

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 DECEMBER 17, 2015 AT**
5 **9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH NOVEMBER 30, 2015, AND DECEMBER 7, 2015.**

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

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

8
9
10 Mr. Bell - Mr. Blankinship, please read our rules.

11
12 Mr. Blankinship - Good morning, Mr. Chair, members of the Board,
13 ladies and gentlemen. The rules for this meeting are as follows: Acting as
14 secretary, I will announce each case. And as I'm speaking, the applicant should
15 come forward to the podium. We will then ask each person who intends to speak
16 to that case to stand and be sworn in. Then a member of our staff will give a brief
17 introduction to the case. Then the applicant will present their case. And then
18 anyone else who wishes to speak will have the opportunity to speak. After
19 everyone has spoken, the applicant and only the applicant will have the
20 opportunity for rebuttal.

21
22 After the Board has heard all of the evidence on a case, they will close that
23 hearing and proceed to the next hearing on the next case. They will render all of
24 their decisions at the end of the meeting. So if you wish to hear their decision on
25 a specific case, you can stay until the end of the meeting, or you can check the
26 Planning Department website—we get it updated usually within an hour after the
27 meeting ends—or you can call the Planning Department this afternoon.

28
29 This meeting is being recorded, so we will ask everyone who speaks to speak
30 directly into the microphone on the lectern. State your name and please spell
31 your last name so that we get it correct in the record.

32
33 Finally, as you can see, we are one member short this morning. Mr. Romers has
34 moved out of Henrico County and for that reason has had to resign his seat.
35 There is a provision in the state code that requires that in order for the Board to
36 grant a variance or a conditional use permit, there must be at least three
37 affirmative votes. So if you wish, you can request to defer until the next meeting

38 in hopes that a fifth member will be seated by then. If you're concerned about
39 whether you'll be able to get that third vote for your case, you certainly have that
40 privilege.

41
42 There were two cases that were advertised in the newspaper but were not on the
43 agenda for this meeting. I just wanted to make sure that nobody was here either
44 for the Ridgetop Recreation Association case or for the Arrowdale Court case.
45 Arrowdale Court has been deferred again, and Ridgetop Recreation Association
46 has been withdrawn.

47
48 With that, Mr. Chairman, I think we're ready to begin.

49
50 **CUP2015-00037** **MARC WAGNER** requests a conditional use permit
51 pursuant to Section 24-12(e) of the County Code to allow a noncommercial
52 kennel at 2405 Buckingham Avenue (BRYAN PARKWAY) (Parcel 779-743-9891)
53 zoned One-Family Residence District (R-4) (Brookland).

54
55 Mr. Blankinship - Is Mr. Wagner or somebody to represent him here?
56 Oh, okay. Would you please stand. Does anyone else intend to speak to this
57 case? All right, if you'd stand and be sworn in please. Raise your right hand. Do
58 you swear the testimony you're about to give is the truth, the whole truth, and
59 nothing but the truth so help you God?

60
61 Mr. Wagner - Yes I do.

62
63 Mr. Blankinship - Thank you. You can be seated. Mr. Madrigal, if you
64 would begin

65
66 Mr. Madrigal - Good morning, Mr. Chairman and members of the
67 Board. The request before you is to allow a non-commercial kennel in a one-
68 family residential district. The subject property is located in the central part of the
69 County and is in the Bryan Parkway subdivision. The property is just under one-
70 quarter of an acre in size and is improved with a one-and-a-half-story, 1,600-
71 square-foot Cape Cod residence constructed in 1949.

72
73 The site is served by a detached two-car garage and a small shed, both located
74 in the rear yard. The rear yard is approximately 6,000 square feet in area and is
75 fenced in by a 4-foot-tall chain link fence. The applicants purchased the home in
76 July 1997. They own a total of four small dogs consisting of three Scottish terriers
77 and one Boston terrier. The two youngest Scotties are just over a year old, and
78 the oldest is eleven years old. The Boston terrier is three years old. All the dogs
79 are kept primarily in the residence and are regularly let out in the backyard. They
80 are all pets and are not used for breeding as per the applicant.

81
82 The County has received several complaints this year for excessive barking. In
83 August, an animal control officer issued the applicant a ticket for not having

84 County dog licenses on his pets. Mr. Wagner subsequently attempted to obtain
85 County dog licenses for his animals and was informed that a CUP was required
86 because he exceeded the limit on the number of pets allowed and was
87 technically a non-commercial kennel.

88
89 The property is zoned R-4 and is designated as SR-2 on the Comprehensive
90 Plan. Although the applicant exceeds the maximum number of pet allowed in a
91 residential district, the keeping of pets is an accessory use to a one-family
92 dwelling and is thus consistent with both the zoning and Comprehensive Plan
93 designations.

94
95 The applicant lives in an older, well-established and moderately dense
96 neighborhood. The subdivision consists of 469 residentially-zoned lots with an
97 average lot size of 8,600 square feet and an average home size of approximately
98 1,500 square feet. Because of the density of the area and the concentrated
99 configuration of the lots within the subdivision, residents are more aware of or
100 sensitive to activities or uses that generate noise.

101
102 Due to the young age and nature of the applicant's dogs, they tend to bark often
103 and excessively. This has led to complaints against the applicant and his dogs.
104 The County's noise ordinance prohibits noisy animals, which it defines as those
105 that are plainly audible inside the confines of a dwelling or from animals that are
106 100 feet or more distant and that can be heard at least once a minute for ten
107 consecutive minutes. Although it is difficult for staff to quantify the amount,
108 duration, and level of barking that occurs at the applicant's residence or how
109 much the barking affects the neighborhood properties, staff did observe during a
110 site visit the applicant's younger dogs persistently barking to our presence. The
111 applicant is aware of the issue and did mention during our visit that he is
112 considering purchasing electronic training collars to control the barking.

113
114 Outside this issue, the property appeared to be well maintained and is void of
115 any pet waste or odors. The applicant does not intend to add any more pets, and
116 the number of animals will be reduced by natural attrition if approved.

117
118 In conclusion, the applicant's request is consistent with the zoning and
119 Comprehensive Plan designations. There appears to be no lasting or substantial
120 detrimental impacts associated with the request beyond the barking issue. The
121 applicant has indicated that he is considering taking steps to further control and
122 limit his dogs' barking, and specific conditions of approval have been prepared to
123 mitigate any adverse impacts on the adjacent property owners. For these
124 reasons, staff recommends approval of the applicant's request.

125
126 This concludes my presentation. I stand ready to answer any questions.

127
128 Mr. Bell - Miguel, I noticed when I was over there that several
129 dogs were being walked. There were two men walking on that street and then the

130 street behind it. Reading the report, I noticed that his next door neighbor has
131 dogs. Now I believe you did say we had specific complaints against these dogs
132 here?

133
134 Mr. Madrigal - Yes sir.

135
136 Mr. Bell - Do we have any complaints about other barking dogs
137 in the area?

138
139 Mr. Madrigal - Unfortunately, when I check, I have to check per
140 property. So unless I was aware of that and asked specifically for each
141 surrounding property, I wouldn't have known. No, I didn't check.

142
143 Mr. Bell - Thank you. Questions?

144
145 Mr. Berman - There are no written complaints or people appearing
146 today against this?

147
148 Mr. Madrigal - No. At this time we have not received any calls. We
149 haven't received any e-mails with respect to this request.

150
151 Mr. Berman - Thank you.

152
153 Mr. Bell - Thank you.

154
155 Mr. Blankinship - All right. Mr. Wagner?

156
157 Mr. Wagner - Good morning. Thanks for hearing our case. We
158 appreciate all the work the staff has done on this. And I attended the site visit. I
159 appreciated the depth of work that the staff does on this.

160
161 We are going to buy the barking collars. We haven't purchased them yet. We've
162 purchased the licenses, so we are all legal at this point. We kind of got backed
163 into this. We got the fourth dog because it was a rescue dog, and we were
164 unaware of that four-dog rule. We've had two dogs for many years.

165
166 I'll address your comment, sir, about the other dogs in the neighborhood. There
167 are at least on our block, probably seven to eight more dogs. About ten years
168 ago, there was a home invasion on our block, and there have been several
169 break-ins. So over time, I think people have gotten more dogs as just alarm
170 systems.

171
172 We accept all the conditions as staff has outlined, and we'll abide by those. Do
173 you have any questions?

174
175 Mr. Bell - Any questions?

176
177 Ms. Harris - Yes. You said you have read the conditions.
178
179 Mr. Wagner - Yes.
180
181 Ms. Harris - What do you think about putting in the condition what
182 you just said about purchasing collars for the dogs?
183
184 Mr. Wagner - We definitely will get the electric shock collars.
185
186 Ms. Harris - Right. Would you be agreeable to having that as a
187 condition is what I'm asking.
188
189 Mr. Wagner - Oh yes. Sure.
190
191 Ms. Harris - We could add that as a condition?
192
193 Mr. Wagner - Yes.
194
195 Ms. Harris - Okay. Are your dogs show dogs?
196
197 Mr. Wagner - No, they're not.
198
199 Ms. Harris - Okay.
200
201 Mr. Wagner - They're all spayed and neutered. And we don't intend
202 to take on any more. Four is enough.
203
204 Ms. Harris - Do you show them?
205
206 Mr. Wagner - No we don't.
207
208 Ms. Harris - Okay. Thank you.
209
210 Mr. Berman - I don't mean to be ghoulish, but we talked about
211 natural attrition to reduce the number down to three. I believe Zuzu is eleven
212 years old?
213
214 Mr. Wagner - Yes.
215
216 Mr. Berman - And the average age of the Scottish terrier is about a
217 dozen-plus years, give or take.
218
219 Mr. Wagner - That's right. She's in good health, but we think two
220 years at the most probably for that type of Scottish terrier.
221

222 Mr. Berman - Again, my apologies for bringing that up.
223
224 Mr. Wagner - That's okay.
225
226 Mr. Berman - I also commend you. My family rescues dogs. And I
227 commend you on the swimmer syndrome. You saved that dog's life and you
228 brought it back to health. But I am concerned about the noise. It's a very close
229 neighborhood. I did stay out there for a while, and I didn't hear any barking, but I
230 think you've said it's maybe 20 percent of the time they're outside. So odds are
231 that I wouldn't be there when they were out.
232
233 Mr. Wagner - Right. It's only when we're there, and we let them out
234 right around their mealtimes and then on weekends for a little bit longer. And
235 then I walk them on the weekend. At least one of them goes out for walks. So
236 probably even less than 20 percent of the time.
237
238 Mr. Berman - We've had similar cases like this in the past, and I
239 have to ask this question as well.
240
241 Mr. Wagner - Sure.
242
243 Mr. Berman - If it came down to having to reduce the total number,
244 do you have a place, a friend or family or something where the dog could be
245 placed if you needed to do that?
246
247 Mr. Wagner - We can find a place.
248
249 Mr. Berman - But I would also say that even with three dogs, my
250 guess is they would still have the same amount of barking.
251
252 Mr. Wagner - Right. The two youngest dogs bark, and they're
253 brothers, and it's likely that we would try to place both of them instead of just one
254 dog.
255
256 Mr. Berman - Okay. Thank you. No more questions.
257
258 Mr. Baka - No questions. Mr. Berman raised the questions I had.
259 Thank you.
260
261 Mr. Berman - You're welcome.
262
263 Mr. Wagner - Thanks.
264
265 Mr. Bell - Next case.
266

267 Mr. Blankinship - No one else to speak to that? A couple of people
268 joined us already in progress. That was conditional use permit number 37, Marc
269 Wagner on Buckingham Avenue.

270
271 **[After the conclusion of the public hearings, the Board discussed the case**
272 **and made its decision. This portion of the transcript is included here for**
273 **convenience of reference.]**

274
275 Mr. Bell - On this one, we talked about maybe adding to the
276 conditions the electric collars for the dogs. Is that agreeable to everybody before
277 we vote?

278
279 Ms. Harris - Yes.

280
281 Mr. Bell - All right, so that will be added. Do I hear a motion on
282 this case? I move that we approve it.

283
284 Ms. Harris - I second the motion.

285
286 Mr. Bell - Is there any discussion?

287
288 Mr. Berman - For the record, I move that we approve it including the
289 fifth condition.

290
291 Ms. Harris - And I second that too.

292
293 Mr. Blankinship - And for the record, can we have some discussion of
294 the test requirements.

295
296 Ms. Harris - Yes. I think the point is well taken that one of the dogs
297 is eleven years old. So we know life does not last forever, and he's getting closer
298 to that age that he may be leaving them. Then they would be in compliance with
299 three dogs.

300
301 Mr. Berman - A condition measurement for the proposed fifth
302 condition, the bark collar, the owner had said that he would agree to purchase it.
303 I want to make it stronger that it would be purchased and put in use.

304
305 Mr. Blankinship - And agree to use them, yes.

306
307 Ms. Harris - Let me ask you a question since we are discussing
308 this. This bark collar, is that controlled by the owner when the dogs are outside?
309 Are you that familiar with it?

310
311 Mr. Baka - A bark collar basically would produce a small signal to
312 startle the animal to prevent it from barking after it starts barking.

313
314 Ms. Harris - Yes, I understand that part. Is that automatic or?
315
316 Mr. Baka - It's manual. In other words, you'd have to be present.
317 If the owner was away from the house and not there, then there's no way—
318
319 Ms. Harris - The dog would bark.
320
321 Mr. Baka - Yes. So you have to be present on site. Similar to a
322 short distance away from the dog to be able to make it work.
323
324 Ms. Harris - Okay. That's what I need to know. Thank you.
325
326 Mr. Baka - There are other alternatives such as perimeter
327 fencing. That's a totally different issue we didn't discuss, a subterranean electric
328 fence.
329
330 Mr. Bell - All those in favor of the motion say aye. All those
331 opposed to the motion say nay. The ayes have it and the motion passes.
332
333 After an advertised public hearing and on a motion by Mr. Bell, seconded by Ms.
334 Harris, the Board **approved** application **CUP2015-00037, MARC WAGNER's**
335 requests for a conditional use permit pursuant to Section 24-12(e) of the County
336 Code to allow a noncommercial kennel at 2405 Buckingham Avenue (BRYAN
337 PARKWAY) (Parcel 779-743-9891) zoned One-Family Residence District (R-4).
338 The Board approved the conditional use permit subject to the following
339 conditions:
340
341 1. This approval is only for the keeping of the four dogs currently owned by the
342 applicant. The approval is not for the boarding or breeding of dogs at any
343 time.
344
345 2. No new or replacement animals may be added, so that the number of animals
346 will be reduced by natural means to three, as allowed by code, at which time
347 this permit shall expire.
348
349 3. The applicant shall maintain the property so that noise and odors are
350 controlled.
351
352 4. The applicant shall remove the two dog houses from the premises and the
353 dogs shall reside in the principal dwelling.
354
355 5. The applicant shall buy and use collars to control the barking of the dogs.
356
357
358

359 Affirmative: Baka, Bell, Berman, Harris 4
360 Negative: 0
361 Absent: 0

362
363

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

366

367 **CUP2015-00038 NICOLE AND DAVID UNICE** request a conditional
368 use permit pursuant to Section 24-95(i)(4) of the County Code to build a
369 detached garage in the side yard at 9713 Old Country Trace (COUNTRY CLUB
370 COLONY) (Parcel 741-735-2998) zoned One-Family Residence District (R-0)
371 (Tuckahoe).

372

373 Mr. Blankinship - Would everyone who intends to speak to this case
374 please stand and be sworn in. Raise your right hands please. Do you swear or
375 affirm the evidence you're about to give is the truth, the whole truth, and nothing
376 but the truth so help you God?

377

378 Mr. Unice - I do.

379

380 Mr. Blankinship - Thank you. You may be seated. Mr. Gidley, if you'd
381 proceed.

382

383 Mr. Gidley - Thank you, Mr. Secretary. Good morning
384 Mr. Chairman, members of the Board of Zoning Appeals.

385

386 This is a request for a detached garage in the side yard at 9713 Old Country
387 Trace. The applicants have an existing two-car garage that is attached to their
388 home, as you can see here. They would like to convert this garage into living
389 space, and that's the reason for the request for a new garage. While I have this
390 up, you'll note the home's construction is cedar siding and stone veneer
391 foundation.

392

393 This is the view looking up the driveway from the front yard. You can see the
394 existing garage again on the side here to the left. The proposed location of the
395 new detached garage would be at the end of the driveway right here. You can
396 also see that on the proposed plot plan. Again, this is the existing garage. The
397 location of the new garage would be right here. Please note it would be
398 seventeen feet off the side property line, which is more than enough to meet
399 setbacks.

400

401 Elevations for the proposed garage show that it is a one-story detached garage.
402 Like the existing home, the construction would be cedar siding and stone veneer
403 foundation, so it would match the existing dwelling.

404

405 Evaluation. Consistency with the Comprehensive Plan and Zoning Ordinance.
406 The proposed garage is consistent with the property's designation as Suburban
407 Residential 1 on the Comprehensive Plan and its R-0 zoning designation. As far
408 as any substantial detrimental impact, this is a view from the road itself. The
409 proposed garage would be way back here, and as you can see, as one drives
410 down the road towards the end of the cul-de-sac from left to right, the existing
411 home and some of the landscaping would help to screen the garage
412 considerably. The distance from the garage to the street would be ninety feet, so
413 there would be a substantial setback there.

414
415 This view is looking from the home towards the adjacent neighbor. What you see
416 here is actually a fence that runs along the end of the driveway. The garage
417 would be located where you see the red markers over here. Although the existing
418 fence right here and here and a few of the trees would be removed, there would
419 be some deciduous trees remaining on both sides of the property line that would
420 help to screen the proposed garage. And if I can zoom in, you may note there is
421 an evergreen hedge that the neighbor has here. And behind it there is a brick
422 wall maybe 3-1/2 feet or so in height. So between the brick wall and the
423 evergreen hedge, that would also help to screen the proposed garage which,
424 again, is only one story in height. Finally, I'd point out the neighbor has an
425 accessory structure as well, which would be located pretty much adjacent with
426 the proposed garage location.

427
428 Based on these findings, staff does not believe there will be a substantial
429 detrimental impact on any of the adjacent properties. As a result, we can
430 recommend approval of this request subject to the conditions in the staff report.
431 This concludes my presentation, and I'll be happy to answer any questions you
432 may have.

433
434 Ms. Harris - Mr. Gidley, I noticed on the survey report that this
435 property is in a FEMA-defined flood hazard area. Does that limit where the
436 garage can be placed?

437
438 Mr. Gidley - If it was within the floodplain, the owner would have to
439 take steps to make sure the garage did not raise the flood level, the base flood
440 level.

441
442 Ms. Harris - Right. But it seems from this map that we have
443 showing here now on the screen that there is plenty of room for the garage in the
444 rear. So I was wondering, why is the rear location unacceptable?

445
446 Mr. Gidley - I'll let the applicant answer that officially. Just from my
447 perspective, this location would be at the end of the existing driveway so access
448 would be much more convenient rather than having to extend pavement into a
449 backyard which is landscaped. I don't know if I have a good picture of the
450 backyard.

451
452 Mr. Baka - Could I add, Paul, that Zone X for FEMA I believe
453 would refer to the absence of a floodplain there, Zone A.
454
455 Mr. Gidley - Right.
456
457 Mr. Baka - A or B to refer to the presence of a floodplain.
458
459 Ms. Harris - I was just reading from the survey.
460
461 Mr. Gidley - They were just noting what it was designated as.
462
463 Ms. Harris - Right. And then when I look at the map, I thought I
464 saw some indications that water was somewhere near the property. But I can ask
465 the applicant about that. But as far as you know, that would not be a factor.
466
467 Mr. Gidley - That's correct.
468
469 Ms. Harris - Okay.
470
471 Mr. Gidley - Yes ma'am.
472
473 Mr. Bell - Any more questions? Thank you.
474
475 Mr. Gidley - Thank you, Mr. Chairman.
476
477 Mr. Lewis - Good morning. I'm Glen Lewis. I'm the contractor
478 representing David and Nicole Unice. Just would like to answer any questions
479 you have on this. Basically what we're trying to do is we have a growing family.
480 The house is a very big house, but it only has four bedrooms. One of the reasons
481 that we're trying to have the detached garage put forth is we're trying to turn
482 living space out of the garage that is attached to the house now. It's only
483 intended for the vehicles they have, for the kids' toys. It really won't exceed
484 anything other than that. There is no additional living space attached to this
485 garage. It is just a garage. It will not exceed the height of the home. It will look
486 like the home. And that's basically the structure of it.
487
488 If this is approved, we will seek a permit to erect this. And actually then we'll seek
489 another permit at the same time to turn the existing garage into living space. The
490 jobs will go in unison, hopefully, for the living space for them to use. This is Dave
491 and Nicole Unice here if you have any questions. Do you have any questions for
492 me?
493
494 Ms. Harris - I don't know if you would answer the question or if the
495 Unices would answer the question. Is there room in the backyard, in the rear yard
496 for the proposed garage?

497
498 Mr. Lewis - Yes, there is room in the rear of the yard. There is
499 about 150 feet from the back fence line to the back of this garage when we're
500 done. That's a pretty extreme backyard. It's wooded back there. It's kind of
501 natural and very distant from the neighbors. From the front yard, you're still about
502 90 feet off the front. So what we're trying to do is—it's very expensive to put
503 blacktop all the way back to extend the driveway about 50 feet into the backyard.
504 I would image at some point it would become very inconvenient when it's raining
505 to come out of the house and try to get to your car. These are just thoughts in my
506 process. It's actually hidden very well by the house now. The fence line is right
507 there. I really think it would be more of an encumbrance to them to have to put it
508 back any further, especially pricewise.
509
510 Ms. Harris - Okay. You may have addressed this in the report.
511 How close to the home will the garage be? I know that we have a stipulation in
512 the code that tells you how far it should be.
513
514 Mr. Lewis - It's actually on the other side of the sidewalk. I would
515 image we're a good distance of maybe thirty feet away from the house.
516
517 Ms. Harris - Okay. That's all I have.
518
519 Mr. Bell - Any other questions?
520
521 Mr. Baka - I was just going to clarify. You mentioned about thirty
522 feet from the home. So would it be about twenty-two feet there from the edge of
523 that garage?
524
525 Mr. Lewis - Yes. On a detached garage, you're probably closer.
526 You're about twenty-two feet from there.
527
528 Mr. Baka - And then from the front portion of the home there's an
529 area of asphalt, blacktop you cross. And then the corner front of the home, that
530 might be what, about half of twenty-feet?
531
532 Mr. Lewis - Yes, I agree.
533
534 Mr. Berman - So the garage is attached—the proposed garage is
535 attached to the existing garage, and you'd do a front entry into the new garage
536 and walk through the old garage to get into the house?
537
538 Mr. Lewis - Actually, the garage is not going to be attached. The
539 new detached garage is not going to be attached with any segue or overhead.
540 We're basically going to be able to pull in the driveway, use the existing
541 driveway, pull right to the back of that driveway, and pull right in from that.
542

543 Mr. Berman - I see.
544
545 Mr. Lewis - The attached garage will then be finished off. We'll
546 remove the garage doors. We'll put cedar siding. We'll do the finishes with the
547 stone at the bottom of the veneer and enclose that room as a living space, heat
548 and cooling and all that stuff.
549
550 Ms. Harris - Let's look at this map. I see the 22 feet. And I see the
551 26 by 26 for the garage scaled here. So can you point out the present garage?
552 Where is that?
553
554 Mr. Lewis - The present garage?
555
556 Mr. Blankinship - You can use the mouse.
557
558 Mr. Lewis - Oh, I'm sorry. Okay. This is the garage here. So right
559 now the Unices are coming in and making this U-turn into the garage here. So
560 what we are proposing is making this living space for their growing family, and
561 then we'll be able to pull in and just go here. They have a side entry door here,
562 so we have a side entry door that will line up almost with this door as close as
563 possible with the setbacks that we're working with. And then they'll be able to
564 come right into the house this way with no overhead or anything there.
565
566 Ms. Harris - So this is empty space. Where you have overhang,
567 this is empty space, vacant space?
568
569 Mr. Lewis - In here now?
570
571 Ms. Harris - Go above that, please.
572
573 Mr. Lewis - Yes ma'am.
574
575 Ms. Harris - Across from the garage you have just the vacant land
576 there?
577
578 Mr. Lewis - Yes ma'am.
579
580 Ms. Harris - Okay.
581
582 Mr. Lewis - It's a very large lot, as you can see here. This is a
583 fence that's here now as a partitioning fence, a barrier kind of to hide. And it
584 actually, in my opinion, will look better than the fence when we're done with it.
585
586 Ms. Harris - Okay. I was just concerned about that area, the space
587 between the house right there. Yes, right in there.
588

589 Mr. Lewis - If we moved it any closer to the house, which I
590 wouldn't suggest, we would actually not have a good ability to pull in without
591 possibly hindering the house if someone were to come in and turn out.
592
593 Mr. Blankinship - Well the required distance between the dwelling and
594 the garage would be ten feet. And of course that will be checked when you
595 submit your building permit.
596
597 Mr. Lewis - Yes. We're definitely within that.
598
599 Ms. Harris - That corner, though, is that corner ten feet from—
600
601 Mr. Blankinship - It will be when his building permit is approved. If they
602 have to push back a couple of feet and pour two feet of asphalt, then that's what
603 they'll have to do.
604
605 Mr. Lewis - We'll make sure.
606
607 Mr. Berman - Does your homeowners' association allow for a front-
608 entry garage?
609
610 Ms. Unice - We don't have a homeowners' association.
611
612 Mr. Berman - Very good.
613
614 Mr. Bell - Your neighbor, have you talked to them about it.
615
616 Mr. Unice - Yes, we informed everyone on the street and
617 personally talked to the neighbors on both sides of our home.
618
619 Mr. Bell - So there are no negative comments?
620
621 Mr. Unice - No negative comments. A couple of just questions
622 and wanted to understand the plans, but we sent them all the plans even before
623 the notice of the hearing went out and just let them know. But no negative
624 comments.
625
626 Mr. Bell - Have you read and understand the conditions and
627 agree to them if it's approved?
628
629 Mr. Lewis - The conditions as to—yes, yes.
630
631 Mr. Blankinship - Four conditions.
632
633 Mr. Lewis - Absolutely. The lighting. We do have an alternative
634 for the lighting. We can put can lights on the front instead of exterior lights, if

635 that's what you suggest. That's basically when they pull in the lighting can be
636 down-lighting in front of the garage doors instead of front lights. The other
637 conditions, there's no problem with any of those conditions.
638

639 Mr. Bell - Thank you.
640

641 Ms. Harris - Okay. Mr. Unice, I did hear, I believe, that you do
642 have space in the rear yard, but it's more convenient to place it where you are
643 suggesting. I'm just concerned about setting a precedent. We have a code that
644 says place a garage in the rear yard, and then for you we make the exception
645 and say you can put yours in the side yard because it's more convenient for you.
646 I'm concerned about that exception. How would you address that, you or your
647 wife?
648

649 Ms. Unice - Well, if you take a look at the shape of the home, we
650 were actually surprised that it was not the rear yard. It shows as "rear yard"
651 because the home extends there in the front there. The reason it's "side yard" is
652 because of the depth of the home rather than the appearance from the front. It
653 actually seems to me like it would be a detriment both to the environment of the
654 neighborhood as well as our rear neighbors if we added sixty feet of pavement to
655 get to the rear yard when we are maintaining a really beautiful environment in the
656 backyard. So really from the front of the home it appears as rear yard; it does not
657 appear as side yard. And it actually is sort of hidden by the fact that the front of
658 home appears the way that it does. So rather than seeing it as a precedent, we
659 see it as a way to both maintain the environment of the neighborhood as well as
660 provide the least amount of intrusion on both our side neighbor as well as our
661 back neighbor.
662

663 Ms. Harris - You said in the report, and you said again, talking
664 about the depth of the house. I might be looking at the wrong map here, but it
665 seems as though even with the depth of the house that you still have quite a bit
666 of room that you can construct a garage.
667

668 Mr. Lewis - There is definitely a large back yard. Again, it's
669 natural area. And you're probably looking at extending the driveway at least
670 another—if you look at the size of the garage, which is 26 feet here, and that's
671 right at the apron of that, we're easily going back 30 feet plus to get back past
672 that. So you're extending 30 feet then the 26-foot-by-26-foot garage would fit in
673 here, and we'd have to come off our setbacks here. As far as room in the rear
674 yard, there is room in the backyard. But I do believe it would probably hinder
675 more natural space than anything.
676

677 Ms. Unice - And there's really beautiful very old trees in the yard
678 that would all have to come down. So I feel like the impact on the neighborhood
679 would be substantial.
680

681 Mr. Blankinship - I was going to ask that. Are you going to have to
682 remove any trees to build the building as proposed?
683

684 Mr. Lewis - This is the only tree that's in jeopardy here. It's really
685 just on the inside of this. We're trying to line it up as best possible with them
686 pulling right in. So this tree is in jeopardy, only the root system. So we're really
687 going to have to look at that tree to take it out only because of the root system.
688 This is the same tree looking here. So this is where we're intending to put the
689 garage here, so they can pull right in. But obviously there is room in backyard.
690 Let's see if I have any more pictures here. So there are some big oaks.
691

692 Mr. Blankinship - This is from the street looking straight down the
693 driveway?
694

695 Mr. Lewis - If we took that garage any further back, we would
696 actually be jeopardizing all of these trees in here instead of this one tree.
697

698 Mr. Unice - That's actually not even a straight-on view of the
699 driveway. It's hard to see that from the street. It turns to the left once you come
700 around this bend. You have a straight-on view here, but it's not as visible from
701 the road.
702

703 Mr. Bell - Any more questions?
704

705 Mr. Baka - Two comments. Thank you for that review of the
706 application. It appears that you have positioned the garage in such a location to
707 try to minimize the impact on the surrounding homes and also secondly to reduce
708 the amount of impervious coverage, as Mrs. Unice referred to. If you were to site
709 it in the backyard, as is possible, it would involve several hundred square feet
710 more of impervious cover and runoff, not to mention the taller trees being
711 removed.
712

713 So when I drove down through Old Country Trace—on the actual subdivision plat
714 again, flip back to that diagram. When you're on the street and you're looking
715 back in the driveway, the proposed garage location appears to be well hidden
716 from the road when you're driving heading towards the cul-de-sac. So I'm
717 encouraged to hear that you took the time to talk to your neighbors. They have
718 no objections, no concerns. I think it's a well-founded application.
719

720 No further questions at this time. Thanks.
721

722 Ms. Harris - I think in order to be fair to Mr. Gidley, I need to ask
723 the question about the water. Are you bothered at all by—have you heard
724 anything about a flood zone being near your property?
725

726 Mr. Unice - I have no knowledge of being in a floodplain.

727

728 Ms. Harris - Okay. Thank you.

729

730 Mr. Lewis - One other thing I'd like to add. If you look at the
731 property and look at this picture like the Unices are saying, they do have a
732 unique house where it runs really long like a rancher. And then from there, it
733 really goes back in the middle of the house. If you look at this property in this
734 picture, that fence really almost looks like the rear yard, and that's what we're
735 looking at. I will tell you that right now if this doesn't go through, the fence
736 actually will stay up. And I know the garage will actually be an improvement over
737 that fence. That's just another observation from my point of view.

738

739 Mr. Baka - Let me just briefly add that since this is a conditional
740 use permit in front of us, the task at hand is merely to understand would the
741 request result in a substantial detrimental impact on nearby property or how does
742 the applicant minimize the adverse impact on adjacent properties. I think those
743 hurdles of the test—I guess we'll get into variances later in the agenda, but those
744 cases are much more higher, stringent tests to climb.

745

746 Mr. Bell - Any more questions? Thank you. Is there anybody
747 else that would like to speak to this issue? All right, Ben, we'll go on with the next
748 one.

749

750 **[After the conclusion of the public hearings, the Board discussed the case**
751 **and made its decision. This portion of the transcript is included here for**
752 **convenience of reference.]**

753

754 Mr. Baka - Mr. Chairman, I'll make a motion that we approve
755 CUP2015-00038, the Unice family, on the grounds that this detached garage
756 would not result in a substantial detrimental impact on nearby properties or
757 adjacent properties. The applicant explained that the neighbors did not have any
758 objections, we did not receive any objections, and the garage is also somewhat
759 hidden from the street as you drive by it.

760

761 Mr. Bell - Do I hear a second on this motion? I move that we
762 second it. Is there any discussion?

763

764 Ms. Harris - Yes. I'm going to vote no on this motion. My concern
765 is to not approve building a structure that we know does not conform to code if
766 there are other alternatives. And since there is a space in the backyard—we
767 talked about hindering the natural space. I think that needs something stronger to
768 get my affirmative vote.

769

770 Mr. Bell - Any other discussion?

771

772 Mr. Baka - No sir.

773
774 Mr. Bell - All in favor say aye. All opposed say nay.

775
776 Ms. Harris - Nay.

777
778 Mr. Bell - The ayes have it; the motion passes.

779
780 After an advertised public hearing and on a motion by Mr. Baka, seconded by
781 Mr. Bell, the Board **approved** application **CUP2015-00038, NICOLE AND**
782 **DAVID UNICE's** request for a conditional use permit pursuant to Section 24-
783 95(i)(4) of the County Code to build a detached garage in the side yard at 9713
784 Old Country Trace (COUNTRY CLUB COLONY) (Parcel 741-735-2998) zoned
785 One-Family Residence District (R-0). The Board approved the conditional use
786 permit subject to the following conditions:

- 787
788 1. This conditional use permit applies only to the location of a detached garage
789 in the side yard. All other applicable regulations of the County Code shall
790 remain in force.
791
792 2. Only the improvements shown on the plot plan and building elevations filed
793 with the application may be constructed pursuant to this approval. Any
794 additional improvements shall comply with the applicable regulations of the
795 County Code. Any substantial changes or additions to the design or location
796 of the improvements shall require a new conditional use permit.
797
798 3. Before beginning any clearing, grading, or other land disturbing activity, the
799 applicant shall submit an environmental compliance plan to the Department of
800 Public Works.
801
802 4. All exterior lighting shall be shielded to direct light away from adjacent
803 property and streets.

804
805
806 Affirmative: Baka, Bell, Berman 3
807 Negative: Harris 1
808 Absent: 0

809
810
811 **[At this point, the transcript continues with the public hearing on the next**
812 **case.]**

813
814 **CUP2015-00039** **ROBERT B. SEAL** requests a conditional use permit
815 pursuant to Section 24-95(i)(4) of the County Code to allow a shed to remain in
816 the side yard at 5204 Eanes Lane (LINNHAVEN COURT) (Parcel 806-712-7586)
817 zoned One-Family Residence District (R-4) (Varina).
818

819 Mr. Blankinship - Is there anyone here representing this case? Okay,
820 great. Does anyone else intend to speak to this case? If so, please stand and be
821 sworn in. Please raise your right hand. Oh, you're already sworn in. Do you
822 swear the testimony you're about to give is the truth, the whole truth, and nothing
823 but the truth so help you God? Thank you.

824
825 Mr. Gidley - Thank you, Mr. Secretary. This is a request to allow a
826 detached garage to remain in the side yard at 5204 Eanes Lane. The home on
827 the property was built in 1956, and a number of additions have occurred over the
828 years. The applicant has owned the property since 1976.

829
830 In 1997, he obtained a variance to allow an attached carport to encroach into the
831 northern side yard, which is shown right here. Then in 2009, there was an
832 addition on the rear of the home. This addition you can see here and here. His
833 current construction includes adding decking in the back of the house. That
834 decking is right here and was under construction on the day the pictures were
835 taken. They are also proposing to add a roof that would come out eight feet and
836 essentially cover the area that you see right here. Both the 2009 addition and the
837 proposed roof over this area of the deck would place the accessory structure in
838 the side yard, which you can see right here.

839
840 I would note during our site visit staff noted a number of accessory structures on
841 the property including a second carport. This one is located in the front yard, as
842 shown here. The total of these accessory structures exceeds the lot area
843 requirement by roughly 177 square feet, the coverage requirement. Because a
844 second carport is not permitted in the front yard and does not meet required
845 setbacks, it should be removed. Doing so would also bring the property under
846 compliance with the lot coverage requirements for accessory structures.

847
848 Evaluation and consistency with the Comprehensive Plan and Zoning Ordinance.
849 The existing detached garage and the deck are consistent with the property's
850 designation of Suburban Residential 2 on the Comprehensive Plan and the
851 property's R-4 zoning.

852
853 As far as any substantial detrimental impact on adjunct property, the garage in
854 question has existed since 1976, so the granting of a conditional use permit
855 should not have any additional impact on the adjacent property owner. Finally,
856 the addition you see here, both the 2009 addition and the new decking, all of
857 these comply with the required 35-foot rear yard setback. So staff does not see a
858 substantial detrimental impact on the adjacent property owner. As a result, staff
859 can recommend approval of this conditional use permit subject to the conditions
860 in the staff report including removal of the second carport that's in the front yard.

861
862 This concludes my presentation, and I can certainly answer any questions you
863 may have.

864

865 Mr. Bell - Questions?
866
867 Ms. Harris - May we see the last picture in our packet that has a
868 rear view of the home and adjacent garage and the view of the shed and addition
869 behind the garage?
870
871 Mr. Gidley - Okay. That's one of the two pictures on the back of
872 your—
873
874 Ms. Harris - The one that shows the red shed.
875
876 Mr. Gidley - Okay. Here we go.
877
878 Ms. Harris - This structure to the right, will that be removed? Or is
879 that in good repair?
880
881 Mr. Gidley - This is the structure in question. That would be in the
882 side yard and that would remain.
883
884 Ms. Harris - Okay.
885
886 Mr. Gidley - To my knowledge, this one would stay. But I'll let the
887 applicant answer that.
888
889 Mr. Bell - Any more questions? Thank you.
890
891 Mr. Seal - I'm Robert Seal, the homeowner.
892
893 Mr. Bergman - I'm Roger Bergman. We're the contractor for the
894 deck.
895
896 Mr. Bell - Give us your spellings of your last names.
897
898 Mr. Seal - Seal—S-e-a-l.
899
900 Mr. Bergman - Bergman—B-e-r-g-m-a-n.
901
902 Mr. Bell - Thank you. Go ahead and present your case.
903
904 Mr. Bergman - I originally had planned on—I don't know how to get
905 to the other picture. In my first permit application, there was a 6-by-16 apex roof
906 to go over this particular deck right here. I was going to place it directly beneath
907 this apex roof here with an open gable and vaulted ceiling. But as a result of the
908 impact on this building right here, I pulled it out of my permit so I could continue
909 construction on this deck here because of Thanksgiving. They had some outside
910 family members coming in. So what I'm doing now is going to—when we get this

911 variance, I will amend the permit to include the apex roof, which is all framed in
912 salt-treated product. The roofing type material the customer has chosen is a
913 corrugated metal roofing, anodized, in a charcoal gray color. Then this job will be
914 complete.

915
916 Mr. Bell - Any questions?

917
918 Mr. Baka - Carport? What are you plans for that front carport?

919
920 Mr. Bergman - That would be the homeowner.

921
922 Mr. Seal - I'm willing to abide by the conditions. I will remove it
923 by the end of January.

924
925 Mr. Bell - So you've read the conditions and understand—

926
927 Mr. Seal - Yes sir.

928
929 Mr. Bell - —and agree to follow them if it's approved?

930
931 Mr. Seal - Yes sir.

932
933 Mr. Bell - I do have a question. Go back to that shed that's been
934 there for a while. Is that going to stay in the backyard? The one attached to the
935 garage.

936
937 Mr. Bergman - That one?

938
939 Mr. Bell - No. Go back. That one.

940
941 Mr. Bergman - All right. This is a—the building in question right now
942 that was on the property when the customer purchased the land. I believe this is
943 just a garden shed and there's virtually nothing in it except for maybe some pots
944 for plantings and this.

945
946 Mr. Seal - I keep firewood in there for my fire pit. I also do have
947 a note from my neighbor that says she's okay with approving the shed staying
948 there. I can present that to you.

949
950 Ms. Harris - Use the microphone. They need to use the
951 microphone.

952
953 Mr. Seal - That's the note from my neighbor, Ms. Marian
954 Siemering, that's been living next door to me for about thirty-five years now. She
955 and her husband approved my carport that we got the variance for, and she
956 brought me the note just to present to you folks that she's fine with the garage

957 staying there. And like I said, I bought the house in 1976. The garage was there
958 then. I don't even use it as a garage. It's a workshop for me and a practice room.
959 I play gospel music, so we practice in the shed. With my workbench in there, I
960 don't have enough to put a car in there, to be honest with you.

961

962 Mr. Baka - That note reads that she's the owner of 5202, which is
963 the residence closest to that.

964

965 Mr. Seal - Yes sir.

966

967 Mr. Baka - Thank you.

968

969 Ms. Harris - This area where the cursor is, you say you keep your
970 gardening equipment here or plants or whatever, Mr. Seal?

971

972 Mr. Seal - Yes, yes ma'am. That is where I keep my
973 wheelbarrow. I keep a little bit of firewood for my fire pits. Garden soil. My wife
974 does planting. Things like that.

975

976 Ms. Harris - Okay. Do we count this as an accessory structure?

977

978 Mr. Blankinship - Yes ma'am.

979

980 Ms. Harris - So I was wondering if you get in trouble having too
981 many accessory structures, could you do something with this, like remove it. I
982 don't know if it's in good repair. But you really need this, right?

983

984 Mr. Seal - Yes ma'am. Just to keep things. I try to keep my yard
985 neat so I keep things in the shed to keep from having them just sitting around in
986 the yard. And to protect them from the weather.

987

988 Ms. Harris - Okay.

989

990 Mr. Berman - Just a quick comment. Mr. Seal, if you are proposing
991 any future modifications or additions, we do ask that you seek permission first
992 other than look for forgiveness later.

993

994 Mr. Seal - Yes sir.

995

996 Mr. Berman - It's a lot easier on everybody.

997

998 Mr. Seal - Yes sir, I understand. This deck is really my last
999 project that I have in mind. I've got the grass down to where I can handle it now.

1000

1001 Mr. Berman - Thank you.

1002

1003 Mr. Bell - If there are no other questions, thank you.
1004
1005 Mr. Seal - Thank you.
1006
1007 Mr. Bergman - Thank you.
1008
1009 Mr. Bell - Is there anyone else who would like to speak to this
1010 issue? All right.

1011
1012 **[After the conclusion of the public hearings, the Board discussed the case**
1013 **and made its decision. This portion of the transcript is included here for**
1014 **convenience of reference.]**

1015
1016 Mr. Bell - Do I hear a motion on this case?

1017
1018 Mr. Berman - I move that we approve CUP2015-00039 as it does
1019 not have any detrimental impact to the surrounding area and that all conditions
1020 are met.

1021
1022 Mr. Bell - Do I hear a second on this motion?

1023
1024 Ms. Harris - Second because I feel that this shed has been there
1025 for a while. It's not being created to non-conform with the code.

1026
1027 Mr. Bell - Is there any other discussion? Hearing none, all in
1028 favor say aye. All opposed say nay. The ayes have it; the motion passes.

1029
1030 After an advertised public hearing and on a motion by Mr. Berman, seconded by
1031 Ms. Harris, the Board **approved** application **CUP2015-00039, ROBERT B.**
1032 **SEAL's** request for a conditional use permit pursuant to Section 24-95(i)(4) of the
1033 County Code to allow a shed to remain in the side yard at 5204 Eanes Lane
1034 (LINNHAVEN COURT) (Parcel 806-712-7586) zoned One-Family Residence
1035 District (R-4) (Varina). The Board approved the conditional use permit subject to
1036 the following conditions:

- 1037
1038 1. This conditional use permit applies only to the keeping of the existing storage
1039 building in the side yard. All other applicable regulations of the County Code
1040 shall remain in force.
1041
1042 2. Only the improvements shown on the plot plan and building design filed with
1043 the application may be constructed pursuant to this approval. Any additional
1044 improvements shall comply with the applicable regulations of the County
1045 Code. Any substantial changes or additions to the design or location of the
1046 improvements shall require a new conditional use permit.

1047

1048 3. The carport located in the front yard, off the southeastern corner of the home,
1049 shall be permanently removed from the property no later than January 31,
1050 2016.

1051
1052 4. All exterior lighting shall be shielded to direct light away from adjacent
1053 property and streets.

1054
1055
1056 Affirmative: Baka, Bell, Berman, Harris 4
1057 Negative: 0
1058 Absent: 0
1059

1060
1061 **[At this point, the transcript continues with the public hearing on the next**
1062 **case.]**
1063

1064 Mr. Blankinship - All right. We've completed the conditional use permit
1065 portion of the agenda, and now we're beginning the variance portion.
1066

1067 **VAR2015-00013** ALDI, INC requests a variance from Section 24-
1068 104(k)(3) of the County Code to allow additional sign area at 6303 W Broad
1069 Street (Parcel 768-742-8126) zoned Business District (B-2) (Tuckahoe). The sign
1070 area requirement is not met. The applicant proposes 169 square feet detached
1071 sign area, where the Code requires 150 square feet detached sign area. The
1072 applicant requests a variance of 19 square feet detached sign area.
1073

1074 Mr. Blankinship - Would everyone who intends to speak to this case
1075 please stand and be sworn in. Do you swear the testimony you're about to give is
1076 the truth, the whole truth, and nothing but the truth so help you God? Thank you.
1077

1078 Mr. Madrigal - Mr. Secretary, Mr. Chair, members of the Board, the
1079 variance request before you is to allow additional sign area on an existing
1080 detached sign located in a community shopping center.
1081

1082 The property is over eleven acres in size and is improved with a large shell retail
1083 building totaling 121,000 square feet in area. It was constructed in 1965. The
1084 shopping center is currently anchored by Burlington Coat Factory and Office
1085 Max. In 2001, a 7,200-square-foot O'Charley's restaurant was added to the
1086 center and is located at the southeast corner of the site.
1087

1088 In 2014, Aldi began negotiating a lease agreement to locate one of their stores at
1089 the shopping center. Construction began in August of this year on a 21,000-
1090 square-foot portion of the building to accommodate their new store, which
1091 involves an interior and exterior remodel on a corner section of the existing
1092 building. Signage at the shopping center consists of a combination of attached
1093 and detached signs. Because of the center's corner location, it is allowed to have

1094 two detached signs, which are required to be spaced at least seventy-five feet
1095 apart. Additionally, the aggregate sign area of the two signs may not exceed 150
1096 square feet, and neither of the two signs is allowed to exceed 100 square feet in
1097 sign area as per code.

1098
1099 The detached signs are located along West Broad Street, one at the primary
1100 entrance of the center and the second near the street intersection. Both signs are
1101 cabinet signs with Plexiglas faces atop a pole. The primary entrance sign has 57
1102 square feet of sign area and identifies Office Max and Burlington Coat Factory.
1103 The corner sign has 86 square feet of sign area and identifies Burlington Coat
1104 Factory only. Total sign area between the two equals 143 square feet and they
1105 have been in this configuration since 1995. Because neither of the two anchors
1106 wish to modify their existing signage to accommodate Aldi, the applicant has
1107 requested a variance to add an additional cabinet sign to the bottom of the
1108 primary entrance sign. This is the proposed plan.

1109
1110 The new sign will add approximately 25 square feet of sign area to the existing
1111 sign. This increases the sign area to 82 square feet from 57 square feet and will
1112 increase the overall detached sign area to 168 square feet from 143 square feet.
1113 The aggregate detached sign area will be approximately 18 square feet over the
1114 150-square-foot limit established by code.

1115
1116 With respect to the threshold criteria for the request, there are two key questions,
1117 one of which the applicant must meet. One is, does the ordinance unreasonably
1118 restrict the use of the property? The second, is there a hardship due to the
1119 physical condition of the property or its improvements at the time of the effective
1120 date of the ordinance?

1121
1122 The current sign regulations have been in effect since 1987. The two detached
1123 signs at the shopping center have been in their current configuration since 1995.
1124 The O'Charley's restaurant was added in 2007 and does not have any
1125 advertising copy on either of the two existing detached signs. Although Aldi
1126 successfully negotiated a lease to locate in the shopping center, they were
1127 unsuccessful in negotiating advertising space within the confines of the existing
1128 freestanding sign. Because the current sign regulations have been in effect for
1129 the last thirty-eight years, signage at the shopping center reflects these adopted
1130 standards. It is staff's position that the current situation faced by Aldi is not one
1131 created by County code nor does not constitute an unreasonable restriction on
1132 the use of the property.

1133
1134 Of the five subtests applied in an evaluation of a variance, each must be
1135 positively met. Test number one, was the property interest acquired in good faith
1136 and any hardship was not self-imposed. Although Aldi did not create the current
1137 sign situation at the shopping center, they did enter into a lease agreement
1138 knowing that the existing anchors were under no obligation to modify their
1139 existing signage in order to accommodate them. Thus, if the lack or shortage of

1140 detached sign area is considered a hardship, it is essentially self-imposed by
1141 their agreeing to locate in the shopping center.

1142

1143 The granting of the variance will not be a substantial detriment to adjacent and
1144 nearby property. Test number two. It's staff's position that granting the applicant's
1145 request absent a hardship will establish a negative and undesirable precedent for
1146 existing and future stores in the shopping center. It will also establish a negative
1147 precedent for adjacent and nearby commercial property wanting larger signs than
1148 what is allowed by code. Approving larger detached signs can negatively impact
1149 the visual and aesthetic quality of commercial corridors within the County by
1150 adding visual clutter and causing a detrimental impact.

1151

1152 Test number three. Is the situation on the property concerned not of a general
1153 recurring nature to allow for an ordinance amendment? It is standard practice for
1154 the business community to ask for and have as much advertising as possible
1155 within their sign requests. Recognizing the interests and desires of the business
1156 community, the Board of Supervisors have determined reasonable limitations on
1157 sign area, hence the existing sign standards. Since the adoption of the sign
1158 regulations, they have been applied fairly and consistently throughout the County
1159 for many years. Staff finds nothing unique in this case that would justify
1160 approving a variance.

1161

1162 Test number four. The granting of the variance does not result in a use that is not
1163 otherwise permitted. The property is commercially zoned and is improved with a
1164 shopping center consistent with the zoning designation. The applicant's request
1165 is for the waiver of a standard and a use variance.

1166

1167 Test number five. The relief sought by the applicant is not available through a
1168 special exception or modification. A special exception or use permit is not an
1169 available option in this case.

1170

1171 In conclusion, the applicant's argument for a variance is that the County's sign
1172 ordinance has created an unfair situation at the shopping center. Detached signs
1173 are limited to a maximum of 150 square feet distributed between the two
1174 freestanding signs. This sign area has been allocated between the anchor
1175 tenants on a first-come-first-service basis which has placed Aldi at a
1176 disadvantage. Aldi faults the sign code for the current distribution of sign area at
1177 the shopping center instead of the lease agreements. Staff contends that the sign
1178 code has been in effect for thirty-eight years and businesses have adapted to
1179 these standards. This is evidenced by shopping centers throughout the County
1180 complying with the code and successfully managing sign criteria on the property.

1181

1182 Based on the facts of the case, a lack of demonstrable hardship or unreasonable
1183 restriction created by code, and the general recurring nature of the issue, staff
1184 recommends denial of the applicant's request.

1185

1186 This concludes my presentation. I'll attempt to answer any questions you may
1187 have.

1188
1189 Mr. Bell - Thank you. Any questions?
1190

1191 Ms. Harris - Yes. I'm a shopper, so I go around and I do notice
1192 signs because I want to know what's in this shopping center, what stores are not
1193 there any longer. I've noticed on several shopping centers in Henrico County that
1194 there are multiple stores listed. I wonder how do they get around that?
1195

1196 Mr. Madrigal - They come in with a sign program, a sign package,
1197 and those get reviewed at the Permit Center. They still have to comply with the
1198 overall sign regulations, the standards.
1199

1200 Mr. Blankinship - The short answer is that they make each sign smaller.
1201

1202 Ms. Harris - When you have eight stores in one shopping center,
1203 certainly it's no larger than Office Max and Burlington. I'm just concerned.
1204 Virginia Center Commons, is that in Henrico County?
1205

1206 Mr. Blankinship - Yes ma'am.
1207

1208 Ms. Harris - Okay. I think there's one over there. It has Bed Bath
1209 and Beyond, and Michael's, and Barnes and Noble, and Chili's, and a whole—
1210 there are quite a few. Men's Warehouse. I've just wondered about that area, if we
1211 could see that area. I'd just like a comparison.
1212

1213 Mr. Blankinship - If they only have one detached sign, it can be 150
1214 square feet on just the one sign. Here they have two detached signs, one on
1215 Broad and one on Horsepen.
1216

1217 Ms. Harris - Okay, that's the difference. That's the difference,
1218 because I think there's only one sign. Thank you.
1219

1220 Mr. Bell - Any other questions?
1221

1222 Mr. Baka - I have a question I guess for the staff. Reading the
1223 applicant's information, how is it unfair if the 150-foot rule applies equally to all
1224 B-3-zoned properties throughout the County? How is that unfair?
1225

1226 Mr. Madrigal - I don't understand your question; I'm sorry.
1227

1228 Mr. Baka - Well maybe this is more appropriately addressed to
1229 the applicant. Let me address that to the applicant. The second question I had for
1230 staff would be, what would happen if O'Charley's Restaurant came in 2016 and

1231 said we'd like a sign variance also, we want to be on that pole. What do we do
1232 then?

1233

1234 Mr. Madrigal - You'd have to consider that case on its own merits
1235 when you heard it. Essentially, they could cite that you've already established a
1236 precedent of granting a larger sign if this were to be approved.

1237

1238 Mr. Baka - Not just this shopping center but any other center
1239 whether it's another street in the County—Broad Street, Laburnum, Route 1. If
1240 you had a situation where the shopping center, as you mentioned, a lot of
1241 signage packages will come in and they'll be well aware of the maximum sign,
1242 and they'll design that sign to fit the maximum. If a new tenant comes in and says
1243 hey, we had to sublet or subdivide the existing space, suddenly they'll ask for a
1244 variance at that location whether it's at Virginia Center Commons or Broad Street
1245 or anywhere. Does this set a precedent if we were to approve this case and allow
1246 a sign variance here?

1247

1248 Mr. Madrigal - It potentially could.

1249

1250 Mr. Baka - All right, thanks. My other question I guess is for the
1251 applicant.

1252

1253 Mr. Bell - Thank you. Would you state your name and spell your
1254 last name please.

1255

1256 Mr. Paparella - Dominick Paparella. P-a-p-a-r-e-l-l-a.

1257

1258 Mr. Bell - Thank you.

1259

1260 Mr. Paparella - Good morning, Mr. Chairman, members of the Board.
1261 At present, the sign, as was pointed out, is 57 square feet total. The addition of
1262 the Aldi cabinet would of course bring us up to 82 square feet. Still under the
1263 100-square-foot code compliance in reference to one stand alone freestanding
1264 sign. Now of course as per the code, this particular site is allowed two
1265 freestanding signs and therefore we do exceed the 150-square-foot max as far
1266 as allowable square footage. Now, the addition of the Aldi cabinet would put us
1267 over the 150 square feet by 18 square feet.

1268

1269 We're asking for relief on the following basis. The store is closing in on an
1270 opening. We don't have any visual identification from Broad Street, which will
1271 result in a financial hardship given the store's setback in reference to Broad
1272 Street.

1273

1274 I would just like to make note. In reference to the staff report, the report points
1275 out that O'Charley's, which has been located in the shopping center from 2007,
1276 does not have any advertising copy on the ground signs. That is true. However,

1277 it's not the same situation. O'Charley's is strategically located on the corner of
1278 Broad and Horsepen; therefore, their walls signs are more than sufficient as far
1279 as identification. Aldi is set back 250-plus feet.

1280
1281 We did not create the situation, but in good faith my client, Aldi, has attempted
1282 desperately to reach an accord with all parties in reference to the tenants and the
1283 property owner. Now I can understand that the sign program can get out of
1284 control and be detrimental to adjacent properties. But I would request the Board
1285 consider that we're dealing with a small increase, and it will in no way impact the
1286 surrounding area visually or aesthetically.

1287
1288 One other option I would just ask the Board to consider because I do realize the
1289 situation that the Board has in reference to setting a precedent. If it's possible, if
1290 we could basically have consideration to install the sign but basically under a
1291 time restriction. In other words, give us time to resolve the situation, to basically
1292 bring the signs back into conformance with the code. I'm sure code enforcement
1293 would make absolutely certain that whatever arrangement was made was
1294 enforced. So it would be a temporary situation if we could get a year to resolve it.
1295 And again, basically at least get a cabinet up there in the interim. Again, at that
1296 point we'll meet with all parties concerned, and we will have to resolve this to
1297 basically bring the 150-square-foot ceiling basically into play again.

1298
1299 Any questions, sir?

1300
1301 Mr. Bell - Questions?

1302
1303 Mr. Berman - Yes, a couple quick ones. First of all, we appreciate
1304 bringing in Aldi and the jobs that your client will create. But we are concerned—
1305 I'm concerned about precedent. There are three options that we see, and I'd like
1306 you to speak to them. One would be, there is seven square feet remaining, so
1307 you could attach a small lighted cabinet on the bottom. You take this viewing
1308 screen right here, it would be about a third of the size of that.

1309
1310 Mr. Paparella - You mean as far as to scale down our sign to
1311 conform?

1312
1313 Mr. Berman - Just the logo.

1314
1315 Mr. Paparella - My only concern—I've been in the sign industry for
1316 quite a while. I'm a little concerned about the legibility if we bring it down any
1317 more than that. That's my concern.

1318
1319 Mr. Berman - Okay. Option two is, signage attached. So as I drove
1320 down Broad Street, your facade—if you go back to the one that's marked "View
1321 of Alid's New Corner Store." Mr. Madrigal, if you could click on that, please. Yes,
1322 that one. So as you drive, you can see the Tyvek—it's right now Tyvek. Wouldn't

1323 it be an option to put attached signage there that could easily been seen and far
1324 bigger—even with the 200-plus-foot setback far bigger than any sign.

1325
1326 Mr. Paparella - You mean in reference to the store frontage itself?

1327
1328 Mr. Berman - Yes.

1329
1330 Mr. Paparella - Again, when you're dealing with a main artery—I did
1331 notice that the traffic flow—it's a situation where if you don't have a ground sign
1332 to identify a shopping center, the tenants that are set back that distance, it's not
1333 going to have the same value. There's no doubt about it that if you're in the
1334 shopping center it's clearly evident where the store is. But that's the whole point
1335 why the other two existing tenants have the ground sign so there's some sort of
1336 identification that we're here.

1337
1338 Mr. Berman - The third option would be a temporary banner, not a
1339 year, but a grand opening banner or now open banner that you file for a permit
1340 for a temporary banner.

1341
1342 Mr. Paparella - Obviously we would consider any alternatives. But
1343 obviously a banner is not the same. My thought on this. We've been very
1344 frustrated as far as trying to get some sort of an accommodation with the tenants
1345 there. The feedback is we don't go through the expense, this and that. However,
1346 I am basically basing my position on that if we could get a temporary cabinet up
1347 there, I'm in a position to negotiate this thing properly with all interested parties.
1348 Everybody's going to basically have to give a little bit to bring us back into 150
1349 square feet given the time constraints that would be put on it.

1350
1351 Mr. Berman - I'm not going to argue the case of the Board of
1352 Supervisors, but you've heard already that this had been in for almost forty years,
1353 and it's been well served in this County, these restrictions. So if you think you're
1354 going to put something temporary up there, you're going to have a battle
1355 probably greater than what you're having today in front us in order to get that
1356 changed or excused. Your client knowingly entered into a contract with these
1357 existing conditions.

1358
1359 Mr. Paparella - Right. Yes. He was under the—we were under the
1360 impression that we definitely would be allowed to basically have our cabinet
1361 installed on that existing ground sign. And then of course it came to pass that we
1362 are over. It became an issue, and it was recommended that well, let's see if we
1363 can basically ask for some relief from the Zoning Board.

1364
1365 Mr. Bell - To follow up on his point. Excuse me for interrupting.

1366
1367 Mr. Berman - I'm done.

1368

1369 Mr. Bell - The state does have stringent requirements of things
1370 we can and cannot do. Number one that he read about the hardship wasn't
1371 created by us in this situation, it was created when you all did sign that
1372 agreement. So therefore, this sort of tells us we have to look at that strong and
1373 hard because the state says this is what we have to do.

1374
1375 Mr. Baka - I have a couple comments. First of all, thank you for
1376 taking the time to appear and address this. We appreciate it. As Mr. Berman
1377 mentioned, we appreciate Aldi in the community. I shop at Aldi on Parham and
1378 enjoy the store. It's a great addition to Henrico and Richmond.

1379
1380 I wish your case were a conditional use permit case. Earlier we simply just said
1381 hey, this case appeared not to have a substantial detriment on any adjacent
1382 properties. When you look at it on its face, if we add eighteen square feet to a
1383 sign, boy, that doesn't necessarily have a substantial detriment on neighboring
1384 properties. But that's the test for the simpler process here in Virginia for the
1385 conditional use permit cases. We have the more complex five-part variance test
1386 that Miguel mentioned, which ironically went into effect July 1, 2015. I noted from
1387 your letter in the packet dated December 1 that negotiations started in 2014. It
1388 went through a period of negotiations.

1389
1390 Can you describe why you necessarily applied for a building permit for
1391 construction and then secondly went ahead with construction without having a
1392 sign permit package finalized for your freestanding sign?

1393
1394 Mr. Paparella - Well, I think that—the sign package I don't think could
1395 be approved until the building was filed. And this came out—basically we were
1396 blindsided by this in reference to what the code requirements were at that time.
1397 We were basically told just go and apply for the existing cabinet. At that point
1398 when we applied to the existing cabinet, okay, we were notified that there was a
1399 restriction as far as the square footage.

1400
1401 Mr. Bell - Okay. Just to add a comment. You don't have to
1402 necessarily wait until the building permit is filed and approved to apply for your
1403 building permit. You can do those at the same time. They can be simultaneously.

1404
1405 One question I had is your letter said in February 2015, sign permits were
1406 applied for to actually add this sign to the cabinet, and it was denied because the
1407 maximum square footage, as Miguel pointed out, was exceeded. So that was in
1408 February 2015. What happened in the last several months? Why wait seven,
1409 eight, nine, ten months to apply for this variance? You're coming and applying for
1410 a variance today when we see steel and construction and activity on site saying
1411 we're going to open soon, we need signage. Why not come in March?

1412
1413 Mr. Paparella - Well, I wasn't totally involved with those negotiations.
1414 But I can tell you basically why there was that delay. The delay was because

1415 once it was established that we had an issue, several meetings took place
1416 between the property owner and the tenants. At that point, obviously, time goes
1417 by, six, seven months went by, and there was no impasse here in that we could
1418 not reach an agreement. The reason we didn't come back sooner is because we
1419 actually thought that there would be some sort of an accommodation where
1420 everybody would basically give a bit and we'd have to redesign in reference to
1421 the existing cabinet. But it was not to be. So that is the reason for the delay.

1422

1423 Mr. Berman - And I empathize with those real estate negotiations. I
1424 realize you have your own private terms and conditions; it's not just fees or
1425 money. A lot of times terms and conditions are what will hang up those items if
1426 you do look at reinvesting in brand new signage from scratch.

1427

1428 In summary, sir, I wish the case were a simpler test. But there is a high hurdle to
1429 overcome, as the chairman pointed out. I don't necessarily see whether this sign
1430 variance request meets that standard. In fact, I'm not sure what situation that any
1431 sign use variance would necessarily meet—the 150-foot standard has been fairly
1432 clear for the past number of years.

1433

1434 Thank you for your consideration and for your time.

1435

1436 Mr. Paparella - Thank you for your time.

1437

1438 Ms. Harris - I have a question. Mr. Paparella, do you know if the
1439 property owners have considered removing one of the two signs and replacing it,
1440 giving Aldi the signage that they need?

1441

1442 Mr. Paparella - Yes ma'am.

1443

1444 Ms. Harris - They've considered replacing—I mean removing one
1445 of those two signs.

1446

1447 Mr. Paparella - Right now—of course the application as it's presented
1448 today is an addition. The Aldi sign would be an additional cabinet. Nothing would
1449 be removed at this time.

1450

1451 Ms. Harris - My question is do you know if the property owners
1452 have considered removing—you have two poles there with signs.

1453

1454 Mr. Paparella - Correct.

1455

1456 Ms. Harris - Okay. One on Broad Street. That one I'm very familiar
1457 with. And the other one, it can be removed. Have they considered removing that
1458 and then giving Aldi the signage that it needs? To me, Aldi does need the
1459 signage. I'm familiar with the store that's on Parham Road and the one that's on
1460 Staples Mill.

1461

1462 Mr. Paparella - Right, right.

1463

1464 Ms. Harris - And I would have never known that they were there if
1465 I had not seen the signage. So to me they definitely need the signage. So I
1466 wondered if the property owners had considered removing one of the poles and
1467 giving Aldi what they need.

1468

1469 Mr. Paparella - The options were not discussed in reference to
1470 actually removing at this time. What we were looking to do is just modify the
1471 signage to conform with the 150 square feet.

1472

1473 Ms. Harris - Thank you.

1474

1475 Mr. Bell - Any other questions? Thank you, sir.

1476

1477 Mr. Paparella - Thank you for your time.

1478

1479 Mr. Bell - Is there anyone else here who would like to speak to
1480 this issue?

1481

1482 **[After the conclusion of the public hearings, the Board discussed the case**
1483 **and made its decision. This portion of the transcript is included here for**
1484 **convenience of reference.]**

1485

1486 Mr. Bell - Do I hear a motion on this one?

1487

1488 Mr. Baka - Mr. Chairman, I'll make a motion on VAR2015-00013,
1489 Aldi sign request. While I don't think it would be a huge impact upon neighboring
1490 properties to add eighteen square feet, I don't believe based on the information
1491 presented and based on the staff report that the applicant meets the five-part test
1492 for the variance as set out in state code. With that in mind, I would make a
1493 motion that we deny the variance request. The 150-foot standard has been in the
1494 code for thirty-eight years, and the staff report outlines the reasons of objection to
1495 the applicant's request.

1496

1497 Mr. Bell - Do I hear a second on the motion?

1498

1499 Mr. Berman - I second the motion to deny.

1500

1501 Mr. Bell - Is there any discussion?

1502

1503 Ms. Harris - Yes. I feel that there are other alternatives for Aldi to
1504 pursue and that is removing one of those poles or going to the Board of
1505 Supervisors and saying we're in your County, you got us to come, so make

1506 provisions for us to have signs advertising our location. I am going to vote no in
1507 agreement with that motion.

1508

1509 Mr. Bell - Any other discussion?

1510

1511 Mr. Baka - There'd be concern about setting a poor precedent for
1512 other commercial businesses, perhaps one that had been on any commercial
1513 road for many years, and they've been told at other times that they couldn't
1514 exceed the 150-square-foot limit.

1515

1516 Ms. Harris - I feel that it's time for this code to be revisited
1517 because it's been in existence for a long time. And we know how shopping
1518 centers spring up all over the place. I feel that it's not going to stop. This case is
1519 not going to stop here. I do believe that either the property owner will resolve it or
1520 take it to the Board of Supervisors because we are dealing with an old code here
1521 that is being challenged.

1522

1523 Mr. Baka - I concur with Ms. Harris. It's not a huge impact on the
1524 neighboring properties to have additional signage, but it simply just doesn't meet
1525 this variance that we have to go by today.

1526

1527 Mr. Bell - Any other discussion? If none, all in favor say aye. All
1528 opposed say nay. The ayes have it; the motion passes.

1529

1530 After an advertised public hearing and on a motion by Mr. Baka seconded by
1531 Mr. Berman, the Board **denied** application **VAR2015-00013, ALDI, INC's**
1532 request for a variance from Section 24-104(k)(3) of the County Code to allow
1533 additional sign area at 6303 W Broad Street (Parcel 768-742-8126) zoned
1534 Business District (B-2) (Tuckahoe). The sign area requirement is not met.

1535

1536

1537 Affirmative: Baka, Bell, Berman, Harris 4

1538 Negative: 0

1539 Absent: 0

1540

1541

1542 **[At this point, the transcript continues with the public hearing on the next**
1543 **case.]**

1544

1545 **VAR2015-00014 SEAN HIGGINS** requests a variance from Sections
1546 **24-9 and 24-94** of the County Code to build a one-family dwelling at 1116
1547 Oakland Road (Parcel 801-706-9799) zoned One-Family Residence District (R-
1548 3) (Varina). The public street frontage requirement and lot width requirement are
1549 not met. The applicant proposes 30 feet lot width and 30 feet public street
1550 frontage, where the Code requires 80 feet lot width and 50 feet public street

1551 frontage. The applicant requests a variance of 50 feet lot width and 20 feet public
1552 street frontage.

1553
1554 Mr. Blankinship - Does anyone else intend to speak to this case?
1555 Would you please raise your right hand? Do you swear the testimony you're
1556 about to give is the truth, the whole truth, and nothing but the truth so help you
1557 God? Thank you.

1558
1559 Mr. Gidley - Thank you, Mr. Secretary. This is a request for a lot
1560 width and public street frontage variance to allow a one-family dwelling to be built
1561 at 1116 Oakland Road. The property is zoned R-3, One-Family Residence
1562 District, and access to the property is via a 30-foot-wide strip of land shown here
1563 that comes up from Oakland Road.

1564
1565 Prior to 1960, the property was zoned for residential use and met the
1566 requirements for a buildable lot. However, in 1960, the Zoning Ordinance was
1567 amended to require fifty feet of public street frontage. Since the property abuts
1568 Oakland Road via this 30-foot-wide access strip here, it was rendered
1569 unbuildable at the time due to the ordinance amendment. In 1987, an additional
1570 amendment to the Zoning Ordinance required lot width to be measured at the
1571 required front yard setback line as opposed to the actual building line. Although
1572 the property is 350 feet wide at its widest point, it is only 30 feet wide at the 40-
1573 foot front yard setback. This resulted in the second deficiency associated with the
1574 property.

1575
1576 In response to these, the property received variances in 2002 and in 2005.
1577 However, in each case the property was sold, the proposed dwellings were never
1578 built, and the variances expired. The current owner purchased the property in
1579 September of this year and has applied for a new variance to allow a dwelling to
1580 be constructed on the site.

1581
1582 The main test for a variance concerns whether the Zoning Ordinance
1583 unreasonably restricts use of the property or if there is a hardship related to the
1584 physical condition of the property at the time of the effective date of the
1585 ordinance. The property is just over 4.7 acres in size. As mentioned early, at its
1586 widest it is over 350 feet in width, which is plenty of room for a building to be
1587 constructed. It has direct access to Oakland Road via this 30-foot-wide access
1588 strip, which is plenty of room for a driveway. As a result, the site is certainly
1589 suitable for a residence. The only reason a residence cannot be constructed on
1590 the property is due to the 1960 and 1987 ordinance amendments, both of which
1591 occurred after the property was already in existence. As a result, the hardship
1592 test at the time of the effective date of the ordinance would appear to be met.
1593 The first test of an unreasonable restriction on the utilization of the property
1594 would also appear to be met because a home cannot be built on it at present.

1595

1596 There are five subtests. These appear to be met as well. First, while the applicant
1597 was aware of the deficiencies, he did not cause them. Second, as you can see in
1598 the aerial here, the surrounding properties are used for residential purposes.
1599 You'll note a number of houses in the area. As a result, there should not be a
1600 substantial detrimental impact, especially considering the size of this parcel.
1601 You'll note a lot of ones on Oakland Road itself are much smaller, so this is a
1602 rather sizeable parcel. So I didn't see any substantial detrimental impact.

1603
1604 Third, although there are a number of lots that lack public street frontage in the
1605 County, there is no practical legislative solution to this problem. Fourth, this is not
1606 a use variance since a one-family dwelling is a permitted use in the property's R-
1607 3 zoning district. And finally, a conditional use permit is not available to resolve
1608 issues such as lot width or lack of public street frontage.

1609
1610 In conclusion, absent a variance, the property does not appear to have any
1611 reasonable use. The applicant did not create the hardship as both deficiencies
1612 were created as a result of code amendments that occurred after the lot's
1613 creation. The proposed dwelling that you can see here would appear to fit in with
1614 the surrounding area. It would also meet all requirements with regard to the
1615 setbacks. Neither a legislative solution nor a use permit is a practical option. As a
1616 result, staff recommends approval of this request subject to the conditions in the
1617 staff report.

1618
1619 This concludes my presentation. I'll be happy to answer any questions you may
1620 have.

1621
1622 Mr. Bell - Any questions?

1623
1624 Ms. Harris - Mr. Gidley, are we aware of other residences already
1625 established with this scenario, having a narrow entrance almost—I consider thirty
1626 feet narrow—and behind that going back we have these huge homes, over a
1627 million dollar homes? Isn't that sort of typical of some of the residences in
1628 Varina? People who want privacy, they may not build their home right there.
1629 They want to be away from the public.

1630
1631 Mr. Gidley - There are a number of lots in Varina with a variety of
1632 situations. The tough situation we face typically is typically where you have lots
1633 that don't have any direct access to the road itself. In this case, at least they do
1634 have that 30-foot access way which they own and which provides direct access
1635 to the road. But at the same time, as you note, by being set back, it does give
1636 someone an element of privacy.

1637
1638 Mr. Blankinship - On the map on the screen now, Ms. Harris, just to the
1639 east of this property you see a similar situation.

1640

1641 Ms. Harris - Yes. We had heard that several—because my son
1642 lives in Varina—millionaires have homes in Varina, but you never would know it
1643 looking from the street. You have to go through this private road. So it's sort of
1644 par for the course in this neighborhood.

1645
1646 Mr. Blankinship - We would not allow them to create a lot in that
1647 configuration today. But because these lots were created prior to 1960, they're
1648 already there.

1649
1650 Ms. Harris - Right.

1651
1652 Mr. Bell - Any other questions?

1653
1654 Mr. Baka - Since this lot predates the Zoning Ordinance of 1960,
1655 I have no questions.

1656
1657 Mr. Bell - Thank you.

1658
1659 Mr. Gidley - Thank you, Mr. Chair.

1660
1661 Mr. Higgins - Good morning. I'm Sean Higgins. Last name H-i-g-g-i-
1662 n-s.

1663
1664 Mr. Bell - Thank you, Mr. Higgins.

1665
1666 Mr. Higgins - As we spoke last month when we were here thinking
1667 that we were on board for that . . . as we mentioned last month, we are under
1668 contract, and so the variance, of course, is the big step in moving forward. To get
1669 the ball rolling, that's why you had a lot of the old—the stuff from the previous
1670 variance. We're a lot farther along with the architect now and site plans. Exactly
1671 where it was on that site plan, it's a little bit different from where we're going, but
1672 it's relatively in the same place. So not much has changed from what was in the
1673 packet. As you can see, we're only going to take down the trees required for the
1674 actual house itself. It really is set back way off the road. As you can see, this
1675 property—and we've talked to the property owner that owns pretty much all these
1676 adjacent parcels. Of course he's thrilled that it's only going to be a single-family
1677 house and that we're not trying to put anything else there. This was originally part
1678 of this parcel but was split off I believe in the early 2000s. And in a sense,
1679 because this has no road frontage, this is practically unbuildable. And there is a
1680 creek that runs through here. So that is actually—if you look at the Henrico
1681 County GIS, the creek right here is on a floodplain. So it's pretty much an
1682 unbuildable area. I know that the current property owner has no plans to put any
1683 kind of dwellings in these areas. So setback off the road, it's really out of
1684 everybody's sight.

1685

1686 Mr. Bell - The house right at the entrance there, have they had
1687 any comments made about your building back there?
1688
1689 Mr. Higgins - Not that we know of. I have spoken to this—a family
1690 member of this property owner. They were more just curious. They had no idea
1691 that this land was for sale behind them because there really wasn't ever a "for
1692 sale" sign out there. So that was more of what his concern was is oh, wow, we
1693 could have actually probably tried to buy that property. But other than that, no. I
1694 think most of the residents around are happy that another house will go in to kind
1695 of add value to the area.
1696
1697 Mr. Bell - Any other questions?
1698
1699 Ms. Harris - Yes. How many parcels will actually have access to
1700 this 30-foot road? How many other parcels. Do you think only you will be using it
1701 or do you think there will be others?
1702
1703 Mr. Higgins - Just us. Now I will say that in speaking to the property
1704 owner—at the time I ran into him, he was actually hunting on this parcel that
1705 we're under contract for. He says he has a right-of-use easement. It's not
1706 documented that I know of. Apparently his son lives in this house which was his
1707 mother's house. And other than letting him have access to his parcel from our
1708 drive, this would be the only dwelling or structure that would have access from
1709 our entryway.
1710
1711 Ms. Harris - Will that 30-foot road be paved?
1712
1713 Mr. Higgins - Probably not initially for cost purposes. We'll probably
1714 do a gravel entryway and then pave it further down the road. We're more focused
1715 on the money towards building the house at the moment.
1716
1717 Ms. Harris - The conditions you've reviewed, have you not?
1718
1719 Mr. Higgins - Yes ma'am.
1720
1721 Ms. Harris - Okay. Have you already had the soil evaluated?
1722
1723 Mr. Higgins - No ma'am.
1724
1725 Ms. Harris - Okay. And what about the environmental compliance
1726 plan, have you begun that?
1727
1728 Mr. Higgins - No ma'am. To really get down the road, we needed to
1729 see if we were even going to be able to do this. Those are the next steps, we
1730 lock down a builder and all that stuff.
1731

1732 Mr. Blankinship - That's normally done at the building permit phase.
1733
1734 Ms. Harris - Right. So this house that we have in our packet, that's
1735 just a plan?
1736
1737 Mr. Higgins - Since I was having to put this in to get the ball rolling,
1738 we can actually update the Planning office with the more detailed house plans
1739 and elevations. I can pull it up on my phone and show you right now if you want
1740 to see it. It generally looks like that. That was the starting point, but there's a little
1741 bit more porches involved. But aesthetically, that is exactly pretty much what the
1742 house is going to look like. So metal roof, HardiPlank, big porches.
1743
1744 Mr. Baka - It's beautiful.
1745
1746 Mr. Higgins - Yes. Thank you. We wanted it to kind of look like a
1747 mixture of Federal and farm house. You see sort of that style in Varina in some of
1748 the older houses anyway.
1749
1750 Ms. Harris - The price range is about a million dollars, right?
1751
1752 Mr. Higgins - No ma'am. No ma'am. We're trying to keep this—the
1753 house is only going to be about 2400 square feet. Really, when you look at the
1754 actual floor plan, it's like I can't believe we squeezed all of this in 2400 square
1755 feet. I tried to keep that—because of the cost of the land and the building costs, I
1756 tried to keep it under 350,000 as a rough estimate. It'll look like a really
1757 expensive house, but hopefully it won't be.
1758
1759 Ms. Harris - On this plan that you submitted to us it said "pricing
1760 starting at 1,170,000." You saw that, right.
1761
1762 Mr. Higgins - Well, I think originally from—because that was from
1763 Southern Living. I think—
1764
1765 Mr. Blankinship - That's \$1,170 for the plans. That's the price of the
1766 plans. That took me several minutes, too, Ms. Harris.
1767
1768 Mr. Higgins - And actually, we cheated a little bit. That was the
1769 starting point, but we didn't actually buy Southern Living's plans. One of my
1770 friends from childhood is an architect, and he's actually doing the house plans for
1771 us.
1772
1773 Mr. Blankinship - Before she joined the Board of Zoning Appeals,
1774 Ms. Harris was on the board of Real Estate Valuation. So I was afraid she was
1775 going to try to set your taxes.
1776

1777 Mr. Higgins - Well, yeah. Generally speaking, the County will get
1778 more taxes from us anyway because you're only getting taxes for an unimproved
1779 property.
1780
1781 Ms. Harris - But you like your privacy that this lot affords.
1782
1783 Mr. Higgins - Yes ma'am. That was the whole thing. We were really
1784 shocked when we found this parcel for sale, especially for the price it was.
1785 Rocketts Landing is just right down the hill from there. And to find almost five
1786 acres within ten minutes of downtown is just amazing. She works downtown and
1787 I work down at Rivers Bend, so I take 5 out to work anyway. And so it just was a
1788 perfect setting for us to be close to the city but have the privacy that five acres
1789 gives you.
1790
1791 Ms. Harris - Thank you.
1792
1793 Mr. Higgins - I'm sure we'll be coming back in the future for some
1794 conditional use permits because of the—yes. We want to have some animals on
1795 that property.
1796
1797 Mr. Bell - And I might be applying to do window washing for that
1798 job.
1799
1800 Mr. Higgins - Any other questions?
1801
1802 Mr. Bell - Any other questions?
1803
1804 Mr. Baka - No questions.
1805
1806 Mr. Blankinship - I just have one, and I'm not really sure how to phrase
1807 it. One of the tests that the Board has to meet in order to grant a variance is that
1808 there is no reasonable use of the—well, it's not worded this way anymore. It used
1809 to be worded that there's no reasonable use of the property without a variance. A
1810 lot of times we have a one-acre lot that has no public street frontage. And it's
1811 easy to look at that and say there's no other reasonable use for this property.
1812 Here, looking at the aerial photograph, you see that everything up to this property
1813 has been farmed, which raises the question is farming a reasonable use for this
1814 property. Do you know why this property was never farmed and do you know
1815 whether it would be reasonable to farm?
1816
1817 Mr. Higgins - I really don't know, sir. I know that if you were to see
1818 the topography, there is a pretty steep slope up on the north end of the property
1819 down to the pond. Now on the lower end, I mean you probably could farm it. I
1820 really can't speak to why it sat empty for so long. It really is a nice piece of
1821 property. There's not like a whole bunch of rock outcropping in the middle of it

1822 that makes it hard to build on or farm. But I really can't speak to it. It's kind of
1823 shocking that it just sat there empty and unused for so long.

1824
1825 Mr. Blankinship - It may still be an unreasonable restriction to say this
1826 property can only be farmed, it can't used for a dwelling.

1827
1828 Mr. Bell - Any other questions? We thank you.

1829
1830 Mr. Higgins - Thank you.

1831
1832 Mr. Bell - Is there anyone else who would like to speak to this
1833 issue? Is there anyone else who has any other issues they'd like to speak to?
1834 Then let's go on and vote.

1835
1836 **[After the conclusion of the public hearings, the Board discussed the case**
1837 **and made its decision. This portion of the transcript is included here for**
1838 **convenience of reference.]**

1839
1840 Mr. Bell - Do I hear a motion on this case?

1841
1842 Ms. Harris - I move that we approve this variance because I feel
1843 that there is no other alternative except to force them to use the land for farming.
1844 With this particular lot, although it is vast, it's still considered unbuildable without
1845 the frontage to the street. So I do vote that we approve this variance.

1846
1847 Mr. Bell - Do I hear a second on the motion?

1848
1849 Mr. Baka - Second.

1850
1851 Mr. Bell - Is there any discussion? Hearing none, all in favor say
1852 aye. All opposed say nay. The ayes have it; the motion passes.

1853
1854 After an advertised public hearing and on a motion by Ms. Harris, seconded by
1855 Mr. Baka, the Board **approved** application **VAR2015-00014, SEAN HIGGINS'**
1856 request for a variance from Sections 24-9 and 24-94 of the County Code to build
1857 a one-family dwelling at 1116 Oakland Road (Parcel 801-706-9799) zoned One-
1858 Family Residence District (R-3) (Varina). The public street frontage requirement
1859 and lot width requirement are not met. The applicant proposes 30 feet lot width
1860 and 30 feet public street frontage, where the Code requires 80 feet lot width and
1861 50 feet public street frontage. The applicant requests a variance of 50 feet lot
1862 width and 20 feet public street frontage. The Board approved the variance
1863 subject to the following conditions:

1864
1865 1. This variance applies only to the lot width and public street frontage
1866 requirements for one dwelling only. All other applicable regulations of the County
1867 Code shall remain in force.

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

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

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

Affirmative:	Baka, Bell, Berman, Harris	4
Negative:		0
Absent:		0

Mr. Bell - Approval of the minutes for November 19, 2015.

Mr. Berman - I move that we waive the reading of the minutes and approve as-is in the record.

Mr. Baka - Second.

Mr. Bell - Is there any discussion? Hearing none, all in favor say aye. All opposed say nay. The ayes have it; the motion passes.

On a motion by Mr. Berman, seconded by Mr. Baka, the Board **approved as submitted** the **Minutes of the November 19, 2015**, Henrico County Board of Zoning Appeals meeting.

Affirmative:	Baka, Bell, Berman, Harris	4
Negative:		0
Absent:		0

Mr. Bell - Is there any other old or new business? The only thing I'd like to say is for the ones that don't know about it—they probably all do by now—Mark is no longer with us. He moved to New Kent. So we'll be getting

1913 someone else in from Varina. It was mentioned earlier when the meeting first
1914 started.

1915
1916 I'd like to wish everybody a merry Christmas since we won't see each other again
1917 until next year.

1918
1919 All right, let's vote to adjourn. Do I hear a motion that we adjourn?

1920
1921 Mr. Baka - So moved.

1922
1923 Mr. Bell - Do I hear a second?

1924
1925 Mr. Berman - Second.

1926
1927 Mr. Bell - All in favor say aye. All opposed say nay. The ayes
1928 have it; the motion passes.

1929
1930
1931 Affirmative: Baka, Bell, Berman, Harris 4
1932 Negative: 0
1933 Absent: 0

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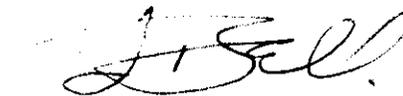
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Gentry Bell
Chairman



Benjamin Blankinship, AICP
Secretary