

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

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

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

8
9
10 Mr. Bell - Welcome to the February 25, 2016 meeting of the
11 Henrico County Board of Zoning Appeals. I ask you all to please stand and join
12 me in pledging allegiance to our flag. Thank you.

13
14 I also would like to welcome Mr. William M. Mackey Jr. he's our new Board of
15 Zoning Appeals representative from the Varina District. Today is his first meeting.

16
17 Mr. Mackey - Thank you, Mr. Bell. I appreciate it.

18
19 Mr. Bell - Mr. Blankinship, please read our rules.

20
21 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
22 ladies and gentlemen, the rules for this meeting are as follows. Acting as
23 secretary, I'll call each case. And as I'm speaking, the applicant should come
24 down to the podium. We will then ask everyone who intends to speak to that
25 case to stand and be sworn in. Then a member of the staff will present a brief
26 introduction to the case. And then the applicant will present their case. And then
27 anyone else who wishes to speak will be given the opportunity. After everyone
28 has had a chance to speak, the applicant, and only the applicant, will have an
29 opportunity for rebuttal. After the Board has heard all the testimony on that case,
30 they will close the public hearing and proceed to the public hearing on the next
31 case. This morning we only have two hearings, so it's not that big of a deal. But
32 we will have the two hearings, and then the Board will make the decisions on the
33 two cases. If you wish to hear their decision on a case, you can either stay until
34 the end of the meeting, or you can check the Planning Department website—we
35 usually get it updated within an hour of the end of the meeting—or you can call
36 the Planning Department this afternoon.

82 Mr. Blankinship - Mr. Johnson, I don't want to interrupt, but the only
83 question is whether there is additional evidence that could not reasonably have
84 been presented last month.

85
86 Mr. Johnson - Oh, yes sir. The use of the homeowner's property,
87 when he brings his horses out from where they are at, he has to come on their
88 property, down that field, the power lines. There's no space in there for him to be
89 riding the horses, so he's using the family members' property to ride through that
90 area. They wanted to be here to express that themselves, and they were not
91 afforded that opportunity because they didn't know that. But that is a great issue,
92 because he doesn't have the space for those horses to come out there. Just like
93 I'm standing here, if I want to move forward, and that's your land in front of me, I
94 have to ride—come through there.

95
96 Mr. Blankinship - Yes sir. Okay.

97
98 Mr. Bell - Anything else, sir?

99
100 Mr. Johnson - No sir.

101
102 Mr. Bell - Any questions?

103
104 Ms. Harris - Mr. Blunt, you were saying that—I mean,
105 Mr. Johnson, you were saying that Mr. Blunt has to access some other people's
106 property in moving the horses. But doesn't his property front Creighton Road? I
107 was wondering why he couldn't he just use Creighton Road, which is a public
108 right-of-way?

109
110 Mr. Johnson - Creighton Road, if you're familiar with the area where
111 Mr. Blunt lives, there are no areas where he can really ride the horses. Unless he
112 brings the horses out of the corral, he's going to be in the street on Creighton
113 Road. If you're familiar with that area. He comes out there where he lives,
114 bringing the horses out where the fence is, maybe about five feet, ten feet or
115 less, he's on the road, Creighton Road riding horses. But if he brings them out in
116 the back area from Creighton Road where you have the power lines, VEPCO,
117 and then you have the homeowner's property over in that field. That's where the
118 space is that he utilizes, riding it through the whole subdivision. He'll ride out that
119 back way, come across through the VEPCO property, over the people's property,
120 crossing the street in Mitcheltree, and riding on down that field where all the
121 power lines are. That's the space he's utilizing as far as in the subdivision
122 because there's no way for him to ride the horse once he comes out that front
123 side of that corral or whatever you call it on Creighton Road, because he's riding
124 in the street. But when he comes out there to ride, to give the horses some
125 space, he has to ride through the subdivision on those peoples' property.

126

127 Ms. Harris - You're aware of the condition where we said he could
128 not ride the horse or horses on public roads. That was one of our conditions.
129
130 Mr. Johnson - That's why I said you all put on some nice conditions.
131 Thank you for the overall benefit of it. He doesn't have the space to adequately
132 ride those horses, and he's coming through those individuals' property. They
133 would have been here today, but we thought you wouldn't hear the case, that you
134 all would have to accept it. And then maybe they would have to come back next
135 week.
136
137 Mr. Blankinship - That's correct. The only decision to be made this
138 morning is whether to rehear the case.
139
140 Mr. Johnson - That's why I'm not really prepared to speak. I just told
141 Mr. Blankinship I'd be here because the rest of them, they had to work. Some of
142 them are still working families, and a lot of them are ladies. Their husbands have
143 died and they're widows. So they came to me as the chair and asked me. I said
144 well I'll see what I can do. I talked to Mr. Blankinship. The Board of Supervisors,
145 Mr. Frank Thornton, he came out there, and he saw what I'm trying to explain to
146 you all with the access. And that's not adequate space, if you look at, keeping the
147 horses all corralled up. And then I saw some of the proffers. As I'm reading them,
148 I think you said he had to reduce what he already has up there. If you were to
149 visit out there and see, you all would say hey no, we need to stick to what the
150 Zoning Board recommended. The adequate space, way over the variance of
151 where he wants—all he has is 60, and he's asking over close to 400 feet. I mean
152 340 or something.
153
154 Ms. Harris - Mr. Johnson, so you're saying that it is impossible for
155 him to ride the horses keeping them off the public road? In other words, we have
156 a condition—you have a copy of the conditions.
157
158 Mr. Johnson - Yes, I have a copy. Yes ma'am.
159
160 Ms. Harris - Okay. Condition 7.
161
162 Mr. Johnson - Okay. This applicant will be responsible for the
163 immediate collection of horse waste when riding—that's even riding on the public
164 right-of-way. It doesn't say not to ride it.
165
166 Ms. Harris - Oh. So you don't want him to ride his horses.
167
168 Mr. Johnson - I thought you were saying in the proffers that he was
169 not to ride the horses.
170
171 Ms. Harris - No, we're not saying that. We said on a public road.
172 That's what the condition says, right?

173

174 Mr. Blankinship - It expects that he will ride them on the public right of
175 way because it requires him to clean up after them when he rides on a public
176 right of way.

177

178 Mr. Johnson - I don't see what you're saying on that. I think I
179 understand what you were asking me, but I don't see what you're saying.

180

181 Ms. Harris - Do you have an objection—do your neighbors have
182 an objection to his riding his horses—his *horse* now? We reduced it to one.

183

184 Mr. Johnson - They have an objection that the variance has been
185 granted under the condition that it shouldn't have been granted from the
186 beginning. We said you all are not speaking on—you all are looking for new
187 material.

188

189 Mr. Blankinship - New evidence, yes sir.

190

191 Mr. Johnson - Just speaking on the new material, that's all. I'm just
192 not trying to speak on.

193

194 Mr. Blankinship - Thank you.

195

196 Mr. Johnson - But they have objections on a lot of things as far as
197 this situation with the horses and the homeowners that have invested their funds.
198 A lot of them, their husbands have died and so forth. They're widowed old ladies.
199 They bought their homes out there to retire.

200

201 Ms. Harris - We understand that. Mr. Johnson, I hate to interrupt
202 you. You sent a letter, right, did you not?

203

204 Mr. Johnson - Yes ma'am.

205

206 Ms. Harris - Okay. You say that you were not informed in writing of
207 the meeting. I wanted Mr. Blankinship to clarify who actually received notification
208 of the meeting last month.

209

210 Mr. Blankinship - Miguel might be able to indicate it on the computer for
211 you as I speak. The Code requires us to notify everyone whose property
212 immediately adjoins the subject property. So it would be those that he's indicating
213 there and across Creighton Road as well. All the property that immediately
214 adjoins. The four signatories to the letter—or the four copyholders, I should say,
215 to Mr. Johnson's letter, none of them immediately abut this property. But several
216 of them are just one or two lots away. And a couple of them are on Korth Lane
217 and Korth Place, which you can see just to the south of the property.

218

219 Ms. Harris - So Mr. Johnson, you're saying that these people
220 whose property abuts Mr. Blunt's property have objections, and they didn't show
221 up at the meeting, and they were notified?

222
223 Mr. Johnson - No.

224
225 Ms. Harris - What are you saying?

226
227 Mr. Johnson - I don't think that's what he said about those
228 individuals whose names are on this communication. They were not notified.

229
230 Ms. Harris - And they live next—

231
232 Mr. Johnson - They are homeowners that Mr. Blunt has to use to
233 move his horses other than going the public way on Creighton Road in the
234 subdivision. When he comes out of the back end of the corral, he has to come
235 where the power lines are, and that's where those—other than that, he doesn't
236 have any way to ride period.

237
238 Mr. Blankinship - Ms. Harris, if you can see 3825 Carolee Court. And
239 Miguel, perhaps you could indicate that. I believe one of the copyholders lives at
240 or owns that property. You can see the one just to the north, 3824. That person
241 would have been notified because that property abuts Mr. Blunt's property. But
242 3825 was not notified. I think Mr. Johnson is saying that Mr. Blunt has to cross
243 that property in order to get to Korth Lane.

244
245 And then the next one south from there, 3824 Korth Lane, I do recall for sure is
246 one of the signatories—or the copyholders of that letter.

247
248 Mr. Baka - And as a result of last month's meeting, did or didn't
249 the applicant agree not to ride the horses down in that right of way onto Korth
250 Lane, to keep the horses ridden on his property shown in yellow?

251
252 Mr. Berman - He did agree, but it was not entered in as a condition.
253 But he did agree.

254
255 Ms. Harris - But it was in his sworn testimony.

256
257 Mr. Baka - It was in his sworn testimony. I think he realized the
258 gravity of that situation when he saw that those parcel lines underneath that right
259 of way are privately owned subdivision lots.

260
261 Ms. Harris - Mr. Johnson, Mr. Blunt also said that he had the
262 consent to house his horses from some neighbors. He didn't have names of the
263 neighbors with him at that time. Do you have names of these people who don't
264 want him to ride on their property?

265
266 Mr. Johnson - Yes ma'am. It's on the communication that I sent, on
267 the letter. He doesn't have any consent. And those individuals that may say he
268 has consent, their property is not where he's riding. They might be like your
269 neighbor next door.
270
271 Mr. Blankinship - I'm sorry; you need to stay by the microphone.
272
273 Mr. Johnson - Oh, okay.
274
275 Mr. Bell - If you look up there, you'll see the map that we're
276 looking at, Mr. Johnson.
277
278 Mr. Johnson - Oh, I really don't know what I'm doing with this. Now,
279 which one is Mr. Blunt?
280
281 Mr. Berman - Right there.
282
283 Mr. Thornton - Okay. Where's Creighton Road? Is this Creighton
284 Road?
285
286 Mr. Blankinship - Just above.
287
288 Mr. Berman - North of it.
289
290 Mr. Johnson - Right here?
291
292 Ms. Harris - Go up higher where it says Creighton Road.
293
294 Mr. Johnson - Wait a minute. Oh, this is Creighton Road.
295
296 Mr. Berman - Yes sir.
297
298 Mr. Johnson - All right. So this is the front of his establishment right
299 here.
300
301 Mr. Baka - Yes.
302
303 Mr. Johnson - All right. Now, he has that corral somewhere around
304 here. Now, he comes out this way. When he comes out here, he's coming out
305 this back way on these people's property. Right up in here. Now see, if you see,
306 he doesn't have any way to come out here. He doesn't have anywhere really to
307 ride even within this circle—I mean this yellow square. His riding space is all
308 coming down here. Right on over, through here, right on down across Korth
309 Lane. And this is a big field coming through the subdivision. That's where his
310 riding space is. This square footage, I think it may do injustice. When you go out

311 there and you actually look, you all have reduced what he already had, that
312 fence. So those horses don't have any space.

313
314 Now I've seen them at Creighton Road, the front part. He comes out of the
315 corral—boom, he's right on the street. Either he's trying to ride whatever that
316 little—let's say a sidewalk. He'll try to ride the sidewalk, but we don't have a
317 sidewalk. And you can't do that because you have little trees and he's up on the
318 horse. So he will have to be physically in the street while traffic on Creighton
319 Road is coming down. So what he does is he comes out there, and his only
320 recourse is to come on down out that back gate, which he does. I sat there while
321 we were waiting to hear on the decision, and the people had "no trespassing"
322 signs up there. I said now this guy, I thought he didn't—he doesn't know that the
323 County heard about this issue, and he's just steady riding like he knows
324 something. He knows something or something is going on. And the people see
325 him, and just stand out there, and he's up in the saddle just riding and looking
326 like "Yeah, I know something. I'm not worried about this."

327
328 Mr. Baka - Mr. Johnson, if I may.

329
330 Mr. Bell - Yes, go ahead.

331
332 Mr. Baka - If I may, sir. I'm beginning to hear some of the very
333 same concerns that this Board considered and deliberated about last month.
334 Three things I wanted to point out. One, there is a perimeter fence on the
335 property that gives the ability for the horses to stay inside as long the rider does
336 so. Secondly, the applicant last month originally had a request for two horses on
337 the property. There's a standard that generally applies of one acre per horse.
338 Because there is slightly less than two acres of property on this, as the Board
339 deliberated and discussed it, we made a motion and condition to reduce that
340 from two horses to one. So there is actually greater than an acre of land for that
341 one horse to ride within the yellow boundary on this map, which is actually
342 greater than the standard, because the standard is one acre per horse. He
343 actually has more land than that within his property. So the key issue becomes
344 did Mr. Blunt agree last month to ride the horse—the one horse—within that
345 property, within that parcel, and not take it onto other people's private land down
346 south toward Korth Lane. Mr. Blunt did that in the conditions, in the sworn
347 testimony.

348
349 I appreciate your comments, but some of what I'm hearing is some of the same
350 issues that we deliberated last month.

351
352 Mr. Blankinship - So the question then, Mr. Chairman, for the Board is
353 is there new evidence here that would justify rehearing this case, or should the
354 decision from last month be considered the final decision.

355

356 Mr. Bell - One question, and then we'll go ahead and talk about
357 whether we'll go ahead and vote for it or against it later on. The question is this.
358 Looking at your not being told that the meeting was being held, we discussed it
359 earlier. When the application was first sent out, didn't you receive a copy or a
360 letter letting you know that this original hearing would be conducted?

361
362 Mr. Johnson - No sir.

363
364 Mr. Bell - Okay. Letters were sent out. That's why I'm asking
365 the question.

366
367 Mr. Blankinship - Mr. Johnson's property does not immediately adjoin
368 the Blunt property. So he would not receive one.

369
370 Mr. Bell - All right. Any other questions?

371
372 Mr. Johnson - Ms. Fay Brown, she didn't receive any
373 communication.

374
375 Mr. Berman - Does she abut to Mr. Blunt's property?

376
377 Mr. Blankinship - No.

378
379 Mr. Berman - Okay. I just want to explain Henrico policy of only
380 sending it out to people who adjoin the properties in question. It would be very
381 impractical to send everybody in a neighborhood a letter. The neighborhood I
382 personally live in has 1,600 homes. So we send it to the adjoining properties. I
383 know this doesn't serve you, Mr. Johnson, but starting this month we now have a
384 very large sign that we put on every property that's going to have a public
385 hearing. So that will help going forward. Yes sir.

386
387 Mr. Johnson - I'm speaking the one that it affected immediately,
388 Ms. Fay Brown. She's the one that he's been using the right-of-way to come
389 across her property.

390
391 Mr. Baka - She lives on Korth Lane.

392
393 Mr. Blankinship - 3824.

394
395 Mr. Johnson - I'm here speaking on behalf of the association.

396
397 Mr. Berman - I understand.

398
399 Mr. Johnson - And I have other concerns that we're not addressing,
400 as you said. But Ms. Fay Brown is the immediate one because her property is in
401 the way when he comes out of that gate.

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Mr. Berman - I understand. It doesn't touch Mr. Blunt's property. Those are the people we sent letters to. I know she was impacted, but I feel that we've served the community's needs by having Mr. Blunt agree under oath that he will not ride through the neighborhood. He reduced the number of horses. Beyond that, there are no new items to discuss on the case. Unless you have something else new, Mr. Bell is going to move forward and discuss whether we should retry it or not.

Ms. Harris - I do have one question—or one statement. Mr. Johnson, since Mr. Blunt said at the last meeting that he will not ride through the neighborhood, if he is riding through the neighborhood, he is in violation of these conditions, and he should be reported. Okay. These are the conditions that he agreed to, and these are the conditions that accompany this case. So if he's riding through the neighborhood, he's in violation, and he should be reported.

Mr. Baka - I concur with Ms. Harris's comments. From now on, you should not see horses outside that yellow line in your neighborhood.

Mr. Bell - Let's go ahead and see if we can form that motion. Any discussion before we form the motion?

Mr. Berman - I also do want to state for the record you had pointed out that Mr. Blunt was an employee of Henrico County. We want to assure you that this proceeding has no bias towards employees, or anybody else for that matter. We see everybody as an equal.

Mr. Johnson - I understand that. If this issue hadn't come up, no telling how many horses he would try to put out there. And those homeowners that are affected, I know you said he's in violation, and the Planning Commission denied it. My concern is you have homeowners who can't even put up a fence or a garage in the area. But he came before this zoning committee asking for a variance of over 360 feet or whatever. And they just want to put up something to beautify their home. They' have invested in their community, and they can't get a fence, garage, or a carport. And not just that, it's the cleanliness and tidiness. I know you all put these conditions on it, but those individuals' homes are up to that.

You said we have to report that. The homeowner shouldn't have to continually look out and see the individual riding through there. That's why we came before in this case, to put it in the County's hands so they won't be out there living—and where they thought they'd live out their lives. The husband or the wife left it for you all do to the right thing. And then we come forward with this to be heard. I don't how you're going to vote. I just don't think it's right. Those people have been out there in that community. It's over thirty-some years. We sympathize with Mr. Blunt.

448
449 Mr. Bell - Mr. Johnson, we are restricted to articles. We're
450 restricted to code as well as you and everybody else. What we're hearing today
451 is basically is there any new evidence. The code says if there is ruled to be
452 some, then we can go on and have the rehearing. If not, we can't. That's the only
453 issue we're really talking about today. All the things that you're talking about we
454 either discussed a lot of them last time or they were discussed with the planners
455 who talked originally. Not all of them, but a lot of them. Was there anything
456 presented today by you that would have a detrimental effect on this case that
457 would require it to reheard that we haven't already heard or heard partially.
458 That's the only thing we're voting on.

459
460 Mr. Johnson - Okay.

461
462 Mr. Bell - So I'm going to go ahead and make a motion at this
463 time that we uphold the original vote, which was a 4-0 unanimous vote and that
464 we did not hear anything that would justify rehearing this case. That's my motion.
465 Any discussion or a second?

466
467 Mr. Berman - I second the motion.

468
469 Ms. Harris - Okay. Discussion?

470
471 Mr. Bell - Discussion.

472
473 Ms. Harris - I just feel that wherever we find residents in Henrico
474 County violating the ordinance or violating—in this case, this man is being
475 accused of violating his conditions, we have to report it. That's our duty. It's not
476 this Board's job to see if everybody in Henrico County, all the residents, are
477 following the law. We need citizens to step up when people are not following the
478 code or following the law, that which is legal. We need citizens to step up. If we
479 have cases in here where we feel the citizens need to speak up, then they
480 sincerely need to speak up.

481
482 I live in an area where there's an agricultural area around me. It was zoned
483 agriculture before I moved into it. I've gotten used to seeing cows in the
484 background, but they don't walk in the street. If they walked the street, I would
485 have another problem. But when I moved into the area, it was zoned agriculture,
486 and it still is. But if they stepped out of line, I would have to report it as a neighbor
487 and as a citizen. Not to this Board, but to the lawmaking body of this Board.
488 That's all I wanted to say.

489
490 Mr. Bell - And to follow up a little bit on that. The conditions that
491 are in the variance that we passed, they should reflect a lot of what you've talked
492 about. My suggestion to you would be is become aware of them. And if they are
493 violated, then let someone know. And then that's a violation of the variance.

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Is there any other discussion?

Mr. Baka - No sir.

Mr. Bell - All right. All those in favor say aye. All those opposed? The ayes have it; the motion passes.

On a motion by Mr. Bell, seconded by Mr. Berman, the Board **denied** the request for a rehearing on **VAR2016-00001, RICKY D. BLUNT, JR.**

Affirmative:	Baka, Bell, Berman, Harris	4
Negative:		0
Abstain:	Mackey	1

Mr. Mackey - I wanted to abstain from the vote since I wasn't here when we heard the case. I didn't oppose it. But I thought it would be wise to abstain.

Mr. Bell - Thank you sir.

Mr. Mackey - You're welcome.

Mr. Blankinship - All right. We'll begin this month's agenda now.

CUP2016-00002 MATTHEW AND HEATHER BOYCE request a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow an accessory structure in the side yard at 12713 Westin Estates Drive (WESTIN ESTATES) (Parcel 733-773-0374) zoned Agricultural District (A-1) (Three Chopt).

Mr. Blankinship - Would everyone who intends to speak to this case please stand so you can be sworn in? Would you raise your right hands please? Do you swear the testimony you're about to give is the truth, the whole truth, and nothing but the truth so help you God? Thank you. Mr. Madrigal, if you'd give us your report.

Mr. Madrigal - Good morning, Mr. Chair, members of the Board.

The request before you is to allow accessory structures in the side of a residential lot. The subject property is located in the West End Estates subdivision, a new 47-lot residential subdivision recorded between 2013 and 2015. The subject lot is one acre in size and is served by County water and an on-site septic system.

540

541 The drainfield on the property runs from front to back along the eastern property
542 line, and the reserve area is located in the eastern rear portion of the lot, which
543 would be back here on the drawing. Wetlands are present on the west side of the
544 lot, which you can see here.

545

546 The applicants purchased the property in August 2014 and built a 4,800-square-
547 foot, two-and-a-half-story home with an attached three-car garage. The home
548 was built in August 2015. The applicants wish to construct a 180-square-foot
549 garden shed with an attached 144-square-foot greenhouse in the eastern side
550 yard, located at the end of their driveway. Because of the location of the septic
551 system and the presence of wetlands on the lot, the applicants are somewhat
552 constrained as to the placement of the proposed structures in the rear yard.

553

554 Although the proposed location encroaches into the side yard, it affords them
555 convenient access without encroaching into the drainfields, while still providing
556 the required setbacks from the house and below-ground septic tanks. The
557 property is zoned A-1 and is designated as Rural Residential in the
558 Comprehensive Plan. A one-family dwelling is consistent with both land use
559 designations, and accessory buildings are customary and incidental to the
560 principal use of the property.

561

562 With respect to the detrimental impact finding, staff does not anticipate any
563 substantial detrimental impacts with this request. The affected side yard is 52
564 feet wide, and there is an existing tree line running along the side property line
565 that serves as a physical and visual buffer to the adjacent neighbor. The shed
566 and greenhouse will maintain a 25-foot side yard setback and will be located at
567 the end of the applicant's driveway. Because the house is designed with a side-
568 loaded garage, the shed will appear more like a small detached garage from the
569 street instead of a garden shed.

570

571 The shed will be designed to complement the architecture of the house, while the
572 greenhouse will not be visible from the street due to its location directly behind
573 the shed and its small dimensions.

574

575 In conclusion, staff finds the applicant's request consistent with the zoning and
576 Comprehensive Plan designations. Little to no negative impacts are anticipated
577 due to the large size of the lot and existing buffers. The proposed structures will
578 architecturally match and complement the existing dwelling, and specific
579 conditions of approval have been prepared to mitigate any adverse impacts on
580 the adjacent neighbor. For these reasons, staff recommends approval subject to
581 the conditions.

582

583 This concludes my presentation. I stand ready to answer any questions you may
584 have.

585

586 Mr. Blankinship - Miguel, could you go back to the proposed plot plan,
587 please?
588
589 Mr. Madrigal - Yes.
590
591 Mr. Blankinship - Thank you. Could you point out for the Board where
592 the septic covers are located?
593
594 Mr. Madrigal - They are right here.
595
596 Mr. Blankinship - Those three symbols there indicated the septic tank.
597 And then just roughly trace where the lines go from the septic tank over to the
598 drainfield.
599
600 Mr. Madrigal - They basically go in this direction.
601
602 Mr. Blankinship - So that's the fundamental problem here. If they put
603 these buildings far enough back to be in the rear yard, they'd be on top of the
604 drainfield line.
605
606 Mr. Baka - And then beyond the septic tank lids you have woods.
607
608 Mr. Blankinship - Yes.
609
610 Mr. Berman - Can you show us the tree line, please, the rear yard
611 tree line?
612
613 Mr. Blankinship - The aerial might be the best.
614
615 Mr. Berman - Okay. So what you're saying is in the septic zone—
616 you obviously can't put a building over the top of a septic tank in case it needs to
617 be serviced beyond the lid itself. There's not enough space between that and the
618 tree line, the foliage behind it?
619
620 Mr. Madrigal - This area back here, that's the reserve drainfield area.
621 So they don't want to encroach into that.
622
623 Mr. Berman - Okay. So how about in the quadrant immediately
624 beyond the mass of the house?
625
626 Mr. Madrigal - This area would be open here, but that would place
627 the shed kind of in an awkward place on the lot. And it wouldn't be as convenient
628 to access as it would be at the end of their driveway.
629
630 Mr. Berman - Define *awkward*.
631

632 Mr. Madrigal - I guess they'd have to just walk a bit more to get to it.
633
634 Mr. Berman - But it is possible to put the shed and the greenhouse
635 beyond the mass of the house, not encroach on septic, not encroach on
636 drainfields or have any other environmental impact.
637
638 Mr. Madrigal - I would say they probably could do it, but I would
639 rather have the applicant explain that.
640
641 Mr. Berman - I could let the applicant speak to that.
642
643 Mr. Blankinship - Right.
644
645 Mr. Berman - Okay, thank you.
646
647 Mr. Walker - My name is Jim Walker. I'm the homebuilder that
648 created this home for the Boyces. As to your question regarding the reserve
649 area, you see the heavy dotted line that comes around the side there?
650
651 Mr. Berman - The heaviest one? Yes.
652
653 Mr. Walker - This line right here.
654
655 Mr. Berman - Yes sir.
656
657 Mr. Walker - That is a buffer for the wetlands area. The reserve
658 drainfield area runs entirely within that area where I'm moving the cursor. And
659 our primary drainfield area has been installed right here. This is not shown on
660 this particular—let's see. These tanks are—basically, you can't come anywhere
661 past that. The lines running over to the primary drainfield are underground.
662 There's more than on line. It's actually a recirculating system that's been
663 installed. As such, Matt and Heather and I really thought that the location that we
664 had considered, pretty much where that playhouse is, is the best alternative all
665 the way around. It would have to be very close to their existing screen porch. It
666 would require removal of more trees. We really felt like that was the best location.
667
668 Mr. Berman - Can you please go back to the previous picture you
669 were looking at, the previous view?
670
671 Mr. Walker - The septic tanks?
672
673 Mr. Berman - Yes sir. The area directly behind the screened-in
674 porch, can you speak to why locating there would not work?
675
676 Mr. Walker - It would block the view from the screened porch to the
677 tree line. It could be located there, but it's not the best place for the homeowner.

678
679 Mr. Berman - Thank you for explaining that.
680
681 Mr. Bell - Any other questions? Just one. Have you read the
682 conditions, understand them, and would agree with them?
683
684 Mr. Walker - That's a question for Heather.
685
686 Mr. Bell - In your report, did you read the conditions, agree with
687 them, and understand them?
688
689 Ms. Boyce - That the gentleman went over?
690
691 Mr. Bell - Yes.
692
693 Ms. Boyce - Yes. The conditions meaning?
694
695 Mr. Blankinship - In the staff report.
696
697 Mr. Berman - Page three.
698
699 Ms. Boyce - I don't have it.
700
701 Mr. Berman - We can provide it and give you time to read them.
702
703 Ms. Boyce - If it's what he just said, then yes, I understood it.
704
705 Ms. Harris - No it's not exactly.
706
707 Mr. Berman - No, it's more detailed.
708
709 Ms. Boyce - No, okay.
710
711 Mr. Bell - And since you have Mr. Walker the builder there, it
712 might be good for him to look at them as well because a lot of them will pertain to
713 him.
714
715 Ms. Boyce - We've spoken about this. And yes. Yes, I'm aware of
716 all of these.
717
718 Mr. Bell - Good. Any other questions?
719
720 Ms. Harris - Yes. Can we see the site plan, please? No, that's not
721 the one I need.
722
723 Mr. Berman - The plot plan.

724
725 Mr. Walker - This one?
726
727 Ms. Harris - Right. We see the arrow saying "wetland buffer" up
728 here. But the area to the right of the screened-in porch.
729
730 Mr. Walker - Here?
731
732 Ms. Harris - Right. You said you could not use that because of
733 what?
734
735 Mr. Walker - This is what I believe is known as an RPA buffer.
736
737 Mr. Blankinship - That's correct.
738
739 Mr. Walker - Which is a resource protection area.
740
741 Ms. Harris - That was my only question. Thank you.
742
743 Mr. Bell - Any other questions? Thank you.
744
745 Mr. Blankinship - Ma'am, could you state your name for us please?
746
747 Ms. Boyce - My name is Heather Boyce. B-o-y-c-e.
748
749 Mr. Blankinship - Thank you.
750
751 Ms. Boyce - Thank you for your consideration.
752
753 Mr. Blankinship - Would anyone else like to speak to this case. All right.
754
755 **[After the conclusion of the public hearings, the Board discussed the case**
756 **and made its decision. This portion of the transcript is included here for**
757 **convenience of reference.]**
758
759 Mr. Bell - Do I hear a motion on this case?
760
761 Mr. Berman - I move that we grant the placement of the structure in
762 the side yard given the conditions set forward.
763
764 Mr. Bell - Do I hear a second?
765
766 Ms. Harris - Second the motion. In driving by, I noticed the care
767 this subdivision is exercising with the structures, the elaborate structures and all.
768 I think that it will enhance the neighborhood to build it exactly where they feel it
769 should be built.

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Mr. Bell - Any other discussion? Hearing none, all those in favor of the motion say aye. All those opposed? The ayes have it; the motion passes.

After an advertised public hearing and on a motion by Mr. Berman, seconded by Ms. Harris, the Board **approved** application **CUP2016-00002, MATTHEW AND HEATHER BOYCE's** request for a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow an accessory structure in the side yard at 12713 Westin Estates Drive (WESTIN ESTATES) (Parcel 733-773-0374) zoned Agricultural District (A-1) (Three Chopt). The Board approved the conditional use permit subject to the following conditions:

1. This conditional use permit applies only to the placement of a garden shed and attached greenhouse in a side yard. All other applicable regulations of the County Code shall remain in force.
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 or as required by conditions of approval. Any substantial changes or additions to the design or location of the improvements shall require a new conditional use permit.
3. The new construction shall match the existing dwelling as nearly as practical in materials and color.
4. A 10 foot setback shall be provided between the principal structure and the proposed accessory buildings.
5. Before beginning construction, the applicant shall field-verify and clearly mark the location of the septic tank, treatment unit (if any), conveyance lines, distribution box, drainfield or dispersal area, and reserve area. No construction shall encroach within ten feet of these system elements.
6. All exterior lighting shall be shielded to direct light away from adjacent property and streets.

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

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

816 Mr. Blankinship - The other case for this morning's agenda is
817 VAR2016-00005, Christine and Tyler Sauer.

818
819 **VAR2016-00005 CHRISTINE AND TYLER SAUER** request a variance
820 from Section 24-94 of the County Code to build a screened porch on an existing
821 deck at 26 Twin Lake Lane (GLENBROOKE HILLS) (Parcel 754-734-5581)
822 zoned One-Family Residence District (R-1) (Tuckahoe). The rear yard setback is
823 not met. The applicant propose 42 feet rear yard setback, where the Code
824 requires 50 feet rear yard setback. The applicant requests a variance of 8 feet
825 rear yard setback.

826
827 Mr. Blankinship - Would you raise your right hands, please? Do you
828 swear the testimony you're about to give is the truth, the whole truth, and nothing
829 but the truth so help you God? Thank you. Mr. Gidley, if you would begin.

830
831 Mr. Gidley - Thank you, Mr. Secretary. Good morning,
832 Mr. Chairman, members of the Board.

833
834 This is a request for a variance to allow the conversion of a portion of an existing
835 deck into a covered screened porch. The subject property is roughly one acre in
836 size and is located in the Glenbrooke Hills subdivision. It contains a home built in
837 1952. When constructed, for some reason the home was set back 104 feet from
838 Twin Lake Lane, resulting in a smaller rear yard, although the home did meet
839 setbacks. As you can see here, it has an extensive front yard where it's set back
840 from the street line.

841
842 In 1973, the owner at the time decided to add a 23-foot addition onto the rear of
843 the home. Since the proposed addition came within 40 feet of the rear lot line—
844 although measurements provided for this variance show 42 feet; the ones at the
845 time showed 40 rather than required 50 feet—the owner at the time applied for
846 and obtained a variance for the addition. The addition is basically this portion
847 here on the back. It was this portion here that came within the 50-foot setback
848 requirement.

849
850 Sometime after the addition was made, decking was added to the house. This
851 was not a problem, however, because uncovered decks are allowed under the
852 Zoning Ordinance to encroach ten feet into the setback. So this was not an issue.
853 The applicant recently decided to convert part of the deck into a covered screen
854 porch. Unlike decks, covered spaces such as sunrooms, screened porches, et
855 cetera, need to meet setbacks, same as the house.

856
857 Since the proposed screened porch would come within 42 feet of the rear lot line,
858 it would violate setbacks. As noted, a previous variance was granted for an
859 addition to come within 40 or 42 feet here. This would permit the proposed
860 screened porch; however, there was a condition on the original variance that
861 read as follows: "Only the addition shown on the plan filed with the case will be

862 constructed." Because the screened porch is not shown on the original variance's
863 plans, it is not covered by the original variance.

864
865 This is a view of the proposed screened porch here. As you can see, part of
866 decking would remain decking and part would be converted into the screened
867 porch.

868
869 In reviewing the standards under state law for a variance, the first initial two tests
870 are does the Zoning Ordinance unreasonably restrict the utilization of the
871 property or will it alleviate a hardship due to the physical condition related to the
872 property or the improvements at the time of the ordinance.

873
874 A dwelling was constructed on the property in 1952. In addition, a variance was
875 approved for a 487-square-foot addition in 1974. As a result, there does not
876 appear to be an unreasonable restriction on the use of the property.

877
878 As for a hardship due to the physical condition of the property, the site contains
879 roughly one acre of lot area. Again, for some reason when the home was built, it
880 was built back quite a ways from the street. The applicant indicates this is due to
881 the slope. But as you can see here, the slope basically goes side to side rather
882 than front to back. So there's no reason the home really couldn't have been built
883 closer to the road had they chosen to do so at the time? As I said, when the
884 home was built initially, it did meet setbacks. And they did get a variance later on
885 for an extensive addition. As a result, staff does not believe there's a hardship
886 related to the conditions on the property simply because they can't convert a
887 deck into a screened porch.

888
889 Finally, the applicant indicates there is a hardship because the County is
890 unwilling to sell land at the rear of the property, which is a small neighborhood
891 park. The inability to acquire land from an adjacent parcel is not a hardship
892 related to the physical condition of the applicant's property, which is a
893 requirement of state code.

894
895 If the Board did feel one of the above two conditions or tests were met, then
896 there are five additional tests all of which must be met to grant a variance.

897
898 First, the property for which the variance was requested was acquired in good
899 faith and any hardship not created by the applicant. In this case, the applicant
900 purchased the property in good faith. However, the decision to convert a lawful
901 deck into a screened porch that does not meet Code requirements may be
902 considered a self-imposed condition.

903
904 Second, the granting of the variance will not be a substantial detriment to
905 adjacent or nearby property. Staff does not see a substantial detrimental impact
906 as a result of this request.

907

908 The third test is arguably the most difficult with this case, and that is the condition
909 of the property concerned is not so generally recurring of a nature as to make
910 reasonably practical the formulation of a general regulation or an amendment to
911 the Zoning Ordinance.

912

913 The Board of Supervisors has decided to treat decks differently than covered
914 space and has decided to allow decks to encroach up to ten feet into the rear
915 yard setback, whereas a covered structure, such as a screened porch or
916 sunroom, must meet regular setbacks. As a result, there are numerous decks
917 throughout the County that legally encroach up to ten feet into the rear yard, but
918 which may not be converted into covered space.

919

920 Prior to the state Supreme Court's Cochran decision, the BZA each year saw
921 dozens of requests to convert decks into sunrooms or into screened porches. As
922 a result, this is one of the most general and reoccurring situations staff has
923 encountered over the years. The Board of Supervisors decided to treat decks
924 differently than other types of additions. And it's up to the Board of Supervisors to
925 amend the ordinance if they so choose.

926

927 Next, the granting of the variance does not result in a use that is not otherwise
928 permitted on the property. A screened porch is customarily accessory to
929 residential use, so it's not a use variance. So there's no problem there.

930

931 And the relief or remedy sought by the variance application is not available
932 through a special exception or modification, and a special exception or
933 modification is not available in this case.

934

935 In conclusion, there does not appear to be any unreasonable restriction on the
936 use of the property or any hardship due to a physical condition of the property or
937 its improvements.

938

939 All five subtests must be met. In this case, the condition is general and
940 reoccurring, and requests to convert decks into a covered space were once
941 arguably the most common request for a variance the Board saw. Again, we had
942 dozens each year, so it was quite common. To find the inability of the property
943 owner to convert a deck into covered space would justify a variance, arguably
944 puts the BZA in the position of amending the code, which is the Board of
945 Supervisors' job. As a result, staff recommends denial of this request.

946

947 Are there any questions I could answer?

948

949 Mr. Berman - Yes, Mr. Gidley. Before I ask Mr. Sauer or Mr. Jones,
950 would it be okay if they enclosed the deck but not all the way to the end and left
951 eight feet on the deck? I guess I'll talk to the homeowner with regard to whether
952 that's a viable change, but would that be—

953

954 Mr. Gidley - They can enclose to within fifty feet of the rear
955 property line.
956
957 Mr. Berman - So they would leave like an eight-foot lip on the deck.
958 And with the pitch of the roof—I know you're not an engineer, but I'll ask
959 Mr. Jones, if he's present. Would the pitch of the roof still be viable if they
960 chopped eight feet off of there?
961
962 Mr. Gidley - It looks like on the original plans, the 50-foot mark
963 would be to around the midpoint right here.
964
965 Mr. Berman - At the bump-out.
966
967 Mr. Gidley - So they could probably come out to around this
968 portion right here and enclose all of this into a screened porch if they wanted to.
969 So they could have a screened porch in this area here as long as they stopped
970 roughly at this point.
971
972 Mr. Berman - Thank you. We can pursue that with the homeowner.
973 Thanks.
974
975 Ms. Harris - Mr. Gidley, how close is that lake to their property?
976
977 Mr. Gidley - Did you say "lake," ma'am?
978
979 Ms. Harris - Yes. I drove by there yesterday.
980
981 Mr. Gidley - Let's find the aerial.
982
983 Ms. Harris - Maybe the homeowner can tell me.
984
985 Mr. Gidley - Okay. It's further southeast. I can't scroll any further.
986
987 Mr. Baka - It's a couple of blocks south.
988
989 Ms. Harris - A couple of blocks?
990
991 Mr. Gidley - To the south?
992
993 Mr. Baka - A couple of blocks south.
994
995 Ms. Harris - So it doesn't affect the property at all?
996
997 Mr. Gidley - No ma'am.
998

999 Ms. Harris - I was thinking with the screened-in porch, if you were
1000 right there on the lake, you would definitely need a screened-in porch. But if it's a
1001 couple of blocks south, I guess not. Thank you.

1002
1003 Mr. Gidley - You're welcome.

1004
1005 Mr. Baka - A couple of questions. How do you get to the park? I
1006 drove by twice trying to get in.

1007
1008 Mr. Berman - I couldn't figure it out.

1009
1010 Mr. Baka - Is there a sign?

1011
1012 Mr. Gidley - That is a good question. We've actually had—when
1013 the subdivision came into being, which was a long time ago, there were actually
1014 two or three parks platted as part of the subdivision. There is one like this, but to
1015 the east. And actually the right-of-way which originally went there was vacated,
1016 and homes were built around it. And now there is a question over access to the
1017 one to the east. That's being addressed by Recreation and Parks.

1018
1019 This one here, according to the homeowners' association in discussing the other
1020 park, it sounds like they could access this. I don't know who owns this right here.
1021 If that's still in public ownership then—

1022
1023 Mr. Baka - It appeared to be a private sign of restricted access
1024 from the corner of University Drive up to Ziontown on that right side.

1025
1026 Mr. Gidley - If you go down to the east more, as I said, that is
1027 surrounded down there. There is no access to that park today from what I can
1028 tell.

1029
1030 Mr. Baka - So back on the owner's property, about 1973, about
1031 43 years ago, there was an addition built that already protrudes into the setback.

1032
1033 Mr. Gidley - Yes sir.

1034
1035 Mr. Baka - I realize the variance that's on there doesn't allow this
1036 applicant today to build this screened-in porch, but the precedent is already set
1037 that you have an extension of the house that's been there for a number of years.
1038 So why isn't it an unreasonable restriction to not allow this approval here today
1039 for a screened-in porch that would match—appears to match flush at 42 feet and
1040 not going any further than that mark? Why isn't that an unreasonable restriction
1041 to deny this permit?

1042
1043 Mr. Gidley - That's an excellent point. It is something staff
1044 discussed, so we kind of went around in our own minds on the case. When we

1045 present something, we try to present under state law and the facts as laid out by
1046 state law. The variance was granted here. They had a condition, which is pretty
1047 standard on your cases, that what you see is what you're approving and nothing
1048 more. You don't want to give carte blanche to something that you're not aware of,
1049 that you're not seeing.

1050

1051 So your point is good. I mean it comes out here right now. If it wasn't for that
1052 condition, this could in fact go out to this 42-foot or even 40-foot mark. There's
1053 just a park back here, so there's arguably no detrimental impact that's
1054 substantial.

1055

1056 From a state code perspective, which is where we're bound to provide our
1057 opinion as such, there is a home on the property now. They were granted a
1058 variance earlier. So it's hard to argue the property is in a situation where they
1059 don't have a reasonable sort of use of the property, that it's a substantial
1060 detrimental impact to this property, given the fact that they have a home on it and
1061 they received a variance earlier.

1062

1063 The other thing is you do have the five subtests. It was the third one that was
1064 tough for us in that you would see pretty much every month requests to covert
1065 decks into sunrooms or covered porches. So it's something that's definitely
1066 general and reoccurring. If the Board wanted to change the rules, they could do
1067 so. So we found the third subtest made it a very difficult case to recommend
1068 approval of.

1069

1070 Mr. Baka - Thank you.

1071

1072 Mr. Gidley - Yes sir.

1073

1074 Mr. Bell - Any other questions? Thank you.

1075

1076 Mr. Blankinship - If somebody could give us at least a couple of
1077 minutes of introduction, starting with your name, please.

1078

1079 Mr. Jones - Graham Jones. G-r-a-h-a-m, J-o-n-e-s. I guess our
1080 thought with the park behind the property is it's been there since 1942. We tried
1081 to acquire a portion of that property to move our setback back, and the County
1082 doesn't want to sell that in part or completely. It's our opinion that because the
1083 government owns that piece of property that's part of hardship. The government
1084 is actually not willing to sell the property. It's not like another homeowner would
1085 have it, which is two private citizens that you'd be dealing with as opposed to the
1086 County. The new variance does not go past—and I measured from the property
1087 line to the existing addition. That's how the 42 feet—that's the actual
1088 measurement.

1089

1090 And to answer your question earlier, yes, we could shorten the roof on it, but that
1091 would be a five-foot screened porch. Basically, five feet is not hardly enough to
1092 get a chair in.

1093

1094 Mr. Berman - I couldn't lay down in it.

1095

1096 Mr. Jones - No sir. It would have to be a very straight-back chair.

1097

1098 Mr. Bell - Any other questions?

1099

1100 Mr. Berman - Mr. Baka, your point was that you can't even access
1101 the park behind the house?

1102

1103 Mr. Baka - I couldn't find how to get there without appearing that
1104 I would be trespassing either on someone's land or going on a private street. So I
1105 didn't go any further to find the park.

1106

1107 Mr. Berman - Mr. Secretary, are we in any position to have
1108 influence with the County on the sale?

1109

1110 Mr. Blankinship - On the sale of the park land?

1111

1112 Mr. Berman - Or a parcel of it.

1113

1114 Mr. Blankinship - I can't recall a case where the Board of Zoning
1115 Appeals has weighed in on that sort of question.

1116

1117 Mr. Berman - Okay.

1118

1119 Ms. Harris - Do we know the comprehensive plan for that park?
1120 Do you know?

1121

1122 Mr. Blankinship - It was created by the subdivision back in the 1940s.
1123 To this point, the County has not found any particular specific use for it. There is
1124 park land immediately northwest of that on Roslyn Hills Drive where the County
1125 has installed some playground equipment, I understand. But in this case, as far
1126 as I know, the County does not have any plans on the books right now to
1127 improve that park.

1128

1129 Ms. Harris - Do you know how large that parcel is?

1130

1131 Mr. Jones - The park is—

1132

1133 Male - [Off microphone.] It's 1.33 acres.

1134

1135 Ms. Harris - Okay.

1136
1137 Mr. Bell - Have you contacted anybody with the County
1138 concerning this?
1139
1140 Mr. Jones - Yes sir. We've had extensive conversations with Al
1141 Azlone, Moore, I think is his name?
1142
1143 Mr. Gidley - Al Azzarone.
1144
1145 Mr. Jones - Azzarone? Thank you. In the Parks and Rec
1146 Department. Initially they were agreeable to sell ten feet of right of way. As time
1147 went on, as he went up through the chain, it became clearer that they were not in
1148 favor of selling any of the property because of some past issues with the
1149 property. He would not elaborate as to what those issues were. He did say that
1150 Parks and Rec would be in favor of a variance for the porch, but they would not
1151 be willing to look into selling the property.
1152
1153 Mr. Bell - Thank you.
1154
1155 Mr. Berman - Mr. Mackey, not to put you on the spot, but with your
1156 expertise in Parks and Recs, do you have anything else to add to that?
1157
1158 Mr. Mackey - I was listening, and I don't even remember that
1159 coming up.
1160
1161 Mr. Berman - You don't remember the case?
1162
1163 Mr. Baka - I have to say the same, Mr. Mackey. I confess that as
1164 a former member of the Parks and Rec board, I was unaware of the pocket park
1165 here, the small park.
1166
1167 Mr. Berman - I apologize. I forgot your—
1168
1169 Mr. Baka - No, don't apologize. I apologize. I should be more
1170 knowledgeable about that.
1171
1172 Mr. Mackey - I was thinking the same.
1173
1174 Mr. Baka - So I guess I have a couple of questions. But first, I
1175 don't see that there's any significant hardship. It's unfortunate they have a
1176 property owner that doesn't want to sell, but that doesn't necessarily lend itself to
1177 what they would define as a hardship. The property is used for residential
1178 purposes, so you're not restricted for residential.
1179
1180 I do think there are some unique circumstances about this case. It just makes me
1181 scratch my head. If you were come here today and have no portion of your home

1182 within that 50-foot setback already and say, "We need a variance to enclose this
1183 deck which already extends past the 50-foot mark, and we're just going to
1184 enclose it in a screened-in porch," that would appear to be something that might
1185 not meet the test of unreasonably restricting the property.
1186

1187 But here's the thing, about 40 years ago there was this addition 42 feet away,
1188 and now we have the deck that comes flush to it. You're not asking to go behind
1189 the edge of that 42-foot mark. I'm looking at this in some regards that I can
1190 understand how it might be perceived as an unreasonable restriction on the use
1191 of the property if you're not able to simply close in a deck that matches the
1192 existing wall of the home that's already had a variance. The precedent was set in
1193 1973 to allow for a variance to go forth.
1194

1195 So I guess my question is—you mentioned hardship earlier. Maybe other
1196 members of the Board do, but I don't personally believe there's a hardship here.
1197 My question is can you ensure that if there were approved with the conditions in
1198 the application that the screened-in porch would absolutely not extend any
1199 further behind the existing wall flush?
1200

1201 Mr. Jones - Yes, it will not. It's actually short about—

1202
1203 Mr. Baka - It's shorter?

1204
1205 Mr. Jones - It's about ten inches shorter, if you look at the
1206 drawings.

1207
1208 Mr. Baka - Do you have that drawing?

1209
1210 Mr. Blankinship - It's on the presentation.

1211
1212 Mr. Jones - Right there were the cursor is.

1213
1214 Mr. Mackey - Can you move the cursor?

1215
1216 Mr. Jones - To the left of that, this is the existing addition. And this
1217 is where the edge of the porch would be. I think it's right at ten inches shorter.
1218

1219 Mr. Baka - It's very little impact on neighboring properties. Okay.
1220 Thank you for that clarification.

1221
1222 Mr. Jones - Thank you.

1223
1224 Mr. Berman - My biggest concern here—and Mr. Gidley pointed it
1225 out—is setting a precedent that we would have a long line of people saying, "I
1226 want to enclose my deck even though it's not 50 feet." That's the biggest
1227 concern.

1228
1229 Mr. Bell - Plus you have the concern of Code 15.2-2309 that
1230 goes with the five requirements that you have to have, which comes under
1231 Cochran, which we in the past, unfortunately, like it or not, had to agree with. So
1232 is what you're saying, Mr. Baka, addressing that hardship.

1233
1234 Mr. Baka - Well I don't believe the applicant has a hardship in the
1235 first test. The question is would it unreasonably restrict the use of the utilization of
1236 the property. And then secondly, would it meet those five tests.

1237
1238 To Mr. Berman's point, and it's a good one, if you had a long line of people
1239 requesting to close in an existing deck for a screened-in porch. I think this case is
1240 somewhat unique in that you already have a portion of the house—whether
1241 granted by variance or not—that already extends into the rear yard setback. I
1242 think that most of those cases where you'd have a request for a deck to be
1243 enclosed in you won't have a portion of the house that already violates that rear
1244 yard setback. To me, that's a difference right there.

1245
1246 Mr. Jones - I think had it not been for that issue, we wouldn't even
1247 be here because of the previous variance.

1248
1249 Mr. Baka - And that's just my opinion. I'm just one opinion here.

1250
1251 Mr. Blankinship - I will say to that point that we have a case sort of
1252 pending right now that is similar to this in that it backs up to property owned by
1253 the County. It has an existing deck, and the owner would like to enclose it with a
1254 screened porch. I don't recall if there is another portion of the building that's
1255 already there.

1256
1257 Mr. Baka - Okay.

1258
1259 Mr. Blankinship - But in terms of the County ownership of the property
1260 abutting, there is another case already queued up. There definitely will be some
1261 precedential value in this morning's decision.

1262
1263 Mr. Baka - So I guess that's what I would hang my hat on, so to
1264 speak, is that if an enclosed portion of a home already violates that setback, then
1265 we're looking at simply extending the building envelope where there's other
1266 additional detrimental impact, provided they meet the five-part test. But I applaud
1267 the fact that the applicant talked to the County Parks and Rec staff to at least ask
1268 whether he could extend it further. I don't see the addition of land in this situation
1269 as being a viable solution.

1270
1271 Mr. Berman - I'm sorry. Not viable because they have not made
1272 headway with the County?

1273

1274 Mr. Baka - Not viable in that if you have a—from my
1275 understanding of Parks and Recreation aspects in the past, it's not typical if a
1276 park borders dozens of properties that they would necessarily cede or sell one
1277 portion that's right in front of, say, Mr. Mackey's property or one portion right in
1278 front of my property, sell off bits and pieces. I haven't seen that in the past.
1279

1280 Mr. Mackey - I've never heard of that.
1281

1282 Mr. Baka - I never saw that in my time on the board.
1283

1284 Mr. Berman - So not the County, but I have seen subdivisions that
1285 have common areas that abut to multiple properties that they sever just a parcel
1286 behind one owner.
1287

1288 Mr. Baka - I would suggest that's an easier process, yes.
1289

1290 Mr. Berman - Okay.
1291

1292 Mr. Baka - Yes.
1293

1294 Mr. Berman - So that hurdle may be higher to deal with when a
1295 neighbor is government versus private? I can assure that the Board has heard
1296 several cases where private citizens have refused to grant the sale of a portion or
1297 all of their property to satisfy a variance.
1298

1299 Mr. Gidley - And that's not in State Code—
1300

1301 Mr. Blankinship - Mr. Gidley was just pointing out that the Code for
1302 variances does not address the willingness or the unwillingness of adjoining
1303 property owners to sell.
1304

1305 Mr. Berman - Thank you.
1306

1307 Ms. Harris - Mr. Jones, the design that we have showing how the
1308 screened porch will be built, are you just enclosing the screened porch or is there
1309 more to it? I'm looking at the plans.
1310

1311 Mr. Jones - Enclosing the deck?
1312

1313 Ms. Harris - Yes, are you—
1314

1315 Mr. Jones - We're enclosing a portion of the deck.
1316

1317 Ms. Harris - Okay.
1318

1319 Mr. Blankinship - Are you replacing more of the deck beyond what's
1320 being enclosed at this time?
1321
1322 Mr. Jones - No. The deck that is to the—
1323
1324 Mr. Blankinship - Which illustration was it that has the perspective
1325 drawing?
1326
1327 Mr. Jones - This part of the deck that's existing is in good
1328 condition. It's not failing. We are going to re-deck it. The structure is fine, but the
1329 decking boards themselves we're going to replace. This portion of the deck is
1330 failing kind of where the cursor is. It's bowing down in the center.
1331
1332 Mr. Blankinship - The structure as well as the boards.
1333
1334 Mr. Jones - The structure, yes. So the structure would be
1335 replaced there, but not any bigger than it is now.
1336
1337 Mr. Blankinship - Right. Does that answer your question, Ms. Harris?
1338
1339 Ms. Harris - Yes. So you are replacing the screened porch, but
1340 not—
1341
1342 Mr. Jones - We're replacing the structure under the screen porch.
1343 The structure and the decking boards as well as building the screened porch.
1344
1345 Ms. Harris - I was listening to Mr. Berman express whether if we
1346 granted this variance would we be bombarded with other cases. We've had
1347 cases like this come up sporadically but they don't—I mean it's not a prevalent
1348 thing, and we've granted them. Once the porch was built, we allowed them build
1349 a porch uncovered. But we haven't had too many cases that ask us to enclose it.
1350 Even though we may have granted that request, we haven't had too many cases
1351 in the years that I've been on the Board, since 2004.
1352
1353 Mr. Blankinship - Yes. Since the Cochran decision, none of these cases
1354 have been approved. Nothing similar to this could have been approved under
1355 Cochran.
1356
1357 Mr. Bell - Any other questions?
1358
1359 Mr. Baka - No sir.
1360
1361 Ms. Harris - Oh, one more thing. You already have a screened-in
1362 porch?
1363
1364 Mr. Jones - No ma'am.

1365
1366 Ms. Harris - You do not.
1367
1368 Mr. Jones - No ma'am.
1369
1370 Ms. Harris - Okay.
1371
1372 Mr. Jones - What's there now—the picture now is what's existing.
1373
1374 Ms. Harris - I thought this was going to be an easy case in which
1375 you would say, "We're located on Twin Lakes. So the lake is there. We have a
1376 problem with mosquitoes. So it makes common sense that we screen the porch
1377 in." So I thought it was going to be an easy case.
1378
1379 Mr. Jones - We are changing the railing on the existing deck to a
1380 wrought iron, a more substantial railing than the wooden one that's there now.
1381
1382 Mr. Bell - Any other question? Thank you.
1383
1384 Mr. Jones - Thank you.
1385
1386 Mr. Berman - Mr. Sauer, did you have anything to add?
1387
1388 Mr. Sauer - Just that I don't feel that this is an unreasonable
1389 request. We'd very much like you to grant this variance.
1390
1391 Mr. Berman - Thank you.
1392
1393 Mr. Bell - Thank you. All right, we can go on to the voting.
1394
1395 **[After the conclusion of the public hearings, the Board discussed the case**
1396 **and made its decision. This portion of the transcript is included here for**
1397 **convenience of reference.]**
1398
1399 Mr. Bell - Do I hear a motion on this case?
1400
1401 Mr. Baka - Mr. Chairman, I will make a motion to approve
1402 VAR2016-00005 with the following discussion. I believe that the applicant has
1403 discussed information that this case would meet the standards of 15.2-2309 at
1404 the bottom of the second page of the staff report where it says that this strict
1405 application of the terms of the ordinance would unreasonably restrict the
1406 utilization of the property. And as I mentioned, I don't believe it meets that
1407 second part of the test. There is not hardship that I foresee here. But it
1408 unreasonably restricts the utilization in that the house already extends into the
1409 rear yard setback, and the request is to extend no further, in fact less than that
1410 extension protruding into the rear yard setback.

1411

1412 There is a five-part test that's spelled out in the staff report on page 3. Number
1413 one, the applicant acquired the property in good faith. I believe that is met. And
1414 there is no hardship here. So I believe part 1 of the test is met.

1415

1416 Number two, there is no substantial detrimental impact. We can't even get to the
1417 park behind it, and the neighbors can't really see it too well. There are no
1418 objections from neighbors. It meets number two.

1419

1420 Number three is the discussion where Mr. Gidley had gone into some detail. I
1421 believe the situation—while decks being converted into screened-in porches are
1422 often recurring applicants—although Ms. Harris pointed out they're not quite as
1423 often as we might think—the different set of circumstances I believe exist here is
1424 that this house already extends into that setback. And I would make a
1425 differentiation on that. I would say if that were not the case here today, I would
1426 turn to the applicant and say that this would be a case that appeared to be one
1427 for denial.

1428

1429 Number four, the variance would not result in a use that is not permitted. That's
1430 straightforward. It meets that test.

1431

1432 And then number five, it's not available through a special exception. In fact, they
1433 also offered that they tried to seek acquisition of a few more feet from the
1434 neighboring property, and that was unsuccessful.

1435

1436 With that, I make a motion to approve this variance request.

1437

1438 Mr. Bell - Do I hear a second? I'll second the motion. Any
1439 discussion?

1440

1441 Ms. Harris - The point at which you disagreed with the County's
1442 recommendation, which subset did you disagree with?

1443

1444 Mr. Baka - Number three. The staff pointed out that this was a
1445 general and recurring nature of decks being converted into screened-in porches.
1446 My difference with that is the unique circumstance here where the existing house
1447 already protrudes and violates that setback.

1448

1449 Ms. Harris - I just wish we had something to go by that would say
1450 that it's commonsense to do something.

1451

1452 Mr. Blankinship - We're not allowed to apply commonsense.

1453

1454 Mr. Berman - My comment is that the house was acquired knowing
1455 that it was unusually set back deep into the lot and that the paperwork for the

1456 original violation or variance request stated that that's it, that's all that it applied
1457 to, just that bump-out. That's all I have to say.

1458
1459 Mr. Bell - Any other discussion? Hearing none, we'll take a
1460 vote. All those in favor of the motion say aye. All those opposed say nay. Three
1461 to two?

1462
1463 Mr. Blankinship - Yes sir.

1464
1465 Mr. Bell - All right. Then the ayes have it; the motion carries.

1466
1467 After an advertised public hearing and on a motion by Mr. Baka, seconded by
1468 Mr. Bell, the Board **approved** application **VAR2016-00005, CHRISTINE AND**
1469 **TYLER SAUER's** request for a variance from Section 24-94 of the County Code
1470 to build a screened porch on an existing deck at 26 Twin Lake Lane
1471 (GLENBROOKE HILLS) (Parcel 754-734-5581) zoned One-Family Residence
1472 District (R-1) (Tuckahoe). The Board approved the variance subject to the
1473 following conditions:

1474
1475 1. This variance applies only to the rear yard setback requirement for the
1476 conversion of a deck to a screened porch. All other applicable regulations of the
1477 County Code shall remain in force.

1478
1479 2. Only the improvements shown on the plot plan and building design filed with
1480 the application may be constructed pursuant to this approval. Any additional
1481 improvements shall comply with the applicable regulations of the County Code.
1482 Any substantial changes or additions to the design or location of the
1483 improvements will require a new variance.

1484
1485
1486 Affirmative: Baka, Bell, Harris 3
1487 Negative: Berman, Mackey 2
1488 Absent: 0

1489
1490
1491 Mr. Blankinship - We can proceed to the minutes.

1492
1493 Mr. Bell - Yes, we can go on now to the minutes. Do I hear a
1494 motion on the minutes?

1495
1496 Ms. Harris - I move that the minutes be approved as submitted.

1497
1498 Mr. Bell - Do I hear a second? I'll second that. Do I hear any
1499 discussion?

1500
1501 Mr. Berman - I have one minor request for an update.

1502
1503 Mr. Blankinship - Yes sir.
1504
1505 Mr. Berman - Page 4, line 138. Insert the word "out" between "lot"
1506 and "of."
1507
1508 Mr. Blankinship - So it should be "lot out of"? I'm sorry; I don't have the
1509 context in front of me.
1510
1511 Mr. Berman - That's correct. "Everybody gets a lot out of it."
1512
1513 Mr. Blankinship - Oh, okay. All right.
1514
1515 Mr. Berman - No big deal. Just want to set the record straight.
1516
1517 Mr. Blankinship - We will correct that.
1518
1519 Mr. Bell - Hearing no more discussion, all those in favor say
1520 aye. All those opposed say nay. The ayes have it; the motion passes.
1521
1522 On a motion by Ms. Harris, seconded by Mr. Bell, the Board **approved as**
1523 **corrected** the **Minutes of the January 28, 2016**, Henrico County Board of
1524 Zoning Appeals meeting.
1525
1526
1527 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
1528 Negative: 0
1529 Absent: 0
1530
1531
1532 Mr. Bell - Any old or new business? Is there anything that we'd
1533 like to discuss?
1534
1535 Mr. Baka - I'm glad we have a member from Varina on the
1536 Board, especially on today's vote.
1537
1538 Mr. Blankinship - I hope he'll stay more than two weeks.
1539
1540 Mr. Baka - Welcome, Mr. Mackey.
1541
1542 Mr. Mackey - Thank you very much. I appreciate that.
1543
1544 Ms. Harris - Glad to have a full board.
1545
1546 Mr. Baka - Yes.
1547

1548 Mr. Berman - Yes.
 1549
 1550 Mr. Baka - Very glad.
 1551
 1552 Mr. Berman - You're not moving any time soon!
 1553
 1554 Mr. Mackey - Not that I'm aware of.
 1555
 1556 Mr. Bell - Let's vote to adjourn. Do I hear a motion that we
 1557 adjourn?
 1558
 1559 Mr. Berman - I move we adjourn.
 1560
 1561 Mr. Bell - Do we have a second?
 1562
 1563 Ms. Harris - Second.
 1564
 1565 Mr. Bell - All those in favor say aye. The ayes have it; we are
 1566 adjourned.
 1567

1568
 1569 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
 1570 Negative: 0
 1571 Absent: 0
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Gentry Bell
 Chairman



Benjamin Blankinship, AICP
 Secretary