

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 25, 2016 AT 9:00**
5 **A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH AUGUST 8, 2016, AND AUGUST 15, 2016.**

7
Members Present: Gentry Bell, Chairman
Greg Baka, Vice Chairman
Dennis J. Berman
Helen E. Harris
William M. Mackey, Jr.

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

8
9 Mr. Bell - Good morning. Welcome to the August 25th meeting
10 of the Henrico County Board of Zoning Appeals. I ask you to please stand and
11 join me in pledging allegiance to the flag of our country.

12
13 Thank you. Mr. Blankinship, please read our rules.

14
15 Mr. Blankinship - Good morning, Mr. Chair, members of the Board,
16 ladies and gentlemen, the rules for this meeting are as follows: Acting as
17 secretary, I'll call each case. And as I'm speaking, the applicant is welcome to
18 down toward the area of the podium. We will then ask everyone who intends to
19 speak to that case to be sworn in. Then a member of the staff will give an
20 introduction to the case. Then the applicant will have the opportunity to present
21 their request to the Board. I'm guessing that we're not going to have a whole lot
22 of other discussions this morning, but anyone else is welcome to speak to the
23 case. After everyone has had a chance to speak, the applicant will have an
24 opportunity for rebuttal. After the Board has heard the first case, they will proceed
25 to the second public hearing. And then after both public hearings are over, they
26 will make their decisions on both cases. So you can either stay until the end of
27 the meeting, or you can call the Planning Department this afternoon, or you can
28 check our website. We usually get it updated within an hour of the end of the
29 meeting.

30
31 This meeting is being recorded, so we'll ask everyone who speaks to speak
32 directly into the microphone on the podium, state your name, and please spell
33 your last name so we get it correct in the record.

35 We have all five members and no requests for deferral or withdrawal, so I believe
36 you are ready to go.

37
38 **CUP2016-00018** **MARIANNE BOYLAN** requests a conditional use
39 permit pursuant to Section 24-95(i)(4) of the County Code to allow an accessory
40 structure in the side yard at 817 Westham Parkway (WESTHAM) (Parcel 759-
41 738-9348) zoned One-Family Residence District (R-3) (Tuckahoe).

42
43 Mr. Blankinship - Would everyone who intends to speak to this case
44 please stand and be sworn in? There is nobody here to present the case, to
45 discuss this case? The Boylans are not here. Well, Mr. Chairman, would you like
46 to proceed to the other case and see if the Boylans show up in the next few
47 minutes?

48
49 Mr. Bell - Yes, let's give them a chance.

50
51 Mr. Blankinship - All right. Mr. Madrigal, we'll come back to you in a
52 moment. Proceeding, then, to the variance on this morning's agenda.

53
54 **VAR2016-00013** **WILLIAM L. NEWTON** requests a variance from
55 Section 24-94 of the County Code to build an addition at 6516 Westham Station
56 Road (WESTHAM) (Parcel 759-731-4504) zoned One-Family Residence District
57 (R-1) (Tuckahoe). The rear yard setback is not met. The applicant proposes 21
58 feet rear yard setback, where the Code requires 50 feet rear yard setback. The
59 applicant requests a variance of 29 feet rear yard setback.

60
61 Mr. Blankinship - Now would everyone who intends to speak to this
62 case please stand and be sworn in. Raise your right hands, please. Do you
63 swear the testimony you're about to give is the truth, the whole truth, and nothing
64 but the truth so help you God? Thank you. You can come on around so you'll be
65 ready when he's finished. Mr. Gidley, you may proceed when you're ready.

66
67 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr.
68 Chairman, members of the Board.

69
70 The subject property is located at 6516 Westham Station Road, which is just
71 west of the Huguenot Bridge. If you look at the aerial, this lot here containing the
72 home and the vacant lot to the west were platted as one lot back in 1945, Lot
73 19B of the Westham Subdivision. The existing home was constructed in 1956
74 and met all setback requirements. In 1992, however, the property was divided
75 into two parcels as shown here. This resulted in Westham Station Road
76 becoming the front yard, as the property no longer abutted Old Bridge Lane. As a
77 result of this division, the property was placed in violation of the rear yard setback
78 since it was located only 25 feet from the rear lot line rather than the required 50
79 feet.

81 The applicants purchased the property in 2009 and are in the process of
82 renovating the existing home. As part of this process, they want to construct an
83 addition onto the back portion of the house. However, since the proposed
84 addition would be within the required rear yard setback, they have applied for a
85 variance.

86
87 This gets us to really two aspects of the proposed addition. You can see the
88 existing home here in the dark gray outline. The 50-foot setback requirement is
89 right here. So a portion of the home is into the setback right now. And I can zoom
90 in for you actually. The hashed area is the proposed addition. Part of it would be
91 adjacent to the existing home and part of it would go further, almost four feet into
92 the rear yard setback.

93
94 Since the home is considered nonconforming with regard to the rear yard
95 setback, it is subject to Section 24-8 of the Zoning Ordinance. That basically
96 prohibits any expansion of a nonconforming dwelling or building. This would
97 include increasing the building area within the required rear yard setback. In
98 other words, they don't get to take advantage of the existing violation by
99 expanding the building further out to the sides.

100
101 The second aspect of this proposal is to further encroach into the rear yard
102 setback by an additional 3.76 feet, which is shown right here. This obviously is
103 not permitted under the Zoning Ordinance since it would make the existing 25-
104 foot setback violation even worse.

105
106 It should be noted that if the applicants were to undo the division by recombining
107 these two lots here, not only would the existing home once again meet all
108 setback requirements, but the proposed addition could be constructed without
109 the need for a variance.

110
111 In reviewing a variance request, there are two avenues to a variance request.
112 The first one, which is the applicant's plan, is that the Zoning Ordinance
113 unreasonably restricts the utilization of the property. However, when the existing
114 home was constructed in 1956, it met all setback requirements. It was the
115 division of the property in 1992 that resulted in the setback violation, not the
116 unreasonableness of the Zoning Ordinance. While staff appreciates the
117 applicant's work and their architect's work, the reality is the Zoning Ordinance
118 does not become unreasonable simply because an applicant cannot build an
119 addition. This is especially so when the proposal is to expand a structure that is
120 already in violation of setback requirements.

121
122 The second path to a variance regarding a hardship due to a physical condition
123 on the property at the time of the effective date of the ordinance is not really
124 applicable in this case. That's because despite the extensive slope on the
125 property, the 50-foot rear yard setback requirement was in effect at the time of
126 the lot's division which created the violation that we're dealing with today.

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If one of the aforementioned two tests is met, then there are five subtests that also must be met. Staff believes conditions 3 through 5 are met, so I will just focus on the first two.

On the first one, the property interest for which the variance is being required was acquired in good faith and any hardship was not created by the applicant. The current owners did not purchase the property until 1992, which was—I'm sorry, until 2009, which was after the 1992 division. As a result, their purchase of the property was in good faith. However, the owners' desire to extend the home further into the required setbacks is a self-created hardship and a contradiction of the last part of this test.

Number two, granting of the variance will not result in a substantial detriment to adjacent and nearby property. The existing home has been at its current location since it was constructed in 1956. As a result, a variance that legalizes structure's existing footprint should not be detrimental to nearby property. Allowing for an additional encroachment into the required rear yard, however, would go against the spacious, low-density nature of the neighborhood's R-1 zoning district.

In conclusion, there is a reasonable use of the property right now. The treatment of the property by the Zoning Ordinance does not rise to the level of being absurd, inappropriate, or unconscionable, as the applicants maintain, simply because the proposed addition cannot be built. The desire of the applicant to build their specific design is a self-imposed condition, which does not meet the last part of the first subtest. For these reasons, staff recommends denial of this request.

However, if the Board chooses to resolve the existing violation caused by the division of the property, staff recommends limiting any variance to the existing building footprint and not allowing any further encroachment into the rear yard area.

This concludes my presentation, and I'll be happy to answer any questions you may have.

Mr. Bell - Yes, Paul. Do we have a schematic of the existing footprint so we'll know exactly what we're speaking to?

Mr. Gidley - Yes sir, certainly. I will zoom in here. The dark gray is the existing footprint, and the hashed area is the proposal to expand into the rear yard setback.

Mr. Bell - And the existing footprint, if we voted on that part it would bring it to code.

173 Mr. Gidley - Right now, the existing footprint is 25 feet from the
174 rear property line rather than the required 50 feet. If you were to grant a variance
175 for the existing footprint, the current home would be brought up to code in that
176 regard. It would be legalized. And that would take care of the violation, yes sir.
177

178 Mr. Bell - Okay. Any questions for Paul?
179

180 Ms. Harris - Mr. Gidley, do you know why the property was divided
181 in 1992?
182

183 Mr. Gidley - Why it was divided? I don't have any personal
184 knowledge of why the owner at the time did so. My assumption is they wanted to
185 make a profit off the sale.
186

187 Ms. Harris - So there's a house next to this property?
188

189 Mr. Gidley - No ma'am. The lot's vacant right now. My
190 understanding is this lot is owned by the owner of the lot to the north, namely 301
191 Old Bridge Lane. This was one lot at one point up here, and it was subdivided
192 legally. They went through the process and obtained a legal subdivision from the
193 County. But both of these lots are now owned by the same person, and this lot is
194 vacant.
195

196 Ms. Harris - Thank you.
197

198 Mr. Gidley - Yes ma'am.
199

200 Mr. Bell - It appears to me also that the aesthetic improvement
201 does not fit Cochran, in and of itself, which sort of restricts us as to how we could
202 rule.
203

204 Mr. Gidley - Yes sir. As I noted in the in the staff report, Cochran
205 noted that design issues and probable improvements to the property are things a
206 board may consider if one of the key tests are met by the applicant to establish a
207 right to a variance. Under the current law, that would be proving the Zoning
208 Ordinance is unreasonable as it applies to the property. If they can meet that
209 test, then all the other issues are issues that could be considered by the Board in
210 deciding whether or not they want to grant a variance. Staff maintains that first
211 test is not met, that the Zoning Ordinance as applied to the property is not
212 unreasonable. And therefore, all the other issues that would come up after that
213 are not really relevant in this case.
214

215 Mr. Bell - Any other questions?
216

217 Mr. Berman - Are there any neighbor comments in favor or against?
218

219 Mr. Gidley - I've not heard anything myself, no sir.

220

221 Mr. Bell - All right.

222

223 Mr. Baka - I have a couple questions, Mr. Chairman. Actually,
224 Paul, I may have a few questions. The first question I would say is what's the
225 harm—if you're asking the applicant, what is the harm or what is the detriment in
226 granting this variance as presented? It appears to be only 3 feet further—3-1/2
227 feet further extension into the setback as it is.

228

229 Mr. Gidley - My response would be—first of all, in order to grant a
230 variance, you have to first show the Zoning Ordinance is unreasonable. Then you
231 would consider an issue like harm to a property. In this case, the existing home's
232 been there since 1956. And so legalizing the existing footprint arguably would not
233 be of any additional harm to other property. And it would resolve the current
234 violation. To allow the expansion of that, though, would further reduce the
235 setback. And at some point, that does become detrimental to nearby property.
236 Again, to get to that point of granting a variance, you have to show that the
237 Zoning Ordinance is unreasonable as applied to the property. Because you can't
238 expand an already nonconforming structure, I don't think makes the Zoning
239 Ordinance unreasonable.

240

241 Mr. Baka - The house already extends 25 feet into that 50-foot
242 setback. Would the applicant have needed to apply for a variance if they did not
243 have the portion of this addition, which extends about 3-1/2 feet in the setback?
244 Would they need to apply for a variance if they were building within that 50-foot
245 area between 25 and 50 feet away but not that final 3-3/4 feet?

246

247 Mr. Gidley - Yes sir. For the Board's reference, basically what's
248 being referred to is anything behind this line. So this area here.

249

250 Mr. Baka - Yes.

251

252 Mr. Gidley - The answer to that question is yes, you would need to
253 apply for a variance because the existing home is considered to be
254 nonconforming under the Zoning Ordinance. And while a renovation to a
255 nonconforming structure is allowed within the existing footprint, you cannot
256 expand that footprint and make it worse. So as noted in my staff report, you can't
257 benefit, so to speak, from having an existing violation.

258

259 Mr. Baka - I guess on that point I would say that if there were no
260 further extension of 3-3/4 feet into the setback, then what the applicant is
261 requesting—the other portions of that addition that the applicant's requesting I
262 realize it's irrespective of any design elements. But the other portions of that
263 would—is it true that they would not protrude into the 25-foot setback that's
264 already there right now? Currently, the house is set back 25 feet from the

265 property line. My question is, if they were to build in that area between 50 feet
266 away from the property line and 25 feet away from the property line, that situation
267 would be one where the applicant is not extending—not enlarging the
268 nonconforming setback any further—not reducing the nonconforming setback
269 any more than 25 feet away from the property line.

270
271 Mr. Blankinship - It's still 25 feet, but it would be additional building
272 mass that is within the required setback. So we would be making the violation
273 worse in that sense, but not in the sense of coming closer.

274
275 Mr. Baka - Okay. All right. One other question I had, Paul, was
276 on the top of page 3 on the staff report, there's the first paragraph which
277 references some comments from the Cochran zoning case, which is what the
278 BZA is bound to use to decide variance cases. My question is, can you elaborate
279 a little bit on what is implied by the Cochran case when it says, "The BZA's
280 discretionary power"? Somewhere in that line, the fourth or fifth line. The sixth
281 line says, "discretionary power." What is that referring to? What discretionary
282 power does or doesn't the BZA have in this case?

283
284 Mr. Gidley - The Code of Virginia provides standards that govern
285 when you can grant a variance and what those standards are. There was a
286 slightly different standard under Cochran. The state code was amended recently,
287 and it provides for a series of tests. The one being claimed by the applicant is
288 that the Zoning Ordinance is unreasonable as it impacts the property. So the
289 question is, whether this standard is met or not. Staff's position is that the Zoning
290 Ordinance is not unreasonable here. You had a home that was built on a
291 spacious lot. Everything was fine. Then a prior owner that created the violation in
292 question.

293
294 Perhaps there's flexibility if the applicant had come in simply saying, "Look, we
295 found out we have a 25-foot violation of the setbacks. We didn't realize that.
296 We're really sorry. We're trying to fix up the house. Can you have some
297 compassion in this regard?" But to say, "I want to expand that," whether it be
298 sideways or out more and make that violation even worse, I don't see where that
299 would rise to the level of the Zoning Ordinance being unreasonable.

300
301 Mr. Baka - Okay. So if the BZA were to approve a variance to
302 make the violation even worse, meaning if the BZA were to approve the request
303 as submitted, you'd be about 21 feet from the property line. Would that set a
304 precedent for this area? Is that a difficult position for the BZA to take?

305
306 Mr. Gidley - Well as I noted earlier, and you can see on the aerial
307 here, there was a division that occurred here, and it was a subdivision that was
308 approved by the County. There are a lot of lots that are a good size. You can see
309 a situation where maybe they want to cut it off here or another property wants to
310 cut off some portion of it. And if staff tells them, "Hey, you can do that if the home

311 would still meet setback requirements." But if there's a situation where a home
312 doesn't meet setback requirements, certainly they could come to the BZA and
313 apply for a variance and say, "Hey, I want to divide my property. You gave these
314 folks a variance, why can't you give me a variance?"

315

316 Mr. Baka - Understood. That was helpful to hear. Last question.
317 Can the Board use the architecture's original design philosophy as a reason to
318 grant a variance?

319

320 Mr. Gidley - Only if the tests for the variance are met.

321

322 Mr. Baka - The first tests and state code, which don't make any
323 reference to architectural design.

324

325 Mr. Gidley - The first two tests and then the five subtests. Yes sir.

326

327 Mr. Baka - Okay.

328

329 Mr. Gidley - If those are met, in your opinion, then you would
330 review things like the architectural design to make sure that it's appropriate for
331 the neighborhood.

332

333 Mr. Baka - All right. Thank you, Mr. Chairman. Appreciate it.
334 Thank you, Paul.

335

336 Mr. Bell - Any other questions? Thank you, Paul.

337

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

339

340 Mr. Blankinship - Before you'd begin, if you'd raise your right hand. Do
341 you swear the testimony you're about to give is the truth, the whole truth, and
342 nothing but the truth so help you God?

343

344 Mr. Newton - I swear.

345

346 Mr. Blankinship - Thank you.

347

348 Mr. Newton - I have a number of copies of some materials.

349

350 Mr. Baka - Name for the record? Someone's name for the
351 record.

352

353 Mr. Newton - Yes, hi. My name is William Newton. I'm the property
354 owner. I guess I'll bring these up one at a time as I get to them, if that's all right.

355

356 Sorry to say I'm rather prepared today. And I'd like to—I think I'm going to
357 highlight a number of differences with the staff report that you just received. I
358 believe it was actually—without any offense intended, I believe it was incorrect in
359 a number of ways, both in terms of facts and in terms of the application of the law
360 of Virginia.

361

362 I want to outline a few facts first. You do know the property, of course. I myself,
363 I've lived here in Henrico County since 2002. A long-time citizen of Henrico. I'm
364 proud of it. I think it's one of the best places in the country to live.

365

366 My original lot, it was made up of two lots. This was well before I was born. And
367 you can see those here.

368

369 Mr. Blankinship - Would you help him use the document camera? Fred,
370 we're going to need the document camera.

371

372 Mr. Baka - It appears to be similar to the last plat in the packet.

373

374 Mr. Newton - It is similar. It's a survey, though.

375

376 Mr. Baka - Oh, it is different.

377

378 Mr. Berman - They have to go back and show one as recorded. And
379 it's got a seal.

380

381 Mr. Newton - I think that should do it. Perfect. Thank you.

382

383 Okay. This is a survey taken in 1984. You can see there the red lines. You can
384 see my house to the right of that. You can actually see another house above in
385 the top left-hand quadrant called Lot 1. Okay. So my house and Lot 1 currently
386 exist. Actually, there is now another lot on the red-lined area. So that was a—I
387 noted that factual inaccuracy. There is in fact a lot—a house on the red-lined
388 area.

389

390 So the red-lined area is a prior—it was originally a portion of my lot. But I say that
391 in the sense that my lot was originally a double lot. It was 19A and 19B. And if
392 you were to look at—it was combined in the '50s, certainly after the Westham
393 Corporation kind of created—they were creating all the lots in this area. I see a
394 number of quizzical looks.

395

396 Mr. Blankinship - If there's a house on that lot, it's not visible in an
397 aerial photograph that was taken in February of this year.

398

399 Mr. Newton - Okay, well—

400

401 Mr. Blankinship - It was built just since February?

402
403 Mr. Newton - It is currently—it's roofed. It exists. I have—my
404 architect is here.

405
406 Mr. Blankinship - I see your architect nodding.

407
408 Mr. Newton - He has seen the house. I live right next door to it. I've
409 seen the house. It does exist.

410
411 Mr. Baka - May I ask, is it the one with the steep aggregate
412 driveway?

413
414 Mr. Newton - They haven't paved the driveway in any way at this
415 point in time, but the house is fully there. It's a three-story house. It's fully
416 standing in all ways.

417
418 So as I was saying lots 19A and 19B were originally two lots. They were
419 combined. And they were then re-subdivided in 1984. I say 1984. That's when
420 the survey was done. Staff has reported that was in the early '90s when the
421 conveyance actually occurred. But the survey in the area designating that the re-
422 subdivision is in fact dated from 1984. I will note that this survey has been
423 recorded. And it has a book number from the original recordation.

424
425 What's also important to note in this drawing is also visible in what you were
426 looking at earlier. This will come up in a second kind of branch of my discussion.
427 This is actually bordered by three roads, not two. It's bordered by three roads. It's
428 bordered by—I believe if we could switch—is it possible to switch back to the
429 view on the screen?

430
431 Mr. Blankinship - Fred, can we go back to the podium?

432
433 Mr. Newton - Thank you. Terrific. So here you have Old Bridge
434 Road. Here you have Westham Station Road. And here you have a road that
435 was dedicated but has not actually been constructed. It was dedicated by the
436 original subdivision and is shown in the original plats that are part of County
437 records.

438
439 So I'll get back to the three roads. They all did actually have different names
440 when they were originally conveyed. East Highland up here was called—you just
441 may want to note this. This was called Crescent Road at one point in time. And
442 Westham Station actually was Riverfront. Rivers—I'll get that for you. Riverside.
443 Sorry. Same as it is on the opposite side of the—

444
445 Okay. So now that everybody understands the land a bit better, I want to take a
446 few minutes to talk about the house itself. Okay? So this is a house that was built
447 from 1954 to 1956. That was really at the end of Frank Lloyd Wright's

448 preeminence of architecture in America; one of America's best and brightest. The
449 house is actually designed by one of his protégés, Bud Highland, who did about
450 30 houses in the Richmond, Virginia, area, and is viewed as one of the
451 preeminent post-war architects in the entire region. So this is a house with some
452 architectural significance. And it has come under—it has slipped, admittedly, over
453 the last five or six decades since it was built. And really is time for kind of an
454 update and renovation. Our goal is to carefully restore and renovate the house
455 and bring it up to modern standards, but yet preserve all of its kind of
456 architectural integrity. So that's really what we're trying to do.

457
458 The original house was built with—kind of in the style of the time. And given
459 some of the nature of some of the folks that lived in the area at this time, it was
460 actually built for a maid. They had a live-in maid. This is the early 1950s. There's
461 a separate maid's room that's a very small little room stuck in the back. It's
462 virtually unfinished, or at least the level of finish is very different than the
463 remainder of the house. It also has a tiny little bathroom that, again, is
464 inconsistent with the remainder of the house. And just off of that is the maid's
465 laundry room and the maid's kitchen.

466
467 Well, we don't have a maid. It's difficult in modern society to—you know, that's
468 not the way modern society works. We're trying to carefully renovate the house
469 but also make one simple addition to flip the kitchen back into more of the public
470 side of the house and less of a portion of the house that is intended really just
471 for—you know, I hate to say it—but live-in help, which was the intent at the time.
472 We're more of a democratic society now that brings the kitchen out into public
473 spaces, if you will.

474
475 That's really the intent. We have consulted with an architect. I mentioned that we
476 were—one of the most important things about this entire project is staying true to
477 the original architectural design. You'll be able to hear from our architect. He's
478 here today. We looked at a number of different options for accomplishing this.
479 We've reviewed four or five different alternatives. And we have determined,
480 based on the input from our architect, that there is no way to do—to bring this
481 house up into modern standards, consistent with the original architectural intent
482 of the original Bud Highland design, without making a minor deviation in the
483 structure of the house. Here we're talking about moving one wall six feet—the
484 maid's room—to expand it to a modern sized guest bedroom. Okay? And to
485 move the kitchen onto the other side of the house where it's out in front of closed
486 doors. It's not behind closed doors any longer. It's out in the public sphere. The
487 rest of the house is going to be carefully kept in very similar condition, but also
488 brought up to modern standards, new electric, etc.

489
490 So I think that's important. Based on a diligent review by an architect who's been
491 practicing in the area for over 20 years it is not possible to do this house
492 consistent with the original architectural intent and bring it up to modern
493 standards without a minor variation in the setback line.

494
495 That's why we're here today is to ask for this variance. And what is that? I know
496 Mr. Ensminger will—I'm going to skip that. I'm going to skip that drawing because
497 it's not worth—but I can tell you that the drawings that are done in detail, they
498 match up very well with the brick piers that are classic Frank Lloyd Wright style.
499 You've probably seen it in some of the photos online from Pennsylvania where
500 they hang out over the water. Fallingwater is a famous one. And it echoes some
501 of those same views. And these brick piers are the design element that is
502 intended to be kind of brought back in and echoed in the extension.

503
504 Mr. Blankinship - We do have some of Mr. Ensminger's drawings in the
505 presentation, if you'd like to refer to them. Staff will assist you with that.

506
507 Mr. Newton - Sure, that would be great. Dan, which one of these
508 would show the—

509
510 Mr. Ensminger - The first one.

511
512 Mr. Newton - Okay. Okay, perfect. It's going to show the brick piers,
513 Dan? I see. Yes, here we are. Okay. In this picture, Westham Station Road is
514 here. I don't know if everybody can see my cursor moving.

515
516 Mr. Berman - Yes.

517
518 Mr. Newton - Okay. So compared to the view that we've been
519 looking at, this is the opposite direction. Okay? So these piers, brick piers, and
520 this massive brick fireplace, they have been featured in a number of magazines,
521 a number of articles about Bud Highland, kind of celebrating him through the
522 years. Okay? These brick piers are designed to be replicated here. Okay. So that
523 brick—those brick piers are an important point of what Mr. Ensminger is trying to
524 copy.

525
526 So I think the important point there is really the conclusion of the architect, and I'll
527 let him speak for himself. There is only one reasonable way to achieve a
528 restoration of the house consistent with a modern structure, a modern floor plan,
529 but also echoing the true architectural intent and one of the premier aspects of
530 the house, those brick piers. Okay? There is only one way to do that, and a way
531 that would require a minor variance. Okay? When we say a minor variance, I
532 think staff did an excellent job of describing that. We would move three feet.
533 Three feet closer to the property line.

534
535 So I want to describe a couple of different ways upon which this Board could
536 agree that this was an acceptable restoration plan. The first is a variance, and I'll
537 talk a little bit about that. I said at the top of the show here that I disagree,
538 actually, with some of the legal assertions made by staff, with no offense
539 intended. I think it's been quite a professional performance. But the second way

540 is actually to treat this as a side yard rather than a rear yard. I'll explain both of
541 those in further detail. But I believe either is a sufficient basis to move forward
542 with the restoration plan.

543
544 So the first one I want to touch upon is the variance. Okay? I think staff did a
545 great job of describing the fact that there are two prime tests and then there are
546 five subtests. Okay? The two primary tests are in the alternative under Virginia
547 Code. So you can either show a hardship, which was the sole standard until last
548 year. And it was sole standard reviewed in the Cochran case that is referenced in
549 staff's report. It's—the sole basis upon which the staff made some of their
550 assertions is a case that was actually superseded by a change in law just last
551 year.

552
553 So the first is hardship. And we're not talking about hardship. We're not claiming
554 that this is a lot that is under—you know, there are lots out there with cliffs and
555 whatnot. That's not the case with this lot. Okay? What we're claiming—and here I
556 think the standard was slightly incorrect that was stated earlier. What we're
557 claiming is that it would unreasonably restrict the utilization of the property. It's
558 not that we're claiming that the entire zoning laws are unreasonable. We're not
559 even claiming that the zoning laws are invalid in any way. And there is no
560 precedent set. That's another issue here. There is no precedent set by this case
561 as compared to any other precedents are not set by the Zoning Board. And that's
562 been viewed by the Supreme Court, actually.

563
564 So we are talking here about unreasonable restriction. And that's all that we're
565 claiming is an unreasonable restriction to use the property. Okay? And we
566 believe that's satisfied by the showing from the architect that the only way to do
567 this is through a minor deviation. Okay.

568
569 So I want to come back to that—yes sir.

570
571 Mr. Bell - Can we ask you a few questions as you talk?

572
573 Mr. Newton - Absolutely.

574
575 Mr. Bell - Okay.

576
577 Mr. Berman - Thank you. Mr. Newton, going back to unreasonable
578 restriction. You've lived in the house for how long?

579
580 Mr. Newton - Six years.

581
582 Mr. Berman - Have you been unreasonably restricted while you've
583 lived there?

584

585 Mr. Newton - Yes, actually, I have been. It's been difficult. That's
586 why we're seeking this variance. That's why we're seeking to do this restoration
587 altogether is because with this small maid's room, it's not a proper guest room.
588 It's not a modern house. With this kitchen, it's not a modern house.

589
590 Mr. Berman - I understand that. I'm trying to get to the point of
591 unreasonableness. I myself don't have enough closet space because my wife
592 hogs it all. But I've lived there for the last 17 years. You've lived there for six
593 years. I would think that if it was unreasonably restricting, you would have moved
594 out.

595
596 Mr. Newton - Well honestly, we've started saving from day one
597 towards this plan. This is a plan that—we've been in discussions with Mr.
598 Ensminger for two years now. This is a long-developing process.

599
600 Mr. Berman - But in 2006, you purchased the place knowing that
601 the lot was split and also knowing that there was, in your words, unreasonably
602 restrictive design within the house's footprint. So you entered into the purchase
603 of the house knowing this. You've lived in the house for six years with the, quote,
604 restriction. That's what I'm having trouble understanding that you're basing your
605 entire—most of your point on unreasonable restriction. I want to let you continue
606 because I want to hear everything you want to say, but I just wanted you to know
607 that I'm struggling with that point right now.

608
609 Mr. Newton - Okay. Well let's talk about unreasonable restriction—

610
611 Mr. Bell - Let me follow up real quick right here. Good point.
612 Give me a definition of unreasonable restriction versus hardship.

613
614 Mr. Newton - I think I'd rather focus on the unreasonable restriction
615 simply because that's the area where I actually happen to know a bit more.

616
617 Mr. Bell - But how do you define *unreasonable restriction*?

618
619 Mr. Newton - Sure, sure. That was part of the—unreasonable. So
620 let's talk about unreasonable. Okay? So unreasonable. Undoubtedly there is a
621 restriction. The question that I think both of you gentlemen are asking is whether
622 it's an unreasonable restriction. Okay. And this was part of the papers that I
623 submitted, and it's also been—staff has mentioned this as well. All right.

624
625 So unreasonable. Well, what does *unreasonable* mean? One synonym for
626 *unreasonable* is simply *inappropriate*. Okay? It would be inappropriate. It would
627 be an unreasonable restriction. It would be an inappropriate restriction to limit this
628 house based on—bringing this house up to modern standards based on the
629 application of this restriction. Okay. There are other words that you could use.
630 Another is *unconscionable*. That's one that's been cited as well. *Unconscionable*

631 meaning, you know, it wouldn't be something that a reasonable person would
632 conclude. Well, a reasonable person would not support varying from the
633 architectural integrity of this house. Again, it's one of the 30 of one of best
634 architects, most famous architects of the post-war era in Richmond. So both of
635 those I think would suggest unreasonableness. Okay. Inappropriateness or
636 unconscionableness.

637

638 Mr. Berman - All due respect, Mr. Newton, the Board goes by
639 Virginia code. We don't reference *Roget's Thesaurus* or *Wikipedia* or anything
640 like that. While I respect the definitions that you're giving, you have to understand
641 that we go by Virginia code.

642

643 Mr. Newton - Yes sir. Virginia code is there. *Unreasonable* is the
644 term in the code. Okay. There are County attorneys who have provided the exact
645 same definition of *unreasonableness*. I haven't seen one from the County
646 Attorney for Henrico County, but I have seen one from other counties in Virginia
647 defining *unreasonable* in this way. And staff itself picked up this exact same
648 definition in its finding. So I think it's a reasonable basis for evaluating whether
649 it's an unreasonable restriction or not.

650

651 I think it would be useful for a second to step back from the unreasonableness,
652 and we can come back to that. Okay? But there are several sub-boxes, if you
653 will, that need to be checked in order for the Board to have the authority to do
654 this. Okay?

655

656 Okay. The property interest—and here I am reading from the Virginia code. The
657 property interest for which the variance is being requested was acquired in good
658 faith. Okay. I did acquire my residence in good faith. Okay? And then it goes on
659 to highlight, "and any hardship was not created by the applicant for the variance."
660 Well first of all, I didn't do any subdivision that was portrayed here, so the
661 applicant hasn't been part of that. Okay? Moreover, the assertion here is of
662 unreasonable restriction not of hardship. So that's the word, "any hardship."
663 Okay. So the property interest for which the variance is being requested was
664 acquired in good faith. And it was.

665

666 The granting of the variance will not be a substantial detriment to adjacent
667 property and nearby properties in the proximity of that geographical area. Okay.
668 So I have four neighbors. Okay? I have this lot here, the Farnhams. I have some
669 new neighbors who have just bought this property here. The Walkers. I have
670 some existing neighbors, the Kellys, which I note are the ones that are on the
671 back line here, the side line, depending on how we describe it. And we have the
672 Blackburns. Okay, I've spoken with all four of them. They've all four provided in
673 writing their support for this.

674

675 Mr. Mackey - Mr. Newton, you said there was another house under
676 roof beside you?

677
678 Mr. Newton - Correct.
679
680 Mr. Mackey - Have you spoken to them?
681
682 Mr. Newton - That is the Blackburns. They've actually constructed a
683 second house approximately right here on this corner. So they have two houses
684 on the same lot, if you will. They purchased this 19—this portion of the lot; 19A is
685 that one. They purchased that with that intent back in the '80s. And so all of the
686 surrounding property holders have in writing provided their support.
687
688 Mr. Berman - Mr. Gidley had mentioned that there discussions
689 about you acquiring the lot that was split to undo the split. Were there any
690 discussions? Obviously, there's somebody else building on it now.
691
692 Mr. Newton - So there have been no discussions. It's not for sale. It
693 simply is not for sale. They subdivided this. They purchased this sub-lot, as I
694 said, about two decades ago with the intent of putting in another house here.
695 Their son is going to move into this house. This is more of a retired couple, and
696 they're going to move into the new one that was just purchased.
697
698 Mr. Baka - Does that house on the corner, the new one, have an
699 access from Highland Road, a driveway going up?
700
701 Mr. Newton - Their driveway is actually about right here, right on
702 Westham Station.
703
704 Mr. Baka - All right.
705
706 Mr. Berman - It's still gravel right now.
707
708 Mr. Baka - Still gravel?
709
710 Mr. Berman - Yes.
711
712 Ms. Harris - Mr. Newton?
713
714 Mr. Newton - Yes ma'am.
715
716 Ms. Harris - Maybe this is for the architect, I don't know. Which
717 part of the intended plan will be in the setback area?
718
719 Mr. Newton - So, ma'am, you can see the cursor moving here? So
720 this is an existing wall. Okay. This is maid's room here, I say here. We're simply
721 looking to move this wall out six feet, which puts it three feet closer to the rear lot
722 line. Okay. All of this would be new. So the new kitchen would be here, some of

723 which would be new, but not any closer to the lot line than any of the rest of the
724 house currently is. The only portion of it that's moving at all closer is this small
725 piece right here.

726
727 Ms. Harris - And you must have that, right?

728
729 Mr. Bell - What's going to be there?

730
731 Mr. Newton - That's going to be a guest room. My in-laws are
732 getting older. They're going to be using that room more and more.

733
734 Mr. Bell - So if you reduce it to a three-foot-smaller guest room,
735 would it fit?

736
737 Mr. Newton - Yes. We did look at that. So that was one of the
738 options that we talked about. We may want to get, Mr. Ensminger up shortly, but
739 I think I can field that one. If you don't extend this wall right here, if you fail to
740 extend that wall, you'll be unable to do those brick piers that are part of the—I
741 showed those at the front. One line goes of brick piers goes right here. The other
742 line will go right here, of brick piers. And you can even see it in the jutting out. So
743 you see one, two, three, four lines. Okay? That's the same as these lines that are
744 here, okay. They actually continue on inside the house as well. So you see the
745 same lines are being echoed on this side. So if you don't bring this out, you can't
746 extend and echo these same steps.

747
748 Mr. Berman - What would preclude you from flipping the extension
749 of the maid's quarters so that it would be within the 25 feet, assuming that the
750 Board would vacate the violation? So just flip where your cursor is, that room to
751 the right of the cursor, mirror imagine it over to the left, and then put the brick
752 piers there. That way you don't extend in. Granted, it doesn't give you the length
753 of the maid's room, but it gives you still the same square footage if you flip it. I'm
754 not an architect, but I've logged a lot of hours with *Fixer Upper* on HGTV. I'm just
755 saying if you could stay within the footprint, this would be a non-issue. Perhaps
756 the architect could speak to that.

757
758 Mr. Newton - So, okay, fair enough. We should hear—but I didn't
759 quite understand the proposal that you're making.

760
761 Mr. Berman - Take that square right there where your cursor is.

762
763 Mr. Newton - Yes.

764
765 Mr. Berman - Stop. Yes, right there. Mirror image it over to the left.

766
767 Mr. Newton - Put it here.

768

769 Mr. Berman - Yes sir. I know you have to—you want to preserve the
770 integrity of the brick piers, which is the angular structure above your cursor. But
771 somehow keep it either within footprint or within the 25-foot setback that we
772 would have to amend, and you wouldn't have an issue.
773
774 Mr. Newton - Mr. Ensminger.
775
776 Mr. Berman - So effectively you're increasing the size of the kitchen
777 unless you reposition the kitchen rather than the maid's quarters.
778
779 Mr. Newton - Okay. So I think the proposal is to—I know we're
780 doing architecture on the fly here. I think you could speak to that, Dan.
781
782 Mr. Berman - What I'm trying to speak to is that I feel that you may
783 have other options that you don't have to go three more feet, four more feet into
784 the setback.
785
786 Mr. Newton - Another way of saying—
787
788 Mr. Blankinship - The question is, is it unreasonable to say that he can't
789 build the addition.
790
791 Mr. Berman - That's what I'm trying to get to.
792
793 Mr. Blankinship - That's really what it all boils down to, is that
794 unreasonable.
795
796 Mr. Bell - Real quickly, if you would.
797
798 Mr. Ensminger - Yes sir. Dan Ensminger, the architect. Mr. Berman,
799 you're exactly right. And I'll speak for Bill and myself. We were told it wasn't the
800 25 feet, it was, as Mr. Baka pointed out before, it was all that zoned that's
801 already—we were fine not going beyond the extension of the house as it is today.
802 That was the very first question we asked. And we were told oh no, you're 25 feet
803 into the setback that already goes to the middle of the house, and you can't go
804 anywhere beyond that with anything. And that's where we said, "Well that's
805 unreasonable," which is to my definition of unreasonable was not—as Bill was
806 saying with the court documents, it was what's unreasonable is the setback goes
807 to the middle of the house already.
808
809 Mr. Blankinship - The only reason that happens is because a previous
810 owner divided the property unlawfully.
811
812 Mr. Ensminger - Well, but it was granted that way.
813

814 Mr. Blankinship - No, nothing was granted. That was just done without
815 any reviews or any approvals.

816
817 Mr. Ensminger - And so now the new owner is held to—

818
819 Mr. Blankinship - We're not out there telling him you have to tear down
820 the north 25 feet of house.

821
822 Mr. Ensminger - Right.

823
824 Mr. Newton - It was recorded, though.

825
826 Mr. Blankinship - It was recorded in the courthouse, but it wasn't
827 reviewed by the Planning Department. It wasn't reviewed by the Planning
828 Commission. It was not approved through the subdivision process.

829
830 Mr. Newton - Is that a requirement?

831
832 Mr. Blankinship - Not always.

833
834 Mr. Newton - This is not being subdivided into 50 lots or more. I
835 don't believe it would fall under the required sub—you know, I don't think that it
836 would be a requirement to come in for Board approval.

837
838 Mr. Blankinship - As long as you're not creating something unlawful, it's
839 not required. But in this case, it did. It created a violation of the setback.

840
841 Mr. Newton - So back to where you were just a second ago.

842
843 Mr. Bell - Where we are, though, is really what he's talking
844 about. We could talk all day about moving it and you're satisfied. This is the issue
845 that we'll be addressing here—not the aesthetics, not Mr. Wright, who designed
846 it, and who would buy it and who wouldn't buy it, but whether what he just
847 explained, what can we do to allow it or not to allow it.

848
849 Mr. Newton - Right. And I guess I'm not sure. Can you—can the
850 Board allow us to build up to but not exceeding where the house is today? That
851 would be great.

852
853 Mr. Baka - I have a comment on that. And I realize the typical
854 practice of the Board is that we deliberate now, and we have the votes at the end
855 of the meeting. There's still another case we haven't heard with respect to others
856 here.

857
858 One of the reasons I raised a question similar to that point earlier was that a
859 previous case—I can't recall the exact neighborhood, near Westham Station

860 north of here—I had made a comment and made a motion at the time to allow for
861 a variance that would not exceed the extent of the house constructed into the
862 setback at this time. I realize that may or may not have been on a split vote or
863 some dissention or some concern at that time. I'm not making a motion at this
864 moment, but I would say—I'll just throw out some comments.

865
866 I wish your case were a conditional use permit because clearly number 2, the
867 granting of the variance will not be of substantial detriment to adjacent nearby
868 property. It's very wooded. It's also hilly. I drove by several times, and it's so
869 wooded. I think I have the house with the gravel drive confused with the brand
870 new one. They were putting in an aggregate driveway the other day. That may be
871 closer to Ridge.

872
873 Here's the thing. It's four feet. I know I said three earlier, but it's basically four
874 feet, three and three-quarters feet into—beyond the extent of where the house is
875 right now. My general comments, Mr. Chairman, I wish they may—or the
876 applicant had more to go on, on the case of how 15.2-2309 has been previously
877 interpreted by *this* Board of Zoning Appeals. I don't think they have a tremendous
878 amount to stand on to jut that in another three and three-quarters feet into the
879 setback. But at a later time in this meeting, I'm prepared to entertain a motion, or
880 at least look at whether a variance could be granted adjusting—I realize it's
881 adjusting design—that would not exceed the extent of where the original
882 foundation wall is. Now, if that's 25.0 feet, then that would be the mark. If it's a
883 little more or a little less than that, let me just go on record by saying wherever
884 that point is, is what I would think is not unreasonable for this Board to make a
885 motion. I'm getting ahead of myself here. But I would think that that would meet
886 the criteria of the first part of the test.

887
888 So I'll come back to that at a later point. I wish they had more to stand on to try to
889 get the additional four feet. And I say "wish," only because it's somewhat
890 innocuous with the large wooded lot and the hilly slope. When I drove back
891 through there, it's hard to see. I did not go up the drive. So anyway.

892
893 Mr. Bell - Helen, I want to apologize for taking your questions. I
894 didn't realize we'd go this far.

895
896 Ms. Harris - Thank you for answering my question.

897
898 Mr. Berman - And then some.

899
900 Ms. Harris - And then some.

901
902 Mr. Bell - Do you have any you want to continue to ask or can
903 we move on?

904
905 Ms. Harris - I think we can move on.

906

907 Mr. Bell - You hear where we stand here. The way we'll be
908 discussing it is going to be what he described to you and what we feel about
909 what can and cannot be done with that situation that would allow or not allow you
910 to build it. If you have any information addressing that, we would like to hear it.
911 But if it's going to be with the architect and all that stuff, that doesn't really enter
912 into this except background information that is very important for us to know
913 about because it could come into effect some other time or in some other way.

914

915 Mr. Newton - Okay. I just think that the—I think there was some
916 weight put on Cochran and the emphasis that the architectural improvements are
917 not important. That wasn't the way I read Cochran. Okay? And Cochran was
918 based on a prior version of the statute. So to me, the relevance of the architect,
919 the relevance of the architect's use are to support the claim that it is an
920 unreasonable interference with our use of the property. Okay.

921

922 So because it would be—there is no other way. Yes, there are other ways, okay.
923 You could put a new kitchen down here, clearly outside of it. Separate the
924 kitchen off of the house. That wouldn't be consistent with kind of modern
925 standards. Yes, you could put a kitchen back up in this—actually under current—
926 you could put a new kitchen over here on this wing of the house. There are other
927 places you could put things, but it wouldn't be consistent with the original design
928 intent. Okay? So that's why I was emphasizing—that really is here, the basis.

929

930 There is evidence. There is support for this in Virginia cases. Okay? I can provide
931 you one. It's Fairfax County, which was a case with a narrow lot. And they
932 reached a conclusion on the basis of economic viability in the relevant real estate
933 market. Okay? Well putting a kitchen off here would not make this—that would
934 not be a relevant economic decision. Okay? Nor would putting it back in here.
935 Okay?

936

937 I think we've hit on the reasonableness or the unreasonable restriction. Okay? I
938 think we've checked the boxes on all of the sub-requirements. Okay? If there are
939 any questions about the sub-requirements, we could take those. To my mind,
940 they're very—they're straightforward. And the only real question here is whether
941 this unreasonably restricts the use of the house, the use of the property. Okay?

942

943 I do want to highlight what might be an easier approach for the Board. Mr. Baka
944 just a moment ago said—wishes this was a conditional permit. It might be easier
945 if it were a conditional permit. Okay? There is another way that this Board could
946 get to this conclusion without granting a variance. Okay? And again, here we
947 have a—and I'll provide you a copy. The original deed creating this area in the
948 1940s included another road. Do we need to put it on the screen or can I hand it
949 over?

950

951 If you look at the orange there, you can see the 20-foot easement, which was
952 reserved for purposes of vehicular and pedestrian access. The language is in
953 there clearly doing that. It was reserved for that purpose. Under Henrico County
954 ordinances, that would qualify as a street. It would be the short side of the street,
955 just as the staff report indicated that if this were viewed as the front, this would
956 make this the side yard. Okay? Same thing here. The 20-foot easement, if that
957 were viewed as the front, it would make this the side yard. Everything that we're
958 proposing here would be totally authorized.

959
960 Mr. Blankinship - Let me read the definition of *street*.

961
962 Mr. Baka - I was going to ask that, why it would be constituted as
963 a street.

964
965 Mr. Blankinship - Yes. We looked at that when we first saw this case.
966 The definition of *street* is "a dedicated public thoroughfare which affords the
967 principal means of access to abutting property including road, highway, driveway,
968 lane, avenue, place, boulevard or any other thoroughfare except an alley." And
969 the definition of *alley* is "a public or private way less than 30 feet wide and
970 affording secondary means of access to abutting property."

971
972 Mr. Baka - So why isn't that easement an alley?

973
974 Mr. Newton - If you look at the original surveys from 1950,
975 Westham Station Road was also a 20-foot easement.

976
977 Two people - But it's not now.

978
979 Mr. Baka - I'm sorry.

980
981 Mr. Blankinship - I see your point to have reached that conclusion.

982
983 Mr. Newton - We'd be happy to reserve another ten feet.

984
985 Mr. Blankinship - If you build a public street—

986
987 Mr. Baka - You want to dedicate another ten feet?

988
989 Mr. Newton - Could do that.

990
991 Mr. Baka - Is that what you're saying?

992
993 Mr. Blankinship - If you build a public street there then that would—

994
995 Mr. Newton - Well under 19-192, it doesn't need to be constructed.
996 Streets may be dedicated for public use by recordation of a subdivision plat. But

997 then the same section goes on to say and it doesn't mean it becomes a County
998 road. 19-192 calls it a street if it is dedicated for public by recordation of the
999 subdivision plat, just as that was. That's Henrico County ordinance. 19-192.

1000

1001 Mr. Blankinship - That may be an option. If you can get the Planning
1002 Commission to approve a dedication of a public street there, then that may
1003 resolve your issue.

1004

1005 Mr. Baka - With a dedication, you need to go to the rear or the
1006 northern-most portion of Mr. Newton's property line?

1007

1008 Mr. Blankinship - That would have to be reviewed by Public Works and
1009 everyone else involved in the subdivision process. We can't decide that here this
1010 morning.

1011

1012 Mr. Baka - One issue in that is timing. You're looking at what,
1013 several months?

1014

1015 Mr. Blankinship - Well it is what it is. It's not really relevant to his
1016 hearing.

1017

1018 Mr. Newton - But the street was already dedicated. It was dedicated
1019 in 1948.

1020

1021 Mr. Baka - But it's an alley.

1022

1023 Mr. Blankinship - That's not really on the table this morning. The
1024 application this morning is for the variance. If he wants to pursue a subdivision
1025 through the Planning Commission, that may be another way of resolving the
1026 issue. But that's not what we're here for this morning.

1027

1028 Mr. Berman - Is there any provision for this Board to declare it as a
1029 side instead of rear, absent of any other action? Today.

1030

1031 Mr. Blankinship - Not that I'm aware of.

1032

1033 Mr. Berman - Okay.

1034

1035 Mr. Ensminger - I just wanted to ask what—help me out. What would a
1036 conditional use permit be?

1037

1038 Mr. Blankinship - The difference there is that in the case of a
1039 conditional use permit, the Board of Supervisors, who adopted the ordinance,
1040 wrote into ordinance that the Board of Zoning Appeals has the authority to grant
1041 the following. And if you all stick around after your hearing, you'll hear an
1042 application for a conditional use permit. They want to do an accessory structure

1043 in a side yard. There's a sentence in the code that says the Board of Zoning
1044 Appeals may approve a conditional use permit for an accessory structure in a
1045 side yard.

1046
1047 A variance is completely different from that in that the Board of Supervisors has
1048 said the setback here is 50 feet. And the Board of Zoning Appeals in a position of
1049 saying, well it's 50 feet for everyone else, but for Mr. Newton it's not going to be
1050 50 feet. So it's a conflict between—this Board is actually appointed by the Circuit
1051 Court. So in a way, it's a conflict between the legislative and the judicial branches
1052 of the government. The variance is an opportunity for the court system, these
1053 appointed officials by the Court, to say the Board of Supervisors has set the rule,
1054 but we have determined that that rule is so unfair in this case, so unreasonable in
1055 this case, that in order for Mr. Newton to have the same rights as his neighbors,
1056 we have to grant a variance for him.

1057
1058 Mr. Ensminger - So if we wanted to apply for a conditional use, that's a
1059 whole other avenue.

1060
1061 Mr. Blankinship - Well that doesn't exist. There's no sentence in the
1062 code that says the Board of Zoning Appeals can grant a conditional use permit
1063 for this.

1064
1065 Mr. Ensminger - I see, I see.

1066
1067 Mr. Blankinship - We have suggested to the Board of Supervisors that
1068 they change the code and make that a possibility. They have decided not to do
1069 that at this time.

1070
1071 Mr. Baka - In summary, I was merely referring to the five-part test
1072 for a variance under 2309 is stricter than the more discretionary nature of a CUP.

1073
1074 Mr. Ensminger - Oh, okay, okay.

1075
1076 Mr. Blankinship - Yes. Once the Board of Supervisors grants them the
1077 delegated authority to approve something by a use permit then it's much easier.

1078
1079 Mr. Ensminger - Then it works. Sure, sure. And on the alley versus the
1080 road, if it was 30 feet it would be a road?

1081
1082 Mr. Blankinship - I'm not certain that's the answer to that question. I
1083 didn't really come this morning prepared to address that part of that question. But
1084 it does specifically have to go through the Planning Commission for—through the
1085 subdivision process. The section of code Section 19-192 Mr. Newton just cited
1086 specifically states that.

1087

1088 Mr. Ensminger - I just thought if there was a way to make the lot
1089 compliant, that would make everyone, even future owners—
1090

1091 Mr. Blankinship - I know that if you made that a public street it would
1092 change the interpretation of the ordinance. The north line would then be the side
1093 lot line. Whether you can do that merely by dedicating up to 31 feet, I don't know.
1094 Whether the Department of Public Works or the County would be willing to
1095 accept a dedication is a question that we can't resolve here this morning.
1096

1097 Mr. Ensminger - Got it. Okay. Thank you.
1098

1099 Mr. Newton - I guess what I'm missing, though, is whether this was
1100 a dedication that's already occurred.
1101

1102 Mr. Blankinship - But at this point, it's less than 30 feet, right?
1103

1104 Mr. Newton - Okay. But it meets the definition of *street*, under
1105 19-192. Streets may be dedicated for public use.
1106

1107 Mr. Blankinship - But not under the Zoning Ordinance, which ends with
1108 the words "except an alley," and then defines an alley as any public thoroughfare
1109 30 feet or less—or less than 30 feet.
1110

1111 Mr. Newton - That doesn't mean that all streets are—the gap there
1112 is that yes, all alleys are 30 feet or less. But not all streets are 30 feet or more.
1113 This was a street that was created in the 19—late '40s. Twenty feet. Specifically
1114 for vehicular ingress and egress. And it meets the definition on 19-192.
1115

1116 Mr. Blankinship - Let me read the first part. Well let me read the
1117 definition of front lot line to you. "The line separating the lot from a street on
1118 which it fronts." And then the definition of *street*, again, is, "A dedicated public
1119 thoroughfare which affords the principal means of access to abutting property."
1120 Now let me ask you, what street provides the principal means of access to this
1121 property?
1122

1123 Mr. Newton - Okay. So as a layman, I think I have to answer
1124 honestly the way that you are a little bit leading me towards there.
1125

1126 Mr. Blankinship - Yes. Clearly that's the front line.
1127

1128 Mr. Newton - Which would be Westham Station Road. But staff
1129 disagrees with that. Staff thinks that the front was here, thinks that this is the front
1130 and this is the side.
1131

1132 Mr. Blankinship - Well before the lot was divided—
1133

1134 Mr. Newton - Correct.
1135
1136 Mr. Blankinship - —the other street was the front. Once the lot was
1137 divided, it no longer fronted on that street.
1138
1139 Mr. Newton - Okay. And so even without that—again, the same
1140 principle could be held here, though, on this side. If you take that as a street on
1141 this side, this becomes a side yard.
1142
1143 Mr. Blankinship - If that were a street. If the alley were a street, we
1144 wouldn't be here this morning.
1145
1146 Mr. Newton - Right.
1147
1148 Mr. Blankinship - We would have approved the building permit when we
1149 first reviewed it.
1150
1151 Mr. Newton - Right. And so that's why I cite 19-192.
1152
1153 Mr. Blankinship - But the alley is not a street. Now if you want to make
1154 the alley a street, if you want to go through the subdivision process and dedicate
1155 the street to the County, that's not before this Board. I'm not saying it's
1156 impossible.
1157
1158 Mr. Newton - But you're not accepting that that happened in 1948?
1159
1160 Mr. Blankinship - No, clearly not, because it's less than 30 feet. And by
1161 definition, an alley is any public thoroughfare with a right-of-way of less than 30
1162 feet. By the Zoning Ordinance. The definition of *street* ends with the words,
1163 "except an alley." And *alley* is defined as "any public or private way less than 30
1164 feet wide."
1165
1166 Mr. Newton - All right.
1167
1168 Mr. Blankinship - Oh, providing secondary means of access to abutting
1169 property. Which clearly if there were a driveway there, it would be the secondary
1170 means of access to this property, the primary means being Westham Station
1171 Road.
1172
1173 Mr. Newton - Okay.
1174
1175 Mr. Blankinship - I would love to call that the front of lot. It would have
1176 saved us all a lot of trouble. We could have approved your building permit
1177 months ago. But it just isn't there.
1178
1179 Mr. Baka - So where are we now?

1180

1181 Mr. Blankinship - But going to the Planning Commission with a
1182 subdivision may be an option.

1183

1184 Mr. Baka - So if they go the Planning Commission, you're saying
1185 to widen—not a subdivision, but to create a public street—

1186

1187 Mr. Blankinship - Yes, a dedicated public street.

1188

1189 Mr. Baka - —the issue is whether dedication is amply enough to
1190 make it a public street when you're not constructing any actual road.

1191

1192 Mr. Blankinship - And that'll be up to—

1193

1194 Mr. Baka - The question is why would Public Works accept it if
1195 it's a street to nowhere.

1196

1197 Mr. Blankinship - But all that would be resolved through the subdivision
1198 process, which is not before this body.

1199

1200 Mr. Baka - So with that in mind, this Board should probably still
1201 pursue an action today regardless of that, because that remedy's still available to
1202 him independent of this action today.

1203

1204 Mr. Blankinship - Yes.

1205

1206 Mr. Baka - Fair enough.

1207

1208 Mr. Newton - I've heard two possible ways for it. One is granting me
1209 the variance on the basis that it does unreasonably restrict the use. Another is
1210 applying conditions. We're not opposed to some conditions here. This is going to
1211 remain a one-story house. It's built into the hill. It's barely visible to any of the
1212 neighbors. That's why they do support this. It's a wooded lot. So we don't mind a
1213 restriction, a condition that said this must remain one story. We'd ask that it be
1214 allowed up to 21.24 feet. Okay? That's the request. Don't have any concern
1215 about a restriction that would go beyond that.

1216

1217 I do think there is enough here to support a conclusion that this would
1218 unreasonably restrict the use of the property. I thank you all for your time. I know
1219 it was quite a long one.

1220

1221 Ms. Harris - Mr. Newton, before you leave. How many stories do
1222 you have there?

1223

1224 Mr. Newton - It's just one story. It's a Frank Lloyd Wright, kind of
1225 long and—

1226
1227 Ms. Harris - Yes, I drove by there.
1228
1229 Mr. Newton - Just one story.
1230
1231 Ms. Harris - It was kind of difficult to tell how many stories.
1232
1233 Mr. Newton - Sure.
1234
1235 Ms. Harris - Thank you.
1236
1237 Mr. Newton - Any further questions?
1238
1239 Mr. Berman - Thank you.
1240
1241 Mr. Bell - Thank you.
1242
1243 Mr. Newton - Thank you all.
1244
1245 Mr. Blankinship - Would anyone else like to speak to this case? Okay,
1246 Mr. Chairman.

1247
1248
1249 **[After the conclusion of the public hearings, the Board discussed the case**
1250 **and made its decision. This portion of the transcript is included here for**
1251 **convenience of reference.]**
1252

1253 Mr. Bell - Do I hear a motion on this variance?
1254

1255 Mr. Baka - Mr. Chairman, I'm prepared to make a motion on
1256 VAR2016-00013, Mr. Newton's property. We've heard a lot of discussion from
1257 the staff. We do try to reach flexible and workable solutions whenever possible.
1258 One of the challenges we have here today is the strict five part variance test from
1259 state code 2309.

1260
1261 I'm going to agree with the staff on one part, and I'm going to also disagree with
1262 the staff recommendation on another matter. But first of all, while the four-foot
1263 extension from 25 down to about 21-1/4 feet would not be a huge adverse impact
1264 on the neighborhood, that's not the test before us for a variance case,
1265 unfortunately, as was my point earlier. So hearing the information from the
1266 applicant, I don't believe that the state code gives us the discretion to further
1267 extend this set back beyond the limits of the nonconforming setback where it
1268 exists today. And I'm reading that to be 25 feet from the property line. With that in
1269 mind, I agree with the staff and the staff report that the applicant's proposal to go
1270 to 21-1/4 feet does not meet the five-part test.
1271

1272 I would also be prepared to make a motion, however, to approve a variance to
1273 not exceed or extend the nonconforming setback any further than 25 feet. By
1274 that, I'm also referring back to a case that we discussed a few months ago—I
1275 believe it was in the Westham Station area not far from the Boylan's home—in
1276 that I made a motion at that time to say that an addition could be approvable
1277 there if it did not extend further than the house, the older house that—the limit of
1278 the older house that was already protruding into that setback there. So with that
1279 in mind, I believe if I look at the five-part test, I believe that approving a variance
1280 to not exceed the building footprint more than 25 feet from the property line
1281 would meet the first and second part of the variance test as discussed by staff. I
1282 would make a motion to approve that, amending the applicant's request.

1283
1284 Mr. Bell - . Do I hear a second?

1285
1286 Mr. Mackey - Second.

1287
1288 Mr. Bell - Any discussion?

1289
1290 Mr. Berman - Mr. Baka, just to clarify your motion. Are you saying
1291 it's 25 feet or the setback under the existing dwelling? Just in case . . .

1292
1293 Mr. Baka - I would agree with your point there. I would say
1294 wherever that closest part of the existing home is, that would be the determining
1295 factor for the setback. It was mentioned in the record that it is 25 feet from the
1296 setback. And perhaps when they built the home, the architect accurately put the
1297 home 25 feet from the side yard at the time. But I say from wherever it is.
1298 However, I think this Board does need to select a footage or a number for the
1299 record. I'm using that as a reasoning. So I think we need to clearly say 25 feet
1300 from the property line.

1301
1302 Mr. Berman - Okay.

1303
1304 Mr. Baka - And just pick a number and go with it.

1305
1306 Mr. Berman - Thank you.

1307
1308 Ms. Harris - Question. If you said within the current footprint,
1309 would that take care of the 25 feet? It would not?

1310
1311 Mr. Baka - Well if you said allowed a variance within the current
1312 footprint, that discussion point would just allow any extension or remodeling
1313 between the area of 50 feet away from the property line and 25 feet away from
1314 the property line. That is not what I'm proposing. I'm proposing that the applicant
1315 would have the ability to build up, extend the house—albeit affecting design—up
1316 to 25 feet from the property line, giving them building envelope to build so long as
1317 it doesn't increase the nonconforming setback that we have already today. The

1318 house has a 25 foot—has a nonconforming setback of 25 feet today in the rear
1319 yard. As long as we don't go beyond that 25 feet, I would make a motion to
1320 approve a variance to allow for that.

1321
1322 Mr. Bell - Putting it another way, keeping it like it is today.

1323
1324 Mr. Baka - Keep the maximum setback—keep the minimum
1325 setback allowed like it is today, which I realize is considered to be a legal
1326 nonconforming setback.

1327
1328 Mr. Blankinship - I don't think it really is legal nonconforming.

1329
1330 Mr. Baka - Considered to be nonconforming setback by staff.

1331
1332 Ms. Moore - Would it be advisable to keep that motion so there's
1333 clearly a minimum/maximum, but also refer to the plans? They were submitting
1334 plans and keeping to a one-story and things like that. So it might be—

1335
1336 Mr. Baka - I would be fine to keep that to the plans, because
1337 what that does—

1338
1339 Ms. Moore - It is germane to what you're considering, I think,
1340 today.

1341
1342 Mr. Baka - Well the only consideration of keeping to the plans is
1343 Mr. Berman's point of perhaps could the building addition be flipped where the
1344 angled brick piers are now—whether or not—the brick piers could certainly be
1345 extended out just a few feet further. And I don't know the answers to those
1346 design or engineers questions today.

1347
1348 So I think that's a very good point made to refer—to make motions tied to a plan.
1349 However, in this case, it may not work because you wouldn't be able to extend
1350 those brick piers to the side.

1351
1352 Ms. Moore - Okay.

1353
1354 Mr. Baka - So that's my motion. And I believe it would meet the
1355 first and second part of the variance test as amended.

1356
1357 Mr. Berman - Your 25-foot proposal would be that second solid
1358 black line from the top.

1359
1360 Mr. Blankinship - Yes, the middle of the three heavy lines.

1361
1362 Mr. Berman - Yes. Okay. I just wanted to make sure I knew which
1363 way.

1364

1365 Mr. Blankinship - Well, no.

1366

1367 Mr. Baka - It would not increase the nonconforming setback any
1368 further than it is today.

1369

1370 Mr. Blankinship - Actually, it's not there either.

1371

1372 Mr. Berman - I'm sorry; it isn't.

1373

1374 Mr. Blankinship - That line is drawn at the—

1375

1376 Mr. Berman - That's at the 21.24'.

1377

1378 Mr. Blankinship - That's farther back. Mr. Madrigal will indicate—

1379

1380 Mr. Berman - It's that corner where Mr. Madrigal is. So it would be
1381 parallel to that line.

1382

1383 Mr. Blankinship - Right. So the shaded area down and to the left of that
1384 point would be permitted. But the shaded area above that line on this drawing
1385 north of this line would not be allowed. They would have to redesign somewhat.

1386

1387 Mr. Baka - Perhaps, however, I would say—with due respect to
1388 the architectural design of the house, I don't believe that 2309 gives us much
1389 flexibility to expand and ignore—bypass the law based on an architect's desire.

1390

1391 Mr. Madrigal - So you would allow building mass south of that line.

1392

1393 Mr. Baka - Yes. Building mass south of that between the 50- and
1394 25-foot mark is my motion. Based on the criteria that it would not violate the
1395 five—that amended proposal would not violate the five criteria as presented to us
1396 by staff today.

1397

1398 Ms. Harris - Okay. Can you look, please, at page 2 of 4 in the
1399 background? The last sentence.

1400

1401 Mr. Mackey - Did you say two?

1402

1403 Ms. Harris - Yes, page 2. The last sentence, "This places the
1404 home in violation of the rear yard setback since it was located only 25 feet from
1405 the rear lot line rather than the required 50 feet." Is this what you are saying
1406 would remain effective?

1407

1408 Mr. Mackey - In the first paragraph?

1409

1410 Ms. Harris - First paragraph, last sentence.
1411
1412 Mr. Baka - This placed the home in violation of the rear yard
1413 setback since it was created—. Yes. What the motion would do would be to say
1414 that the home that has been in nonconforming setback for many years,
1415 unbeknownst to the owner, would now not only be in conformity, but secondly
1416 would also allow for further limited or measured construction up to a point of 25
1417 feet away from the property line so that it does not decrease the nonconforming
1418 setback of 25 feet any further than it already is.
1419
1420 Ms. Harris - Right. So that would give them flexibility to widen that
1421 area but not to go beyond 25 feet.
1422
1423 Mr. Baka - That's correct. It would give them that flexibility.
1424
1425 Mr. Mackey - And that would take care of the 25 feet, correct?
1426
1427 Mr. Blankinship - Yes.
1428
1429 Mr. Mackey - Okay.
1430
1431 Mr. Blankinship - To Ms. Moore's point, if you would look at the
1432 condition for just a second, the one condition recommended by staff. Mr. Baka,
1433 would it be consistent with your motion to keep the first and third sentences of
1434 that condition, but completely strike the second sentence?
1435
1436 Mr. Baka - This variance applies only to the rear yard setback
1437 requirement for the existing dwelling. And you're saying strike—
1438
1439 Mr. Blankinship - Let's strike "for the existing dwelling only."
1440
1441 Mr. Baka - Okay.
1442
1443 Mr. Blankinship - And then all of the second sentence.
1444
1445 Mr. Baka - The second sentence reads: "No changes or
1446 additions may be made to the existing dwelling unless they comply with the
1447 setback of the zoning requirements." Yes, that's—
1448
1449 Mr. Blankinship - Clearly, that's not consistent with the intent of your
1450 motion.
1451
1452 Mr. Baka - I'm proposing that we strike that second sentence in
1453 condition 1.
1454

1455 Mr. Blankinship - But all other applicable regulations such as the front
1456 yard setback, the side yard setbacks, and the height requirements.

1457
1458 Mr. Baka - Yes. To the extent that we can tie down—Ms. Moore
1459 had a very good point. To the extent we can tie this down to the plan, which is a
1460 typical practice, a generally accepted standard practice, we'd like to do that. But
1461 here we need some flexibility.

1462
1463 Ms. Harris - So we're going to only retain the first sentence?

1464
1465 Mr. Blankinship - The first sentence will end at the word *requirement*.
1466 So it'll read: "This variance applies only to the rear yard setback requirement.

1467
1468 Ms. Harris - Period.

1469
1470 Mr. Blankinship - Well, and you want to put the 25 feet. This variance
1471 applies only to the rear yard setback requirement of 25 feet. Will that work?

1472
1473 Mr. Baka - Yes.

1474
1475 Mr. Blankinship - And then all other applicable regulations of the
1476 County code shall remain in force.

1477
1478 Ms. Harris - Okay, that's good.

1479
1480 Mr. Berman - They'll still need to submit a plan, though?

1481
1482 Mr. Blankinship - Yes. He'll need to resubmit it and then get a building
1483 permit.

1484
1485 Mr. Baka - A revised plan.

1486
1487 Mr. Blankinship - It won't come back to you; it'll come through the
1488 Building Department.

1489
1490 Mr. Baka - The Building Department would ensure that no part of
1491 that construction protrudes into the remaining 25-foot setback that's there.

1492
1493 Mr. Blankinship - Right.

1494
1495 Mr. Mackey - So do we need some changes done? Do you need a
1496 re-second to the motion?

1497
1498 Mr. Blankinship - I think just stating that you still support that motion.

1499

1500 Mr. Mackey - I re-second the motion with the changes made to the
1501 conditions.
1502
1503 Ms. Harris - Good question. Do you think that should have been
1504 two motions rather than one? We have a motion with two parts.
1505
1506 Mr. Blankinship - What would the two parts be?
1507
1508 Ms. Harris - The one that we just read. And the other one was
1509 denial of the further extension.
1510
1511 Mr. Baka - You're saying to I need to deny the case as was
1512 recommended by the staff—or as submitted by the applicant?
1513
1514 Ms. Harris - Yes. I wonder do we need that.
1515
1516 Mr. Blankinship - In my mind, it's all one action.
1517
1518 Ms. Harris - Okay, that's good.
1519
1520 Mr. Bell - It's all one action.
1521
1522 Ms. Harris - All right.
1523
1524 Mr. Baka - It's a good question.
1525
1526 Mr. Blankinship - You're granting part of what was requested, but not all
1527 of it.
1528
1529 Mr. Bell - Any other discussion? Then we shall vote. All in favor
1530 say aye. And before we say "aye," would you repeat it one more time.
1531
1532 Mr. Baka - Sure. I would make a motion that we approve the
1533 variance based—the variance request as amended and discussed so that no
1534 portion of the construction would exceed the 25-foot setback that is currently
1535 there at the existing home, and that the setback—the nonconforming setback
1536 which exists today would not be decreased any further than 25 feet. It also
1537 comes with this first condition as drafted in the staff report saying that this
1538 variance applies to the rear yard setback requirement and then—rear yard
1539 setback requirement of 25 feet, and then the second sentence, "All other
1540 applicable regulations of the County code shall remain in force." And that's it.
1541 That's my motion.
1542
1543 Mr. Bell - Okay. All in favor say aye. All opposed say no. The
1544 ayes have it; the motion passes.
1545

1546 After an advertised public hearing and on a motion by Mr. Baka, seconded by Mr.
1547 Mackey, the Board **approved in part and denied in part** application **VAR2016-**
1548 **00013, WILLIAM L. NEWTON's** request for a variance from Section 24-94 of the
1549 County Code to build an addition at 6516 Westham Station Road (WESTHAM)
1550 (Parcel 759-731-4504) zoned One-Family Residence District (R-1) (Tuckahoe).
1551 The request was approved in part and denied in part, as expressed in the
1552 following condition:

1553
1554 This variance applies only to a rear yard setback of 25 feet. All other applicable
1555 regulations of the County Code shall remain in force.

1556
1557
1558 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
1559 Negative: 0
1560 Absent: 0

1561
1562
1563 Mr. Berman - If Mr. Newton disagrees with the amended condition,
1564 he can appeal to the Circuit Court?

1565
1566 Mr. Bell - Certainly.

1567
1568 Mr. Baka - That's a good point. That's not what the applicant
1569 asked for. If he disagrees, he has the right to appeal. That is a very good point.

1570
1571
1572 **[At this point, the transcript continues with the public hearing on the next**
1573 **case.]**

1574
1575 Mr. Bell - Let's go ahead and call the first case.

1576
1577 **CUP2016-00018** **MARIANNE BOYLAN** requests a conditional use
1578 permit pursuant to Section 24-95(i)(4) of the County Code to allow an accessory
1579 structure in the side yard at 817 Westham Parkway (WESTHAM) (Parcel 759-
1580 738-9348) zoned One-Family Residence District (R-3) (Tuckahoe).

1581
1582 Mr. Blankinship - Would everyone who intends to speak to this case
1583 please stand and be sworn in? Raise your right hands please. Do you swear the
1584 testimony you're about to give is the truth, the whole truth, and nothing but the
1585 truth so help you God?

1586
1587 Mr. Madrigal - I do.

1588
1589 Mr. Blankinship - Thank you. You can be seated. And Mr. Madrigal, you
1590 may begin.

1591

1592 Mr. Madrigal - Thank you, Mr. Chair, Mr. Secretary, members of the
1593 Board. Good morning.

1594

1595 Before you is a request to allow a carport in the side yard of a one-family
1596 dwelling. The subject property is located in the Westham Subdivision, which was
1597 platted in 1951. The property is almost one-half acre in size and is improved with
1598 a 1,529-square-foot ranch-style residence built in 1954. Open parking is provided
1599 by way of an asphalt driveway located on the western side of the lot. The
1600 applicant purchased the lot in 2007. As part of her improvements to the property,
1601 she would like to construct a 700-square-foot carport on the western side yard,
1602 which would essentially be here in this area. The carport is predominantly in the
1603 rear yard. A portion of it does encroach into the side yard, necessitating a
1604 conditional use permit.

1605

1606 The property is zoned R-3, and is designated as Suburban Residential 2 on the
1607 Land Use Plan. A one-family dwelling is consistent with both the zoning and
1608 Comprehensive Plan designations. The proposed carport is allowed as an
1609 accessory use to the dwelling. Due to the shape of the lot and the siting of the
1610 existing dwelling, the applicant is somewhat limited as to the placement of the
1611 carport on the property. The proposed location conserves the existing backyard
1612 area behind the house and maximizes the use of the lot. Although the carport
1613 could be relocated further back on the lot so as to not trigger the need for a use
1614 permit, the applicant has opted to move forward with her request as proposed.
1615 The carport location capitalizes on the use of the existing driveway, provides
1616 adequate setbacks, and does not encroach into the front yard.

1617

1618 Although the carport will be clearly visible from the street, the architectural design
1619 will match the existing dwelling and should enhance the curb appeal of the
1620 property. The carport will be partially screened from view from the closest
1621 neighbor on the west by an existing six-foot-tall privacy fence seen here, a shed
1622 in the neighbor's yard seen here, and existing vegetation.

1623

1624 Staff does not anticipate any substantial detrimental impacts if the applicant's
1625 request is approved. In summation, the proposed use is constituent with both the
1626 Zoning Ordinance and the Comprehensive Plan. Although the carport can be
1627 relocated further back on the lot so as to avoid the need for a use permit, no
1628 detrimental impacts are anticipated on adjacent or nearby property if the Board
1629 approves the applicant's request as presented. The proposed architectural
1630 design of the carport will match the existing dwelling and should enhance the
1631 curb appeal of the property. If approved, the impact on adjacent properties
1632 should be negligible. As such, staff recommends approval approve subject to
1633 conditions.

1634

1635 This essentially concludes my presentation. I stand ready to answer any
1636 questions you may have.

1637

1638 Mr. Bell - Any questions?
1639
1640 Mr. Baka - One. Was there further questions? You may have
1641 mentioned this covering evergreen screening or shrubs along the side? Did you
1642 mention that?
1643
1644 Mr. Madrigal - No. Essentially because of this six-foot privacy fence,
1645 the shed blocking the view, as well as this being essentially the rear of the house,
1646 staff didn't feel it was necessary.
1647
1648 Mr. Baka - And the rear of the home just south of it backs up to
1649 this property line, and it's a two-story. Right there on lot 3, if you move your
1650 cursor to the southwest, to the west.
1651
1652 Mr. Madrigal - Oh this one here? This would be the side. This would
1653 be the front, rear—
1654
1655 Mr. Baka - That's why I was asking about whether they had
1656 proposed to do any shrubs or any type of thing there. All right.
1657
1658 Mr. Madrigal - Along here?
1659
1660 Mr. Baka - Are there any objections from the adjacent property
1661 owner, lot 3?
1662
1663 Mr. Berman - Received by phone call or by—
1664
1665 Mr. Blankinship - We got a lot of phone calls. This one really made me
1666 wish we didn't post those public notice signs.
1667
1668 Mr. Madrigal - I did field a lot of phone calls. There were really no
1669 concerns once people found out that it was a carport.
1670
1671 Mr. Baka - Fair enough. Thanks.
1672
1673 Mr. Berman - Were any of the calls to the negative, though?
1674
1675 Mr. Blankinship - No.
1676
1677 Mr. Berman - Just inquiries?
1678
1679 Ms. Boylan - Good morning. I'm Marianne Boylan, the property
1680 owner. I didn't know so many people would make phone calls about it.
1681 Interesting.
1682

1683 Really, again, I could have pushed it back a little farther. But when you go by and
1684 you look at my lot, it's very unbalanced. It's a ranch. It's almost a half acre. And
1685 so really all you see is that long driveway. There was a carport actually right
1686 here. And when I purchased the house in '07, it was full of termites. It was a one-
1687 car carport. And it just—I tore it down. It looked terrible, quite frankly.

1688
1689 Not that this matters, but I've completely renovated the inside of the house, and
1690 it's just off balance. I need a place, obviously, to park the car, etc. And in the
1691 Westham subdivision, it's very common to have carports. Garages, you don't see
1692 as many. And again, that two or three feet that it's encroaching, if you will, on the
1693 side yard, it truly balances it. It makes it, I think, look better, rather than push it all
1694 the way back, because the house already looks like it's all the way back and I
1695 have all front yard. I have the fence all the way around the property. No neighbor
1696 will really see it. The way architecturally I'm going to have it built. It will match the
1697 design of the neighborhood. So I just request the Board to grant me my
1698 conditional use permit.

1699
1700 Mr. Bell - Would you state your name and spell it, please.
1701
1702 Ms. Boylan - Marianne Boylan. Spelled M-a-r-i-a-n-n-e. Boylan is B
1703 as in boy, o-y-l-a-n.
1704

1705 Mr. Baka - There are five standard conditions on the staff report.
1706 You have no concerns or objections to the general conditions?
1707

1708 Ms. Boylan - No.
1709

1710 Mr. Baka - Okay.
1711

1712 Mr. Berman - Thanks.
1713

1714 Ms. Harris - I have a question. Not of Ms. Boylan, but just a—we
1715 received a printout this morning. Is this a change or an amendment to what's in
1716 our manual?
1717

1718 Mr. Blankinship - We'll be going over that after the election of officers.
1719

1720 Ms. Harris - Okay. Well I was wondering does it impact the
1721 detached accessory buildings.
1722

1723 Mr. Blankinship - Oh. That is not effective yet, but it would still allow
1724 this. I mean this is detached, so.
1725

1726 Mr. Bell - Any other questions? Thank you. Ms. Boylan.
1727

1728 Mr. Blankinship - Would anyone else like to speak to this case? Thank
1729 you, Mr. Madrigal. All right, then the public hearing is closed.

1730
1731 Mr. Bell - All right, we'll go straight to discussion of the cases for
1732 the vote. Let's start with the one that just ended, Ms. Boylan's case.

1733
1734 Mr. Baka - I'll make a motion to approve CUP2016-00018,
1735 Marianne Boylan, with the five conditions as presented in the staff report, on the
1736 grounds that this conditional use permit will not adversely affect the health, safety
1737 or welfare of neighboring properties.

1738
1739 Mr. Bell - Do I hear a second?

1740
1741 Ms. Harris - I second. I think there's plenty of land there to do this
1742 carport. I see it not negatively impacting on the neighborhood.

1743
1744 Mr. Bell - All right. Let's go ahead. All in favor say aye. All
1745 opposed say no. The ayes have it; the motion passes.

1746
1747 After an advertised public hearing and on a motion by Mr. Baka, seconded by
1748 Ms. Harris, the Board **approved** application **CUP2016-00018, MARIANNE**
1749 **BOYLAN's** request for a conditional use permit pursuant to Section 24-95(i)(4) of
1750 the County Code to allow an accessory structure in the side yard at 817
1751 Westham Parkway (WESTHAM) (Parcel 759-738-9348) zoned One-Family
1752 Residence District (R-3) (Tuckahoe). The Board approved the conditional use
1753 permit subject to the following conditions:

- 1754
- 1755 1. This conditional use permit applies only to the construction of a carport in the
1756 side yard. All other applicable regulations of the County Code shall remain in
1757 force.
 - 1758
 - 1759 2. Only the improvements shown on the plot plan and building design filed with
1760 the application may be constructed pursuant to this approval. Any additional
1761 improvements shall comply with the applicable regulations of the County
1762 Code. Any substantial changes or additions to the design or location of the
1763 improvements shall require a new conditional use permit.
 - 1764
 - 1765 3. The new construction shall match the existing dwelling as nearly as practical
1766 in materials and color.
 - 1767
 - 1768 4. If land disturbance will affect over 2,500 square feet of land area, before
1769 beginning construction the applicant shall submit an environmental
1770 compliance plan to the Department of Public Works.
 - 1771
 - 1772 5. All exterior lighting shall be shielded to direct light away from adjacent
1773 property and streets.

1774
1775
1776 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
1777 Negative: 0
1778 Absent: 0
1779
1780
1781 Mr. Bell - All right. We can go on and vote on approving the July
1782 28th minutes. Do I hear a motion on the minutes?
1783
1784 Ms. Harris - I have a correction.
1785
1786 Mr. Bell - All right.
1787
1788 Ms. Harris - Page 35, line 1552. Delete one of those "does." We
1789 have "does" twice there.
1790
1791 Mr. Bell - Do I hear a motion on the minutes with the corrections
1792 made?
1793
1794 Mr. Berman - I move that we accept the minutes without reading
1795 into record, along with Ms. Harris's correction.
1796
1797 Ms. Harris - Second the motion.
1798
1799 Mr. Bell - All right. Is there any discussion? Hearing none, all in
1800 favor say aye. All opposed say no. The ayes have it; the motion passes.
1801
1802 On a motion by Mr. Berman, seconded by Ms. Harris, the Board **approved as**
1803 **corrected** the **Minutes of the July 28, 2016**, Henrico County Board of Zoning
1804 Appeals meeting.
1805
1806
1807 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
1808 Negative: 0
1809 Absent: 0
1810
1811
1812 Mr. Bell - We'll go on to new business. Should we discuss your
1813 two—?
1814
1815 Mr. Blankinship - Whichever you prefer. You want to do the discussion
1816 first?
1817
1818 Mr. Bell - Yes, let's do the discussion first.
1819

1820 Mr. Blankinship - Okay. We have left two items on the table for you.
1821 The longer one with the staple and the heading of article Roman numeral
1822 something or other, Board of Zoning Appeals, that is the current text of the
1823 sections of the Zoning Ordinance that specify your powers and duties. It came to
1824 our attention last month or the month before that maybe not everybody got the
1825 current update of that. But that was amended about a year ago. So make sure
1826 that you're using that with your—we gave everybody a copy of the Zoning
1827 Ordinance when you came on the Board. Make sure you've got that same text in
1828 your copy. We just wanted to make sure everyone was up to date on that.

1829
1830 The other item, the one that begins with the word *ordinance* in bold capital
1831 letters, that you may find familiar. Some time ago, you had a variance request on
1832 a front porch issue where a guy renovated a house and the front porch was built
1833 into the setback. In accordance with our recommendation, you denied the
1834 variance. But it was another one of those that everybody hated to deny.
1835 Everybody looked at it and said we really wish we could approve this.

1836
1837 And you as a Board ended up writing a letter to the Board of Supervisors asking
1838 them to change the County code so that there would be a way for people to have
1839 a front porch of that nature added to their dwelling and it be lawful. Your request
1840 was that be by conditional use permit, which of course comes back to you.

1841
1842 We did a work session with the Board of Supervisors, and they generally liked
1843 the idea, but they didn't like sending it back to you. They thought it should come
1844 back to them instead. So you will see on the second page there where we're
1845 adding—well actually in all three paragraphs we're adding essentially the same
1846 language, which is that an eight-foot-wide porch would be allowed on houses in
1847 exception subdivisions, subdivisions approved prior to 1960. A porch up to eight-
1848 feet deep would be allowed by provisional use permit. So that would go to the
1849 Planning Commission for recommendation and then to the Board of Supervisors
1850 for approval.

1851
1852 They asked us, "How many of these do you think we'll see?" And of course
1853 there's no really good answer to that question. The sense I got from them was if
1854 this became something where they were seeing two a month, then they probably
1855 would reconsider and want to delegate them to you. But if they're seeing two a
1856 year, then they'll so go ahead and handle them themselves.

1857
1858 So that will go to the Planning Commission September the 15th for a work
1859 session. And then assuming they're okay with it, October the 13th for the public
1860 hearing. And then after that, it will go to the Board of Supervisors for a public
1861 hearing. If that amendment does go all the way through, then I will provide you
1862 an update. But because this was one that was initiated by you, I just thought
1863 you'd be interested in knowing about it on the front end of the process.

1864
1865 Mr. Baka - Very interesting.

1866
1867 Ms. Harris - What are the two dates that it will be?
1868
1869 Mr. Blankinship - September 15th the Planning Commission will hold a
1870 work session. And then October 13th the Planning Commission will hold a public
1871 hearing.
1872
1873 Ms. Harris - Thank you.
1874
1875 Mr. Blankinship - And then the Board public hearing will be—the date
1876 will be determined after that.
1877
1878 Mr. Baka - I think this is very good example how a system could
1879 work. We had some consternation that the variance at Skipwith and Three Chopt
1880 near the hospital did not meet the standard of a general recurring nature. I think
1881 this is a good solution for something that would reoccur we thought maybe even
1882 three times in that neighborhood because there were three houses similar.
1883
1884 I do have one question. If this passes, would that family whose variance we
1885 denied—and I believe that was a split vote—would they be the first case? Do
1886 they need to go ahead and apply for that PUP to the Board?
1887
1888 Mr. Blankinship - They would have to apply. But if they do, then yes,
1889 they would be.
1890
1891 Mr. Baka - Okay. Thanks.
1892
1893 Mr. Berman - Are we going to let them know or is it up to them to
1894 find out?
1895
1896 Mr. Blankinship - I think they're following the process.
1897
1898 Mr. Berman - That was the soccer coach?
1899
1900 Mr. Blankinship - Yes, that's correct.
1901
1902 Mr. Berman - On Article 24, is there an as-of date on that?
1903
1904 Mr. Blankinship - I can get that for you, Mr. Berman. I don't know it off
1905 the top of my head. I want to say it was August of 2015, but I'll look that up to
1906 make sure.
1907
1908 Mr. Berman - But we should render decisions based on it.
1909
1910 Mr. Blankinship - Yes. That is current, yes.
1911

1912 Mr. Berman - Okay.

1913

1914 Mr. Bell - Any other questions? All right, well go on to the next
 1915 new business, and that's the elections of the officers. I'll make a motion that our
 1916 next chairman will be Mr. Greg Baka. And you see the logic, the knowledge that
 1917 he had just about five minutes ago with a number of departments within the
 1918 County and also with state. He has—

1919

1920 Mr. Baka - You better stop before I vote you for vice chairman.

1921

1922 Mr. Bell - He has a good feel and relationship with the general
 1923 public, making sure they are treated fairly and right. Because of those reasons, I
 1924 nominate him for the next Chairman of the Board.

1925

1926 Mr. Blankinship - All right. Mr. Bell has nominated Mr. Baka. Are there
 1927 any further nominations for the office of chair? If not, a motion to close the floor to
 1928 nominations would be in order.

1929

1930 Ms. Harris - I so move.

1931

1932 Mr. Mackey - Second.

1933

1934 Mr. Blankinship - All right. There is a motion by Ms. Harris, seconded
 1935 by Mr. Mackey to close the floor to nominations for the office of chair. All in favor
 1936 say aye. All opposed say no. The motion passes. Mr. Baka, since you're the only
 1937 candidate nominated, you have been elected chair by acclamation.
 1938 Congratulations.

1939

1940

1941 Affirmative:	Baka, Bell, Berman, Harris, Mackey	5
1942 Negative:		0
1943 Absent:		0

1944

1945

1946 Mr. Baka - Thank you, and thank you Mr. Chairman.

1947

1948 Mr. Blankinship - The floor is now open for nominations for the office of
 1949 vice chair.

1950

1951 Ms. Harris - I have a nomination. I would like to nominate
 1952 Mr. Berman for vice chair.

1953

1954 Mr. Blankinship - Ms. Harris has nominated Mr. Berman. Are there any
 1955 further nominations? Is there a motion to close the floor to nominations?

1956

1957 Mr. Bell - I so move.

1958

1959 Mr. Baka - I so move.

1960

1961 Mr. Blankinship - All right. I'm going to count Mr. Bell as the second. All
 1962 in favor say aye. All opposed say no. The vote is 5 to 0. Mr. Berman, since you're
 1963 the only candidate nominated, you're elected vice chair by acclamation.
 1964 Congratulations.

1965

1966

1967 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
 1968 Negative: 0
 1969 Absent: 0

1970

1971

1972 Mr. Berman - Thank you.

1973

1974 Mr. Blankinship - Mr. Baka, I will now turn the gavel over to you. I
 1975 believe Mr. Baka would like to make a brief presentation.

1976

1977 Mr. Baka - I would like to make a brief presentation at this time.
 1978 We've been very appreciative of the service that Gentry Bell, Mr. Bell has
 1979 provided to the Board of Zoning Appeals. And we're appreciative of your kind,
 1980 diplomatic and generous nature as chairman. I hope I'll be able to follow in your
 1981 footsteps as I can.

1982

1983 This award says it's presented to Mr. Gentry Bell for his service as Chairman,
 1984 Henrico County Board of Zoning Appeals, from August 29, 2014 through August
 1985 25, 2016. Thank you very much.

1986

1987 Mr. Bell - Thank you very much. You know when you get age
 1988 on you, you do a lot of things. But in the last several years, I've been here. I have
 1989 felt that I can accomplish as much as any job I've ever had that is really
 1990 meaningful to not just me, but to the people that I deal with. And then secondly,
 1991 I've always felt that I've been with a very professional, highly qualified group. So
 1992 this is very important to me. Thank you.

1993

1994 Mr. Baka - All right. So with that in mind, may I ask is there a
 1995 motion to adjourn the meeting?

1996

1997 Ms. Harris - I so move.

1998

1999 Mr. Berman - I second.

2000

2001 Mr. Baka - Am I allowed to—

2002

2003 Mr. Blankinship - Yes sir, you're fine. You've been voted in.

2004

2005 Mr. Berman - The gavel has been passed.

2006

2007 Mr. Blankinship - That's right.

2008

2009 Mr. Baka - All those in favor? Meeting is adjourned.

2010

2011 On a motion by Ms. Harris, seconded by Mr. Berman the Board adjourned.

2012

2013	Affirmative:	Baka, Bell, Berman, Harris, Mackey	5
2014	Negative:		0
2015	Absent:		0



Gentry Bell
Chairman



Benjamin Blankinship, AICP
Secretary