example, builds a house and it violates the setbacks without
262 getting a variance, then that is a hardship that is in violation of that first criteria for

263 granting a variance. That is the way the Supreme Court has interpreted that
264 decision.

265
266 I checked this morning on Westlaw, which is a legal research site. This case has
267 been analyzed in six circuit court decisions around the state of Virginia, but
268 there's been no further discussion by the Supreme Court of Virginia on that
269 criteria. So we don't have anything more recent on that. We expect that probably
270 will be one of the things that may come up as this new standard is being applied.

271
272 So to close, let me just say this. The impact of the 2015 General Assembly is to
273 change the standard. It remains high, but it is reduced for variances by House Bill
274 1849, which was the General Assembly legislation, by the elimination of the
275 language that a variance could only be granted if there was no reasonable use of
276 the property. The lawyers expect that the variance applications are going to
277 increase, at least in the short run as people are trying to figure out how the new
278 language is going to be applied. We don't know. I can't stand here telling you
279 today how this is going to be applied by the courts or even by this BZA. I think
280 the task that you have as members of the Board of Zoning Appeals is to hear
281 every case, take the facts in, try and apply the language as best you can, and
282 then we're going to see how they are interpreted by the courts going ahead.

283
284 So with that, I will be glad to answer any questions.

285
286 Mr. Berman - Yes, I have a question. First of all, thank you for
287 updating us. Second, these new standards, are they grandfathered to any cases
288 that are currently still open, like a pending case or an appeal?

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290 Mr. Tokarz - As to appeal, I would think it would probably be
291 legislation as it existed prior to July 1st. It would be applicable to variance
292 applications and to appeals that were filed after July 1st.

293
294 Mr. Berman - So it's not grandfathered, the new measurements.

295
296 Mr. Tokarz - What I'm saying is the old cases would be—cases
297 filed before July 1, 2015, would be heard under the law as it existed prior to July
298 1, 2015.

299
300 Mr. Berman - Thank you.

301
302 Mr. Tokarz - Any case filed after July 1, 2015, would be subject to
303 the new standards.

304
305 Mr. Berman - Thanks.

306

307 Mr. Baka - If I could, I wanted to ask for a little bit of clarification
308 on the third out of the fifth criteria. The first question is does the variance need to
309 meet all five of those criteria?

310
311 Mr. Tokarz - Yes, yes sir.

312
313 Mr. Baka - Okay. The third one, paraphrase—or maybe I'll read
314 from the staff report here. "The condition or situation of the property concerned is
315 not of so general or recurring a nature as to make reasonably practical a
316 formulation of a general regulation to be adopted as an amendment to the
317 ordinance." So I guess what I wanted to ask for is a little more detail on how you
318 perceive or what you believe when it says "so general or recurring of a nature."
319 When we look at a certain property and we're trying to understand whether a
320 variance should be granted there, what makes it recurring?

321
322 Mr. Tokarz - I'm not sure the *recurring* is as important in this
323 statutory term—and they have cited the statutory term verbatim—as the term
324 *general*. I think the concept here that the General Assembly is trying to get to is
325 that a variance is supposed to be an application of an ordinance to an individual
326 piece of property, the size or the area, and now the height of structures and that
327 sort of thing. If there is a situation where—and I'm just going to envision—a
328 subdivision which has fifty lots in it, and there is an ordinance provision that
329 applies to all fifty lots that the owners believe creates a hardship, and that's
330 something that can be handled by a rezoning or an amendment to the Zoning
331 Ordinance by the Board of Supervisors, I think that's what this is intended to
332 apply to.

333
334 Mr. Baka - Okay.

335
336 Mr. Tokarz - This is really designed, I think, to focus the Board of
337 Zoning Appeals' attention on the individual characteristics of that particular piece
338 of land.

339
340 Mr. Baka - So if you had an individual situation that is general
341 and occurs on two or three or four properties, that might be applicable to amend
342 the Zoning Ordinance rather than to get a variance from this Board here. Is that
343 generally what you're trying to say?

344
345 Mr. Tokarz - Yes, that's generally—now whether two or three as
346 opposed to ten or fifteen, I don't know that the Board of Supervisors would
347 amend the Zoning Ordinance to apply just to two pieces or property or three
348 pieces of property. But certainly if it comes to twenty, thirty, fifty pieces of
349 property, that would be the case.

350

351 This one is one that I think is a fact-by-fact case. You'd have to know what all the
352 facts of the case are. The one that comes to mind initially is setbacks in a
353 subdivision.
354

355 Mr. Baka - Setbacks?
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357 Mr. Tokarz - Setbacks in a subdivision would be one. Or building
358 lines that have been put into a subdivision. The question is how large is the
359 subdivision? Is there something we can do to amend the Zoning Ordinance
360 related to that subdivision? Rezone the property or something like that. Once
361 again, if it's one or two lots, then you're on that line as to whether this fits that
362 criteria or not.
363

364 Mr. Baka - So a setback would be a general nature that it's
365 equally shared by 100 lots in a subdivision. Can an applicant contend or suggest
366 that maybe the character of the subdivision—or due to the proposed
367 improvement or the character of the improvement that they would need a
368 variance based on that and that would be—would anything dealing with a
369 character of a improvement help an applicant's case when you look at the
370 language of "general or recurring nature" if they're asking for a setback change?
371

372 Mr. Tokarz - The language of the statute—and the General
373 Assembly has split some very fine hairs in the language of the statute. The
374 language of the statute is that—and this was summarized up there, so let me
375 give you the exact language:
376

377 The condition or situation of the property concerned is not of so
378 general or recurring a nature as to make an amendment—is not so
379 general or recurring a nature as to make reasonably practicable the
380 formulation of a general regulation to be adopted as an amendment
381 to the ordinance.
382

383 So they're going to look at the condition or situation of the property. I'm not sure
384 that necessarily—and this is one of the areas that's unclear in the statute
385 whether the character of the improvement actually falls within the language of the
386 statute.
387

388 Mr. Baka - Okay. And then a separate question from that. I had a
389 brief question about ex parte contact with applicants. I know typically the
390 Planning Commission talks to applicants before meetings. The Board of
391 Supervisors talks to applicants before meetings. Could you touch on that?
392

393 Mr. Tokarz - Absolutely. There is a new statute also enacted by the
394 2015 General Assembly that is found—and I'll give you the site because it's not
395 enacted in the County code. The reason we did not enact it in the County code is
396 because it exists already in state law. It's 15.2-2308.1. That statute is entitled

397 "Board of Zoning Appeals Ex Parte Communications." What is provided is that
398 the non-legal staff of the governing body may have ex parte communications with
399 a member of the Board of Zoning Appeals prior to the hearing, but may not
400 discuss the facts or law relative to a particular case. And the same is true for the
401 applicant/landowner or his agent or attorney. They may have ex parte
402 communications with a member of the Board prior to the hearing, but may not
403 discuss a particular case with you.

404
405 The definition of ex parte communication is any communication that's made
406 outside the presence of the other party. And if there is any ex parte
407 communication or discussion of facts or law of a particular case, if that occurs,
408 then the statute requires the party engaging in such communication to inform the
409 other party as soon as possible and advise the other party of the substance of
410 that communication.

411
412 This is similar to the law that we have as attorneys in court. We may not have ex
413 parte communications with a judge about a case that the judge is going to hear
414 that the other party doesn't know about. We're required to send all of our filings
415 to both the court and to the attorneys for the other side. So this is a similar type
416 of rule. Now the rule applies except when you're having a public hearing, like it is
417 right there, because that is not an ex parte communication. And it does not apply
418 to any meeting that the members of the Board of Zoning Appeals attend where
419 everybody who is involved in that particular case are present. But the idea is no
420 unfair advantage really by a communication with Board of Zoning Appeals
421 members and parties to the case.

422
423 There is an exception. And the exception is that the applicants for a conditional
424 use permit are permitted to have ex parte communications with you because that
425 is deemed to be a legislative process. And so you may have communications
426 both with staff and with applicants in a conditional use permit case.

427
428 Mr. Baka - All right. Thanks for the clarification.

429
430 Mr. Tokarz - I will add that's traditionally not been the case, that
431 BZA members have traditionally not had communications with either side ex
432 parte. I, for example, represented the Director of Planning in a number of cases
433 before the BZA. And any communications I had with the BZA prior to the public
434 hearing have been done by letter to the BZA sent to the other side. That's
435 generally been the rule. You can continue to maintain that rule, but the statute
436 does not apply to ex parte communications in conditional use permit cases.

437
438 Mr. Baka - Thanks.

439
440 Mr. Berman - Can I quickly follow on that question?

441
442 Mr. Tokarz - Yes sir.

443

444 Mr. Berman - The BZA, as a practice, will go often on site visits to
445 an applicant's property. And we will sometimes get approached by the
446 applicants, and sometimes we will actually ask for permission to go in a backyard
447 to take a look at a variance request. Is that considered ex parte? A lot of times
448 they'll say, "Hey, do you think this case is going to fly?" And I was like I can't
449 comment on that. Where is the line drawn in ex parte? Are we literally allowed to
450 talk to them and say hey, can I look in your backyard, that kind of thing?

451

452 Mr. Tokarz - Well, the statute says "may not discuss the facts or
453 law relative to a particular case." I would suppose just standing here that if you
454 simply say "May I look at your backyard," that is not a discussion of the facts or
455 the law about the case. If the next question is, "How long has this shed been
456 here," that would be a discussion of the facts of the case. My recommendation to
457 you would be to be extremely circumspect in any communications you have with
458 the applicant in the case. And, in fact, my suggestion to you would be that you
459 ask the—just standing here, that you ask the Planning Department to make that
460 contact for you to find out if the permission can be obtained so that you don't
461 have to have any communication with the applicant. That's my thought just
462 standing here right now. And if I change my mind after I sit down, I'll send you all
463 a letter and let you know that. But that's my thought right now.

464

465 Mr. Blankinship - And if they did speak to an applicant on site, not
466 meaning to, but an applicant came up and asked questions and they discussed
467 the case, could they then just contact the Planning Department and say I met the
468 applicant on site and we discussed the following matter?

469

470 Mr. Tokarz - I would think that at that point what would be the
471 appropriate thing to do would be to put in the case record that there was a
472 communication and what the substance of that communication was so that
473 anybody reviewing the record would have knowledge of it.

474

475 Mr. Blankinship - So an e-mail to the Planning Department that would
476 then be added to the file.

477

478 Mr. Tokarz - Yes sir.

479

480 Mr. Berman - Thank you.

481

482 Mr. Tokarz - Mr. Gidley has pointed out to me that when they apply
483 for a conditional use permit, that at the end of the application it says that by
484 signing this application, the property owner authorizes the Board of Zoning
485 Appeals and County employees to enter the property during the normal
486 discharge of their duties in regard to this request, and acknowledge that the
487 County employees will make regular inspections of the site. Given that, my
488 suggestion is what you may want to do is simply advise the Planning Department

489 when you'd like to go so they can inform the owner. I mean you don't want to just
490 show up unannounced, I would think, just as a matter of common courtesy. That
491 would be my thought.

492

493 Ms. Harris - Mr. Tokarz.

494

495 Mr. Tokarz - Yes.

496

497 Ms. Harris - Several things. May we get a copy of this PowerPoint
498 presentation?

499

500 Mr. Tokarz - Absolutely.

501

502 Ms. Harris - Good. The other thing, when we were talking about—

503

504 Mr. Tokarz - And Ms. Harris, let me just tell you. There was a
505 longer—I've done this presentation twice for the Board of Supervisors. I've done
506 it for the Planning Commission. I can send you the longer PowerPoint which, as
507 an act of mercy, I did not present today. But I'll be glad to do that.

508

509 Ms. Harris - Sure, thank you. You know we were talking about the
510 property that was a recurring situation. We had many cases that involved farms
511 that needed public street frontage. And we kept kicking those over to the Board
512 of Supervisors, and they kicked it back to us. So it seems as though they made
513 no decision. Am I correct?

514

515 Mr. Blankinship - It was reasonably practical to draft an amendment to
516 the ordinance, but the Board chose not to adopt the ordinance, the amendment
517 that was drafted. Or the adopted an amendment, but it didn't address the
518 problem that this Board was hoping that they would address.

519

520 Ms. Harris - So we continue to deal with those cases.

521

522 Mr. Tokarz - Yes ma'am.

523

524 Ms. Harris - In some districts it's more of a concern than other
525 districts.

526

527 Mr. Tokarz - I expect that's the case. I've seen some of the
528 subdivision plats that have been filed, yes.

529

530 Ms. Harris - Right, right. And as far as the ex parte
531 communication, we can always talk about the case after the fact because it's
532 public record then, is it not?

533

534 Mr. Tokarz - Right. Once a decision has been made, you're able to
535 do so, yes.

536
537 Ms. Harris - Okay. I think those were all of the questions I had.
538 Thank you.

539
540 Mr. Tokarz - Any other questions? If you have any other questions,
541 please feel free to contact me in the County Attorney's Office. And I will get to
542 Mr. Blankinship the PowerPoint presentation for him to forward to you.

543
544 Ms. Harris - Thank you.

545
546 Mr. Tokarz - Thank you.

547
548 Mr. Blankinship - Thank you very much, Mr. Tokarz. And you're exactly
549 on your estimated time of twenty minutes for your presentation and ten minutes
550 for questions.

551
552 Mr. Tokarz - You gave me ninety minutes.

553
554 Mr. Blankinship - Excellent. Ladies and gentleman, I appreciate your
555 patience in sitting through that. It was not directly intended for you, but several of
556 you are here as applicants for variances. And since we are all finding our way
557 through this new statute, I did think it would be helpful for you to hear the same
558 presentation that the Board members heard.

559
560 With that, Mr. Chairman, would you like to call the first case?

561
562 Mr. Bell - Yes. This was a case that was deferred from our last
563 meeting.

564
565 **VAR2015-00007 MIKA AND HENNA E. ELOVAARA** request a
566 variance from Sections 24-95(c)(4) and 24-95(i)(1) of the County Code to allow
567 the existing improvements to remain at 1804 Rockwood Road (BERKELEY
568 PARK) (Parcel 761-746-9054) zoned One-Family Residence District (R-3)
569 (Tuckahoe). The front yard setback is not met. The applicants propose 29 feet
570 front yard setback and steps extending 11 feet, where the Code requires 35 feet
571 front yard setback and allows steps extending 10 feet. The applicants request a
572 variance of 6 feet front yard setback and steps extending 1 foot.

573
574 Mr. Blankinship - Would everyone who intends to speak to this case
575 please stand and be sworn in. Would you raise your right hands please? Do you
576 swear the testimony you're about to give is the truth, the whole truth, and nothing
577 but the truth so help you God? Thank you. Mr. Gidley, if you would begin with
578 your presentation.

579

580 Mr. Gidley - I'm afraid Mr. Tokarz may have picked up my
581 presentation by mistake.

582
583 Mr. Blankinship - Mr. Chairman, what would you think of proceeding to
584 the next case while Mr. Gidley tries to find him?

585
586 Mr. Bell - I think it's a good idea.

587 ⁸
588 [SEE PAGE 27 FOR RESUMPTION OF THIS CASE.]

589
590 **CUP2015-00026** **ROBERT LANPHEAR** requests a conditional use
591 permit pursuant to Section 24-95(i)(4) of the County Code to allow an accessory
592 structure in the front yard at 506 Old Providence Circle (CARTER'S RIDGE)
593 (Parcel 754-738-8730) zoned One-Family Residence District (R-3) (Tuckahoe).

594
595 Mr. Blankinship - Would everyone who intends to speak to this case
596 please stand and be sworn in. Do you swear the testimony you're about to give is
597 the truth, the whole truth, and nothing but the truth so help you God? Thank you.
598 Mr. Madrigal, if you'd begin with your presentation.

599
600 Mr. Madrigal - Good morning, Mr. Chairman, members of the Board.
601 This is a request for a conditional use permit to build an accessory structure in
602 the front yard. The subject property is located in the West End of the County in
603 the Carter's Ridge subdivision. This is the third lot to be built within this new ten-
604 lot residential development. The property is located on the north end of a cul-de-
605 sac and is 17,300 square feet in area.

606
607 Because of its location and orientation along the cul-de-sac, it has an elongated
608 and curving street frontage. You can see that here in the drawing. The front lot
609 line of the property follows the curve of the cul-de-sac, as does the front yard
610 area, which is depicted here in pink. This condition significantly reduces the
611 depth of the lot at its southern end and concentrates the buildable area of the lot
612 towards the northern portion of the property. In addition to the lot's unique shape,
613 it slopes approximately 16 percent from back to front with the slope becoming
614 more severe within the first twenty feet of the property line.

615
616 Although the applicant has obtained a building permit to construct a two-story
617 residence with a detached, two-story, two-car garage that meets all the County
618 setback requirements, he would like to reposition the proposed garage closer
619 towards the street and encroach twenty feet into the forty-foot front yard setback.
620 This drawing here depicts his approved site plan.

621
622 While the residential use is consistent with both the zoning and Comprehensive
623 Plan designations, the applicant's request becomes an issue of architectural and
624 aesthetic appropriateness relative to the existing development pattern in the area
625 and its effect on the new subdivision. Even though the lot has a somewhat

626 constrained building area, there are a variety of designs that would
627 accommodate a two-car garage and still provide ample rear yard without the
628 need to encroach into the front yard setback.

629
630 Additionally, the two existing neighborhoods on either side of Carter's Ridge have
631 similar lot configurations, and the existing homes on those lots do not breach the
632 front yard setback. Those would be the neighborhoods of Belle Grove and
633 Whitehall on either side.

634
635 Although there is an existing residence with a detached garage in the front yard
636 abutting the subject lot on its south side, these existing improvements predate
637 the new subdivision. And while the existing garage is in the front yard, it is a one-
638 story structure that does not encroach into the forty-foot front yard setback. Even
639 though this is an existing condition, it should not set the standard for the
640 remaining lots yet to be developed within the new subdivision.

641
642 Although the applicant's proposed garage will be architecturally similar to the
643 proposed home, staff believes that the cumulative effect of a reduced front yard
644 setback, higher lot grade, and shallow depth of the lot will accentuate the
645 proposed garage's bulk and mass so that it will appear out of scale and character
646 with the surrounding area.

647
648 In conclusion, staff is of the opinion that granting the applicant's request would be
649 contrary to the existing development pattern in the area. While the residential use
650 is consistent with the zoning and Comprehensive Plan designations, the
651 proposed garage would be out of scale and character as proposed. Finally, the
652 applicant already has a building permit in hand and is under construction with a
653 design that meets all of the required setbacks. And again, here is the drawing
654 that's been approved. For these reasons, staff recommends denial of the
655 applicant's request.

656
657 This concludes my presentation. I stand ready to answer any questions you may
658 have.

659
660 Mr. Bell - Questions?

661
662 Mr. Baka - Just to clarify, Mr. Madrigal. You mentioned out of
663 character with the neighborhood. When I drove back there, the cul-de-sac veers
664 to the right. It appears in the future if there were houses on the additional lots that
665 this garage would be somewhat recessed to the right side, would be somewhat
666 screened by the house, but not totally. And it would clearly be visible from the
667 cul-de-sac. So could elaborate a little more on why your assertion is that it would
668 be out of character?

669
670 Mr. Madrigal - I believe the garage being twenty feet from the front
671 property line would just be an imposing mass. It wouldn't have the forty-foot

672 relative to what you would normally see along the street. Additionally, it's a two-
673 story structure. So the elevation or the grade of the property is already a bit
674 higher than the sidewalk or the street. Add to that the height of the garage and it
675 will appear out of scale. So the closeness, the height issue, and relationship to
676 the property line would just exacerbate its bulk and mass.

677
678 Mr. Baka - And due to the fact that this is an irregular shaped lot
679 is part—I'm inferring that that is part of the reason there's an application for the
680 garage anyway. Because it would appear in some manner that the garage might
681 be in the side yard of the house. It's to the side. However, that is a front yard
682 setback because the cul-de-sac cuts into it. I guess one other question for staff.
683 This is a conditional use permit which has—Mr. Tokarz gave a presentation a few
684 minutes ago on a variance which has a much higher standard to meet under
685 state law, five specific criteria. The standards for a conditional use permit are not
686 quite as onerous, if I remember correctly. Basically, we're trying to determine if
687 this would adversely impact the health, safety, or welfare of the neighboring
688 properties and surrounding properties. So I just wanted to mention that those are
689 two different items.

690
691 Mr. Madrigal - Yes sir. Knowing that, that's why we have drafted the
692 proposed conditions, if you were to decide to approve it. And one of those
693 conditions is that it would be limited to not more than one story in height and then
694 provide the minimum twenty feet as proposed.

695
696 Mr. Baka - Those are four draft conditions on the staff report.

697
698 Mr. Madrigal - Yes.

699
700 Mr. Baka - Thanks.

701
702 Ms. Harris - I have questions. Do you think that if the owners built
703 a single-story garage that it would make a difference in the curb appeal?

704
705 Mr. Madrigal - Yes. I think it would be immediate. You wouldn't
706 perceive such a large structure, a two-story structure. The house that's going to
707 be built is already a two-story structure, and that would be forty feet back. The
708 garage coming forward, even though it's still somewhat recessed in the cul-de-
709 sac, I think once you were there, you would see its presence. It would just be
710 somewhat looming, I would feel.

711
712 Mr. Blankinship - Would you put up the existing residence and garage
713 again, please? You just immediately see there the difference between the tall
714 house and the low garage. Of course the perspective is adding to that a little bit
715 there. The previous one gave you a better idea when comparing the scale of the
716 house to the existing garage. These are the ones on the adjoining lot.

717

718 Mr. Madrigal - Just so you get a feel for the elevations for the
719 proposed house. So they have the two-story portion here that drops down to one
720 story. The garage would be over here. There a garage elevation.
721
722 Mr. Romers - Can you show me this other property with the garage
723 on the front where it is relevant to the house?
724
725 Mr. Madrigal - Here's the existing residence, and the garage is to be
726 right there.
727
728 Mr. Romers - So the two garages would be near each other then.
729
730 Mr. Madrigal - Yes sir.
731
732 Mr. Romers - In this case.
733
734 Mr. Madrigal - Yes.
735
736 Ms. Harris - Is there another place where the garage could be
737 constructed other than in the front of the house?
738
739 Mr. Madrigal - He does have a design where it could be attached to
740 the house as opposed to detached, and he would comply with all of his required
741 setbacks. Right now, he does have an approved plan with a garage that meets
742 the forty-foot setback. It does somewhat reduce the size of his backyard. But if
743 you compare that plan to his proposed plan, it does affect it, but I don't believe
744 it's a severe impact.
745
746 Ms. Harris - I drove by there too. The foundation that we see is for
747 the house, is it not?
748
749 Mr. Madrigal - I couldn't answer that. I would assume so, yes. I
750 haven't been out there recently.
751
752 Ms. Harris - They have not started construction on the garage?
753
754 Mr. Baka - Yes, that was the house foundation.
755
756 Ms. Harris - Thank you.
757
758 Mr. Madrigal - When we went out, this is what we saw.
759
760 Mr. Baka - There has been a lot of work since then. That is the
761 foundation of the house, not the garage.
762
763 Mr. Bell - Any other questions?

764
765 Mr. Baka - I had one follow-up question. I believe I'm aware of
766 the answer for this, but just to ask the question. This is an application for a
767 detached garage twenty feet from the road. Can you explain briefly why this is
768 eligible for a conditional use permit, which is not as high a criteria, as difficult as
769 say if someone applies for a variance, which would be an attached garage onto a
770 house? Why is this eligible for a conditional use permit and an attached garage
771 that attaches to a house would be a variance request?

772
773 Mr. Blankinship - The briefest answer to that, Mr. Baka, is that the
774 Board of Supervisors actually amended the Zoning Ordinance shortly after the
775 *Cochran* case went into effect. Prior to that time, residents did apply for variances
776 for this kind of a change. After the *Cochran* decision went into effect, the Board of
777 Zoning Appeals routinely denied those variances because you can't make the
778 argument that there is no reasonable use of the property in cases like these.
779 There were enough applicants who were concerned about the way that was
780 being applied that they went to the Board of Supervisors, and the Board of
781 Supervisors changed the Zoning Ordinance to specifically authorize this Board to
782 approve detached accessory structures in the front and side yard.

783
784 Mr. Baka - And the rear yard?

785
786 Mr. Blankinship - Well they're already allowed in the rear yard. So this
787 provision specifically allows the Board of Zoning Appeals to grant by conditional
788 use permit placing a structure in the side or front yard. That was done specifically
789 because the Board found it unlawful to grant variances in those cases.

790
791 Mr. Baka - Thanks.

792
793 Mr. Berman - Quick question. If the proposed move of the garage
794 brings it out further, I think we have supplemental information here that says it
795 would—because of the grade sloping down, it would actually make the whole
796 structure lower. Is that correct?

797
798 Mr. Madrigal - One more time. I'm sorry.

799
800 Mr. Berman - Moving the garage to the proposed location, closer to
801 the street front, given the grade that you talked about, that would actually make
802 the garage height lower?

803
804 Mr. Madrigal - Well, it's more severe. The height increases most
805 severely within the first twenty feet, roughly. So you can see here the gradation
806 lines. It's going up about four to five feet. So following this line, we're at 285. And
807 the street is probably at 281, 282. So it's up approximately—unless they're going
808 to move the garage down, which I'm not sure if that's what's going to happen.

809 Assuming that it's going to rest on that grade, then it would be three to four feet
810 up.

811
812 Mr. Blankinship - Lower than the location in the rear yard, but not that
813 much.

814
815 Mr. Madrigal - Not that much.

816
817 Mr. Berman - Not that much. Now it would be further from the
818 backyard neighbors if they moved it forward.

819
820 Mr. Blankinship - Yes.

821
822 Mr. Berman - Okay. Thanks.

823
824 Mr. Baka - May I ask what the total difference—you
825 recommended the one-story garage. Is that correct?

826
827 Mr. Madrigal - Yes.

828
829 Mr. Baka - What's the difference in total height at the roof pitch
830 from a two-story that has accessibility to the second floor and a one-story that
831 just has a roof pitch? What would the height difference on those two garages be?

832
833 Mr. Madrigal - Potentially eight feet.

834
835 Mr. Blankinship - We'd have to see plans, I think, to really say that, but
836 no more than eight feet. Probably at least four.

837
838 Mr. Bell - Any others?

839
840 Mr. Blankinship - Thank you, Mr. Madrigal. Mr. Lanphear?

841
842 Mr. Lanphear - Good morning, members of the Board. My name is
843 Rob Lanphear, and I'm the applicant. L-a-n-p-h-e-a-r. Thank for taking time to
844 check out this case and review everything. I did want to take just a few minutes
845 and give you a few points.

846
847 First of all, this is our home. I'm the developer of the neighborhood and I'm the
848 designer of it. I'm not the builder. I'm a current lot owner of lot four. We're going
849 to build a house for my family and our kids. So streetscape is really important to
850 me. We're going to be here for a long time. I know my neighbors—the Ellens, the
851 Bowmans, the Berrys, the Litterals—all the people around us. So I don't want to
852 do anything that would adversely impact them.

853

854 We are proffering a quality custom-designed garage. Architecture is very
855 important. High quality materials. It's a small community of ten homes. I think I
856 have the support of all the surrounding residents. I'm not sure if there has been
857 any opposition voiced. I don't think there has. If there has, I'd love to know. But I
858 think everyone is in favor of this. I did send a letter and some supplemental
859 information from the Jesters who are immediately behind the property. This
860 transition and location would move the garage about ten feet away from the rear
861 property line, away from the people in White Hall, closer to the street in Carter's
862 Ridge.

863

864 Also on the supplemental information, I wanted to be sure there were no
865 questions on that. You can ask me, I guess, now or later, but to understand how
866 the position of the garage will be lower with respect to the original position in the
867 backyard. The way this would work, we would be digging out some of the grade
868 to make the garage lower as we come toward the street. The top of the garage,
869 the very, very peak of the garage, would be about between twelve and thirteen
870 feet below the top of the main structure of the house.

871

872 In closing, I think I'd just say this is kind of a unique situation. I think that when
873 we designed this neighborhood, we intentionally put a curve in the road to add
874 architectural appeal. And when we did that curve, what happened is we created,
875 technically, some new front yard by County standards. I think if you were out on
876 the site you would also recognize that this is truly a side—kind of a side/back
877 yard in all respects just from the street.

878

879 Any questions I can answer?

880

881 Mr. Bell - Yes. If the Board would approve this, have you read
882 and understand the conditions listed in our package?

883

884 Mr. Lanphear - Yes, I have. I would suggest an amendment to the
885 third condition, which I believe is the height. I would suggest that we could say
886 that the maximum elevation of the approved garage structure be at least twelve
887 feet below the maximum elevation of the main structure of the house. You may
888 have a different way to word that. But basically, the peak of the garage will be no
889 more—the peak of the house will be twelve feet higher than the peak of the
890 garage.

891

892 Mr. Baka - Is it easier to enforce if we just added a condition,
893 may I ask, to just specify a maximum height on the garage as opposed to a
894 comparison?

895

896 Mr. Blankinship - It probably would be.

897

898 Mr. Baka - I'm just not sure how an inspector—

899

900 Mr. Blankinship - We can do it either way, but I think just a limit on the
901 height of the structure.
902
903 Mr. Baka - Are we at questions, Mr. Chairman?
904
905 Mr. Bell - Yes.
906
907 Mr. Baka - May I ask? If you were to have the garage be twelve
908 feet or no more less than twelve feet lower than the height of the house, what
909 would that make the actual height of the garage if we specified a maximum
910 height of the garage instead?
911
912 Mr. Lanphear - In the supplemental information—
913
914 Mr. Blankinship - That would just be “as designed.”
915
916 Mr. Lanphear - A maximum height of twenty-four feet.
917
918 Mr. Baka - Twenty-four. Thank you.
919
920 Mr. Lanphear - Less than twenty-five.
921
922 Mr. Blankinship - That would actually be covered by condition #2 that
923 ties him to these plans, only the improvements shown on the plot plan and
924 building design. So you’d essentially just be striking the limit of one story.
925
926 Ms. Harris - Question. You said striking the limitation of one story.
927 So condition three—
928
929 Mr. Blankinship - That’s what the applicant is requesting, yes ma’am.
930
931 Ms. Harris - That we don’t limit it to one story.
932
933 Mr. Lanphear - That it would be a possibility for a two-story, correct.
934 As designed.
935
936 Mr. Berman - I want to make sure that we’re sensitive to his
937 approach. I believe what we’re trying to do—and correct me if I’m wrong—is not
938 put the limit to the overall height of the garage, but to take into consideration the
939 grade, that you will make it lower so that the relative comparison to the height of
940 the house, the main structure, is what you’re driving at. I believe Mr. Madrigal
941 said the issue was an issue of scale and that’s what he’s trying to do in that
942 comparison of the height of the two structures. Put that in the condition and that
943 will make it more meaningful than the overall height of the garage itself.
944

945 Mr. Blankinship - As far as how the Board reviews the case and makes
946 its decision, yes. When the Permit Center staff gets an application for a building
947 permit, Mr. Baka was thinking rather than have them pull out the building plans
948 for the house and then get out a topographic map and try to figure out where the
949 ridge of the house is and work backward to this, it would be a lot easier for them
950 just to know this set of plans has been reviewed and approved.

951
952 Mr. Berman - It might be easier, but what if the applicant put it up on
953 a hill. It could be almost the same height as the house if the structure was still
954 twenty-four feet or twenty feet.

955
956 Mr. Blankinship - But by saying that this drawing is what's approved,
957 then he has to come into the office with this drawing. And then the staff would
958 know that this is what the Board has reviewed and approved—or not, whatever
959 the Board decides.

960
961 Mr. Berman - Okay. And I guess the other part is that the foundation
962 of the main house is poured, so that elevation is set.

963
964 Mr. Romers - Can I ask a question here?

965
966 Mr. Bell - Certainly, go ahead.

967
968 Mr. Romers - I'm looking at the supplemental drawing that you've
969 got here. Is that effectively street level, the elevation for where the garage is
970 shown on this drawing?

971
972 Mr. Lanphear - I want to be sure I understand your questions.

973
974 Mr. Romers - The bottom of the garage, the foundation, is shown.
975 It's hard to read the details as far as dimensions. But it looks like it's shown at
976 street level versus the location of the house.

977
978 Mr. Baka - So to describe that grade over the first twenty feet
979 from the cul-de-sac?

980
981 Mr. Lanphear - In general terms, I suspect the very base of the
982 garage, the very bottom of the slab, would be about two feet above the curb. And
983 then from there this would take over, if that makes any sense. The house itself is
984 significantly above the curb, probably seven or eight feet.

985
986 Mr. Romers - So the peak of the garage is at the same height as
987 the peak of the extension on the side of the house?

988
989 Mr. Lanphear - That is correct. That's what I'm proposing.

990

991 Mr. Romers - And that it not exceed that.
992
993 Mr. Lanphear - Correct.
994
995 Mr. Romers - Thank you.
996
997 Ms. Harris - So are we changing the dimensions of this two-car
998 garage? In the report, 24 feet wide by 26 feet deep. Are we still going to do that
999 and you just change the grade where it's going to be placed?
1000
1001 Mr. Lanphear - That's correct.
1002
1003 Ms. Harris - But you're going to keep the same dimensions? Is
1004 that what you're saying?
1005
1006 Mr. Lanphear - That's correct.
1007
1008 Ms. Harris - How close would this garage be? How close is it to
1009 the accessory structure for the adjacent lot that's already built?
1010
1011 Mr. Lanphear - I would need to measure that. I supposed sixty or
1012 seventy feet. I ironically live in the adjacent structure right now.
1013
1014 Ms. Harris - Can we see that picture, please?
1015
1016 Mr. Blankinship - I'm going to estimate 100 feet, Ms. Harris.
1017
1018 Mr. Baka - I was going to say a lot more.
1019
1020 Ms. Harris - From where your garage will appear.
1021
1022 Mr. Blankinship - From the wall of the garage in the photo showing now
1023 to the wall of the proposed garage.
1024
1025 Ms. Harris - Okay, about a hundred feet.
1026
1027 Mr. Blankinship - Nearest point to nearest point. And that's an
1028 approximation. It could be 80 or 120 feet. Each garage would be about fifty feet
1029 from the common property line.
1030
1031 Mr. Berman - This picture does a good job of showing the grade on
1032 lot 4 is substantially higher and it gradually works its way down to lot 5 to the
1033 point that the home and the auxiliary structure on lot 5 are significantly below the
1034 curb.
1035

1036 Ms. Harris - When you drive by, you see the foundations. They
1037 have them poured for the other properties. You can see that you're definitely
1038 lower.
1039
1040 Mr. Berman - What is the number inside the blue circle on the
1041 supplemental information? Is that five foot four?
1042
1043 Mr. Lanphear - Five foot six, I believe.
1044
1045 Mr. Berman - Thank you.
1046
1047 Ms. Harris - So you're telling us that you would not consider
1048 having a one-story garage. Is that what you're telling us today?
1049
1050 Mr. Lanphear - My strong, strong, strong preference is to have a two-
1051 story garage.
1052
1053 Ms. Harris - But you could live with a one-story garage.
1054
1055 Mr. Lanphear - No.
1056
1057 Ms. Harris - No, okay. I don't want to do anything to take your life,
1058 so. Thank you.
1059
1060 Mr. Baka - What would the use be of the second floor of the
1061 garage, a second living quarters?
1062
1063 Mr. Lanphear - Auxiliary space, a craft room, play area, etc.
1064
1065 Mr. Bell - Any other questions?
1066
1067 Mr. Baka - Do you plan to have any deciduous trees in the front
1068 yard of the house that might one day partially screen the garage from the road?
1069
1070 Mr. Lanphear - We do. I've employed a site design landscaping firm
1071 to do a plan for the entire yard, including the buffer along the back adjacent to
1072 Whitehall. That plan calls for three large deciduous trees along the curve all the
1073 way up to about where the garage would enter the cul-de-sac—the driveway
1074 would enter the cul-de-sac.
1075
1076 Mr. Bell - One clarification, Ben. Did we decide #2 takes care of
1077 not needing another amendment?
1078
1079 Mr. Blankinship - It's up to the Board. The applicant has requested
1080 that—my interpretation of it would be striking the words "limited to one story in

1081 height and" so that condition 3 reads: The detached garage shall provide a
1082 twenty-foot front yard setback."

1083

1084 Mr. Bell - Okay.

1085

1086 Mr. Berman - On inspection of the lot, we noticed that there are no
1087 curb cuts. Will there be one put where this diagram shows the shaded area
1088 where it intersects the cul-de-sac?

1089

1090 Mr. Lanphear - Yes.

1091

1092 Mr. Berman - Okay.

1093

1094 Ms. Harris - So in condition 3, we're not going to say anything
1095 about how they're going to build the garage?

1096

1097 Mr. Blankinship - Condition 2 ties them to the plans that he has
1098 submitted.

1099

1100 Mr. Baka - Depending on what the Board's decision is, we could
1101 go either way, whether it's twelve feet less than the peak or going with the plan.
1102 Going with the plan specifies an exact footage. I'm just thinking about the
1103 building inspector, that field crew that has to enforce this condition. It doesn't
1104 make a huge difference to me at all. I think it's the same thing either way. But I
1105 just think it's easier to administer.

1106

1107 Mr. Romers - Wouldn't it be simpler just to follow the plan?

1108

1109 Mr. Bell - In other words, not to make the amendment to 3. Just
1110 follow the plan for 2 that we have here.

1111

1112 Mr. Baka - Follow the plan to specify an actual height on the
1113 garage, which is stated in condition 2.

1114

1115 Mr. Bell - Okay.

1116

1117 Mr. Baka - Whether we amend condition 3 or not.

1118

1119 Mr. Blankinship - We can take that up at the time of discussion.

1120

1121 Mr. Bell - Okay. All right. Any other questions? Thank you, sir.

1122

1123 Mr. Lanphear - Thank you very much.

1124

1125 Mr. Bell - Does anyone else intend to speak to this application?

1126 [After the conclusion of the public hearings, the Board discussed the case
1127 and made its decision. This portion of the transcript is included here for
1128 convenience of reference.]
1129

1130 Mr. Baka - Mr. Chairman, I'll make a motion on CUP2015-00026.
1131 This is a conditional use permit request, it has a different standard. I'll make a
1132 motion that we approve this request on the fact that it does not adversely affect
1133 the health, safety, or welfare of the adjoining properties. My motion would
1134 include—I'm proposing to strike the words in condition #3 where it says "be
1135 limited to one story in height and," so that condition #3 on page 4 of your report
1136 would say: The detached garage shall provide a 20-foot front yard setback. I
1137 believe the difference in the grade elevation and the limited number of homes—in
1138 fact, there is only one existing home and it's adjacent—the adjacent properties,
1139 the one directly closest to this. I believe it lessens the impact. I don't see this
1140 adversely impacting the neighborhood. So that's the reason for my motion for
1141 approval with the change to condition #3. So there will be four conditions.
1142

1143 Mr. Bell - Do I hear a second to the motion?
1144

1145 Mr. Romers - I second it.
1146

1147 Mr. Bell - Is there any discussion?
1148

1149 Mr. Berman - You're saying there is no mention in the proposed
1150 conditions for that twelve feet below the main structure. Just keeping it very
1151 simple, strike the one-story height requirement, and just leave the 20-foot
1152 setback.
1153

1154 Mr. Blankinship - I was thinking about that afterward, Mr. Berman. What
1155 if we added something at the end of the sentence saying such that the ridge of
1156 the garage roof shall be twelve feet below the ridge of the main portion of the
1157 house?
1158

1159 Mr. Baka - I would be fine with adding that.
1160

1161 Mr. Blankinship - That way it doesn't become an enforcement problem,
1162 but it does write into the condition what was intended.
1163

1164 Mr. Berman - Do you feel the enforcement isn't difficult.
1165

1166 Mr. Blankinship - Right. I think that would serve both needs.
1167

1168 Mr. Berman - Again, the problem statement is that it doesn't look to
1169 be to scale.
1170

1171 Mr. Blankinship - Right. You want it to be lower.

1172

1173 Mr. Berman - Okay.

1174

1175 Mr. Baka - I would recommend adding that.

1176

1177 Ms. Harris - So how are we going to word that?

1178

1179 Mr. Blankinship - Let me get the report out so that I don't misspeak.
1180 Condition #3 will read something like: The detached garage shall provide a 20-
1181 foot front yard setback and the ridge of the garage roof shall be at least 12 feet
1182 lower than the ridge of the main portion of the dwelling. Something along those
1183 lines.

1184

1185 Mr. Romers - He also said that it would be at the exact same height
1186 as the lower portion, if that helps the wording in some way.

1187

1188 Mr. Berman - He's at 12 feet 9 inches right now, so that should be
1189 okay.

1190

1191 Mr. Blankinship - Yes.

1192

1193 Mr. Bell - Let's go ahead and vote on it. All in favor say aye. All
1194 opposed say no. The ayes have it; the motion passes.

1195

1196 After an advertised public hearing and on a motion by Mr. Baka, seconded by
1197 Mr. Romers, the Board **approved** application **CUP2015-00026, ROBERT**
1198 **LANPHEAR's** request for a conditional use permit pursuant to Section 24-
1199 95(i)(4) of the County Code to allow an accessory structure in the front yard at
1200 506 Old Providence Circle (CARTER'S RIDGE) (Parcel 754-738-8730) zoned
1201 One-Family Residence District (R-3) (Tuckahoe). The Board approved the
1202 conditional use permit subject to the following conditions:

1203

1204 1. This conditional use permit applies only to the construction of an accessory
1205 building in the front yard. All other applicable regulations of the County Code
1206 shall remain in force.

1207

1208 2. Only the improvements shown on the plot plan and building design filed with
1209 the application may be constructed pursuant to this approval or as amended by
1210 these conditions. Any additional improvements shall comply with the applicable
1211 regulations of the County Code. Any substantial changes or additions to the
1212 design or location of the improvements shall require a new conditional use
1213 permit.

1214

1215 3. The detached garage shall provide a 20 foot front yard setback, and height of
1216 the garage shall be as shown on the building design filed with the application,

1217 such that the ridge of the garage roof will be 12 feet lower than the ridge of the
1218 two-story portion of the dwelling.

1219
1220 4. All exterior lighting shall be shielded to direct light away from adjacent
1221 property and street.

1222
1223
1224 Affirmative: Baka, Bell, Berman, Harris, Romers 5
1225 Negative: 0
1226 Absent: 0

1227
1228
1229 Mr. Blankinship - All right. Mr. Chairman, we can go back up to the first
1230 case on the agenda.

1231
1232 **[At this point, the transcript continues with the public hearing on the first**
1233 **case on the agenda.]**

1234
1235 **VAR2015-00007 MIKA AND HENNA E. ELOVAARA** request a
1236 variance from Sections 24-95(c) (4) and 24-95(i)(1) of the County Code to allow
1237 the existing improvements to remain at 1804 Rockwood Road (BERKELEY
1238 PARK) (Parcel 761-746-9054) zoned One-Family Residence District (R-3)
1239 (Tuckahoe). The front yard setback is not met. The applicants propose 29 feet
1240 front yard setback and steps extending 11 feet, where the Code requires 35 feet
1241 front yard setback and allows steps extending 10 feet. The applicants request a
1242 variance of 6 feet front yard setback and steps extending 1 foot.

1243
1244 Mr. Blankinship - Everyone has already been sworn in. So Mr. Gidley, if
1245 you would proceed.

1246
1247 Mr. Gidley - Thank you, Mr. Chairman, members of the Board.
1248 This is a request for a variance to allow the existing covered front porch to
1249 remain at 1804 Rockwood Road. The case was deferred from last month's
1250 meeting to allow the homeowner and the contractor, the applicant, to attend
1251 today. Before I go over the legal basis of the case, I'd like to briefly review some
1252 of the other homes that were discussed during the hearing last month.

1253
1254 In your packet, you should have received a memo titled Rockwood Road
1255 Renovations. In addition to the subject property, there were three other homes
1256 that were discussed—next door at 1802 Rockwood Road and down the road at
1257 1818 and 1822 Rockwood Road. Staff has reviewed all three of these homes to
1258 determine their status.

1259
1260 In each of the cases, the Permit Center at the time of building permit review
1261 noted the front porch as proposed appeared to go into the front yard setback and
1262 asked the applicant to go ahead and make adjustments to the plan so it would

1263 comply with the required setback. The applicant subsequently made these
1264 adjustments and received building permit approval.

1265
1266 In the case of 1802 Rockwood Road, for whatever reason, the applicant did not
1267 build it as per the plans. There is a violation of the setback at 1802 Rockwood
1268 Road similar to the subject property today.

1269
1270 At 1818 Rockwood and 1822 Rockwood, the adjustments as shown on the
1271 building permits were made, and both homes comply with the setbacks. So 1818
1272 and 1822 Rockwood comply with the setback; 1802 and 1804 do not comply with
1273 the setbacks. Since there was different information given out during the hearing
1274 last month, I just wanted to clarify that for the record.

1275
1276 As for today's case, the original home was built in 1953. In 2013, the home was
1277 purchased by Mr. Velasquez, a general contractor who applied for and received
1278 a building permit for additions to the first and second floors, including adding a
1279 covered front porch. During the building permit review, a detailed plot plan was
1280 not submitted. Instead, the Permit Center provided this computer-generated map
1281 of the existing home showing the required setbacks. These are noted below in
1282 the lower right-hand corner. This shows the structure meeting the 35-foot building
1283 setback and building line requirements, although it's not clear on it as to whether
1284 or not the covered front porch would be included.

1285
1286 A business partner of Mr. Velasquez briefly owned the home before the
1287 applicants expressed interest in purchasing it. As part of the due diligence
1288 process, the applicant's attorney obtained a survey of the property that showed
1289 the front porch violated the front yard setback. You can see the survey right here.

1290
1291 In addition to the required 35-foot front yard setback, there is also a 35-foot
1292 building line on the subdivision plat. If the variance is approved, the applicants
1293 will also need to apply to the Board of Supervisors to vacate this building line.

1294
1295 The key question in considering a variance is does the Zoning Ordinance
1296 unreasonably restrict utilization of the property or would the variance alleviate a
1297 hardship due to a physical condition related to the property or its improvements
1298 at the time of the effective date of the ordinance. There is no unreasonable
1299 restriction since the property contains a buildable area that is eighty feet deep.
1300 While having the remove the front porch would arguably constitute a hardship to
1301 the applicant, a variance may only be granted for the property or its
1302 improvements at the time of the effective date of the ordinance. Since the front
1303 porch did not exist at the time of the effective date of the ordinance, this may not
1304 be a basis for a variance.

1305
1306 The deputy county attorney mentioned five additional tests that must be met for a
1307 variance. The first one is the property interest for which the variance is being
1308 requested was acquired in the good faith and any hardship was not created by

1309 the applicant. Although the applicant was aware of the need for the variance at
1310 the time of purchase, the applicant did not cause the setback violation; that was
1311 caused by the contractor, Mr. Velazquez.

1312

1313 Two, the granting of the variance will not be a substantial detrimental impact to
1314 adjacent or nearby property. As I mentioned, there is a 35-foot building line in this
1315 subdivision. Other than the inside of a curve, all the homes along Rockwood
1316 Road were built at the 35-foot building line. That does create a certain amount of
1317 consistency within this neighborhood. And the homes at 1802 and 1804, by
1318 encroaching into this, do go against this arrangement.

1319

1320 The condition of the property is not so general or recurring so as to make
1321 reasonably practicable the formation of a general regulation or amendment to the
1322 ordinance. The Zoning Ordinance allows a six-foot-wide porch to encroach four
1323 feet into the required front yard setback. All the homeowners on the street would
1324 be subject to that same requirement if they wanted to build a front porch. As a
1325 result, it would be appropriate for the Board of Supervisors to amend the Zoning
1326 Ordinance to allow for a larger front porch encroachment rather than for the BZA
1327 to grant variances each time a homeowner decided they wanted a porch larger
1328 than that permitted.

1329

1330 The granting of the variance does not result in a use that is not otherwise
1331 permitted. Since the property is zoned residential, this is not a use variance. A
1332 home is a permitted use in this district.

1333

1334 And finally, the relief or remedy sought by the variance application is not
1335 available through a special exception or modification. Neither of these is an
1336 option under our zoning ordinance.

1337

1338 In conclusion, there is no unreasonable restriction on the use of the property. Any
1339 hardship that exists results from the unlawful addition of the porch, not from a
1340 physical feature at the time of the adoption of the Zoning Ordinance. Instead, it
1341 occurred after the Zoning Ordinance was already in effect. So that cannot be the
1342 basis for a variance. The situation is arguably generally occurring since each
1343 home on the block is subject to the 35-foot front yard setback requirement and
1344 the 35-foot building line. As a result, staff recommends denial of the variance.

1345

1346 This concludes my presentation. Are there any questions I can answer?

1347

1348 Mr. Bell - Any questions?

1349

1350 Ms. Harris - Mr. Gidley, in the past, we have always said that we
1351 judge each case by its own merits. We make decisions on this Board that apply
1352 to a specific parcel of land, not the complete neighborhood of the various
1353 subdivisions and the homes that we've dealt with. We're dealing with one case
1354 here. According to the application, we're dealing with one case. If the owners

1355 wanted to seek a variance for the other cases, they would have to go through this
1356 same process that they did with this case. So in my way of thinking, we're only
1357 dealing with one case. If there's something else I need to know, I really need it to
1358 be revealed right now.

1359
1360 Mr. Gidley - I think it's a unique case in that the improvements—I
1361 haven't heard anyone who doesn't like them or doesn't appreciate them. I think
1362 they made the home a lot better. The concern, I guess, would be, as the deputy
1363 county attorney noted, the purpose of a variance is to make sure properties are
1364 treated equally, not to give an advantage to one homeowner over another. In this
1365 case, the other homeowners on the block would not be allowed to encroach five
1366 feet into the front yard setback, whereas these two are being allowed, arguably,
1367 to do so, even though what they built was in violation of the Zoning Ordinance.
1368 So it does arguably give them preferential treatment, whereas someone who
1369 came in and said I want to do this. I haven't done this, but I want to do this. They
1370 might very well be denied. And in fact, they, too, would have to go to the Board of
1371 Supervisors and get that 35-foot building line eliminated. So there is an equity
1372 issue here, I guess is where staff is coming from.

1373
1374 Ms. Harris - But you know, I wonder about the Permit Center
1375 approving this request. And then I see a disclaimer—I call it a disclaimer—on the
1376 plat that says something like the owner has field tested all of this. So to me, it
1377 seems that we have two parties who are to blame for this situation that has been
1378 created—the owner as well as the Permit Center that permitted this to go
1379 unchecked. And I don't know if other cases that will come before us will be
1380 unique in this respect, but I see this as a unique case for that reason.

1381
1382 Mr. Gidley - That's certainly a valid point on this property. I would
1383 tend to agree with you. The potential problem is next door they have the same
1384 issue, and in that case, the Permit Center was correct in its review. They made
1385 the applicant resubmit the documents, and the applicant specifically stated it's
1386 set back at thirty-seven feet, which it was not when it was actually built. So in that
1387 case, it's going to be—you would potentially be in a bind. How do you grant that
1388 person a variance where there was no mistake by the Permit Center? And yet
1389 how do you turn them down but allow this one? So it is a difficult situation.

1390
1391 Mr. Bell - When it comes also to the number of homes earlier
1392 that we talked about in this Berkeley subdivision, there are 131 dwellings, and
1393 121 of them do match the 35-foot setback. We've had two homes that were built
1394 that fit this description that were built right—1822 and 1818. And then we have
1395 two homes that were built incorrectly. One of them did submit his plans correctly;
1396 the other one was submitted incorrectly. Was that a mistake or was that
1397 something else. So when you put all of that together, what will be the effect now
1398 if we go ahead and approve the variance for this house? How is it going to affect
1399 all of the other homes? Can we deny those? If we wanted to approve this for all

1400 the homes in that area, it would have to go back to the Board of Supervisors,
1401 wouldn't it.

1402

1403 Mr. Gidley - Yes sir, to vacate the building line.

1404

1405 Mr. Romers - Is it vacated or just move it?

1406

1407 Mr. Blankinship - The building line, the term that they use for that is
1408 vacation.

1409

1410 Mr. Romers - Okay. Can I ask a question?

1411

1412 Mr. Bell - Go ahead, sure.

1413

1414 Mr. Romers - I'm a little confused about 1802, the neighboring
1415 property. Can you explain to me how that came to be? Was that a variance? Was
1416 that something granted? From what I'm reading, it looks like the Planning
1417 Department thought something was being approved that protected the property
1418 line, and then ultimately, based on what they'd shown and how it was built, it
1419 violated the line by the size of the porch and/or steps. How did that happen?
1420 How did we let that happen?

1421

1422 Mr. Gidley - Okay. In the case of 1802, the Permit Center was
1423 reviewing the building permit, and they noticed that it appeared the front porch
1424 did not meet the setback. And so they went to the applicant, notified him of this,
1425 and said you need to check into this and submit us plans showing that it meets
1426 the setback. The applicant subsequently submitted a plot plan showing the front
1427 porch would be thirty-seven feet from the property line, and he said that was
1428 field-verified. And so once the applicant came in and put in writing this front porch
1429 will be thirty-seven feet from the property and I field-verified it, the Permit Center
1430 went ahead and approved that addition. Since it was just an addition to a home,
1431 there's no certificate of occupancy issued, per say, and so there is no zoning
1432 inspection to confirm that what the builder builds actually meets the setback.

1433

1434 Mr. Romers - And if I could inject, at that point, the inspectors that
1435 supervise the construction of that property have no obligation to ensure that it's
1436 sitting on the property where it's supposed to be?

1437

1438 Mr. Gidley - The building inspectors go out and review it according
1439 to the building code to make sure that it complies with the building code. They do
1440 not check for zoning compliance, no sir.

1441

1442 Mr. Romers - So I guess to translate what I think I just heard, if they
1443 show you on a piece of paper that it's compliance and you approve it, but then
1444 they put it wherever they want it, no one follows up on that during the
1445 construction process to say before you build it, you can't have it here, while we're

1446 inspecting the foundation or any other part and have a chance to do this. So this
1447 house was built, and others could be built that way all day long, including the
1448 house that we're discussing.
1449

1450 Mr. Gidley - As I said, when it comes to a new home that is
1451 constructed, those do have zoning inspections since a certificate of occupancy is
1452 needed. And typically on those, an as-built survey is requested to ensure
1453 setbacks are met. When you're looking at an addition for an average homeowner
1454 out there, when they do an addition there is no zoning inspection since a
1455 certificate of occupancy is not required. In those cases we typically do not make
1456 them go through the process of having to obtain a survey to show they meet
1457 setbacks.
1458

1459 Mr. Romers - Okay, thank you.
1460

1461 Mr. Gidley Yes sir.
1462

1463 Mr. Bell - One more question, please. Going through there, you
1464 have several stoops on the other homes with the four-foot steps going out. I
1465 noticed there were some that were wider than others. How far out can they build
1466 a stoop on the front of their house? For instance, this particular house, if you
1467 would take the roof off and make it like a pergola all the way across, and then put
1468 your stoop in the middle with that, would that be legal?
1469

1470 Mr. Gidley Yes sir. In the case where a home is built at the front
1471 yard setback, which is thirty-five feet, you can have a covered front porch up to
1472 six feet in width, and that can encroach up to four feet into the front yard setback.
1473 So I guess the answer to your question, then, is they can have a six-foot-wide
1474 covered front porch.
1475

1476 Mr. Bell - So they couldn't carry it all the way across.
1477

1478 Mr. Gidley They could not go all the way across.
1479

1480 Mr. Blankinship - And if you have just a stoop with no roof over it—
1481

1482 Mr. Gidley Then they could go up to ten feet into the front yard
1483 setback.
1484

1485 Mr. Blankinship - And can go the full width of the building.
1486

1487 Mr. Bell - I was just thinking. If they have to move it, what
1488 options aesthetic-wise might be there. That's why I asked the question. Any other
1489 questions?
1490

1491 Mr. Romers - If we were clarifying where you went with that, sir, I
1492 guess if the stoop in itself, the size of the stoop itself is within compliance; the
1493 roof is not. And the setback is based on the roof, not the stoop. So if the roof was
1494 reduced in size to be six feet wide and four feet deep overtop of the existing size
1495 of that stoop, everything would come into compliance. Did I say that correct?
1496
1497 Mr. Gidley Yes sir, you did.
1498
1499 Mr. Blankinship - Is this the one where the steps extent one foot too
1500 far?
1501
1502 Ms. Harris - Yes.
1503
1504 Mr. Gidley Actually, it's .41 feet for the front steps.
1505
1506 Mr. Blankinship - So there would also have to be some allowance made
1507 for the existing steps.
1508
1509 Mr. Gidley Change to the steps, yes. The steps are roughly five
1510 inches out. But I think that could be worked around.
1511
1512 Mr. Romers - Yes, thank you.
1513
1514 Ms. Harris - Mr. Gidley, on the application for the variance, I
1515 noticed that the applicant said that they have 29.89 feet for that porch—I call it a
1516 porch. And the code required thirty-five feet. So the variance needed is 5.11 feet.
1517 But I thought that we allowed—according to code, you can extend up to four feet.
1518 Is that correct?
1519
1520 Mr. Gidley Yes ma'am. I see where you're going with that. A
1521 covered front porch, as you note, can extend up to four feet into the required
1522 front yard setback on the condition that it is not more than six feet in width. Since
1523 this porch is the entire width of the home, it is not subject to that exception.
1524
1525 Ms. Harris - I know. So does that mean that they're just 1.11 feet
1526 in violation? If you will allow an extension up to four feet and this one needs 5.11.
1527
1528 Mr. Blankinship - That four-foot allowance does not apply here because
1529 this porch is more than six feet wide. That only applies if the porch is six feet
1530 wide or less.
1531
1532 Ms. Harris - So if it is six feet wide, then they would allow up to
1533 four. But if it's larger than that, there is no allowance at all?
1534
1535 Mr. Blankinship - Yes ma'am, that's correct.
1536

1537 Mr. Gidley Unless it's uncovered. If there's no roof, then it can go
1538 ten feet.

1539
1540 Ms. Harris - Thank you.

1541
1542 Mr. Baka - To summarize the staff report—and I'd like to hear the
1543 applicant in a second—it's a strict variance process of five steps. The third step,
1544 you mentioned implied that it was of a general or recurring nature and that it
1545 might be more appropriate for the Board of Supervisors to consider some type of
1546 an amendment to the Zoning Ordinance, especially when I heard Ms. Harris say
1547 that it appears you could have nothing more than a stoop six feet wide, like a
1548 front stoop rather than a true front porch that extends four feet into the setback.

1549
1550 So I guess I just have either an open-ended question for Mr. Gidley, or I see
1551 Mr. Emerson, the Director of Planning, here today. For either of you gentlemen,
1552 is there an opportunity for a text amendment to address this greater issue of
1553 homes that are aging in Henrico County, homes that were built in the 1950s—this
1554 one was in '52 or '54, and the builder did a good job or sprucing it up. It's
1555 improperly permitted. But when you look at rehabbing older neighborhoods and
1556 that issue countywide, is this for either of you gentlemen? Is this a candidate for
1557 a text amendment?

1558
1559 Mr. Emerson - Mr. Baka, Board members, I am Joe Emerson. I'm the
1560 Director of Planning for the County. In reference to your question, Mr. Baka, I
1561 think that is, of course, in the purview of the Board of Supervisors. It certainly
1562 could be a request that could come from this body to them that they consider
1563 some form of a text amendment to address these types of structures and others
1564 in the County. This certainly won't be the only location that you will have this type
1565 of issue where the zoning code doesn't necessarily address improving older
1566 structures that have been built to the full building envelope of what was allowed
1567 under the code for the lot size at that time.

1568
1569 Certainly, we have a lot of revitalization efforts throughout the County. If this body
1570 would like to forward that request to the Board of Supervisors, they could
1571 possibly consider that and direct staff to examine that. But that would be in the
1572 purview of the Board.

1573
1574 I think the process would be if you were to take action on this today and it were a
1575 denial, I think along with that I would suggest that the Board request staff draft a
1576 letter to the Board for the signature of the Chairman requesting that the Board
1577 consider that type of text amendment for these situations.

1578
1579 Mr. Baka - Especially in this aging neighborhood, I don't want to
1580 vote on a matter today that would require that the applicant remove or rip off their
1581 front porch where they've made good effort to improve this neighborhood. I
1582 appreciate your comments and thank you.

1583
1584 Mr. Emerson - Certainly. And if the Board were to take that action, as
1585 staff we would hold back from enforcement action until we determined exactly
1586 what the direction of the Board of Supervisors would be.
1587
1588 Mr. Romers - May I ask another questions, please?
1589
1590 Mr. Bell - Sure, go ahead.
1591
1592 Mr. Romers - This may be for Mr. Gidley. I thought I read in here
1593 somewhere on this home that—I guess this home has been rebuilt on an existing
1594 foundation? Can you explain that process here?
1595
1596 Mr. Gidley - Yes sir. In this case, the home had additions made to
1597 the first and second floors. Some of the homes down the street were demolished
1598 down to the foundation and then rebuilt on top of them.
1599
1600 Mr. Romers - But not this house.
1601
1602 Mr. Gidley - Not this one, no sir.
1603
1604 Mr. Romers - So the main structure remains in place where it is with
1605 improvements going vertical.
1606
1607 Mr. Gidley - To the first and second floor, yes.
1608
1609 Mr. Romers - Yes, okay.
1610
1611 Mr. Blankinship - The building permit description is “new addition, two-
1612 story.” It was not a demolish and rebuild; it was an addition to an existing home.
1613
1614 Mr. Romers - So the existing foundation was on the property line,
1615 though, when they were renovating the house?
1616
1617 Mr. Blankinship - Yes sir.
1618
1619 Mr. Romers - And so if they wanted a porch, and they did it in
1620 advance, and went for the variance or whatever they needed to do, either way, if
1621 they wanted a porch larger than six-by-four feet they would have needed
1622 permission to add it before they did it.
1623
1624 Mr. Blankinship - Yes sir, exactly.
1625
1626 Mr. Romers - Okay.
1627
1628 Mr. Bell - Any other questions? Thank you.

1629
1630 Mr. Gidley - Thank you, Mr. Chairman.
1631
1632 Mr. Blankinship - Mr. Kastenbaum?
1633
1634 Mr. Gray - Bob Kastenbaum isn't here.
1635
1636 Mr. Blankinship - Oh, I'm sorry.
1637
1638 Mr. Gray - Good morning, everyone. From my understanding,
1639 you guys really wanted to get some time to meet the players here. So if you'd like
1640 to meet them first—I would like to respond to some of the discussion, so should I
1641 proceed with that?
1642
1643 Mr. Blankinship - Yes. Tell us your name again, please.
1644
1645 Mr. Gray - My name is George Gray.
1646
1647 Mr. Berman - A-y or e-y?
1648
1649 Mr. Gray - A-y. Thank you.
1650
1651 I kind of want to start—at the center of this is kind of the character, the general
1652 character of the neighborhood. I think in many ways this hardship kind of results
1653 from the location of the home right up against the setback line. To construct the
1654 porch, they had to encroach upon the front yard setback. In looking around the
1655 neighborhood—I know Paul had put this up on the screen, but I'm circling some
1656 areas—
1657
1658 Mr. Blankinship - We need you to speak to the microphone.
1659
1660 Mr. Gray - I've circled some areas there. Those homes were not
1661 built directly on the setback line. Essentially what I'm trying to point out here is
1662 that within view of the subject property there are four or five, maybe six homes
1663 that are set back maybe double. Just by the eye, they look to be at least double
1664 what this home is set back. And so for many of the homes in the area, they would
1665 not experience this hardship in trying to make improvements to the porch. I wish I
1666 had a pointer, and you can't see it very well, but essentially you can see where
1667 the subject property is, 1804. Up Rockwood we see—where I've circled, if you
1668 move up. Thank you. And then across the street. That whole section of houses is
1669 set back what looks to be double. And that's what it looks like when you drive
1670 through the neighborhood. This house on the corner of Tallwood and Rockwood.
1671 And then across the street there, there's a line of houses that is set back almost
1672 double. And actually, the home at the intersection of Tallwood and Rockwood on
1673 the lower end of the paper has a fantastically looking covered front porch on it.
1674

1675 This also goes to the point that the neighborhood has quite a bit of variance in
1676 the character. And so not all of these houses really are situated the same. You
1677 know, going down the line, their driveways are oriented differently. Some homes
1678 don't even have a driveway. Some you have the side where you pull off on the
1679 road to park, and then some you go up. Some of them have steps; some of them
1680 have small, covered porches. And then as I've pointed out here, some of them
1681 are set back far enough that they can utilize their front yard space in a number of
1682 different ways.

1683

1684 Essentially, because the home is constructed right on that setback line, when
1685 they constructed the porch, and when they did so with the permission of the
1686 County, it substantially limited their options for improving the facade of their
1687 home. Had they been aware of—or had the parties involved been aware of the
1688 location of the structure relative to the setback, they could have exercised a
1689 much more economic solution to improving the property. That's where we are
1690 now, asking for a variance because of the hardship that condition creates.

1691

1692 Mika, the homeowner, will elaborate on this also, that going into this process—
1693 Bob Kastenbaum handled the settlement, and I worked on the file as well. We
1694 were aware of the violation, and we took a lot of time to discuss his options. In no
1695 way did he come into the variance application process thinking it was going to be
1696 an automatic granting or solution. He really just fell in love with the home, and it
1697 fit his family's needs, and so he chose to close on the property knowing that he
1698 would have to apply for a variance but, you know, hoping that it would be
1699 granted.

1700

1701 That's really all I have to say. Again, I'll just stress that it does improve the
1702 neighborhood. But also, I think that that particular home is in a unique situation
1703 relative to quite a few of the properties that surround it.

1704

1705 I'm happy to answer any questions.

1706

1707 Mr. Baka - Mr. Gray, could you clarify your relationship with the
1708 applicant?

1709

1710 Mr. Gray - I'm the applicant's attorney. I apologize. I work for
1711 Kerns & Kastenbaum. Bob Kastenbaum is essentially my boss, and he prepared
1712 the application.

1713

1714 Mr. Berman - A couple of clarifications to your statement, Mr. Gray.
1715 First off, I do see in the neighborhood that there are different setbacks, that's
1716 true. But this block that the house in question is on, the 1800 block of Rockwood
1717 Road, there is a very distinct build line that all the houses are up against. If
1718 everybody was allowed to add a porch or every other house, it would not be a
1719 clean line any longer, and you understand that.

1720

1721 And at risk of rehashing what we did last month, and what Mr. Baka stated
1722 earlier, these improvements are great, and it does benefit the neighborhood. But
1723 basically, the approach taken seems like it was easier to beg for forgiveness than
1724 to ask for approval. While nobody wants the applicant to have to rip anything out,
1725 basically it shouldn't have been built without permission. I'm just making that
1726 statement because while we feel bad and we recognize the benefit, it just was
1727 not handled the right way.
1728

1729 Mr. Romers - A quick question. At one point, Mr. Gray, in your
1730 statement, I think you said permission from the County at one point. What
1731 permission was that?
1732

1733 Mr. Gray - I believe that this particular property, 1804, as
1734 opposed to 1802, as I'm understanding now was built not according to the
1735 drawings.
1736

1737 Mr. Romers - Which one was not built according to the drawings?
1738

1739 Mr. Gray - 1804. And Paul might want to clarify that if I'm stating
1740 something that's inconsistent.
1741

1742 Mr. Romers - The property in question was not built according to
1743 the drawings?
1744

1745 Mr. Gray - The property in question was built according to the
1746 drawings, from what I understand. So they were—and the builder is here, I
1747 believe, and you may want to talk to him directly about this. But my
1748 understanding is that he submitted a plan and then a plan of design and that
1749 those drawings were approved, and he constructed it with a permit.
1750

1751 Mr. Romers - And it showed the porch?
1752

1753 Mr. Blankinship - That's the problem. There's a plot plan that shows
1754 everything meeting the setback. There's a building design that shows a front
1755 porch. The front porch doesn't show on the plot plan.
1756

1757 Mr. Romers - And the property line doesn't show on the building
1758 plan?
1759

1760 Mr. Blankinship - Right.
1761

1762 Mr. Romers - One document is not cross-referenced with the other?
1763

1764 Mr. Blankinship - Right.
1765

1766 Mr. Gray - Right. One of the documents that was submitted is—

1767
1768 Mr. Romers - So you had an approved building plan.
1769
1770 Mr. Gray - Yes sir.
1771
1772 Mr. Romers - Okay.
1773
1774 Ms. Harris - Attorney Gray, I don't know if you can answer this
1775 question. Could this property have been built conforming to our Zoning
1776 Ordinance in Henrico County?
1777
1778 Mr. Gray - I'm not sure I—could it have—?
1779
1780 Ms Harris - Conformed. I need to talk to the builder. Is the builder
1781 here?
1782
1783 Mr. Blankinship - Yes.
1784
1785 Ms. Harris - Okay. Let's just ask the question of the builder.
1786
1787 Mr. Gray - Okay. If I can maybe respond to where I think you're
1788 going from here. It's kind of our position that everything was done properly and
1789 not with any intentional intention to mislead anyone, as far as I can tell. And I've
1790 spoken with the builder's attorney also, and she's aware of everything that
1791 happened. It's her feeling that it was just a misunderstanding.
1792
1793 Kind of the hardship that's resulted from this is that the builder could have
1794 exercised a number of options prior to the construction of the porch to improve
1795 the property in a way that would not require us to be here today asking for a
1796 variance.
1797
1798 Ms. Harris - So the answer to the question was yes.
1799
1800 Mr. Blankinship - He could have, yes.
1801
1802 Mr. Romers - It was a good answer, though.
1803
1804 Mr. Blankinship - It was.
1805
1806 Ms. Harris - Thank you.
1807
1808 Mr. Gray - Thank you.
1809
1810 Mr. Bell - Any other questions for this gentleman? Thank you,
1811 Mr. Gray.
1812

1813 Mr. Gray - Thank you.

1814

1815 Mr. Bell - Anybody else wish to speak?

1816

1817 Mr. Elovaara - Good morning, ladies and gentlemen. My name is
1818 Mika Elovaara—E-l-o-v-a-a-r-a. This is my wife, Henna, and our two younger
1819 children. Our oldest daughter is at Tucker High School right now. She is going
1820 through freshman orientation at Advanced College Academy. I'm having a hard
1821 time believing that my oldest daughter is a freshman.

1822

1823 I don't have as much facts as I have just a context for why we're here. First of all,
1824 I apologize for not being here in the first hearing. At that time when everything
1825 started to happen in May, we'd already been fortunate to have airline tickets to
1826 go home, which for us is Finland. Henna's dad got us tickets and we went to visit
1827 family. When this happened, we still needed to go. We had the understanding
1828 that representation would be acceptable. But it was in no way a disregard to the
1829 importance of the issue, obviously.

1830

1831 So a little bit about why we are here. We're legal, permanent residents of the
1832 United States of America. I came here for college in 1995, graduated, moved
1833 back to my home country, Finland, and always thought it would be great to return
1834 one day and actually see what life is like in America. I was here for college, and
1835 everybody knows that college life is not real life; it's college life.

1836

1837 In 2007 after I finished my PhD, I was fortunate enough to get a job offer from
1838 UNC Wilmington, my alma mater. We moved back here thinking that we're going
1839 to go back in two years maybe. It's going to be a great experience for the kids.
1840 And eight years later, we're still here. It's a land of opportunities for us, for sure.
1841 And we have an American here as well. He's the first one to tell you when people
1842 ask us from our accents where we're from. And we say Finland. And what do you
1843 usually say? Yep. And he says, "But I'm from America."

1844

1845 That's probably more than you usually hear on an occasion like this, but it's
1846 important for perspective because we're here away from home, but we're looking
1847 for a home.

1848

1849 We moved to Richmond in 2014 from Minnesota, as I was offered a job at the
1850 University of Richmond. I'm the associate head coach for the women's soccer
1851 team there. Everything happened quickly that summer. Henna and the kids are
1852 already in Finland, and I moved the belongings of the family here, and we rented
1853 a home, which is great—it was a townhome—but we knew that we would be
1854 looking for a home where we could settle down. After the season ended in 2014,
1855 we spent about four months looking for the right type of home. For us, the criteria
1856 were numerous. They had a lot to do with having three children who are very
1857 active. And also the two of us leading lives where sometimes it's quicker to
1858 change cars than to get the kids from one car to the other.

1859
1860 Proximity to many places that are important to us, including the University of
1861 Richmond and the gym where Henna works and the kids go. But also the
1862 character of the neighborhood. With what we can afford and what we needed for
1863 size and the yard, it wasn't easy. When something became available, it was gone
1864 before we even had a showing. You deal with the homes in this town and in this
1865 County, and you know the area so well that you know that those that are very
1866 attractive to families with children, they go fast.

1867
1868 We were in search for a home, and finally found one that we felt that we could
1869 afford, and would have the room, and would have what we wanted as we hope to
1870 settle here in Richmond. One of the things was the character, the feeling that you
1871 get when you go to an older neighborhood. As you've already mentioned, most of
1872 the houses were built in the 1950s. One of the things that we fell in love with is
1873 that we really, really have to slow down and crawl to drive because there are so
1874 many kids around. And you don't see that. Even when you have neighborhoods
1875 where you have a lot of families with children, the children are in their yards and
1876 they have play dates. But you don't see that activity. For us with three children,
1877 that was one of the many things that appealed to us.

1878
1879 As we started going through the paperwork and process of actually hoping to
1880 close on the home, it was the week of the closing when the survey was brought
1881 to our attention and the violation of the setback, obviously, as part of that. From
1882 my perspective, we were told that you should do that, you should do the survey,
1883 but you don't have to do that. Well for me, if it's something that I should do and
1884 someone who is a professional in that, then I do that.

1885
1886 Based on the information available to us, everything was done with the
1887 permission of the County. That was the reason why we willingly and knowingly
1888 took the risk of okay, let's close on the home because we fell in love with it and
1889 we've looked for a home for so long. But since based on the information available
1890 to us, it was done with the permission of the County, it seems reasonable that
1891 there would be a chance a variance could be granted. But as I mentioned, we
1892 knew the risk involved. We knew that it may not, because it's a variance. There's
1893 a reason why there are codes and rules and restrictions. But it is a risk that we
1894 took because we wanted to move in there. We didn't want to back out from what
1895 we thought was going to be a home for us, children's schools, districts—
1896 everything was in place. We've already left our home country across the Atlantic
1897 Ocean to come here. And then we thought if—the worst case scenario is that our
1898 house doesn't look the way that we want it to look, but it's a home. It's still the
1899 same home, because we make it home.

1900
1901 So we're here hoping that we get to keep everything. And we know that if that
1902 roof goes, even though it's just a roof, it makes a huge difference. We know that
1903 it makes a huge difference financially as well in terms of any possible future sale

1904 or resale. We're aware of all of that. But I don't know if you can put a price on
1905 something where you find a home like that.

1906
1907 That's why we're here. That's why we're here applying for a variance. I apologize
1908 for the rambling. I had notes that I didn't look at. And I welcome any questions
1909 about anything so that you have the information you need.

1910
1911 Mr. Bell - Questions, anybody?

1912
1913 Mr. Baka - First of all, I appreciate your comments. You had
1914 mentioned that you thought everything was taken of by the County and had
1915 permits. I appreciate you saying that. Basically, Mr. Tokarz, the County attorney,
1916 earlier pointed out people acquiring property in good faith. It sounds similar to
1917 what you did.

1918
1919 Mr. Elovaara - Right.

1920
1921 Mr. Baka - You acquired it in good faith. He mentioned it's okay
1922 for someone to buy the property, for someone to know that it's in violation, but
1923 then that they don't actually go ahead and make any further steps to violate the
1924 ordinance further. Those were the three items he mentioned. So first of all, thank
1925 you and your family for appearing. It's my assertion, I understand you acquired
1926 the property in good faith. So thanks.

1927
1928 Mr. Elovaara - Thank you, Mr. Baka.

1929
1930 Mr. Bell - Thank you, sir.

1931
1932 Mr. Elovaara - Any other questions? Thank you for your time.

1933
1934 Mr. Romers - Is the builder available?

1935
1936 Mr. Blankinship - The builder is available. That's one of the reasons we
1937 deferred this.

1938
1939 Mr. Blankinship - Mr. Velazquez, I notice that you came to the meeting
1940 a little bit late, and they had already been sworn in. So if you don't mind, would
1941 you raise your right hand, please? Do you swear the testimony you're about to
1942 give is the truth, the whole truth, and nothing but the truth so help you God?

1943
1944 Mr. Velazquez - I do.

1945
1946 Mr. Blankinship - Thank you.

1947

1948 Mr. Velazquez - Good morning, everyone. My name is Willie
1949 Velazquez. I used to be a Class B, and then I became a Class A contractor. But I
1950 had to shut down everything because—

1951

1952 Mr. Blankinship - Would you speak into the microphone?

1953

1954 Mr. Velazquez - Okay. Sorry about that. When I submitted the permits
1955 for the house, I understand that the porch wasn't included. But then we had an
1956 issue with the steps going up to the second floor. So then I had to submit another
1957 plan with the porch in it, and they approved it. They reviewed it and they
1958 approved it and they inspected the footings for me. And as far as my
1959 understanding, I was doing everything by code, doing it legal. So I didn't try to
1960 hide. I didn't try to build anything—I didn't try to hide anything from anybody.

1961

1962 The home was built for a reason. We came from the Richmond area. We have
1963 our kids. I have three little boys. The school system the kids were going to, we
1964 didn't like it. We didn't like the system. Our kids were attacked by some other
1965 kids a couple of times in the bus and in the school. So we found an opportunity
1966 with this house. Our friend sold the house to us for 50-some thousand dollars
1967 before we did the renovation. Because I was a builder, I was allowed to do the
1968 work without having to pay a lot of cost on the house. So we thought it was our
1969 dream house, and that's the reason we built the house.

1970

1971 I don't have any experience on this kind of business as far as paperwork. I know
1972 how to do the work. But as far as paperwork, I was a little—not aware of the
1973 things I needed to take care of. Some people that I work for, they created a
1974 contract for me, and I signed it. And because I didn't have the knowledge of what
1975 I was signing, I screwed myself. So we got Harmony lender to put up \$100,000 to
1976 my business company to get the home. And things went good, and then we had
1977 to sell the home. But we were not thinking to sell the home; we built the house for
1978 house. But things were not good for me and my business, so we had to make a
1979 move. Otherwise, it wouldn't be an issue because I built the house and was living
1980 there, with permits and everything.

1981

1982 That's all I have to say. I didn't try to hide anything. I tried to build the best I can
1983 for my family. As far as legal, I tried to do everything legal. I don't know what I did
1984 wrong in order to be here. So if there's anything I did wrong, I apologize because
1985 I didn't mean to do anything to create all this. So that's all I have to say.

1986

1987 Mr. Bell - There are four houses over there that look like yours.
1988 Did you build all four of them?

1989

1990 Mr. Velazquez - I built all four, yes.

1991

1992 Mr. Bell - Which did you build first, second, third, and fourth?

1993

1994 Mr. Velazquez - 1804 was the first one I built because that's the
1995 opportunity that we found to build our home. Then 1822. It was a neighbor that
1996 was knocking on my door every morning—help me build my house just like
1997 yours, please. And I did help him build a house, which it didn't end up very good.
1998 He still owes me like \$29,000 on that home. And he's not going to pay it; he told
1999 me. Because the way I signed the agreement, I didn't have any experience. So
2000 that's why.

2001
2002 I started seeing that people liked the home. So then the neighbor next door on
2003 1802 came to me and said do you want to buy my house. I was flipping houses,
2004 so I told him why not. I'll make another one just like the ones I made. The people
2005 like it. So that's how I ended up building four houses. And 1802 was the third,
2006 and then 1818 was the fourth.

2007
2008 1818 and 1822, those were built on the exact same foundation. We pulled
2009 permits to demo all the houses to the ground. The other one was just like a
2010 renovation. But I did put everything in writing as far as my understanding. And
2011 supposedly, I did what I had to do to build the houses. So I don't know what I did
2012 to make them state that I did things wrong, because I didn't mean to do
2013 anything.

2014
2015 Mr. Bell - Did you use the same building plats for all four of
2016 them?

2017
2018 Mr. Velazquez - Well, no. The thing is when I built 1804, I didn't even
2019 know what *plat* meant. I didn't even know what *survey* meant. So there was no
2020 way for me to tell where the property line ends. I didn't know what *setback* was,
2021 because I was beginning. I tried to do this by myself because I'm a hard worker.
2022 Soon as I got here, everything I've done is work. I can get your records and
2023 recommendations. I haven't got in any trouble with anybody. My record is clean. I
2024 don't drink. I'm a family guy. And that's all I do, try to work every day and take
2025 care of my family. That's probably why the measurements on those houses, on
2026 this front porch are a little mistake on the measurements. I just went by what the
2027 County requested. And I did what I think I thought I could do.

2028
2029 Now, before I do anything else, I don't think this is going to happen again
2030 because I know exactly what *setback* means and what *survey* means. So if they
2031 asked me to go to the property and measure it, I didn't know what I was
2032 measuring. But my only problem is I think the inspectors are in the right to
2033 measure before I do anything or before I complete anything and tell me you're
2034 doing this on the wrong spot. You can't do this. Nobody told me nothing, so I
2035 finished it off the way they approved it for me.

2036
2037 Mr. Bell - Any other questions?
2038

2039 Mr. Baka - Just briefly. If you built all four improvements and
2040 porches in the neighborhood, I do think it's a great improvement to the
2041 neighborhood overall, and I appreciate that. In the future, as we've already
2042 stated, we strongly encourage you make sure that it's in compliance with the
2043 codes, and the Permit Center will do the same as they crosscheck your plats and
2044 surveys.

2045
2046 I have no other questions at this time, just an observation. We're just trying to
2047 figure out the best method possible, if there is relief, whether this meets the state
2048 code for a variance, the five standards of the variance, or whether it could be a
2049 text amendment for Henrico's aging neighborhoods and some of the work that
2050 the County does in Community Revitalization, or if there's another method to
2051 allow for this porch to remain. So thanks for your time.

2052
2053 Mr. Velazquez - You're welcome Thank you.

2054
2055 Mr. Bell - Thank you. Is there anybody else that desires to
2056 speak to this issue? Thank you. Then we'll call the next case.

2057
2058 **[After the conclusion of the public hearings, the Board discussed the case**
2059 **and made its decision. This portion of the transcript is included here for**
2060 **convenience of reference.]**

2061
2062 Mr. Baka - I'm prepared to make a motion on this case,
2063 Mr. Chairman.

2064
2065 Mr. Bell - All right. Do I hear a motion?

2066
2067 Mr. Baka - Well, we need a little discussion first. I appreciate the
2068 improvements the builder made, not just on one house but on four houses in the
2069 neighborhood. It complements the efforts of Community Revitalization in the
2070 county. I think this is a county-wide issue. It's all across from Varina, Highland
2071 Springs, Tuckahoe. How do you deal with aging neighborhoods? I think this is
2072 almost better addressed—this particular situation is almost better addressed
2073 through a text amendment to the code to allow certain distances—I don't know
2074 what they'd be; staff can delve into that—to encroach for whether it's a porch, an
2075 open porch, a covered porch, steps, stairs, a stoop. It does sound like it would
2076 take a good deal of time to dig into that and also perhaps to investigate how
2077 other urban localities have dealt with such a thing in Virginia. The American
2078 Planning Association, Virginia Chapter, has probably got some great resources
2079 on that.

2080
2081 With that said, I don't want to rip this front porch off the building, but I think the
2082 appropriate motion to make on this would be that—I move that we deny the
2083 variance request on the grounds that it's recurring in other areas of the County.
2084 Along those lines, secondly, Mr. Chairman, I would recommend that maybe the

2085 Board vote on a matter, if it's a second vote, if we need to do that, that we
2086 strongly recommend that the Planning Commission and Board of Supervisors
2087 proceed with a text amendment to address this general issue I already described.
2088

2089 So my motion is, unfortunately, to deny the variance. And I hope that the County
2090 can find a more suitable remedy for this family in this situation.

2091

2092 Mr. Bell - If we deny it and then put the request for the research
2093 in the variance, how will it affect them in terms of keeping the porch on the front.

2094

2095 Mr. Blankinship - I believe I heard Mr. Emerson say that if the Board of
2096 Zoning Appeals writes a letter to the Board of Supervisors, as Mr. Baka
2097 suggested, then Mr. Emerson's position would be that we should hold off on any
2098 enforcement action until the matter is resolved one way or the other. I'll also say
2099 we don't have any enforcement action under way. No one has served a notice of
2100 violation or anything. They found out at closing that this was a problem, and they
2101 brought it to us. So it's not something where we're out there telling them that they
2102 need to tear it off.

2103

2104 Mr. Berman - What's the difference between a text amendment and
2105 vacating the subdivision building line?

2106

2107 Mr. Blankinship - Those are two completely different subjects. The text
2108 amendment that I think Mr. Baka is suggesting would be for the Board to add
2109 something to the Zoning Ordinance saying the setback is 35 feet, but if you have
2110 an existing dwelling built before 1960 that doesn't have a front porch, then you
2111 can add—or maybe the Board could grant by conditional use permit for a porch
2112 to be built onto that. Or just some way for the Board of Supervisors to address in
2113 the ordinance what they want to allow. The whole problem with a variance is the
2114 separate power thing where you're actually sitting in the place of the court
2115 essentially saying the Zoning Ordinance is unconstitutional as applied to this
2116 property. Whereas if the Board of Supervisors says we delegate to you the
2117 authority to grant a front porch under these circumstances, then you're looking at
2118 a different way of looking at things.

2119

2120 The vacation of the building line, prior to the 1960 Zoning Ordinance, building
2121 lines were often used in place of setbacks. And it was just a way of drawing it on
2122 the subdivision plat rather than putting it in any code at all. It almost functions as
2123 an easement in that it's considered to be a real estate property interest owned by
2124 the County that nobody can build beyond that line. That's why the term *vacation*
2125 is used because it's similar to vacating an easement. If the County actually held
2126 an easement saying you can't build forward of this line, then vacation would be
2127 the appropriate way to say we'll vacate ten feet of this easement or whatever.

2128

2129 So whether or not there is a text amendment, they would need to vacate that
2130 building line in order to keep that porch there. But again, we won't proceed with
2131 that until the other issues are resolved.

2132
2133 Did that make sense?
2134

2135 Mr. Romers - Would that be stated when they come back in here
2136 that while the outcome of this is being determined by the supervisors that
2137 enforcement will not occur during that period of time? Will somebody be saying
2138 that to them?

2139
2140 Mr. Blankinship - I can put that in a letter to them, if the Board would
2141 like that.

2142
2143 Mr. Romers - I think based on where they are from outside the
2144 country and whatnot, being more clear than not would be very appropriate for the
2145 moment so they don't have to be concerned.

2146
2147 Mr. Blankinship - That's a very good suggestion.

2148
2149 Mr. Romers - The other question I wanted to ask real quick on this,
2150 being as I'm newbie number one here, is if they had done this the other way and
2151 had asked for the variance before it was built, would we be ultimately going
2152 through the same process of turning it back to the County for a text amendment?
2153 Or would be just saying no?

2154
2155 Mr. Baka - That's a really good question.

2156
2157 Mr. Blankinship - The only time in my sixteen years that this Board has
2158 written a letter to the supervisors asking them—well, I guess there have been two
2159 times asking them to address an issue like that. One was allowing accessory
2160 structures in the side yards, because we've had several cases that were denied
2161 where people felt strongly that they wanted to approve them but couldn't. The
2162 other was the public street frontage issue that Ms. Harris mentioned earlier
2163 where this Board asked the supervisors to allow that by conditional use permit.
2164 The Board changed the code, but not in the direction that this Board really asked
2165 them to. But other than that, we've denied a lot of variances and not asked the
2166 Board to do anything about it.

2167
2168 Mr. Baka - I think perhaps we may have wanted to do something.
2169 I guess that's speculation. But one thing I'd say is that just historically—after
2170 World War II, a lot of homes were built very small, 800 square feet, 900 square
2171 feet, 1,000 square feet. And when you look at Henrico today, to help revitalize
2172 some of these neighborhoods, physical improvements and rehabbing and even
2173 porches and decks and stoops, that helps give better curb appeal. I would hope
2174 we would have thought of a text amendment like that. I can't say for sure.

2175
2176 Mr. Romers - I just keep thinking back to the story between the
2177 builder and it was his dream home that turned into the other family's dream
2178 home, and the language barriers involved in the process. So I have extra
2179 empathy for that, big time. These older neighborhoods. My first home was only
2180 800 square feet, in Sandston. But that we can find some way to help them
2181 improve—if they had done this through the proper channels, they would have
2182 been pointing at the home next door, big time.
2183
2184 Mr. Blankinship - Right.
2185
2186 Mr. Romers - As a reason that if that happened, why can't this
2187 happen. So again, I'm learning a lot here, but it's a question that plays out in my
2188 mind as to what the fairness of this whole situation is.
2189
2190 Mr. Bell - Been there. I lived at 1706 Rockwood Road for four
2191 years.
2192
2193 Mr. Blankinship - Right down the street.
2194
2195 Mr. Romers - The last thing I want to do is take that roof away from
2196 that family. I can tell you that.
2197
2198 Ms. Harris - Mr. Bell, [distorted audio]? We went to the discussion
2199 period before we got the second.
2200
2201 Mr. Bell - I'm going to ask for that.
2202
2203 Ms. Harris - Because I have some discussion.
2204
2205 Mr. Bell - Once again, Greg, could I ask you for the motion?
2206
2207 Mr. Baka - Okay. The motion is to deny VAR2015-00007 for the
2208 reason that this situation would appear to be general and recurring county-wide,
2209 not just in Rockwood Estates. Coupled with that motion is a strong
2210 recommendation that this BZA Chairman sign a letter or draft a letter to the
2211 Planning Commission or the Board of Supervisors to recommend strongly for a
2212 text amendment to allow for certain encroachments in Henrico's aging
2213 neighborhoods that would include things such as, but not limited to, porches,
2214 stoops, decks, covered porches, uncovered, whichever, et cetera, so that it aids
2215 the efforts that Mark Strickler is working on in the Community Revitalization
2216 Department.
2217
2218 Ms. Harris - Did we get a second?
2219
2220 Mr. Bell - Do I hear a second to that motion?

2221
2222 Mr. Berman - I second the motion.
2223
2224 Mr. Bell - Do we have any discussion?
2225
2226 Ms. Harris - Yes, I do. I don't see this as being something that—
2227 this case as being something that will be applied county-wide because there
2228 were errors made in this case. There were many errors made. The Permit Center
2229 made the error. The builder made the error. And I can't see that being duplicated
2230 all over the County. I think that our decision here, based on this condition #2,
2231 already addresses the fact that should we approve this variance, it would have to
2232 go before the Board of Supervisors for them to vacate that building line.
2233
2234 To remove the porch itself to me would be just completely considered a hardship.
2235 I drove by there. The way the house is constructed—and I'm not an architect, but
2236 I didn't see how possibly they could remove that porch and it would look like
2237 anything that somebody would want to live in or not to mention would buy. So I
2238 think we have to be a little practical about some things too. We need to apply the
2239 code, but hardship to me, that's definitely a hardship that they didn't create.
2240
2241 Mr. Baka - May I ask, then, would you be generally inclined to
2242 support the variance request regardless of the idea of a text amendment to help
2243 other properties that are close to a 35-foot setback?
2244
2245 Ms. Harris - I would be in favor of approving the variance, but you
2246 said deny the variance.
2247
2248 Mr. Blankinship - The motion was to deny.
2249
2250 Mr. Baka - I said deny. But I guess I'm asking would you be
2251 generally inclined to approve this particular variance request?
2252
2253 Ms. Harris - Yes. With the same text amendment that you said.
2254 But going by experience, that's going to delay them for we don't know how long.
2255 To get on the Board of Supervisors' agenda and for them to decide if this case is
2256 important enough for them to take. You're going to deny the use of the property
2257 for a while, I believe.
2258
2259 Mr. Romers - Did you say deny the use of the property?
2260
2261 Ms. Harris - Yes. If they're waiting for us to make a decision and
2262 we're waiting for the Board of Supervisors to make a decision, I think that's a
2263 delay, an excessive delay.
2264
2265 Mr. Berman - But the delay would not impede the owners. They
2266 could still the house and still use the porch.

2267

2268 Ms. Harris - Well hopefully.

2269

2270 Mr. Romers - We're going to put that in the letter about
2271 recommending to keep the porch until this is solved.

2272

2273 Mr. Berman - I feel that we could separate—I appreciate your view,
2274 but I still feel that this Board can separate the errors that were made in this case
2275 from the need for a text amendment, meaning that, as Mr. Baka pointed out, it's
2276 the future. The ordinances drafted were decades old. An example in our HOA
2277 that I live in, we didn't used to allow satellite dishes and solar panels, but now it's
2278 the future, and they're common, and they're smaller and more effective, so we
2279 changed the regulations.

2280

2281 Ms. Harris - I have no problem with the text amendment; I think it's
2282 something that should be done. What I have a problem with is making this
2283 particular house something that somebody can't live in. If you're going to tear off
2284 the roof 60 days from now, 30 days from now, you're making it, to me, unlivable. I
2285 just feel that it's too attractive. There are what, four houses in the entire
2286 subdivision, the homes are old, so it's an established community. The other
2287 homes are old. These homes are really a plus to the community. To destroy that,
2288 especially given the fact that errors have been made, I would have to vote
2289 against it.

2290

2291 Mr. Berman - I can't speak for the Board, but I don't think anybody
2292 was proposing that we do rip it off. In fact, we were told that it would not be
2293 enforced while we're trying to find other remedies.

2294

2295 Mr. Bell - That's what Mr. Emerson said this morning.

2296

2297 Mr. Romers - I think what I'm hearing Ms. Harris say is that if we
2298 were to approve the variance on this property and send the text amendment for
2299 the larger picture that it could be considered a win-win in this case in the sense
2300 that we can put these people's mind to rest about what we all wish about. I
2301 haven't heard anyone say they want that roof coming off. But I think we
2302 understand all the mistakes made up to this point. Can we not accept the
2303 variance and send the text for the larger change across the County, as opposed
2304 to the opposite which is to deny the variance and send the text, leaving them in
2305 limbo because we don't actually know that the County is going to change
2306 anything.

2307

2308 Mr. Bell - Would we have to do the same thing, then, if 1802
2309 comes up?

2310

2311 Mr. Romers - That's recurring. This is where the reoccurring comes
2312 in, right? If we were to approve this variance and it would keep reoccurring over
2313 and over and over again.
2314
2315 Mr. Bell - We already know 1802 is out there, so it can come up
2316 here. So we'd have to go through the whole thing again.
2317
2318 Mr. Romers - 1802 is the neighboring house? Is there any action on
2319 that house?
2320
2321 Mr. Blankinship - They're waiting to hear the outcome of this.
2322
2323 Mr. Romers - The County is waiting to hear the outcome?
2324
2325 Mr. Blankinship - The owners of that property. They're aware that it's a
2326 problem and that they need to address it.
2327
2328 Mr. Romers - How long has that porch been on?
2329
2330 Mr. Blankinship - That was built after this one, I believe.
2331
2332 Mr. Romers - These are the only two that are in violation.
2333
2334 Mr. Blankinship - That's correct.
2335
2336 Ms. Harris - Case by case. I don't see how we can project what is
2337 going to be done by the County or the owners in the future. We need to fix this
2338 one now. I go by the conditions that were given to us in this packet.
2339
2340 Mr. Baka - Personally, I'm not entirely—I'm not entirely opposed
2341 to the idea of approving the variance, which would allow the porch to be retained
2342 now, today. It removes any cloud or any doubt over the future. When I made the
2343 motion, I was inclined to think that hey, that's the best process, deny the variance
2344 and let's start the text amendment.
2345
2346 Mr. Blankinship - Do you feel it meets the legal requirements to grant a
2347 variance?
2348
2349 Mr. Baka - This is a little bit different than the variance for us later
2350 for a garage. That's one case. This I thought was two cases and four—four
2351 improvements that were built, but there are only two that are potential variances,
2352 correct?
2353
2354 Mr. Romers - Only two.
2355

2356 Mr. Baka - I feel there are a number of homes in Henrico County
2357 that are set back right at the setback line, whether it's a 35-foot setback or maybe
2358 it's a 45-foot setback. I guess that's the recurring question I was trying to get at.
2359

2360 Mr. Bell - We still have to get it. In this report, if you look at it,
2361 there are 121 homes just in this area. So if you wind up making exceptions to
2362 these, then you have the possibility of 120 other ones. Once again, we shouldn't
2363 look at those, but that's a fact; they're there.
2364

2365 Ms. Harris - But they're built already. Those are established
2366 homes.
2367

2368 Mr. Bell - This was an established home at the time.
2369

2370 Ms. Harris - There are 121 homes in the entire neighborhood that
2371 are built. These four are just new ones that were renovated.
2372

2373 Mr. Bell - The old house was torn down.
2374

2375 Ms. Harris - I know. I said was renovated. I call it being renovated.
2376 Do you think all 121 will be renovated?
2377

2378 Mr. Bell - If they see that porch, they very well might. I know if
2379 you go down to Westgate and look across there, you'll see a beautiful long porch.
2380

2381 Ms. Harris - Well I would hope they would have sense enough to
2382 go by the building line by then, after they hear about this.
2383

2384 Mr. Romers - I think there's a piece of this, though, that you spoke
2385 to earlier, and that is there were mistakes made all the way around. And the
2386 County was complicit in some of those mistakes. I would hope there would be no
2387 County mistakes on the next 121 when the paperwork comes across. These
2388 people went through a process that included various approvals and processes
2389 and language barriers and everything trying to get to where they are. But
2390 because the County was involved in the series of mistakes, as you said earlier, I
2391 think that's extenuating circumstances in this case.
2392

2393 Ms. Harris - I call for the vote.
2394

2395 Mr. Bell - Call for the vote?
2396

2397 Ms. Harris - Were you getting ready to say something?
2398

2399 Mr. Baka - I wasn't ready call to vote. Go ahead. Dennis—
2400

2401 Ms. Harris - I take it back. I thought we were ready to vote, but Mr.
2402 Berman has something.
2403
2404 Mr. Berman - To Mr. Blankinship's point, does this meet the
2405 requirement of the variance, and I tend to agree with staff that it does not. For
2406 that reason, I don't want to rule with emotion. While compelling the stories were, I
2407 want to rule within the guidance of the regulations.
2408
2409 Ms. Harris - Mr. Berman, all the cases that come before us for
2410 variances are exactly that, they are variances. So they don't go by the code. This
2411 is why we're here.
2412
2413 Mr. Blankinship - But there are legal requirements to grant a variance.
2414
2415 Ms. Harris - Yes. There are legal requirements to grant a variance.
2416 And to me, this falls within that purview. But I said all I'm going to say. Mr. Baka
2417 was getting ready to say something.
2418
2419 Mr. Baka - I was just wondering. When a variance comes before
2420 the Board of Zoning Appeals, is there a maximum period of time in which we
2421 have to make a decision? I don't know what is gained by deferring the case
2422 indefinitely, but can a case be held out for a year until a board takes action or
2423 says absolutely no, we will not apply for such?
2424
2425 Mr. Blankinship - The requirement is either sixty or ninety days from
2426 when the application is received.
2427
2428 Ms. Moore - That then I believe it's granted by default, isn't it?
2429
2430 Mr. Blankinship - No, that would be a Planning Commission thing. But
2431 there is a requirement.
2432
2433 Mr. Baka - The issue with that scenario is the facts remain the
2434 same as they are today, did it meet the legal requirement or not. I just want to
2435 be—I agree with Ms. Harris's sentiment. I want to be supportive of the
2436 homeowners in this situation and find a remedy for them. I'm not sure I'm the one
2437 that can make the remedy here today.
2438
2439 Mr. Blankinship - Ninety days.
2440
2441 Mr. Romers - That gives them sixty days, roughly.
2442
2443 Mr. Blankinship - Ninety days of the filing.
2444
2445 Mr. Baka - I don't know. Respectfully understanding Ms. Harris's
2446 comments, I would stick with the sentiment that there are a lot of homes in the

2447 County that are built right at the setback limit. It's my assertion today that the
2448 best way to solve this is to deny the variance and wholeheartedly support a text
2449 amendment for different types of encroachments outside the main building wall of
2450 a home that we've already discussed.

2451
2452 Mr. Berman - If the text amendment fails, then they can appeal to
2453 the Circuit Court, can't they?

2454
2455 Mr. Baka - They could appeal that we didn't grant on the basis of
2456 the hardship, as Ms. Harris has enumerated. Yes.

2457
2458 Ms. Harris - They can appeal any decision that we make in a
2459 variance.

2460
2461 Mr. Blankinship - Call the question.

2462
2463 Ms. Harris - I'm ready to vote.

2464
2465 Mr. Bell - We have a call for the vote. Are we ready? Mr. Baka's
2466 motion to deny but to—

2467
2468 Mr. Blankinship - Request a letter to the Board.

2469
2470 Mr. Bell - Yes, request a letter to the Board. All in favor say aye.
2471 All opposed say no. The ayes have it; the motion passes.

2472
2473 After an advertised public hearing and on a motion by Mr. Baka seconded by Mr.
2474 Berman, the Board **denied** application **VAR2015-00007, MIKA AND HENNA E.**
2475 **ELOVAARA's** request for a variance from Sections 24-95(c)(4) and 24-95(i)(1)
2476 of the County Code to allow the existing improvements to remain at 1804
2477 Rockwood Road (BERKELEY PARK) (Parcel 761-746-9054) zoned One-Family
2478 Residence District (R-3) (Three Chopt).

2479
2480
2481 Affirmative: Baka, Bell, Berman, Romers 4
2482 Negative: Harris 1
2483 Absent: 0

2484
2485
2486 Mr. Romers - Now we're going to have that letter that's going to let
2487 them know—

2488
2489 Mr. Blankinship - Yes. I will address that in their denial letter. And you'll
2490 have a letter from the Chairman to the Board.

2491
2492 Mr. Romers - That was my first vote.

2539 hardship related to the physical condition of the property, namely lack of public
2540 street frontage, that existed prior to 1960, the effective date of the ordinance.

2541
2542 In addition to this, you have to look at the five other conditions for variances.
2543 First, was the property acquired in good faith and any hardship not created by the
2544 applicant. The lot is non-conforming due to the 1960 adoption of the public street
2545 frontage requirement. Neither the applicant nor the prior owners of the property
2546 are responsible for this situation.

2547
2548 Number two, the granting of the variance will not pose a substantial detrimental
2549 impact to adjacent or nearby property. The owners of the subject property also
2550 own the home in front of it. They own the vacant lot to the north. To the south is
2551 the James River, and to the east is 68-acre wooded parcel. I don't see any
2552 substantial detrimental impact. The access is proposed to come in off of James
2553 Street here. So inasmuch as there's a road going behind the home right here and
2554 any future home that may be built right here at 9424, there may be a slight
2555 impact, but it's not substantial or detrimental.

2556
2557 Just for the record, the applicant could combine this lot, which they own, with the
2558 subject property, and that would eliminate the need for the variance because
2559 they would have public street frontage. However, because both of these lots
2560 were legally created at the time, staff believes they have the right to develop
2561 each property separately.

2562
2563 On the condition that the property would not warrant an ordinance amendment, in
2564 this case, the Board of Supervisors could adopt an amendment saying all lots
2565 created prior to 1960 don't need public street frontage. But the problem with that
2566 is the ordinance was adopted for public safety reasons in large part, so if they
2567 exempt a large classification of lots, it's kind of going to undo the whole reason
2568 for establishing that in the first place.

2569
2570 The granting of the variance does not result in a use not otherwise allowed on
2571 the property. It's zoned A-1, Agricultural. Single-family homes are a permitted
2572 use in that district, so it's not a use variance.

2573
2574 And finally, the relief or remedy sought is not available by special exception or
2575 modification. In this case, it's not.

2576
2577 So in conclusion, the subject property complied with the Zoning Ordinance at the
2578 time of its creation in 1951. It was the 1960 adoption of the public street frontage
2579 requirement that made it non-conforming and prevents the owner from building
2580 on it. As a result, the hardship claimed is due to a physical condition of the
2581 property at the time of the effective date of the ordinance.

2582

2583 Finally, the request complies with each of the remaining five requirements for a
2584 variance to be issued. For these reasons, staff recommends approval of this
2585 variance request.

2586

2587 That concludes my presentation. Are there any questions I can answer?

2588

2589 Mr. Bell - Any questions? Okay. Thank you.

2590

2591 Mr. Gidley - Yes sir. Thank you.

2592

2593 Mr. Bell - The owners, please?

2594

2595 Ms. Kondakor - Good morning.

2596

2597 Mr. Kondakor - Good morning. I'm Robert Kondakor. This is Janet
2598 Kondakor. It's K-o-n-d-a-k-o-r. It was e-r on the request, so it's o-r. Thank you,
2599 Board members. Thank you, Mr. Gidley, for all the work that you did.

2600

2601 When we purchased the property, we were purchasing it from somebody that
2602 was basically related to Judge Marshall. Judge Marshall was the nephew or
2603 something of the owner of the land. Before we purchased it, we wanted to make
2604 sure that we could build on the land, because we didn't want to purchase it if we
2605 knew that we couldn't build on it. So he did his work and produced
2606 documentation and went through the Health Department and all that. And they
2607 said that yes, you would be able to build on the land, which was fine. But we
2608 didn't realize that we wouldn't be able to have the road frontage right away to go
2609 through there.

2610

2611 So after working with the builders and everybody, they said we have to get all
2612 this straight, obviously. We were thinking we could just drive through the existing
2613 property that's closest. But they said no, you have to have the 50 feet of road
2614 frontage. So that's where we ended up, going to the County to discuss that with
2615 them.

2616

2617 Like they were saying, the subdivision was built a long time ago. There was a
2618 road in common that went to both properties. The road in common, there's a gate
2619 there now. But the road in common that went to both properties is grown over. At
2620 that time, we thought that's the way we could go anyway. So in a sense, we did
2621 purchase it, in a sense, in good faith, not knowing that there were any problems
2622 with them getting back to that area.

2623

2624 Mr. Bell - Have you had any complaints or talked to any of the
2625 other neighbors that use that same road coming in?

2626

2627 Mr. Kondakor - Do you mean James Street?

2628

2629 Mr. Bell - Yes.
2630
2631 Mr. Kondakor - We've talked to Mark and Wanda Chavis, who are on
2632 the other side of the street. We know them very well, and they don't have any
2633 problems with anything.
2634
2635 Mr. Bell - Is that county-maintained or is that maintained by you
2636 all?
2637
2638 Mr. Kondakor - James Street is county-maintained.
2639
2640 Mr. Bell - Okay. Thank you.
2641
2642 Mr. Kondakor - You're welcome.
2643
2644 Ms. Harris - I just have a couple of quick questions. On the site
2645 sketch that we have in our packet—do you have a packet yourself?
2646
2647 Mr. Kondakor - Yes ma'am.
2648
2649 Ms. Harris - Okay. I noticed that the access road will come from
2650 James Street. Who owns that property? I see the cemetery, but who owns that
2651 property?
2652
2653 Mr. Romers - They own both properties, I think. Do you own the
2654 property that is adjacent to James Street with the graveyard on it?
2655
2656 Mr. Kondakor - Yes.
2657
2658 Mr. Romers - So you own both properties.
2659
2660 Mr. Kondakor - Yes.
2661
2662 Mr. Blankinship - All three of them.
2663
2664 Ms. Harris - And you own the one that already has the access
2665 road?
2666
2667 Mr. Kondakor - Yes.
2668
2669 Ms. Harris - Okay. So you're not going to use that road that's
2670 already there.
2671
2672 Mr. Kondakor - Well, it's very close to the area that we were going to
2673 use. But the access road, it's basically dirt and it's grown over. So they didn't
2674 consider it an actual road because of its condition.

2675
2676 Ms. Harris - So you're going to construct another access road, is
2677 what I'm asking.
2678
2679 Mr. Kondakor - A driveway.
2680
2681 Ms. Harris - Oh, you would construct a driveway.
2682
2683 Mr. Kondakor - Yes.
2684
2685 Ms. Harris - Okay. I think that's all I have right now.
2686
2687 Mr. Baka - The only observation I have is that the lot was
2688 recorded in 1951, prior to the 1960 Zoning Ordinance that limits it. So it appears
2689 the lot was there first, prior to the zoning action that led to this case.
2690
2691 Mr. Berman - Was there an option to also purchase the Ingalls' lot
2692 that's right in front of James River and just extend James Street, and come
2693 across by the James River?
2694
2695 Ms. Kondakor - The Ingalls' lot is in the RPA. You would not be able
2696 to put a road in there.
2697
2698 Mr. Kondakor - How this is drawn on what is up there, it actually isn't
2699 correct. There is kind of a small cul-de-sac turnaround. It doesn't go all the way
2700 down to the river there. And then there are power lines that go across where the
2701 end of that road is. So there's VEPCO right away that goes through there with
2702 their power lines and power poles. You can't really see the turnaround, but pretty
2703 much where the—I guess you can blow it up.
2704
2705 Mr. Berman - Okay.
2706
2707 Mr. Kondakor - Kind of close to the end of the property line right
2708 there, you can see where the road ends, and the rest of it is—
2709
2710 Ms. Kondakor - It's pretty cliffy.
2711
2712 Mr. Kondakor - It's cliffy.
2713
2714 Mr. Berman - It would not make for a very safe road.
2715
2716 Mr. Kondakor - Right, right. It's like a fifty-foot drop-off.
2717
2718 Mr. Berman - Okay, thanks. It was hard to see that. You can't see
2719 that from James Street.
2720

2721 Mr. Baka - That's a natural feature of the land's topography.
2722
2723 Ms. Harris - I came by there yesterday, and I had to back out of
2724 James Street. I didn't want to risk going down a private road and trying to turn
2725 around. I could see the James River. It's quite an elevation there. I was careful to
2726 back up carefully.
2727
2728 Mr. Kondakor - It's hard to turn around there.
2729
2730 Mr. Bell - Any more questions?
2731
2732 Mr. Baka - No sir.
2733
2734 Mr. Bell - Thank you.
2735
2736 Mr. Kondakor - Thank you.
2737
2738 Mr. Blankinship - Does anyone else wish to speak to this case? All
2739 right, we'll go to the next case.
2740
2741 **[After the conclusion of the public hearings, the Board discussed the case**
2742 **and made its decision. This portion of the transcript is included here for**
2743 **convenience of reference.]**
2744
2745 Mr. Romers - I'll make a motion for this one. I'd like to make a
2746 motion that it be approved as requested and with the conditions stated by the
2747 Planning Department.
2748
2749 Mr. Bell - Do I hear a second?
2750
2751 Mr. Baka - Second.
2752
2753 Mr. Bell - Is there any discussion?
2754
2755 Ms. Harris - I think we need to say something about this in our
2756 discussion period. We do know that this lot is exceptional. The deep grade to the
2757 James River. I think we have occasion to look at these lots that are exceptional. I
2758 think that's one thing that I wanted to mention. It does help that they own several
2759 parcels of land so that the access road can come through land that they own.
2760 And we do have specifications of how wide that access road is supposed to be.
2761 We continue to have a problem with properties that don't have the public street
2762 frontage, and this list goes on. The beat goes on and on, and this is certainly an
2763 example.
2764
2765 Mr. Bell - Thank you. Any more discussion?
2766

2767 Mr. Blankinship - Mr. Romers, was it significant in your decision-making
2768 that this lot was created prior to the requirement?

2769
2770 Mr. Romers - Yes it was.

2771
2772 Mr. Blankinship - The public street frontage requirement. I'd like to have
2773 that on the record.

2774
2775 Mr. Bell - If there is no more discussion, all in favor say aye. All
2776 opposed say no. The ayes have it; the motion passes.

2777
2778 After an advertised public hearing and on a motion by Mr. Romers, seconded by
2779 Mr. Baka, the Board **approved** application **VAR2015-00009, ROBERT AND**
2780 **JANET KONDAKOR's** request for a variance from Section 24-9 of the County
2781 Code to build a one-family dwelling at 9440 James Street (DEEP BOTTOM
2782 FARMS) (Parcel 829-673-0296) zoned Agricultural District (A-1) (Varina). The
2783 public street frontage requirement is not met. The Board approved the variance
2784 subject to the following conditions:

2785
2786 1. This variance applies only to the public street frontage requirement for one
2787 dwelling only. All other applicable regulations of the County Code shall remain in
2788 force.

2789
2790 2. Only the improvements shown on the plot plan and building design filed with
2791 the application may be constructed pursuant to this approval. Any additional
2792 improvements shall comply with the applicable regulations of the County Code.
2793 Any substantial changes or additions to the design or location of the
2794 improvements will require a new variance.

2795
2796 3. Approval of this request does not imply that a building permit will be issued.
2797 Building permit approval is contingent on Health Department requirements,
2798 including, but not limited to, soil evaluation for a septic drainfield and reserve
2799 area, and approval of a well location.

2800
2801 4. Before beginning any clearing, grading, or other land disturbing activity, the
2802 applicant shall submit an environmental compliance plan to the Department of
2803 Public Works.

2804
2805 5. The remains of the existing home shall be removed prior to the issuance of a
2806 certificate of occupancy.

2807
2808 6. The applicant shall present proof with the building permit application that a
2809 legal access to the property has been obtained. The access easement shall be at
2810 least 30 feet in width. It shall be improved with a durable gravel or asphalt
2811 roadway at least 10 feet wide with 12 feet of horizontal clearance and 14 feet of

2812 overhead clearance to provide access for police, fire, and emergency medical
2813 services and other traffic.

2814
2815 7. The owners of the property, and their heirs or assigns, shall accept
2816 responsibility for maintaining access to the property until such a time as the
2817 access is improved to County standards and accepted into the County road
2818 system for maintenance.

2819
2820 8. The new home shall not encroach any further into the Resource Protection
2821 Area (RPA) setback than the remnants of the existing dwelling

2822
2823
2824 Affirmative: Baka, Bell, Berman, Harris, Romers 5
2825 Negative: 0
2826 Absent: 0

2827
2828
2829 **[At this point, the transcript continues with the public hearing on the next**
2830 **case.]**

2831
2832 **VAR2015-00010 DEBRA J. O'BRIEN** requests a variance from Section
2833 24-94 of the County Code to build an attached two-car garage at 8925 Rearden
2834 Road (MOORELAND FARMS) (Parcel 744-732-6089) zoned One-Family
2835 Residence District (R-1) (Tuckahoe). The rear yard setback is not met. The
2836 applicant proposes 46 feet rear yard setback, where the Code requires 50 feet
2837 rear yard setback. The applicant requests a variance of 4 feet rear yard setback.

2838
2839 Mr. Blankinship - Anyone who intends to speak to this case, please
2840 state and be sworn in. Raise your right hands, please. Do you swear the
2841 testimony you're about to give is the truth, the whole truth, and nothing but the
2842 truth so help you God? Thank you. Mr. Gidley, if you would begin.

2843
2844 Mr. Gidley - Mr. Chairman, members of the Board. This is a
2845 request for a variance to allow a proposed two-story attached garage to encroach
2846 up to four feet into the required rear yard setback. The property is zoned R-1,
2847 One-Family Residence, and is located in the Mooreland Farms subdivision. The
2848 property is slightly over one-half acre in size and contains a 4,000-square-foot
2849 home built in 1985. The applicant and her husband were the second owners of
2850 record, having purchases the home in 1997.

2851
2852 The applicant, who is now widowed, would like to construct a garage with a direct
2853 entrance into the home for improved security. You can see the proposed garage
2854 here. And then within the build area would be the stairwell that would go up to the
2855 door in the back of the house.

2856

2857 As you can see here, the driveway slopes downward somewhat to the rear of the
2858 lot, and then at the rear line it levels out. Due to the slope, the stairwell would
2859 require ten or eleven steps to access the home. This, however, is not an issue as
2860 far as the rear yard setback is concerned, as the stairs would run parallel to the
2861 home, and the stairwell would be four feet in width regardless of the slope of the
2862 lot.

2863
2864 In looking at the requirements for a variance, does the Zoning Ordinance
2865 unreasonably restrict the utilization of the property or would it alleviate a hardship
2866 at the time of the effective date of code. Although the variance application
2867 indicates the slope of the lot is a factor in this request, as just mentioned, it does
2868 not appear to be the case as the steps would be four feet wide regardless of the
2869 slope. Even if the slope were a contributing factor, this could not be used to
2870 qualify for a variance because both the lot and the existing dwelling were created
2871 after the 1960 adoption of the rear yard setback requirement. As a result, the
2872 hardship test does not apply here.

2873
2874 As for the unreasonable restriction test, the setbacks adopted by the Board of
2875 Supervisors for the R-1 district have allowed construction of a 4,000-square-foot
2876 home shown here. Often, someone would build a garage right in this area here.
2877 The fact that one was not built to begin with is a decision the builder and original
2878 owner made. It's not related to a restriction of the Zoning Ordinance.

2879
2880 I would imagine one could also be converted today to allow one right here. In
2881 addition to this, the applicant could construct a detached garage in excess of
2882 1500 square feet. Finally, the applicant can construct an attached two-car garage
2883 with interior stairwell by reducing the size of the proposed garage by 3-1/2 feet to
2884 a depth of 21.5 feet. Given the existing home on the property, along with a
2885 number of options available for the applicant to have a garage on the property, it
2886 is difficult to argue the Zoning Ordinance unreasonably restricts the use of this
2887 property.

2888
2889 As far as the five tests Mr. Tokarz mentioned, the first is the property was
2890 acquired in good faith and any hardship is not created by the applicant. The
2891 applicant's owned the home since 1997. According to her representative in talks
2892 with me, they reduced the size of the garage somewhat. But his client was not
2893 willing to reduce it enough to meet the setback requirements. Any hardship is
2894 arguably self-imposed because of this. That said, as previously mentioned, the
2895 setback requirement predates the creation of the home, so the hardship test is
2896 actually not applicable here.

2897
2898 Second, the granting of the variance will not be a substantial detriment to
2899 adjacent or nearby property. As you can see here on the view of the home to the
2900 side, the lot is wooded in the side and rear yards. In addition, the applicant is
2901 proposing supplemental landscaping. So staff does not see a substantial
2902 detrimental impact.

2903

2904 The condition of the property concerned is generally recurring to allow for an
2905 amendment to the Zoning Ordinance as an option. The surrounding
2906 neighborhood is also zoned R-1 and is subject to the same 50-foot rear yard
2907 setback requirement. Lot sizes vary in the neighborhood, but several lots are
2908 similar in size and shape to the applicant's. This includes the neighboring home
2909 shown here. As you can see, it looks like the rear lines of both homes are pretty
2910 much in line with one another. As a result, the neighboring property owner, if they
2911 wanted to do an addition, they would face the same options as the property
2912 owner here today. This is an example of why this is a general and reoccurring
2913 situation. If the Board of Supervisors wanted to reduce the rear yard setback
2914 requirement in the R-1 district, they could do so by amending the code.

2915

2916 As a side note, the purpose—and Mr. Tokarz noted this, and I believe this came
2917 up at a recent conference as well. The purpose of a variance is to ensure
2918 consistency and equity in how the Zoning Ordinance treats different properties,
2919 not to grant a special privilege for one property that is not available to others.
2920 Again, the neighbor here on the side faces the same restrictions and same
2921 requirements, and there are other lots in this neighborhood as well. They're all
2922 zoned R-1, and all would face the same regulations.

2923

2924 The granting of the variance would not result in a use otherwise not permitted on
2925 the property. This is not a use variance. Again, a home is a permitted use in the
2926 R-1 district.

2927

2928 And finally, the relief sought by the variance application is not available for a
2929 special exception or modification. While an ordinance amendment is certainly an
2930 option, a special exception or modification is not.

2931

2932 In conclusion, there is no unreasonable restriction on the use of the property. The
2933 lot contains an existing dwelling, and the applicant has a number of options to
2934 add a garage to the property that would comply with the Zoning Ordinance.
2935 These include renovation of the existing home, constructing a 21.5-foot-deep
2936 attached garage, or even building a 1500-square-foot detached garage. In
2937 addition, at least two of the supplemental requirements for issuing a variance are
2938 not met. By not choosing one of the options just mentioned, the applicant is
2939 arguably creating their own hardship.

2940

2941 Finally, the situation is of a general nature, as there are other lots in the
2942 subdivision similar in size and shape, including the adjacent property. These and
2943 other lots in the subdivision are subject to the same rear yard setback
2944 requirement of the R-1 district. If this was unreasonable, the Board of
2945 Supervisors could change it by amending the Zoning Ordinance. For these
2946 reasons, staff recommends denial of this variance request.

2947

2948 That concludes my presentation. Are there any questions you have?

2949
2950 Mr. Bell - Any questions? Thank you, Paul.
2951
2952 Mr. Baka - Excuse me. Mr. Chairman. Is it possible we could
2953 take a brief five-minute recess and come back?
2954
2955 Mr. Bell - Sure, we can do that.
2956
2957 Mr. Blankinship - Do you want to finish the hearing first?
2958
2959 Mr. Baka - Let's do it after the hearing.
2960
2961 Mr. Bell - All right. Okay, thank you, Paul.
2962
2963 Ms. O'Brien - My name is Debra O'Brien, and I'm the homeowner at
2964 8925 Rearden Road, requesting this variance. I have my builder here with me
2965 who can go through some of the specifics of why we've arrived at this option.
2966
2967 I do want to say that I'm primarily doing this for security. So the idea of a
2968 detached garage was not appealing to me. My other consideration is of the
2969 neighbors to the side. I want to make sure this is the most appealing structure
2970 that I can make it, since they will be viewing it. I did review the plans with Mr. and
2971 Mrs. Gavin Jeffs, and they're in full support. They said if I needed a letter from
2972 them to you, they'd be happy to write it in support of this plan. With that, I'll turn it
2973 over to my builder, and he can explain some of the specifics about the
2974 dimensions that would make this 21.5-foot garage a little bit more difficult.
2975
2976 Mr. Bell - Before you go, should we ask her some questions
2977 first? Are there any questions for Mrs. O'Brien?
2978
2979 Mr. Berman - Before the builder comments on it, what is your
2980 opinion on why shrinking it another few feet, for instance taking out the center
2981 pillar and having it a one-door garage?
2982
2983 Ms. O'Brien - A single door. I just think aesthetically. It's an upscale
2984 neighborhood, and I just feel like aesthetically it just wouldn't look as nice. The
2985 current plan has dormer windows that complement the dormer windows on the
2986 front of the house. We wouldn't be able to do that same design. Certainly, it's
2987 possible. I understand that there are other ways to do this. But in keeping with
2988 the character of the house and doing an improvement that increases value of the
2989 home is part of the process here. I don't want to spend a lot of money on
2990 something that doesn't look particularly that nice. Put it that way.
2991
2992 Mr. Berman - I understand. But there are alternatives that have
2993 good aesthetics like the new barn door, if that's allowed by your HOA, for a single

2994 door. Speaking of the dormers, what is the purpose of the dormers in that they
2995 face the rear of the property? Really nobody sees them.

2996

2997 Ms. O'Brien - Well, they face the side yard. I guess the view right
2998 here that you're looking at, that particular neighbor, Mr. and Mrs. Jeffs, is going to
2999 look this way. Now we're doing screening and things like that, but it still is
3000 something that they will see to some extent. To be courteous to them as well, I
3001 wanted to build a structure that is appealing from their perspective as well.

3002

3003 Mr. Berman - What is the proposed purpose of the second story?
3004 Would it have any living quarters?

3005

3006 Ms. O'Brien - No. It's storage and sort of just a bonus area. It was
3007 not meant to be an in-law suite or anything like that. It's because of the elevation,
3008 that the garage sits here, and you have to go up a set of steps, it seemed just
3009 natural. And I guess aesthetically also it makes that building look nicer. It's just
3010 going to be used for storage.

3011

3012 Mr. Berman - Thank you.

3013

3014 Mr. Bell - Mark?

3015

3016 Mr. Romers - Yes. A couple of questions. One is just an observation
3017 to how beautiful the property actually is.

3018

3019 Ms. O'Brien - Thank you.

3020

3021 Mr. Romers - And trying to increase the aesthetic value even
3022 around the sides is commendable. But it strikes me that access to the garage, to
3023 park inside the garage, with the narrowness of the driveway in the side yard that
3024 possibly the depth allows for better turning radius. Is that a factor in this in terms
3025 of why the 24 feet is more desirable than the 21-1/2 feet?

3026

3027 Ms. O'Brien - On the original plan, I don't know what the exact
3028 footage was, but it was even bigger than this in order to accommodate that and
3029 give more space. This design has been shrunk a couple of times, and we really
3030 feel like at this point it would really be difficult to shrink it much more, again, to
3031 allow the turning space. Already it's probably tighter than I would prefer, but we
3032 can make it work.

3033

3034 Mr. Romers - It looks like it's offset along the back of the house by a
3035 few feet for that same purpose. Would that be the reason that's that way—

3036

3037 Ms. O'Brien - Yes.

3038

3039 Mr. Romers - —as far as being parallel to the side of the existing
3040 house?
3041
3042 Ms. O'Brien - I believe so, yes.
3043
3044 Mr. Romers - Thank you.
3045
3046 Ms. O'Brien - Thank you.
3047
3048 Mr. Bell - Any other questions?
3049
3050 Mr. Baka - Was a detached garage—I realize you said it was not
3051 preferable, ma'am. A detached garage with a breezeway connecting it, was that
3052 something that may have been considered? And is that permissible under the
3053 ordinance to have a breezeway connect it?
3054
3055 Mr. Blankinship - That would be allowed under the code.
3056
3057 Ms. O'Brien - Yes.
3058
3059 Mr. Romers - Wouldn't that still push it back into the setback with
3060 the breezeway?
3061
3062 Mr. Blankinship - Detached, though. A different set of regulations would
3063 apply.
3064
3065 Ms. O'Brien - It seems kind of interesting. You can put a large
3066 structure as long as it's detached, which probably would not be favorable to the
3067 rear neighbors, who also are in agreement with this plan. But again, my
3068 primary—I've lived in the house for almost twenty years. And it's really a case of
3069 security for me. I want the idea of pulling into a garage and coming right into my
3070 house. I'm living alone right now with two children, and that to me is the primary
3071 driver for this garage. Otherwise, I would have done it years ago. But that's
3072 where I am today.
3073
3074 Mr. Baka - If the garage is built slightly smaller, 21-1/2 feet out
3075 from the homes as an attached two-car garage, what do you lose?
3076
3077 Ms. O'Brien - I think the ability to have two doors is the main thing.
3078 You don't have enough space to have the three pillars with two doors in the
3079 middle. You'd have to have a single large door. Does that plan work with that?
3080 Let me introduce John.
3081
3082 Mr. Ezell - My name is John Ezell. I'm the builder. And E-z-e-l-l.
3083 The 21-foot depth you were asking about. I'm going to say 21 feet and then I'm
3084 going to go width-wise. The depth of it would be back into the house area. You

3085 were asking about the turning radius. Twenty-four, you need that to get them in
3086 there. But the 21.5 going width-wise to put one door in there. Most of the time
3087 when you have one door, it turns into a one-car garage. It's tough to get two cars
3088 in a 16-foot door. And then we're dealing with brick here, so we have a little bit
3089 extra width-wise and we have those wider walls to accommodate the brick.

3090
3091 When we first started off, I called the County about getting the setbacks. I said to
3092 do a garage addition, and I guess a little misinterpretation of language. And I was
3093 told five feet on the rear setback. So we drew the plans. In the original plan, the
3094 main garage was twenty-eight feet with an eight-foot breezeway or stairwell area.
3095 So when we came and applied, we found out that being an attached garage was
3096 different than detached. We had to have a 50-foot rear setback. So at that time, I
3097 was doing the plan, it was very close. So we called Balzer. I had them come out
3098 and survey the property. Come to find out we had even less room than we
3099 thought by looking at the plat. So I've scaled it down from 28 feet to 24 feet and
3100 took off the stairwell from eight feet wide to four feet, trying to get every inch that
3101 we could to make it a two-car garage. When they came back out to set it on there
3102 again, we were 3 feet 4 inches into the setback.

3103
3104 So that's how it came about. I guess scaling it down to about as small as we
3105 could get it to get the two doors in there. I feel like the hardship is actually the
3106 grade on this lot. The entrance to the house is seven feet off of grade, so it
3107 requires those eleven steps. If we didn't need that, there would be no
3108 requirement for this little four-foot stairwell area. And we could attach the garage
3109 directly to the house, and we would be in code. But by having that grade so far to
3110 have to get up, we have to have those steps enclosed. That's the area where
3111 that little walk-in door is. And by creating that stairwell up there, that kind of
3112 creates that second story. It wasn't really necessary, but I think it adds to the
3113 house and makes it look like it blends in since it's a fairly large home.

3114
3115 The lot next door as far as being the same deal, their lot is a lot flatter. They only
3116 have about four steps going into their backdoor. If you were going to put a
3117 garage on there, you wouldn't have that problem with having that big stairwell
3118 and the steps protruding out into the garage area where you're going to park. If
3119 we turned those steps the other way, we'd come halfway across the garage. It
3120 still wouldn't be a two-car garage. And depth-wise, if we tried to make this garage
3121 deeper to put the steps on the back wall, we'd get into the kitchen windows and a
3122 lot of other stuff on the back of the house, which doesn't allow us to do that.
3123 We're fighting a lot of things. We also have a meter base there, which we have to
3124 have a three-foot clearance in front of. By having that four feet wide, it gives us
3125 that clearance for that brick wall of the garage for the meter base.

3126
3127 Mr. Bell - So you couldn't put it four feet inside the garage, the
3128 steps.

3129

3130 Mr. Ezell - If we did that, sir, we'd be in that garage door. The
3131 steps would be taking up part of that garage door. I narrowed down everything,
3132 the pillars and everything, as small as I could get them to be structurally sound
3133 and a little bit of aesthetics. To me, I think it would look better larger anyway.
3134

3135 Mr. Baka - In summary, as we look at that front view on the right
3136 side of that diagram up there, is it your assertion, sir, that if you were to shrink
3137 the width of that any further that it would be out of character with the
3138 neighborhood?
3139

3140 Mr. Ezell - I think what would happen, the door would be right
3141 against the wall. If you back into the garage, you wouldn't be able to open the
3142 door of the car. And in between, you may have this much room. It would be
3143 worthless.
3144

3145 Mr. Baka - Okay.
3146

3147 Mr. Ezell - The house next door would be looking at this. The
3148 dormers will point more to the side house, not to the rear of the yard.
3149

3150 Mr. Baka - I have one general question for staff. Are there any
3151 variance requests over the past few years that you recall, because I don't recall
3152 hardly any, in River Road Farms or Mooreland Farms?
3153

3154 Mr. Blankinship - I wouldn't say very many. I'd have to look it up to give
3155 you a number.
3156

3157 Mr. Baka - Just curious.
3158

3159 Ms. O'Brien - I did a little research on that. Within the last couple of
3160 years, I didn't find any. But you go back into the early 2000s and there are like
3161 four on my street, my street alone, four additions and garages that had setback
3162 problems. Not necessarily rear, but. I think I have a list with me, if that would be
3163 helpful to you.
3164

3165 Mr. Baka - Just helpful to hear. Thank you.
3166

3167 Ms. O'Brien - Again, it's an older neighborhood, and a lot of the
3168 houses did not have garages. So I think it was a common interest to add garages
3169 to these homes. So I've seen it done by a number of the neighbors.
3170

3171 Mr. Romers - I'd like to ask one quick question. This may be a
3172 clarification right here between us. Do I understand that we have a 50-foot
3173 setback if it's an attached garage, but if it's a detached garage of most any size
3174 it's only a 5-foot setback?
3175

3176 Mr. Blankinship - There is a limit on the size, but in the R-1 district it's
3177 pretty large.

3178
3179 Mr. Romers - In theory, would we be able to go back to the 28-foot
3180 detached garage and a 5-foot setback?

3181
3182 Mr. Blankinship - Detached, yes sir.

3183
3184 Mr. Romers - So the only issue here is the difference between
3185 attached and detached and the setbacks associated with each?

3186
3187 Mr. Blankinship - Yes sir.

3188
3189 Mr. Romers - And this woman's concerned with security, meaning
3190 that she would prefer it be attached for that purpose and her children. So that's
3191 really where we are with all of this, whether it was asking for just three feet or
3192 asking originally for seven feet, if she'd gone to the 28 foot request. Correct?

3193
3194 Mr. Ezell - We're happy with four feet. We don't need it bigger.

3195
3196 Mr. Romers - Well, I'm making the point also because in many
3197 cases it's admirable to come forward and ask the questions as you should and
3198 get the permissions as you need. Many other people would build a detached
3199 garage and then close the gap shortly thereafter. I just wanted to clarify that
3200 piece here.

3201
3202 Mr. Ezell - And not to interrupt you, but we did look at the
3203 breezeway. If you did a detached with a breezeway, from my understanding, it's
3204 still considered attached at that point, so it falls into the 50-foot setback.

3205
3206 Mr. Blankinship - Only if the breezeway exceeds ten feet in width. If you
3207 have an eight-foot-wide breezeway—

3208
3209 Mr. Ezell - Then the problem we would have would be the
3210 breezeway would be going—seven feet of grade and a short breezeway would—

3211
3212 Mr. Romers - I'm not suggesting you change it. I was just making
3213 sure I understood what the options might have been to be considered.

3214
3215 Ms. O'Brien - I would not build a detached garage. I would just
3216 scrap it.

3217
3218 Mr. Romers - I understand, I understand.

3219
3220 Mr. Baka - I appreciate you pointing it out because you had
3221 mentioned, Mr. Romers, that the applicant had plans for 7-1/2 feet away and

3222 reduced it to about 3-1/2 feet encroachment. So an attempt to be flexible there.
3223 Thanks.
3224
3225 Ms. Harris - Mr. Chairman, I have a question. The steps that will
3226 go up, are they inside the garage?
3227
3228 Mr. Ezell - Yes ma'am.
3229
3230 Ms. Harris - They're inside the garage.
3231
3232 Mr. Ezell - Yes ma'am. There's a walk-in door feature there. It
3233 goes right up the steps.
3234
3235 Mr. Romers - Helen, if I could clarify that. I think they're not actually
3236 in the garage itself; they're in the space between the garage and—
3237
3238 Mr. Ezell - This opens to the garage. Yes sir, you can come
3239 down the steps and turn into the garage.
3240
3241 Ms. O'Brien - Maybe you can't see, but that brick set of steps right
3242 now, that will be converted into wood steps that are interior to the garage. That's
3243 how we'll use that door. It's just going to be interior instead of exterior.
3244
3245 Mr. Ezell - And this lower door that enters the home is just a
3246 mechanical room. It's not that we can tie in and use that as an entrance to the
3247 house.
3248
3249 Ms. Harris - That doesn't concern you as far as security is
3250 concerned?
3251
3252 Ms. O'Brien - I'll be inside the garage and get out and go up.
3253
3254 Mr. Ezell - The steps are in the garage; they're part of it.
3255
3256 Ms. Harris - Okay.
3257
3258 Mr. Bell - Thank you.
3259
3260 Mr. Ezell - Thank you.
3261
3262 Mr. Bell - Let's take a five-minute break.
3263
3264 Mr. Blankinship - Does anyone else wish to speak to this case?
3265
3266 [Five Minute Break]
3267

3268 [After the conclusion of the public hearings, the Board discussed the case
3269 and made its decision. This portion of the transcript is included here for
3270 convenience of reference.]
3271

3272 Mr. Baka - Mr. Chairman, I will make a motion that we approve
3273 VAR2015-00010 in that it meets the five-part test and that the homeowner cited
3274 safety and security reasons, so this would not be generally recurring. It appears
3275 to be a unique situation in need of relief from the code due to the individual
3276 circumstances on this property. I make a motion to approve.
3277

3278 Mr. Bell - Do I hear a second on this motion?
3279

3280 Mr. Romers - I'll make a second.
3281

3282 Mr. Bell - Is there any discussion? I'd like to say a few words
3283 and address it as a question to Ben for his opinion, mainly. This is the case that
3284 sort of got me a little confused in that this morning, when the attorney talked to us
3285 and he told us the changes that occurred July 1st, he was talking about the five
3286 points. When I was listening to him, I was viewing them almost like *Cochran*.
3287 They have to be—
3288

3289 Mr. Blankinship - They have to meet the main test of the hardship and
3290 then all five of the other tests.
3291

3292 Mr. Bell - And how they are met will determine the precedent of
3293 what's going to be set for each one.
3294

3295 Mr. Blankinship - Yes sir.
3296

3297 Mr. Bell - This one, I have a hard time seeing where it met all
3298 five.
3299

3300 Mr. Blankinship - Yes sir.
3301

3302 Mr. Bell - If I'm in agreement to vote with the proposal, how do
3303 the two affect each other?
3304

3305 Mr. Blankinship - Can we agree that it meets the fourth and fifth, that
3306 it's not a use issue and there's no special exception. Those two, I think, are
3307 satisfied. The second one, the substantial detriment, in the staff report we didn't
3308 really struggle too much with the substantial detriment. It's a nice design. It's in
3309 the rear yard. Fifty feet is a big setback, and they're meeting 90 percent of that.
3310 So there is probably not a lot of detrimental impact.
3311

3312 For us as the staff, I think the first and the third of the five enumerated tests were
3313 a real struggle. The first one really is the problem. If there is a hardship here, it's

3314 totally self-created. There is no hardship on the property now. There's a 4,000-
3315 square-foot house that meets all the setbacks. So there's no problem with the lot
3316 at all now. The applicant desires to build something that doesn't fit on her lot. So
3317 how can that hardship not be self-created is where we came back around as a
3318 staff. I don't see a resolution for that one.

3319
3320 And then the general or recurring, Paul started to mention, that I heard an
3321 interesting point at a conference recently, where an attorney was trying to explain
3322 what all this means. One thing she said that really stuck with me is that the idea
3323 is if there is one lot in a subdivision that is being deprived of something that all
3324 the other lots have, a variance should bring that lot up to meet what everyone
3325 else gets. But if all the lots have the same circumstances, you shouldn't use a
3326 variance to give one lot additional privileges that the rest of them don't have. To
3327 me, there is nothing about the physical constraints of this lot or the way the lot
3328 was developed, the way the house was laid out, or anything else that leaves this
3329 lot in a disadvantage comparable to any other lot in Mooreland Farms.

3330
3331 That's why from staff's point of view we recommended denial. Although we don't
3332 really find a substantial detriment—I can't see anything that would be a hardship
3333 that is not self-created. And I can't separate this from any other lot in Mooreland
3334 Farms.

3335
3336 Mr. Berman - Even though they discussed the grade as it relates to
3337 the stairwell?

3338
3339 Mr. Blankinship - There is a steeper grade here than on some of the
3340 other lots. But as Paul pointed out, the stair goes parallel to the house. So the
3341 stair is only four feet wide no matter what the grade is. Whether it goes up two
3342 feet or it goes up twelve feet, it's still only four feet wide. So that's not really
3343 what's creating the problem. What's creating the problem is that she wants to
3344 build a garage that doesn't fit.

3345
3346 Mr. Romers - She wants to build an attached garage that doesn't fit.
3347 She can build a much larger garage that has a one-inch air gap and it would still
3348 provide—

3349
3350 Mr. Blankinship - It would have to be ten feet away, but yes, she could
3351 do that.

3352
3353 Mr. Romers - And then put a very secure breezeway in. Again, I'm
3354 the rookie here, but I find the difference between setbacks for detached and
3355 attached a tad conflicting in this scenario in particular, as it's being applied here.
3356 This is an asset to the community, actually, but it's also security for a single lady
3357 with her children. And I think in this world of insecurity, which I think is profound
3358 in the world we live in today, wanting to make it secure is something that we
3359 could help with. That's my thought.

3360
3361 Mr. Berman - Is it considered attached if you enclose the
3362 breezeway and attach that to the house and then to the garage?
3363
3364 Mr. Blankinship - The breezeway, as long as it's narrower than ten feet.
3365 If the breezeway is more than ten feet, then it would be just part of the dwelling.
3366 But an eight-foot wide breezeway could be enclosed.
3367
3368 Mr. Berman - So she could have a detached garage that's
3369 connected the house with an enclosed breezeway that met the requirements.
3370
3371 Mr. Romers - Does it have to allow a breeze, is what I think you're
3372 asking. Most breezeways would be screened in as opposed to making it a hard
3373 structure with windows.
3374
3375 Mr. Baka - Does it need to have two walls.
3376
3377 Mr. Blankinship - It seems like we recently had a question like that that
3378 we resolved the other way.
3379
3380 Mr. Gidley - As someone who used to supervise the front counter
3381 where building permits were reviewed in the old days I can say that typically, a
3382 breezeway we would view as needing to be open and exposed to the air.
3383
3384 Mr. Blankinship - If it was an eight-foot-wide hallway, we would say that
3385 was still be integral with the house, wouldn't we.
3386
3387 Mr. Gidley - Yes sir, that is correct.
3388
3389 Mr. Blankinship - I may have misspoke there.
3390
3391 Mr. Gidley - I think the question from staff's perspective goes back
3392 to the fact that everybody is subject to the same requirements in the
3393 neighborhood. There is nothing unique here on this case. The same setback
3394 applies all over, which is what I think Mr. Tokarz was getting at. That's kind of
3395 where staff came from. There is a reasonable use of the property, and everybody
3396 is subject to meeting the same setbacks and shouldn't be given any special
3397 privilege, as it were.
3398
3399 Mr. Berman - So there is no option to make it detached but still
3400 have a secure egress from the garage to the house.
3401
3402 Mr. Gidley - You could have a two-car detached garage. Again, it
3403 gets back to that's not what the applicant wants. But it is an option. You can have
3404 a one-car attached garage. You could have one large door even, which may
3405 allow two cars to access it. So there are options, as you mentioned earlier, that

3406 would comply with the code. That's why I think Ben mentioned the self-created
3407 hardship issue. We all have to be flexible to a certain extent in order to comply
3408 with the codes.

3409
3410 Mr. Bell - Any other discussion? We have a motion to approve.
3411 All in favor say aye. All opposed say no.

3412
3413
3414 Affirmative: Baka, Romers 2
3415 Negative: Bell, Berman, Harris 3
3416 Absent: 0

3417
3418
3419 Mr. Blankinship - Okay, the Board has taken no action. There was a
3420 motion and the motion was defeated. A motion to deny would be in order.

3421
3422 Mr. Bell - Do I hear a motion to deny approval of **VAR2015-**
3423 **00010?**

3424
3425 Ms. Harris - I move that we deny this application for a variance
3426 because the Zoning Ordinance does not unreasonably restrict the use of the
3427 property. I'm reading from the conclusion of the staff's report. The property has
3428 allowed the construction of a 4,000-square-foot home. In addition, it would allow
3429 construction of a 21.5-foot wide attached garage or a detached garage of up
3430 1,500 square feet in floor area. If there is a hardship, it appears to be self-
3431 created. This situation is not of a general nature as there are other lots in the
3432 same subdivision that are similar in size and shape, including the adjacent lot.
3433 That's the reason for my motion.

3434
3435 Mr. Berman - I second the motion.

3436
3437 Mr. Bell - Is there any discussion? Hearing none, all in favor to
3438 deny say aye. All opposed say no. The ayes have it; the motion passes.

3439
3440 After an advertised public hearing and on a motion by Ms. Harris seconded by
3441 Mr. Berman, the Board **denied** application **VAR2015-00010, DEBRA J.**
3442 **O'BRIEN's** requests a variance from Section 24-94 of the County Code to build an
3443 attached two-car garage at 8925 Rearden Road (MOORELAND FARMS) (Parcel
3444 744-732-6089) zoned One-Family Residence District (R-1) (Tuckahoe).

3445
3446 Affirmative: Bell, Berman, Harris 3
3447 Negative: Baka, Romers 2
3448 Absent: 0

3449
3450

3451 Mr. Bell - Let's go ahead and do the approval of the minutes,
3452 and then we'll go to our new business because we have several things to do.

3453
3454 Do I hear a motion on the minutes?

3455
3456 Mr. Berman - I move that we approve the minutes as written and
3457 waive the reading.

3458
3459 Mr. Bell - Do I hear a second?

3460
3461 Mr. Baka - Second.

3462
3463 Mr. Bell - Is there any discussion? Hearing none, all in favor say
3464 aye. All opposed say no. The ayes have it; the motion passes.

3465
3466 On a motion by Mr. Berman, seconded by Mr. Baka, the Board **approved as**
3467 **submitted the Minutes of the July 23, 2015**, Henrico County Board of Zoning
3468 Appeals meeting.

3469
3470
3471 Affirmative: Baka, Bell, Berman, Harris, Romers 5
3472 Negative: 0
3473 Absent: 0

3474
3475
3476 Mr. Bell - Let's go on to the new business. Probably the best
3477 way to do this, as we talked about Ben, is to turn it over to you.

3478
3479 Mr. Blankinship - You want to do the election of officers next? All right.

3480
3481 Mr. Bell - Yes. And then we'll handle the new code.

3482
3483 Mr. Blankinship - All right. Thank you, Mr. Chair. The floor is open for
3484 nominations for the office of chair.

3485
3486 Mr. Baka - I nominate Mr. Bell to be Chairman next term.

3487
3488 Ms. Harris - Second the motion.

3489
3490 Mr. Blankinship - All right. Mr. Baka has nominated Mr. Bell, and
3491 Ms. Harris has seconded that. Are there any further nominations? The floor is
3492 open to a motion to close the floor to nominations.

3493
3494 Mr. Baka - So moved.

3495
3496 Mr. Berman - Second.

3497
3498 Mr. Blankinship - Motion has been made and seconded to close the
3499 floor to nominations. All in favor say aye. All opposed, no. Congratulations, Mr.
3500 Bell, you're the only candidate, so you are elected by acclimation.
3501
3502 Mr. Bell - Thank you. Thank you, Greg.
3503
3504 Mr. Blankinship - The floor is open for nominations for the office of vice
3505 chair.
3506
3507 Ms. Harris - I nominate Mr. Baka, please.
3508
3509 Mr. Blankinship - All right.
3510
3511 Mr. Bell - I second the motion.
3512
3513 Ms. Harris - You know what? I didn't really make a motion; I
3514 nominated.
3515
3516 Mr. Blankinship - Ms. Harris has nominated Mr. Baka. Are there any
3517 further nominations for the office of vice chair? If not, a motion to close the floor
3518 to nominations would be in order.
3519
3520 Mr. Bell - I move that we close the floor for nominations.
3521
3522 Ms. Harris - I second the motion.
3523
3524 Mr. Blankinship - All right. On a motion by Mr. Bell, seconded by
3525 Ms. Harris, we'll close the floor to nominations for vice chair. All in favor say aye.
3526 All opposed say no. The floor is closed. Congratulations, Mr. Baka. As the only
3527 candidate, you are elected by acclimation.
3528
3529 Mr. Baka - Thank you.
3530
3531 Mr. Blankinship - And Mr. Chair, I will turn the gavel back over to you.
3532
3533 Mr. Bell - Everybody received the letter concerning the
3534 changes, correct? Has everybody had a chance to read it and understand it? If
3535 not, we can go ahead and continue it until next time.
3536
3537 Ms. Harris - They're not really major changes. They just changed
3538 the office from "chairman" to "chair," and the corresponding language that goes
3539 with it.
3540
3541 Mr. Blankinship - There is one change that I would like to call your
3542 attention to that would fly under the radar otherwise, but there is a reason for it.

3543 My eye is not falling on it, but somewhere it says that the applications shall be
3544 placed on the agenda in the order in which they are received. That's always what
3545 we've done in the past. The result of that is you may have variance, use permit,
3546 variance, use permit, variance, use permit. It was at a training session recently
3547 where the speaker—actually, it was the same speaker I cited earlier—joked that
3548 she asked her BZA to all get judges' robes and keep them in the back of the
3549 room. When they do a variance, put on their judges' robes, and when they do a
3550 use permit, take them off, so that you can think about the completely different job
3551 that you're doing. And that, of course, was a joke. But she said one thing that
3552 they do is separate the agenda so that they heard all the variances first and then
3553 they heard all the use permits second, or the other way around, whichever you
3554 prefer. That way you get into that mindset of which test am I applying.
3555

3556 So I would like to just make that small change to your process, that we list either
3557 all the variances and then the use permits or all the use permits and then the
3558 variances.
3559

3560 Mr. Baka - I like the idea. I think it would be suitable to have the
3561 use permits go first because the threshold is not quite as high and strict as the
3562 variance requests. It would be natural for them to come second.
3563

3564 Mr. Blankinship - What we're doing is striking from the rules that they
3565 are listed in the order in which they're submitted. And that is in draft before you.
3566 This draft would allow me to do that.
3567

3568 Ms. Harris - Didn't we do that at one point, Mr. Blankinship?
3569

3570 Mr. Blankinship - No ma'am. Sometimes they fall that way just by
3571 chance, but it's always been whatever order we receive them. In that case,
3572 Mr. Chairman, I guess a motion would be in order to amend the rules.
3573

3574 Mr. Bell - Do I hear a motion that amend the rules of
3575 proceedings for the Henrico County Board of Zoning Appeals?
3576

3577 Mr. Baka - So moved.
3578

3579 Mr. Bell - Do I hear a second?
3580

3581 Ms. Harris - Second.
3582

3583 Mr. Bell - Any discussion? Hearing none, all in favor say aye.
3584 All opposed say no. The ayes have it; the motion passes.
3585

3586
3587 Affirmative: Bell, Baka, Berman, Harris, Romers 5
3588 Negative: 0

3589 Absent: 0
 3590
 3591
 3592 Mr. Bell - The last and final thing, do I hear a motion to—first,
 3593 are there any comments before we adjourn? Do I hear a motion that we adjourn?
 3594
 3595 Ms. Harris - So moved.
 3596
 3597 Mr. Bell - Do I hear a second?
 3598
 3599 Mr. Romers - Second.
 3600
 3601 Mr. Bell - Any discussion? Hearing none, all in favor say aye.
 3602 All opposed say no. The ayes have it; the motion passes.
 3603
 3604
 3605 Affirmative: Bell, Baka, Berman, Harris, Romers 5
 3606 Negative: 0
 3607 Absent: 0
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Gentry Bell
 Chairman



Benjamin Blankinship, AICP
 Secretary