

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 JANUARY 28, 2016 AT**
5 **9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH JANUARY 11, 2016, AND JANUARY 19, 2016.**
7

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

Also Present: Benjamin Blankinship, Secretary
Paul Gidley, County Planner
R. Miguel Madrigal, County Planner

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

13 Thank you. Mr. Blankinship, please read our rules.
14

15 Mr. Blankinship - Good morning, Mr. Chair, members of the board,
16 ladies and gentlemen, the rules for this meeting are as follows: Acting as
17 secretary, I'll call each case. And as I'm speaking, the applicant is welcome to
18 come down to the front. We will then ask everyone who intends to speak to that
19 case to stand and be sworn in. Then a member of our staff will give a brief
20 introduction to the case. Then the applicant will present their case. And then
21 anyone else who wishes to speak will be given the opportunity.
22

23 After everyone's had a chance to speak, the applicant will have an opportunity for
24 rebuttal. Then after the Board has asked any questions, they will close that public
25 hearing, and they will proceed to the next public hearing. They will render all of
26 their decisions at the end of the meeting. So if you wish to know their decision on
27 a specific case, you can either stay until the end of the meeting, or you can check
28 the Planning Department website—we usually get it updated within the hour after
29 the meeting ends—or you can call the Planning Department this afternoon.
30

31 This meeting is being recorded, so we will ask everyone who speaks to speak
32 directly into the microphone on the podium, state your name, and please spell
33 your last name so that we get it correctly in the record.
34

35 The Code of Virginia provides that in order to rule in favor of an applicant or an
36 appellant, there must be at least three affirmative votes. And as you can see, we
37 are one Board member short this morning. We had a member move out of the

38 County and his seat will not be filled until next month. So if anyone would like for
39 their case to be heard by a full five-member Board, you certainly have the right to
40 request a deferral to next month's meeting. If you don't want to, you can of
41 course proceed with the case today.

42
43 Mr. Chair, we do not have any requests for deferral or withdrawals that I'm aware
44 of.

45
46 Mr. Bell - Thank you.

47
48 **CUP2016-00001 SHOPPES AT WILLOW LAWN** requests a
49 conditional use permit pursuant to Section 24-116(d)(1) of the County Code to
50 hold a special event at 1601 Willow Lawn Drive (Parcel 773-736-6272) zoned
51 Business District (B-2) (Brookland).

52
53 Mr. Blankinship - Would everyone who intends to speak to this case
54 please stand and be sworn in? Do you swear the testimony you're about to give
55 is the truth, the whole truth, and nothing but the truth so help you God?

56
57 Mr. Blankinship - Thank you. Mr. Madrigal?

58
59 Mr. Madrigal - Mr. Chair, members of the Board, good morning. The
60 request before you is to allow a one-day special event at the Willow Lawn
61 Shopping Center. The applicant is proposing to host a fundraising event to
62 benefit the Virginia State Chapter of the Special Olympics. The event is entitled
63 the RVA Plunge Winter Fest and is scheduled for Saturday, February 27th, from
64 noon to 4 p.m.

65
66 The event will be held in the events courtyard at the shopping center and will
67 consist of a polar dip challenge into an unheated above-ground swimming pool.
68 Both individuals and team participants are encouraged to take part in the
69 challenge with a minimum \$100 donation. The event will be free to the viewing
70 public. Two 4-foot-tall, 20-foot-diameter swimming pools will be erected along
71 with four large tents. Those can be seen here in the layout. One pool will be used
72 for the main event, while the second pool will serve as backup. Stairs and
73 platforms will be erected at either end of the pools to facilitate getting people in
74 and out of the water quickly and safely.

75
76 Two 400-square-foot tents will be designated as men's and women's changing
77 areas. A third 400-square-foot tent will be used for registration, and a fourth
78 1,600-square-foot tent will be used as a hospitality tent. With the exception of the
79 registration tent, the tents will all be heated—enclosed and heated. No food or
80 alcoholic beverages will be served during the event. Setup and breakdown will
81 occur the same day, commencing at 6 a.m., and all the temporary structures will
82 be removed by 7 p.m.

83

84 Approximately sixty parking stalls will be temporarily displaced during the
85 fundraiser. Stores fronting on the courtyard will be open for business during the
86 event. Since this is a first-time event for the shopping center, the goal is to have
87 100 participants take the polar plunge and to attract three to four hundred
88 spectators.

89
90 With respect to the consistency finding, the subject property is zoned B-2 and is
91 designated as commercial concentration on the County's Comprehensive Plan.
92 Willow Lawn routinely hosts a variety of family-focused events throughout the
93 calendar year that showcases the property and its tenants. The events tend to be
94 very popular, well attended and organized. The center's 2010 conversion to an
95 outdoor mall conveniently facilitates these activities and centralizes them in the
96 courtyard.

97
98 The proposed fundraiser is consistent with the center's outdoor theme and adds
99 to its growing list of events, and staff finds the proposed use consistent with the
100 intent of the Zoning Ordinance and the Comprehensive Plan.

101
102 With respect to potential detrimental impacts, staff does not anticipate any
103 negative impacts to the center, its tenants, adjoining properties, or the community
104 at large. Ample parking—approximately 2,100 parking stalls—will be available
105 through throughout the 37-acre parcel. Past events have not generated any
106 complaints or lasting impacts to adjacent businesses or properties.

107
108 In conclusion, the frequency and variety of these types of events have
109 contributed to the success of the center, the request is consistent with both the
110 zoning and Comprehensive Plan designations, there appear to be no lasting or
111 substantial impacts associated with the event, and specific conditions of approval
112 have been prepared to mitigate any adverse impacts.

113
114 This concludes my staff report. If you have any questions, I'll be happy to answer
115 them. Thank you.

116
117 Mr. Bell - Any questions? Hearing none, thank you.

118
119 Ms. Corbett - Good morning.

120
121 Mr. Blankinship - Give us your name, please.

122
123 Ms. Corbett - Oh. My name is Jessica Corbett. C-o-r-b-e-t-t.

124
125 Mr. Blankinship - All right. Anything to add?

126
127 Ms. Corbett - I think he pretty much covered it. This is one of four
128 events held in the state of Virginia. They have a Virginia Beach one that's been

129 going on for twenty-four years. This is the second year of the Richmond one. And
130 there's also one in Northern Virginia and Southwestern Virginia. Very popular.

131
132 Mr. Bell - Any complaints about this from any of the other
133 locations in the past? Anybody hurt or anything like that?

134
135 Ms. Corbett - No sir.

136
137 Mr. Berman - Ms. Corbett, these are great events. I participated in
138 one in Maryland that was very similar. Everybody gets a lot out of it. One of the
139 questions I have is there's a document in here from the Division of Fire that
140 outlines emergency preparedness. Has there been any consideration given to
141 having an EMT on site during the event?

142
143 Ms. Corbett - There will be. There will actually be four to six of
144 them—four that are by the pool and then two that are just monitoring the event in
145 general.

146
147 Mr. Berman - Mr. Blankinship, do you think we should amend the
148 Division of Fire memo or add it into condition #10 or just leave it as-is?

149
150 Mr. Blankinship - That would certainly be appropriate, yes sir, to add it
151 to the condition.

152
153 Mr. Berman - Okay. If it comes to that, I'll propose it in the motion.

154
155 Mr. Blankinship - Okay.

156
157 Mr. Berman - Thank you.

158
159 Ms. Harris - I had a couple of questions. You are hired by this—
160 you're the project manager for this event or for Willow Lawn?

161
162 Ms. Corbett - For this event. I do help them with several of their
163 other events throughout the season.

164
165 Ms. Harris - Okay. What other events have they had?

166
167 Ms. Corbett - They do a Wine and Whiskers event every summer,
168 which is a wine tasting event held in the courtyard. And that's in its fourth year.
169 And then in its third year is a craft beer event held in the fall. This past
170 November, they had it, and that benefited FeedMore.

171
172 Ms. Harris - A question about insurance. What type of insurance
173 do you all have for events like this?

174

175 Ms. Corbett - We usually get a special event insurance rider with a
176 million dollar policy attached to it. And we name both the property, which is
177 Federal Reality; Willow Lawn; County of Henrico; my business, which is Echelon
178 Event Management; and then the non-profit.

179

180 Ms. Harris - So they do have insurance for this event?

181

182 Ms. Corbett - Yes ma'am.

183

184 Ms. Harris - Okay. I noticed that—piggybacking on Mr. Berman's
185 question, will you have vehicles—I know you have the fire trucks there.

186

187 Ms. Corbett - We do.

188

189 Ms. Harris - Will you have the other emergency ambulances there
190 just in case?

191

192 Ms. Corbett - I don't think they had one in the past, but we can
193 certainly make sure one's available.

194

195 Ms. Harris - What's the temperature of that water? Just curious.

196

197 Ms. Corbett - I don't know the exact answer to that, to be honest.
198 It's cold.

199

200 Mr. Blankinship - There's one way to find out, Ms. Harris.

201

202 Ms. Harris - I'll take your word for it.

203

204 Ms. Corbett - They do fill it that morning. So they will erect the pools
205 around 6 a.m. and start filling them with water at 7 a.m. Last year it actually
206 snowed on the event, so I unfortunately wasn't present where it was last year.
207 But I believe it's fairly freezing.

208

209 Ms. Harris - Thank you.

210

211 Mr. Bell - Have you read the fourteen conditions, understand
212 and agree with them?

213

214 Ms. Corbett - Yes sir.

215

216 Mr. Bell - Thank you.

217

218 Mr. Baka - The large tent, how is that specifically anchored
219 down?

220

221 Ms. Corbett - Water barrels.
 222
 223 Mr. Berman - Will there be somebody present at all times while the
 224 pools are filled with water?
 225
 226 Ms. Corbett - Yes sir.
 227
 228 Mr. Berman- Thank you.
 229
 230 Mr. Bell - Hearing no other questions, thank you.
 231
 232 Ms. Corbett - Thank you.
 233
 234 Mr. Bell - Is there anybody else that would like to speak to this
 235 issue?
 236
 237 **[After the conclusion of the public hearings, the Board discussed the case**
 238 **and made its decision. This portion of the transcript is included here for**
 239 **convenience of reference.]**
 240
 241 Mr. Bell - Do I hear a motion on this case?
 242
 243 Mr. Baka - Mr. Chairman, I'll make a motion to approve
 244 CUP2016-00001, with the fourteen conditions as presented in the staff report
 245 based on that it will not adversely affect the health, safety, or welfare of the
 246 neighboring properties. And it's a temporary event.
 247
 248 Mr. Bell - Do I hear a second?
 249
 250 Mr. Berman - I would like to amend condition #10 before we make
 251 the motion—
 252
 253 Mr. Baka - Sure.
 254
 255 Mr. Berman - —to include specifically EMT on site and supervision
 256 while pools are filled at all times.
 257
 258 Mr. Baka - I would concur with that.
 259
 260 Mr. Bell - So we just add that to the motion.
 261
 262 Mr. Baka - Yes.
 263
 264 Mr. Bell - All right.
 265
 266 Ms. Harris - I do second that motion.

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Mr. Bell - I do hear a second to the motion. Is there any discussion?

Mr. Blankinship - Could we get just a brief boilerplate statement on meeting the findings?

Mr. Baka - Sure. I believe it meets the findings of a conditional use permit because it does not adversely affect the health, safety or welfare of the adjoining properties and that it's a temporary event.

Mr. Blankinship - Thank you.

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

After an advertised public hearing and on a motion by Mr. Baka, seconded by Ms. Harris, the Board **approved** application **CUP2016-00001, SHOPPES AT WILLOW LAWN's** request for a conditional use permit pursuant to Section 24-116(d)(1) of the County Code to hold a special event at 1601 Willow Lawn Drive (Parcel 773-736-6272) zoned Business District (B-2) (Brookland). The Board approved the conditional use permit subject to the following conditions:

1. This conditional use permit is for the approval of a one-day temporary outdoor event to be held on Saturday, February 27, 2016, at the Willow Lawn Shopping Center. All other applicable regulations of the County Code shall remain in force.
2. The outdoor event shall be limited to the Events Courtyard at the shopping center between the hours of 6:00 am to 7:00 pm including set-up, event, and breakdown. Parking within the events courtyard shall not be constrained more than 24 consecutive hours.
3. Only the temporary improvements shown on the plot plan filed with the application may be erected pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code or as specified in the conditions of approval.
4. The applicant shall clearly delineate the perimeter of the event area with traffic cones (as needed) and shall install temporary traffic barriers at affected parking drive aisle entrances to block vehicular traffic from entering the event area. Main traffic drive aisles (providing general internal traffic circulation) leading in or out of the shopping center shall be kept free and clear of equipment, vehicles, and obstacles associated with the event.

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5. The applicant shall obtain necessary building permits for items including large tents (over 900 square feet) and temporary stairs, platforms, and elevated stages to be used during the event. The applicant shall request building permits no later than two weeks prior the event and shall schedule required inspections no later than 10:00 am on the day of the event.
6. Temporary tents shall maintain a 10 foot setback from buildings. All temporary tents shall be properly tethered as required by Building Inspections Department and the Division of Fire.
7. The applicant shall provide adequate restroom facilities as required by the Building Inspections Department. Portable restroom facilities shall be located along the pedestrian corridor, southwest of the children's plaza, between the two retail buildings.
8. The applicant shall maintain the property so that noise and debris are controlled. The site shall be kept clean and adequate trash receptacles shall be provided during the event.
9. On-site landscaping planters shall be kept free and clear of equipment and displays. All approved landscaping shall be maintained in a healthy condition at all times. Dead plant materials shall be removed within a reasonable time and replaced during the normal planting season.
10. [Amended] Emergency preparedness procedures shall be developed in accordance with the written requirements of the Division of Fire (see attached memo). Emergency medical technicians shall be on site during the event and the pool shall be supervised at all times that it contains water.
11. The applicant shall comply with the Health Department's swimming pool regulations as outlined in their memo dated January 7, 2016 (see attached).
12. Speakers for amplified sound and music shall be directed toward the main event in order to limit its impact on adjoining businesses and /or residential neighborhoods and shall not exceed 65 dB at the property line.
13. The sale of alcoholic beverages shall be prohibited at the event.
14. The applicant shall prohibit loitering on the property.

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

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363

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

366

367 Mr. Blankinship - All right, Mr. Chair, that completes the conditional use
368 permit portion of the agenda. We'll now begin with variances.

369

370 **VAR2016-00001** **RICKY D. BLUNT, JR.** requests a variance from
371 Section 24-10(b) of the County Code to build a barn and fenced pasture at 3805
372 Creighton Road (Parcel 811-730-5661) zoned Agricultural District (A-1)
373 (Fairfield). The agricultural distance requirement is not met. The applicant
374 proposes 60 feet from enclosure to dwelling, where the Code requires 400 feet
375 from enclosure to dwelling. The applicant requests a variance of 340 feet from
376 enclosure to dwelling.

377

378 Mr. Blankinship - Would everyone who intends to speak to this please
379 raise your hand. You're still under oath. Do you swear the testimony you're about
380 to give is the truth, the whole truth, and nothing but the truth so help you God?
381 Thank you. All right, Mr. Madrigal.

382

383 Mr. Madrigal - Mr. Chairman, members of the Board. The request
384 before you is to build a fenced-in pasture for the keeping of horses. The subject
385 property is a 2.7-acre parcel that is relatively flat and void of any significant
386 vegetation with the exception of a thin tree line running along the western
387 property line.

388

389 The property is improved with a 2,314-square-foot, one-family residence with a
390 two-car attached garage constructed in 2007. The eastern two-thirds of the
391 property is encumbered by a Dominion Virginia Power transmission easement
392 used for high-voltage towers and overhead lines. The property abuts a residential
393 neighborhood along its western and southern property lines. It also sits across
394 the street from a large residentially-zoned tract of land that is partially developed.

395

396 The applicants purchased the property in April 2011. In July 2015, they installed
397 a four-foot-tall electrified ribbon fence around the majority of the property in order
398 to create an enclosed horse pasture. At or about the same time, they acquired
399 two horses to keep on the property. In August 2015, the County received a
400 complaint regarding the riding of horses through the adjacent subdivision and the
401 applicants not cleaning up after the horses.

402

403 Community Maintenance conducted an investigation and confirmed that horses'
404 were being kept on the subject property. They subsequently contacted the

405 applicants and notified them that they did not meet the minimum distance
406 requirements from a residential district to keep horses. They cited Section 24-
407 10(b), which requires that a private stable or enclosure for the keeping of horses
408 for personal enjoyment shall be 400 feet distant from any dwellings in a
409 residential district and 200 feet from any dwellings other than farm dwellings in
410 any other districts. Additionally, any buildings or enclosures for the keeping of
411 horses shall meet the minimum side and rear yard requirements for other
412 permitted uses in the A-1 district. And there shall be no more than one horse
413 permitted on the premises for each acre of enclosed land.

414

415 Due to the proximity of adjoining residences, the closest being sixty feet from the
416 property, it is impossible for the applicant to meet the minimum distance
417 requirements. After attempting to work with the applicants to abate the zoning
418 violation, Community Maintenance issued a Notice of Violation on October 23,
419 2015. The applicant subsequently filed a variance request to waive these
420 distance requirements.

421

422 With respect to the threshold question, the property must satisfy one of two
423 conditions, either the strict application of the terms of the Code unreasonably
424 restricts the use of the property or the variance alleviates a hardship due to a
425 physical condition of the property or improvements thereon at the time of the
426 effective date of the ordinance.

427

428 The current standards pertaining to horses were adopted in 1985 as an
429 exception to the County standards for the keeping of agricultural livestock. This
430 exception is significant in that it allows for the development and establishment of
431 equestrian properties in subdivisions subject to the minimum distance
432 requirements, enclosed land area, and sets a cap on the number of horses that
433 can be kept. These minimum standards were adopted to ensure that this
434 accessory use does not turn into a nuisance and to ensure that enough land area
435 is provided for the health and wellbeing of the animals. Although the applicants
436 own a 2.7-acre lot, the property does not meet the minimum distance
437 requirements from a residential district nor to non-farm homes in other districts.
438 The lot sits directly across the street from an R-3 district and abuts R-2A and R-
439 4A districts on the west and south. All three of these residential districts predate
440 the introduction of horses on the lot. Additionally, the applicant's enclosure is less
441 than 200 feet from non-farm dwellings in the abutting A-1 district that's just east
442 of the subject lot

443

444 Staff finds that the applicants already enjoy a beneficial use of the property by
445 simply residing upon it. Thus, there does not appear to be an unreasonable
446 restriction on the use of the property caused by code. They simply do not meet
447 the minimum distance requirement to keep horses as an accessory use, and the
448 only unique physical condition affecting the use of the property is the power
449 easement, which occupies the eastern two-thirds of the lot and affects the
450 property in a limited way.

451

452 Of the five tests that have to be met, the first is that they acquired the property in
453 good faith and any hardship was not self-imposed. The applicant claims that prior
454 to the purchase of the property in 2011, he contacted the Planning Department
455 and inquired about keeping horses on the lot. He recalls being told that horses
456 are allowed in the A-1 district and that he would need to meet a minimum of one
457 acre of land per horse. He alleges that no other requirements were mentioned.
458 Notwithstanding the applicant's position, the code has been in effect since 1985,
459 and the abutting residential districts predate his acquisition of the property and
460 the introduction of horses onto the lot. Staff finds the current situation faced by
461 the applicant to be self-imposed.

462

463 Test number two, the granting of the variance will not be of a substantial
464 detriment to nearby property. It is staff's position that granting approval of the
465 variance poses a potential nuisance for adjacent property owners. The distance
466 requirements were established as a minimum buffer between large animals and
467 residential districts. The keeping of large animals has ancillary impacts with
468 them, primarily cleanliness, noise, odor, insects, water quality, and safety, to
469 name a few. Some of these issues can be further exacerbated during the
470 summer months. Waste management is critical on a small acreage property, not
471 only for the health of the animal and the condition of the grazing pasture, but also
472 to eliminate nuisances on adjacent property owners. Not employing best
473 management practice for waste disposal can potentially be a constant source of
474 annoyance with detrimental impacts on quality of life for adjacent neighbors.

475

476 Also, providing one acre of enclosed land per horse is the bare minimum
477 recommended for the health, wellbeing, and management of the animal.
478 Because the code requires a fence to meet setbacks, the existing lot is not large
479 enough to accommodate two acres of enclosed land. And for this reason, no
480 more than one horse may be kept on the property.

481

482 Test number three. The situation of the property is not so general of a recurring
483 nature as to make reasonably practical the formulation of a general regulation to
484 be adopted as an amendment to the ordinance. The County east of I-295 is
485 slowly changing from an agrarian landscape to a more suburban environment.
486 New development placed alongside farms accepts these challenges and the
487 potential risk of placing homes so close to existing agriculture uses. Homebuyers
488 also accept these potential annoyances when purchasing a home so close to a
489 preexisting agricultural use. In this case, the applicant purchased an
490 agriculturally-zoned parcel of land that abuts residential districts on the tree sides
491 and then introduced horses to the property in violation of County standards. They
492 are now seeking relief from those standards. The present situation is not a
493 general or frequently recurring issue that warrants legislative relief.

494

495 Test number four, the granting of the variance does not result in a use that is not
496 otherwise permitted on the property or results in a zoning classification change.

497 In this case, the request is for the relief of a distance requirement similar to
498 waiving the setback. It is not a use issue.

499
500 And finally, test number five. The relief is not available through a special
501 exception. In this case, a special exception is not an available option for this
502 request.

503
504 In conclusion, the applicants contend that they were not properly notified by the
505 Planning Department of the rules prior to purchasing the subject lot. They assert
506 the department erred in not providing complete information. Be that as it may, the
507 Code has been in effect for the last thirty-one years, and the abutting
508 neighborhood was established twenty-eight years ago. Both predate the
509 applicant's home, which was constructed in 2007, the purchase of the property in
510 2011, and the introduction of horses in 2015.

511
512 The hardship faced by the applicant is entirely self-imposed. It does not lend
513 itself to a legislative solution, and cannot be remedied by a conditional use
514 permit. Moreover, if approved, the presence of horses on the property could be a
515 constant source of nuisance for adjoining neighbors. For these reasons, staff
516 recommends denial of the applicant's request.

517
518 This concludes my presentation.

519
520 Mr. Bell - Any questions?

521
522 Ms. Harris - What was your reason for this not being considered a
523 use permit case?

524
525 Mr. Madrigal - One more time, ma'am?

526
527 Ms. Harris - What was your rationale for this case not being
528 considered a use permit case?

529
530 Mr. Madrigal - Because the code doesn't allow for it. It's not an
531 option for this use. He's asking to waive the distance requirements, same as if
532 you were requesting to waive a setback.

533
534 Mr. Bell - Any other questions? Thank you, Miguel.

535
536 Mr. Blankinship - I have one. Miguel, if you put up the circle diagram, if
537 you have it there. Could you just give a ten-second explanation of what that is?

538
539 Mr. Madrigal - Sure. If you look here, you can see that the colored
540 areas are the residential districts. And you can see that there are homes on the
541 western and southern sides. Code requires that in residential districts the
542 enclosure or the stable where they are keeping the animals be at least 400 feet

543 from the dwellings. In this case, this home here would be approximately 60 feet
544 from where the fence line exists now. And keep in mind he's not meeting his
545 required setback. But if you were to extend that 400 feet, it would basically be
546 this radius here.

547
548 Over here is an A-1 district, and there are two homes in the A-1 district that are
549 not farm dwellings. And those would have to be 200 feet. So you can see here
550 just by the radius of the circles that there's really no area on this property that
551 would allow for the keeping of horses.

552
553 Mr. Baka - Right where the edge of the arc of the circle ends.

554
555 Mr. Madrigal - Yes.

556
557 Mr. Baka - They all overlap. So just to clarify, there is no stable. I
558 saw the house, the detached garage, the large fenced area. There is no stable
559 on the property. To the stable area, the keeping area is the entire fenced—you're
560 defining it as that entire fenced polygon.

561
562 Mr. Madrigal - Right, right. It's just all an open area with only the tree
563 line as a wind stop, essentially. And then you can also—let's see here. This area
564 here, this is what I call the horse paddock. That's where they primarily stay.
565 There is water there. That's where their feeding occurs.

566
567 Mr. Baka - If someone had a stable somewhere—and it may not
568 be possible on this property based on the way you showed the four overlapping
569 circles. But if you had a stable, do you measure just 400 feet from the edges of
570 the walls of the stable even if they had a larger fenced-in area outside of that
571 building?

572
573 Mr. Madrigal - We would measure to the stable and also probably to
574 the enclosure pasture because the code specifically states enclosed land.

575
576 Mr. Baka - Enclosed pasture.

577
578 Mr. Blankinship - In specifies the area where the animals are enclosed.
579 So for horses it would be that fence. If it was an animal that lived primarily in—
580 like a chicken, for example, we would measure to the coup area where the
581 chicken generally stays. But for animals that stray more widely, it would be the
582 area where they are enclosed.

583
584 Mr. Baka - Okay. And then one other question. The fence itself
585 where it's been constructed right now, that doesn't meet the setback?

586
587 Mr. Madrigal - No it does not. It has to meet the setbacks for other
588 permitted uses in the A-1 district.

589
590 Mr. Baka - Okay. All right. Thank you.
591
592 Ms. Harris - Mr. Madrigal, where is the storage area for the
593 horses?
594
595 Mr. Madrigal - You're seeing it here on the screen, ma'am.
596
597 Ms. Harris - Can we see the aerial?
598
599 Mr. Madrigal - It is essentially right here, this area here.
600
601 Ms. Harris - Okay.
602
603 Mr. Baka - That helps, that diagram.
604
605 Mr. Berman - But there is no structure enclosing them, no physical
606 enclosed structure like a stable.
607
608 Mr. Madrigal - The fence is the enclosing structure.
609
610 Mr. Baka - But even if there was a structure, I think Mr. Madrigal
611 is saying you still have to measure to the fence.
612
613 Mr. Madrigal - Yes.
614
615 Mr. Baka - I wasn't clear on that part of your explanation.
616
617 Mr. Madrigal - Yes. If you look at the staff report, the very last
618 sentence of Section 24-10(b) basically says on the premises for each acre of
619 enclosed land.
620
621 Ms. Harris - And the only complaint has been because they ride
622 through the neighborhood, and of course they leave matter.
623
624 Mr. Madrigal - They do what they do.
625
626 Ms. Harris - So that's the only complaint?
627
628 Mr. Madrigal - Yes.
629
630 Ms. Harris - From the neighbors?
631
632 Mr. Madrigal - That I'm aware of, yes.
633

634 Mr. Bell - Go back to the circles. The houses that we see here,
635 the green and the gold ones there, you mentioned that this was zoned thirty-one
636 years ago. Most of those houses have been built since the last thirty-one years,
637 haven't they.

638
639 Mr. Madrigal - I believe so, yes. These subdivisions were
640 established in the late '80s.

641
642 Mr. Bell - Right. So therefore they were built under the statute.

643
644 Mr. Madrigal - Yes.

645
646 Mr. Bell - Okay. Thank you. Which would indicate that they
647 obviously were aware of it at the time.

648
649 Mr. Madrigal - Yes. The subject home on the property was built in
650 2007.

651
652 Mr. Baka - Why is this case a variance rather than a conditional
653 use permit? The code would specifically list that something could qualify for a
654 conditional use permit and it doesn't in this case?

655
656 Mr. Madrigal - That's correct. It's not a listed option.

657
658 Mr. Baka - So therefore he needs the variance?

659
660 Mr. Madrigal - Right. Think of it like a setback. Someone comes in
661 and says hey, can I have a twenty-foot setback instead of the required forty. This
662 would be same situation. He's asking for basically 60 feet instead of 400 feet.

663
664 Mr. Baka - It's just the variance is a higher hurdle to climb.

665
666 Mr. Madrigal - Yes.

667
668 Ms. Harris - We've had cases that involved a conditional use
669 permit when we were dealing with chickens and goats and so forth. So would
670 that fall under the same category? That was a conditional use.

671
672 Mr. Madrigal - Yes. Basically, chickens are livestock, similar to cows
673 and horses. If he were breeding horses and selling horses, then that would
674 qualify as livestock. But in this case, the code does make exception for the
675 keeping of up to three horses for personal enjoyment. It's in between a pet and
676 livestock I guess.

677
678 Mr. Blankinship - Mr. Bell, according to the real estate records, all the
679 houses adjoining this property to the west and south were built in 1989.

680

681 Mr. Bell - Thank you. Any other questions? Thank you, Miguel.

682

683 Mr. Madrigal - Thank you.

684

685 Mr. Blankinship - Mr. Blunt

686

687 Mr. Blunt - My name is Ricky Blunt. B-I-u-n-t. He pretty much
688 summed up everything, but I guess I wanted to say that it really wasn't self-
689 imposed. I currently work for the County as an engineer for Public Utilities. And
690 so when I was looking for a house, I was looking for a house that was zoned for
691 me to have horses. I grew up with horses, so when my wife and I finally got
692 married, we were ready to buy a house. I found this house online. It said "bring
693 your horses" in the ad. Well I looked up the house, and it said agriculture. I think
694 it said A-1C or something like that.

695

696 So I called the Planning Office. I didn't want to make an assumption, so I called
697 and asked them, can I have horses at this house? And the person I spoke to said
698 well let me get you with—I believe it was an inspector. And he said you can have
699 horses there, but you can only have one horse per acre. And under that
700 circumstance, we went ahead and bought the house. We didn't build the pasture
701 immediately because I didn't have the money to do it at first. We moved in. I first
702 bought a truck, an older truck. Paid \$2,500 for it. Then the next year I bought an
703 old horse trailer. Then I finally found some old fence—well, it was brand new
704 fencing, but the lady never used it because her husband died. So I was able to
705 save up and get my horse.

706

707 And also I wanted to add that there's a house right down the street from me that
708 has horses. I guess the County allowed them—the subdivision to be built right
709 around it. And those houses are within twenty feet of the actual pasture. When I
710 kind of mentioned it to whoever I spoke to here recently, they said the house was
711 grandfathered in. And I said I understand that, but the County still allowed them
712 to build houses twenty feet close to where the horses were. And he said the rule
713 is really to protect the homeowners. And I said I do understand that and I was
714 told—before I did the variance, I actually sent out a little postcard to everyone
715 within 400 feet of my residence asking if you have any complaints with me having
716 horses here. And I got texts and calls saying we like the horses, we really feel
717 like it enhances the neighborhood. It's so cool to see them out there. I look
718 forward to opening up my back window and seeing them. Kids come over and
719 look at them. And I did hear the complaint about riding through the neighborhood.
720 If that's a problem, I will stop. I don't have to ever do that.

721

722 But like I said, the only reason I bought that house is because I was told that I
723 could have the horses. Like I say, I'm not getting any complaints. If I need to do
724 something extra to try to make the situation better. I feel like it wasn't self-
725 imposed because I called. I don't know what else to do other than call. People

726 call me all the time in Utilities asking can they do certain things in the right-of-way
727 or can their plumber work on this, and we tell them yes or no.
728
729 I think that pretty much covers everything.
730
731 Ms. Harris - Mr. Blunt, how many acres are enclosed with the
732 fence?
733
734 Mr. Blunt - It's probably about two acres.
735
736 Ms. Harris - Enclosed by the fence?
737
738 Mr. Blunt - Yes ma'am.
739
740 Ms. Harris - So when you enclosed it with the fence, you left out
741 your dwelling?
742
743 Mr. Blunt - Yes ma'am.
744
745 Ms. Harris - Did you invest quite a bit in the fencing?
746
747 Mr. Blunt - Yes ma'am
748
749 Mr. Berman - Mr. Blunt, are they just for personal enjoyment?
750
751 Mr. Blunt - Yes sir.
752
753 Mr. Berman - And during bad weather, how are the horses
754 sheltered?
755
756 Mr. Blunt - I have a little tarp set up so they can go under there,
757 but they don't ever go under there. I grew up with horses. We had a stable when
758 I was really small, and then we found that the horses would get sick or something
759 like that. They weren't fully acclimating to the weather, [unintelligible], so we
760 stopped. We would just have like a running carport and let them go in there if
761 they wanted to or under the wood line. Every since then, the horses would never
762 get sick. I guess nature knew how to take care of them better than I do.
763
764 Mr. Berman - So they were okay during the recent snowstorm?
765
766 Mr. Blunt - Oh yes. Yes sir.
767
768 Mr. Berman - Okay.
769

770 Ms. Harris - I know very little about horses except how to ride
771 them. So you don't have a storage building for them, a primary storage area?
772 You're saying you just have the tarp?

773
774 Mr. Blunt - Yes ma'am, that's it.

775
776 Ms. Harris - Okay.

777
778 Mr. Blunt - I have a little small tarp area that I also put the hay
779 under. They can go in there if they want to. But if I'm allowed, I can build
780 something for them. I didn't want to do that. After I found this out, I didn't want to
781 do anything else, any kind of permanent structure.

782
783 Ms. Harris - I would just consider they're like a dog. You know, we
784 have a doghouse.

785
786 Mr. Blunt - Right. Horses, a lot of times they were plain animals.
787 A lot of times they don't like staying in places like that because they are prey
788 animals. And so a lot of places like that kind of freak horses out. They kind of like
789 to be in the open. Usually when a storm is going, my horses would rather stay in
790 the middle of the field so they can kind of see what's going on. That's why they
791 don't really like sometimes being in horse trailers and small areas. You can get
792 them used to it if you want to, but just by natural instinct, they prefer not to be in a
793 small enclosed area.

794
795 Ms. Harris - Have you investigated other uses for your horses
796 other than for personal pleasure to conform to code maybe?

797
798 Mr. Blunt - Yes. I want to teach horse lessons and be able to
799 breed my horse, but I didn't think that was a possibility.

800
801 Mr. Blankinship - The restrictions for that would be more. That would be
802 more restrictive than personal use.

803
804 Mr. Blunt - Okay.

805
806 Ms. Harris - I remember we had a horse farm where they were
807 teaching the blind.

808
809 Mr. Blunt - Yes ma'am.

810
811 Ms. Harris - So those restrictions were more stringent than these?

812
813 Mr. Blankinship - Yes ma'am. Considerably more. That was a much
814 larger parcel than this one.

815

816 Mr. Baka - On this map, sir, where is the tarp? Could you point to
817 or even reference where that tarp was that you said you would keep them out of
818 bad weather?

819
820 Mr. Blunt - Right up in here.

821
822 Mr. Baka - Okay. And then on the east side of the property
823 there's a large power utility right-of-way. Do you have any plans to build any
824 structures on that side within that right-of-way?

825
826 Mr. Blunt - No sir. The County also has a sewer line running
827 through there, so I understand they have to have access if they ever needed to.

828
829 Mr. Baka - If this variance were approved, do you have any plans
830 to build a small stable on the west side of that easement outside of that to keep
831 the horses out of the weather?

832
833 Mr. Blunt - Yes. I plan to build more of a run-in type, not a spot
834 where they have to stay in there, but a spot they could go in and get out of it if
835 they choose to. You don't think about it, but when a storm is going on, the last
836 thing you want to do is put your horse in an area where he can't get out. If a tree
837 falls on it, lighting strikes it and it catches on fire, your horse is going to die.
838 That's why we'd never do that. Because you're not out there to see it, you're
839 gone, you have your horses in there—and I just had that happen with a lady that
840 trims our horses' feet in Powhatan. A tree fell on top of the shed. She lets them
841 go in there, but she doesn't close them in for that reason.

842
843 Ms. Harris - We could not very well use that rational because a
844 tree could fall on our house, and we don't want to be outside when it's falling. Did
845 you see the conditions here in the staff packet? You did not get a packet? You
846 probably need to get one and look at those.

847
848 Mr. Blankinship - You didn't get a copy of the staff report?

849
850 Mr. Blunt - No sir.

851
852 Mr. Baka - Page 5.

853
854 Mr. Blunt - I received one sheet of paper that had one little
855 paragraph.

856
857 Mr. Blankinship - The notice letter?

858
859 Mr. Blunt - Yes.

860

861 Mr. Blankinship - Right. Well you should have also received a copy of
862 this; you'll probably get it tomorrow.

863
864 Mr. Blunt - Okay.

865
866 Mr. Blankinship - Sorry about that.

867
868 Mr. Baka - Slow mail delivery.

869
870 Mr. Berman - Can we give Mr. Blunt some time to read his
871 conditions?

872
873 Mr. Blunt - Okay.

874
875 [Pause in meeting while Mr. Blunt reads conditions.]

876
877 Mr. Blunt - I can agree with the conditions if it's accepted.

878
879 Mr. Bell - Let me put it in the form of a question. If this by
880 chance was approved, could you agree with the conditions as written?

881
882 Mr. Blunt - Yes sir. Preferably two horses, but if I had to—
883 because it says only one horse, right?

884
885 Mr. Blankinship - By the time the fence is moved to the setbacks—not
886 the 400-foot distance requirement, but the 40- and 50-foot setbacks, you would
887 have only about an acre and a half or less than that enclosed.

888
889 Mr. Blunt - Okay.

890
891 Mr. Baka - To clarify, this variance is just for the keeping of a
892 horse on the property. It's not to leave the fence in the present location. The
893 owner would still need to move the fence to meet the setback? Is that correct?

894
895 Mr. Blankinship - Yes.

896
897 Mr. Baka - Thanks.

898
899 Ms. Harris - Mr. Blunt, you said you sent postcards to your
900 adjoining neighbors? Do you have anything in writing that they sent back to you?

901
902 Mr. Blunt - I had copied—I left it when I was taking my kid to
903 daycare. One person texted me, "You have my support." Another said, "I live at
904 3812 Court Lane in Mitchelltree and I don't have a problem with your horses."

905
906 Ms. Harris - You probably need to send that to our techs.

907
908 Mr. Blunt - I had printed it out, and I left it this morning. I was in a
909 hurry taking my son to daycare.
910
911 Ms. Harris - So how many responded through text messages?
912
913 Mr. Blunt - Three between text messages and e-mail, and then I
914 got two voice mails. They were all in support. Some people wanted to come and
915 ride them.
916
917 Mr. Bell - Did you get any complaints?
918
919 Mr. Blunt - No never, not one complaint. That was the reason
920 why I sent it because I didn't want waste \$300 trying to do a variance if it was
921 really a problem to my neighbors. I told them they could text me or e-mail
922 because I know sometimes people don't want to say something like that in
923 person, so I said just text me or send an e-mail or something. Or put something
924 in my mailbox to let me know.
925
926 Mr. Bell - Any other questions?
927
928 Mr. Berman - I have some for Mr. Madrigal.
929
930 Mr. Bell - All right. Thank you, Mr. Blunt.
931
932 Mr. Blunt - You're welcome.
933
934 Mr. Berman - Thank you. Mr. Madrigal, if we approve this, the
935 conditions that the staff has recommended, would it be setting any bad
936 precedents?
937
938 Mr. Madrigal - That's always a difficult question.
939
940 Mr. Berman - That's why I asked it.
941
942 Mr. Madrigal - You could look at it in a bunch of different ways. You
943 could look at it just in the immediate area, which you would consider that the
944 community. You can look at it for the entire East End. You can look at it for the
945 entire County. If you were to approve it, essentially you would say this is on a
946 case-by-case basis. So you could always, I guess, fall back on that, that you
947 review these specifically on a case-by-case basis. But again, when the public
948 views it and how they perceive it, that's going to be a different matter.
949
950 Mr. Berman - Thanks.
951
952 Ms. Harris - Mr. Madrigal, this code is thirty-five years old, right?

953
954 Mr. Madrigal - It's thirty-one years old. It's been in effect for thirty-
955 one years, since 1985.
956
957 Ms. Harris - Okay. And when was this subdivision built?
958
959 Mr. Madrigal - The subdivision to the south was in the late '80s. The
960 rezoning to the north was in I want to say the early 2000s.
961
962 Ms. Harris - But to me, they should have built their homes further
963 away.
964
965 Mr. Madrigal - That's why in the report I said that when development
966 moves east, the developers know that there are agricultural uses and they accept
967 those risks.
968
969 Mr. Blankinship - But there were no horses on that lot until a year ago.
970
971 Mr. Madrigal - Right.
972
973 Ms. Harris - Yes.
974
975 Mr. Madrigal - He had mentioned that other property just a little bit
976 further east. That property has had horses since at least the mid '80s. The
977 residential neighborhood came in after that. So the person that has those horses
978 is grandfathered.
979
980 Mr. Blankinship - Right.
981
982 Mr. Bell - Any other questions? Thank you, Miguel. Is there
983 anyone else that would like to speak to this issue? Thank you. Call the next case
984 please.
985
986 **[After the conclusion of the public hearings, the Board discussed the case**
987 **and made its decision. This portion of the transcript is included here for**
988 **convenience of reference.]**
989
990 Mr. Bell - Do I hear a motion on this case?
991
992 Ms. Harris - I move that we approve this variance considering the
993 conditions of the case, especially the one in which the applicant will not—I think
994 he said he will not ride his horses through the neighborhood, and he will also
995 reduce the two horses to one. I think it's a case where we have an established
996 neighborhood with some being confronted with some new rules from a new
997 neighborhood. So considering the agricultural nature of this particular case, I do
998 move that we approve this variance.

999

1000 Mr. Baka - Second the motion.

1001

1002 Mr. Bell - Is there any discussion?

1003

1004 Mr. Berman - Ms. Harris, would you consider modifying or striking
1005 condition #7 such that Mr. Blunt would not ride within the community or?

1006

1007 Ms. Harris - I think it was a part of his sworn testimony.

1008

1009 Mr. Berman - It is, but did we want to codify that or not?

1010

1011 Ms. Harris - I think if he agrees to condition 7, I think that would
1012 cover the complaint. That's the complaint.

1013

1014 Mr. Baka - Let me clarify. Seven talks about on the public right-
1015 of-way. So that does not only imply the subdivision road where the complaint
1016 originated. It would imply any public right-of-way such as any other road,
1017 Creighton or elsewhere. So it may be reasonable to keep it, realizing he indicated
1018 he wouldn't be in that subdivision again.

1019

1020 Mr. Berman - Yes, I'm okay with that. Would the Board entertain
1021 leaving the two horses alone instead of knocking it down to one?

1022

1023 Mr. Baka - If he had more than 2.0 acres of land that remained
1024 fenced in after the new area is calculated. Correct?

1025

1026 Mr. Berman - Did we calculate what we thought—

1027

1028 Mr. Baka - We can't.

1029

1030 Mr. Blankinship - It would be about 53,000 square feet, if memory
1031 serves. So it's close to 1-1/4 than 1-1/2. I think I said 1-1/2 during the hearing.

1032

1033 Mr. Berman - Yes, that's right, I remember. So it's not close to two.
1034 Okay.

1035

1036 Mr. Bell - Any other discussion?

1037

1038 Ms. Harris - He agreed to reduce the horses to one, because he
1039 was always aware, based on the acreage, that you're only allowed one per acre.
1040 I think that we are in agreement with that condition.

1041

1042 Mr. Bell - Any other discussion? Hearing none, all those in favor
1043 of the motion say aye. All those opposed say nay. The ayes have it, and the
1044 motion passes.

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After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr. Baka, the Board **approved** application **VAR2016-00001, RICKY D. BLUNT, JR.'s** request for a variance from Section 24-10(b) of the County Code to build a barn and fenced pasture at 3805 Creighton Road (Parcel 811-730-5661) zoned Agricultural District (A-1) (Fairfield). The agricultural distance requirement is not met. The Board approved the variance subject to the following conditions:

1. This variance applies only to the keeping of one horse on an agriculturally zoned lot. All other applicable regulations of the County Code shall remain in force.
2. The fencing shall be set back 50 feet from the front and rear lot lines and 40 feet from the side lot lines. The portion of the fence along Creighton Road shall be a four-rail fence of wood, vinyl, or similar durable material.
3. The applicant shall create a fenced off feeding paddock to separate it from the grazing pasture. The feeding paddock shall be covered with a 3 to 6 inch layer of smooth and rounded pea gravel or wood chips to create an elevated and dry area for the horse, limiting its exposure to mud.
4. The applicant shall enhance the natural wind break along the western and southern property lines (tree line) with additional evergreen plantings to limit the horse's exposure to the elements.
5. The applicant shall maintain the property so that odors, noise and other impacts are controlled. Manure shall be stored and disposed of in compliance with the Virginia Department of Agriculture and Consumer Services requirements and any other applicable standards, including the "Virginia Agricultural Stewardship Act Guidelines" of April 1, 2010. All manure shall be removed from the premises every week and may be redeposited only to areas under cultivation during the growing season, and in agronomic rates.
6. Stored horse manure awaiting disposal shall be kept at the southeast corner of the property. Any composting shall occur in this same vicinity and shall be limited to an area no greater than 72 square feet.
7. The applicant shall be responsible for the immediate collection of horse waste when riding on the public right of way.
8. The applicant shall obtain an electrical permit within 30 days from the approval of this variance for an exterior grade electrical outlet to be located within six feet of an electrical appliance as per §210.50 of the National Electric Code.

1136 From 1928 until 1960, prior to the adoption of the current Zoning Ordinance, a
1137 home could have been built on the subject lot even though it did not have public
1138 street frontage. With the adoption of the 1960 ordinance, that did include the
1139 public street frontage requirement, which is still in effect today. Due to the
1140 existing topography and locations of dwellings, it is not practical to build a public
1141 street to serve the subject lot; therefore, the property can only be used for a
1142 dwelling if a variance is granted.

1143

1144 With respect to the threshold question, the property is zoned for a one-family
1145 dwelling, and it exceeds the one-acre minimum lot size for well and septic. It is
1146 large enough to accommodate the proposed dwelling with required setbacks.
1147 This gives you a sense of the lot. It is served by a private driveway shared
1148 between two existing homes by way of a deeded easement. Here's the eastern
1149 view of the drive.

1150

1151 It would not be practical to use the subject lot for any other uses permitted in an
1152 R-2A district. Granting the variance would alleviate a code-related hardship that
1153 would otherwise prohibit the only reasonable use of the land.

1154

1155 Of the first required tests, test number one, the property was acquired in good
1156 faith and any hardship was not self-inflicted. When the property was acquired in
1157 1972, the applicant should have known that a variance would be required to use
1158 the property for a dwelling. However, the lot already lacked public street frontage
1159 at that time, so the applicant did not create the hardship. Also, the state Supreme
1160 Court has determine that purchasing a property knowing that it needs a variance
1161 does not indicate absence of good faith or constitutes a self-inflicted hardship.

1162

1163 Test number two, granting the variance will not result in substantial detriment to
1164 adjacent or nearby property. There are two existing dwellings, other than the
1165 applicant's home, which may be affected by the proposed dwelling. The property
1166 to the south at 1460 Battery Hill Drive, which is here, fronts on the public street
1167 and abuts the private drive that will serve the proposed dwelling. There may be a
1168 small increase in traffic from the proposed home, but that traffic would turn off
1169 Battery Hill Drive before it reaches the neighbor's driveway. Also, the proposed
1170 dwelling would be located on the opposite side of the applicant's existing house,
1171 so it should not have a substantial impact on this home.

1172

1173 The other dwelling that may be affected is at 1480 Battery Hill Drive, which is up
1174 here. That dwelling was built pursuant to a variance that was approved in 1972.
1175 The proposed home would be approximately 280 feet distant from that home
1176 across a steep ravine. So it would be the distance from here to roughly here.

1177

1178 Both lots are heavily wooded, and this existing home is approximately sixteen
1179 feet higher than the site of the proposed home. Staff does not anticipate any
1180 substantial detrimental impacts to either of the properties if the variance is
1181 approved.

1182

1183

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Test number three. The condition or situation is not so general of a recurring nature as to make reasonably practical the formulation of a code amendment. There are many existing lots in the County that would be buildable except that they do not have public street frontage. Between 2008 and 2011, staff spent a great deal of time working on a solution to this problem of allowing such lots to be used without encouraging substandard development. The solution adopted by the Board of Supervisors created a process where property owners could subdivide new lots lacking public street frontage and use them for family members. However, for existing lots, the Board of Supervisors did not choose to change the Zoning Ordinance, leaving a variance as the only process to avoid a regulatory taking of existing lots. Although the situation is general and recurring in nature, a legislative solution is not reasonably practical.

Test number four, granting of the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property. The proposed use of the property is a one-family dwelling, which is permitted by right in the R-2A district. This is not a use variance

And then test number five, is the relief available through a special exception. In this case, it is not an available option.

In conclusion, as applied to the subject property, the Zoning Ordinance prohibits the only reasonable use of the land. Granting the variance request would relieve that hardship. The property appears to have been acquired in good faith and the applicant did not create the hardship. Staff does not anticipate any substantial detrimental impact from the proposed dwelling. And although the situation is recurring in nature, there is no reasonable legislative solution. For these reasons, staff recommends approval of the variance, subject to the conditions in the staff report.

Mr. Bell - Any questions?

Ms. Harris - Mr. Madrigal, I know we don't have any type of statute legislatively, but in your report you said that although the situation is generally recurring in nature, a legislative solution is not reasonably practical. Why isn't it? We have many lots like this throughout the County of Henrico, especially in the Varina area. We have many situations like this. So why are you saying that a legislative solution is not reasonably practical?

Mr. Blankinship - All I can tell you about that, Ms. Harris, is that we spent five years trying to draft something that would please everybody, and we got nowhere close.

Ms. Harris - Okay. Thank you.

1228 Mr. Baka - This lot was created in 1928, prior to the 1960 Zoning
1229 Ordinance being adopted?

1230

1231 Mr. Madrigal - Yes. Lot C, that three-acre strip, I guess, was created
1232 in 1928. In 1974, a couple years after they acquired the property, it was split
1233 again.

1234

1235 Mr. Baka - Thank you.

1236

1237 Mr. Bell - Any other questions? Thank you, Miguel.

1238

1239 Ms. Long - My name's Rebecca Long. John and Donna Deal are
1240 my parents. They're out of town, so I was the family-appointed person to come
1241 and talk. I live at the residence there at 1470

1242

1243 Mr. Blankinship - What can you tell us that we don't already know?

1244

1245 Ms. Long - Well, he pretty much covered everything. The only
1246 thing that you might be interested in is that Battery Hill Drive was not there in
1247 1972 when my mother and father purchased the lot. There was an old driveway
1248 that we now call the grand canyon because it's impassible now unless you have
1249 a yak and a Sherpa. We then had a driveway delivered to Battery Hill Drive and
1250 granted an easement to— Chiles who lives just to the north of us. And then the
1251 Charitys who are the larger house and have a pool next to us; we've grown up
1252 with their kids. So we're all on very good terms with all the neighbors. We've told
1253 everybody what we're planning to do.

1254

1255 Our house is actually for sale. My father's health has precipitated the need for us
1256 to move and consolidate a little bit. He's got first stages of dementia, so we're
1257 just trying to—I know, terrible. We're just trying to consolidate somewhat and
1258 move. So many have come and asked. We listed the house and the two lots that
1259 are adjacent. Altogether it's a total of 3.8 acres. But we keep having people
1260 calling and saying "Can I just buy this riverfront lot?" We didn't want to parcel it
1261 out or sell it separately just because it's so beautiful with the woods around it like
1262 it is. But if we want to sell, real estate is a little tough these days. Having a
1263 variance in hand to say yes, this could be buildable, our hope is that somebody
1264 would buy it and leave it as-is. But if we needed to, it could be parceled out and
1265 built on.

1266

1267 We actually thought about doing that ourselves, my husband and I moving next
1268 door and building a dwelling, which we'd have to go through this anyway. But
1269 since then, we just built a small mother-in-law suite for my parents to live in so
1270 she didn't have to clean. She doesn't like having to vacuum 4,000 square feet of
1271 the house, so she lets me do that now.

1272

1273 Do you have any questions specifically or?

1274
1275 Mr. Blankinship - That was the question I had, if it was for sale or to be
1276 occupied by the owners.
1277
1278 Ms. Long - Yes. We took it off the market for the holidays, and
1279 I'm glad it's not there now because the driveway looks like a war zone with all the
1280 snow. I didn't think I'd get out this morning. We'll be putting it back up probably
1281 mid-March, something like that, once we make sure we didn't churn up too much
1282 mud and everything on the side of the driveway trying to get in and out.
1283
1284 Mr. Baka - Are you familiar with the five proposed conditions in
1285 the staff report?
1286
1287 Ms. Long - Five proposed conditions?
1288
1289 Mr. Blankinship - Did you receive the staff report?
1290
1291 Ms. Long - I got a paper. Let me see if it's—
1292
1293 Mr. Blankinship - Yes, that's it.
1294
1295 Ms. Long - Okay.
1296
1297 Mr. Baka - Page 4.
1298
1299 Ms. Long - Page 4.
1300
1301 [Pause in discussion while applicant reads conditions.]
1302
1303 Ms. Long - Yes, I understand.
1304
1305 Mr. Blankinship - Building a driveway to this lot is going to be a
1306 challenge, unless you're going to build a suspension bridge.
1307
1308 Ms. Long - Yes. What we thought to do—my father-in-law used to
1309 work for TollBrothers—
1310
1311 Mr. Blankinship - Oh, okay.
1312
1313 Ms. Long - —are you familiar with them?—up in DC. And he was
1314 in charge of site planning and land development and built those huge
1315 McMansions up in Leesburg and elsewhere.
1316
1317 Mr. Blankinship - Sure.
1318

1319 Ms. Long - He since went to work for the CIA for their interior
1320 construction. But with all the layoffs and stuff, he's started his own company.
1321 With the James River here, he suggested having a driveway right in this area on
1322 the second piece of land that my parents own. He said just a modicum of filling
1323 would be necessary to do that. I went and spoke with David Pennock. He's the
1324 Assistant Director of Community Development. We talked about that. And then
1325 he said, "You know who need to talk to is David Gunn," who I assume is an
1326 engineer. He's the guy that you talk to when you want to build something or
1327 move earth close to the river. So he said yes, it's totally doable. You just would
1328 need to fill in one portion and the rest would be easy.

1329
1330 Mr. Blankinship - I think it can be done, but it'll be a challenge.

1331
1332 Ms. Long - Right. But people that want to buy that waterfront lot,
1333 one would hope they'd have the funds to do that.

1334
1335 Mr. Blankinship - Right.

1336
1337 Ms. Harris - Ms. Long, could you point out on the site map here
1338 before us where that would be constructed? And also where is the residence for
1339 your mom and your father? Use the aerial photo, please. Do you have the
1340 mouse?

1341
1342 Ms. Long - Yes. Right here? Can you see it?

1343
1344 Mr. Blankinship - Yes, she's moving it.

1345
1346 Ms. Long - Yes, right here.

1347
1348 Ms. Harris - Oh, I didn't see. I'm sorry.

1349
1350 Ms. Long - The house right here, this is the house that I grew up
1351 in. My parents bought it in '72 and they built in some bedrooms and so forth. My
1352 parents, their mother-in-law suite is attached to that house. So it's right
1353 underneath the hand here on the map.

1354
1355 Ms. Harris - Okay.

1356
1357 Ms. Long - The current driveway from Battery Hill, as you can
1358 see from the easement is here and here, leading to the house. It's covered by
1359 trees, so you can't really see it. What we proposed and the easiest way to do that
1360 is that photo that Mr. Madrigal showed you was a straight shot from here to here,
1361 to the bend in the driveway. What we proposed is a little dogleg off of that
1362 driveway at this area here, allowing you access to this lot. So you would come
1363 here, take a right, and go that direction.

1364

1365 Mr. Madrigal - That's essentially the access point.
1366
1367 Ms. Long - Yes. So right in here you would have to—this is the
1368 only area you'd have to fill. And this about a space as large as your seating area
1369 there. And then it would go straight towards this shed and then hook over and
1370 directly access the land from that point.
1371
1372 Ms. Harris - Okay. Thank you. The access road that we saw
1373 earlier, who will maintain that?
1374
1375 Ms. Long - So far we maintain that at 1470. We put the gravel
1376 down just a couple months ago to add to it—I mean upkeep.
1377
1378 Mr. Berman - You mentioned an access from the north. Can you go
1379 back to the previous view?
1380
1381 Mr. Blankinship - Up at the top where it says "Aerial Photo."
1382
1383 Ms. Long - Oh, aerial photo. Yes. There is an old, old driveway,
1384 so we would come here, take a left, and then you'd go all the way out to Osborne
1385 Turnpike.
1386
1387 Mr. Berman - Which are you proposing to do?
1388
1389 Ms. Long - This one. This is impassable right here. Maybe you
1390 could get through it if you had a 4-by-4. The driveway that we've had since I was
1391 a child is here right off of Battery Hill. So it's like an L-shape.
1392
1393 Mr. Blankinship - I'm sorry we don't have the topo map, but right at the
1394 western property, the diagonal sort of yellow line there, there is a ravine there
1395 that runs down about 32 feet and then back up 40 feet on the other side. That's
1396 where I made the suspension bridge joke. If they tried to come in from that other
1397 easement, there would be a huge problem with the construction.
1398
1399 Ms. Long - Right. Which is why we didn't even want to go there.
1400 When I spoke to David Gunn, he said if somebody wanted to fill that in, they
1401 certainly could. It's not going to cause problems to this dwelling here or yours. It
1402 would just cost a boatload of money. But this is probably your best bet, he said,
1403 is to have access here on that property line, on this lot. We call it the ravine lot
1404 because that's what it is.
1405
1406 Mr. Blankinship - Good name for it.
1407
1408 Ms. Long - It's great sledding, though.
1409
1410 Mr. Bell - Any other questions?

1411
1412 Mr. Blankinship - Please tell John that we missed him. Those of you
1413 who haven't been on the Board as long, Mr. Deal has made fifty or a hundred
1414 presentations to this Board just in the time that I've been here probably. He's an
1415 old friend of the BZA.

1416
1417 Ms. Long - Oh good, good. He and mom are in Texas right now
1418 visiting a friend that's in hospice. He said, "I'd go there myself, but I'd probably
1419 say the same thing ten times." So I said well I'll go since you're not here. But
1420 thank you, I'll pass on your kind words. Thank you.

1421
1422 Mr. Bell - Is there anyone else who would like to speak to this
1423 issue? Why don't we take a five-minute break, and then we'll continue with the
1424 last two.

1425
1426 [Board takes a five-minute break.]

1427
1428 **[After the conclusion of the public hearings, the Board discussed the case**
1429 **and made its decision. This portion of the transcript is included here for**
1430 **convenience of reference.]**

1431
1432 Mr. Bell - Do I hear a motion on this case?

1433
1434 Mr. Baka - Mr. Chairman, I'll make a motion to approve
1435 VAR2016-00002, John and Donna Deal, with the five conditions as presented in
1436 the staff report, based on the criteria that the lot was created in 1928, prior to the
1437 1960 zoning ordinance, and based on the criteria of the five steps and the
1438 evaluation, that it meets the five-part test established by state code for a
1439 variance.

1440
1441 Mr. Bell - Do I hear a second?

1442
1443 Mr. Berman - I second the motion.

1444
1445 Mr. Bell - Is there any discussion? Hearing none, all those in
1446 favor of the motion say aye. All those opposed to the motion say nay. The ayes
1447 have it; the motion passes.

1448
1449 After an advertised public hearing and on a motion by Mr. Baka, seconded by
1450 Mr. Berman, the Board **approved** application **VAR2016-00002, JOHN AND**
1451 **DONNA DEAL's** request for a variance from Section 24-9 of the County Code to
1452 build a one-family dwelling at 1474 Battery Hill Drive (Parcel 803-677-9363)
1453 zoned One-Family Residence District (R-2A) (Varina). The Board approved the
1454 variance subject to the following conditions:

1455

- 1456 1. This variance applies only to the public street frontage requirement for one
 1457 dwelling only. All other applicable regulations of the County Code shall remain in
 1458 force.
 1459
 1460 2. Only the improvements shown on the plot plan and building design filed with
 1461 the application may be constructed pursuant to this approval. Any additional
 1462 improvements shall comply with the applicable regulations of the County Code.
 1463 Any substantial changes or additions to the design or location of the
 1464 improvements will require a new variance.
 1465
 1466 3. Before beginning any clearing, grading, or other land disturbing activity, the
 1467 applicant shall obtain a building permit including an agreement in lieu of erosion
 1468 control plan.
 1469
 1470 4. Approval of this request does not imply that a building permit will be issued.
 1471 Building permit approval is contingent on Health Department requirements,
 1472 including, but not limited to, soil evaluation for a septic drainfield and reserve
 1473 area, and approval of a well location.
 1474
 1475 5. The applicant shall present proof with the building permit application that a
 1476 legal access to the property has been obtained. The driveway shall be improved
 1477 with a durable asphalt or compacted gravel surface at least 10 feet wide with 12
 1478 feet of horizontal clearance and 14 feet of overhead clearance to provide access
 1479 for police, fire, emergency medical services, and other vehicles. The owners of
 1480 the property, and their heirs or assigns, shall accept responsibility for maintaining
 1481 access to the property until such a time as the access is improved to County
 1482 standards and accepted into the County road system for maintenance.

1483
 1484
 1485 Affirmative: Baka, Bell, Berman, Harris 4
 1486 Negative: 0
 1487 Absent: 0

1488
 1489
 1490 **[At this point, the transcript continues with the public hearing on the next**
 1491 **case.]**

1492
 1493 [The meeting is called back to order.]

1494
 1495 Mr. Bell - Let's call the meeting back to order.

1496
 1497 Mr. Blankinship - Mr. Chairman, the next two cases are companion
 1498 cases. They're the same applicant and they're next door to each other. So if you
 1499 don't mind, I'll call them together. We'll have one public hearing, but then of
 1500 course when it's time for the decisions, we'll have to have two separate votes.
 1501

1502 **VAR2016-00003** **MATT FERGUSON PROPERTIES, LLC** requests a
1503 variance from Section 24-94 of the County Code to build a one-family dwelling at
1504 8005 Edith Hill Court (OSBORNE HEIGHTS) (Parcel 803-688-4810) zoned
1505 Agricultural District (A-1) (Varina). The lot width requirement and side yard
1506 setback are not met. The applicant proposes 85 feet lot width and 46 feet sum of
1507 side yards, where the Code requires 150 feet lot width and 50 feet sum of side
1508 yards. The applicant requests a variance of 65 feet lot width and 4 feet sum of
1509 side yards.

1510
1511 **VAR2016-00004** **MATT FERGUSON PROPERTIES, LLC** requests a
1512 variance from Section 24-94 of the County Code to build a one-family dwelling at
1513 8001 Edith Hill Court (OSBORNE HEIGHTS) (Parcel 803-688-2402) zoned
1514 Agricultural District (A-1) (Varina). The lot width requirement is not met. The
1515 applicant proposes 100 feet lot width, where the Code requires 150 feet lot width.
1516 The applicant requests a variance of 50 feet lot width.

1517
1518 Mr. Blankinship - Would everyone who intends to speak to these two
1519 cases, please stand and be sworn. Raise your right hand, please. Do you swear
1520 the testimony you're about to give is the truth, the whole truth, and nothing but
1521 the truth so help you God? Thank you. Mr. Gidley, if you would begin.

1522
1523 Mr. Gidley - Thank you, Mr. Secretary. Good morning,
1524 Mr. Chairman, members of the Board.

1525
1526 This is a request for a lot-width variance at 8001 Edith Hill Court just to the left
1527 here. In addition, variances for both lot width and total side yard setback are
1528 being requested at 8005 Edith Hill Court.

1529
1530 Both lots are located in the Osborne Heights subdivision and are currently
1531 undeveloped. They are zoned A-1, Agricultural District, and the proposed use is
1532 for a one-family dwelling. At the time of the subdivision's recordation in June
1533 1999, these lots were allowed to meet their lot width requirement at the front
1534 building line where the home would actually be placed, rather than at the 50-foot
1535 front yard setback.

1536
1537 Mr. Blankinship - Paul, excuse me. Could you slide a little to your left?
1538 I'm having trouble hearing you.

1539
1540 Mr. Gidley - I'm sorry. At the time of the subdivision's recordation
1541 in June of 1999, these lots were allowed to meet their lot width requirement at the
1542 front building line, which is where the home would actually be placed, rather than
1543 at the 50-foot front yard setback. Due to the design of the lots, this resulted in
1544 8001 Edith Hill Court over here having a 93-foot front yard setback and 8005
1545 Edith Hill Court having a 110-foot front yard setback.

1546

1547 Both of these setbacks were clearly shown on the construction plans for the
1548 subdivision. However, due to the steep slope that you can see along the rear of
1549 each property, today's applicant would like to build each building or each dwelling
1550 51 feet back from the cul-de-sac, as shown on the two plot plans. This is 8001.
1551 And note it's 51 feet back, proposed, versus the building line up here. And then
1552 the plot plan for 8005 Edith Hill Court, again—actually, I reversed them. This is
1553 8001 here and the prior one was 8005.

1554
1555 In the evaluation, I'll cover the lot width variance request first. The main test for a
1556 variance whether the zoning ordinance unreasonably restricts the use of the
1557 property, or if there's a hardship related to the physical condition of the property
1558 at the time of the effective date of the ordinance. With regard to both lots, the
1559 latter test does not appear to apply since the code requirements for lot width
1560 existed at the time of the creation of the lots. The first test involving an
1561 unreasonable restriction on the use of the property, however, would appear to be
1562 applicable. The applicant indicates the steep slope could result in a 36- or 40-foot
1563 rear yard foundation if the home were to be built at the current building line. Staff
1564 believes the actual amount is no more than half this, but nonetheless significant.

1565
1566 In reviewing the five subtests, staff finds the following:

1567
1568 With regard to good faith, while the developer was certainly aware of the lots he
1569 was creating and the effect of the topography on each lot, the applicant didn't
1570 purchase the lots until 2006. And according to the state Supreme Court,
1571 purchasing a lot knowing it needs a variance does not indicate an absence of
1572 good faith, so this first subtest is met.

1573
1574 The second is dealing with a substantial detriment to nearby property. The other
1575 homes in the cul-de-sac range in size from 1,510 square feet to 2,212 square
1576 feet. The proposed homes would each be 1,432 square feet in area, slightly less
1577 than the existing homes, but not significantly so. The existing homes have brick
1578 crawlspace foundations, and staff recommends the proposed homes do so as
1579 well.

1580
1581 The other area we looked at with regard to detrimental impact was whether the
1582 placement of the homes would result in the new homes facing the side or rear of
1583 the existing homes or vice versa. The setbacks do vary somewhat, but this
1584 doesn't really appear to be a big issue, in part because of the A-1 district and the
1585 lot size and substantial setbacks to go along with that in the A-1 district.

1586
1587 That said, we did receive a call from an adjacent property owner at 8009 Edith
1588 Hill Court expressing concern over the proposed variances. A follow-up letter
1589 from them was included in your packet.

1590
1591 Fourth, this is not an illegal use variance; a dwelling is permitted in the A-1
1592 district.

1593

1594 And finally, a conditional use permit cannot resolve the lot width issue faced by
1595 this applicant.

1596

1597 So the five subtests above appear to be met in this case.

1598

1599 As I said earlier, in addition to the lot width variances, the applicant has also
1600 requested a variance for total side yard setback requirements at 8005 Edith Hill
1601 Court. What this means—you look here. You have one side yard at 20.5 feet and
1602 another at 25.5 feet. Those add up to 46 feet. Under code, both side yards
1603 combined need to equal 50 feet in the A-1 district. Since they fall short of that, he
1604 has requested a variance for the total side yard setbacks.

1605

1606 Staff does not believe either of the two main tests is met by this second request.
1607 Assuming the lot width variance is granted, that would result in there being
1608 adequate room to place a home within the level portion of the buildable area that
1609 would meet setbacks. As you can see here, the home itself is twenty-seven feet
1610 deep, and you can go back an additional amount of area here, probably twenty
1611 feet easily, where it's still level and is within the building envelope. So if you
1612 reduce the width of the home say by five feet, you could build back further and
1613 actually build a larger home and still meet setbacks and be off that slope.
1614 Because of this, it would appear that there is no unreasonable restriction on the
1615 use of the property. The applicant simply needs to design a home that would fit
1616 within that buildable area.

1617

1618 A hardship related to the physical condition of the property must occur at the time
1619 of the effective date of the ordinance. Since the ordinance was in effect prior to
1620 this lot's recordation, that test would not appear to apply.

1621

1622 If you look at the five subtests, whether the property was purchased in the good
1623 faith. By not designing a home that would fit within the buildable area, it's staff's
1624 contention that the applicant is creating his own hardship.

1625

1626 Regarding substantial detriment to nearby property, the proposed home does not
1627 line up as well with the adjacent home at 8009 Edith Hill Court, which is far
1628 more—again, as we noted earlier, the A-1 district has larger lot size and setback
1629 requirements, which helps to mitigate this. However, to the extent you reduce the
1630 side yard setbacks, that would sort of chip away at this protection. The letter that
1631 I referenced earlier came from the people who live right here in this house, and
1632 they did express concern, especially on the point about the side yard setback
1633 being reduced.

1634

1635 Third, it is a general and recurring situation for a builder to have to design a
1636 home to meet setbacks. Again, assuming the lot width variance is granted, staff
1637 believes there is adequate room to design a home that would comply with the
1638 setback and still be off the back slope.

1639

1640 Fourth, this is not a use variance, as a one-family dwelling is consistent with the
1641 property's A-1 zoning.

1642

1643 And finally, a conditional use permit is not a tool available to reduce setbacks.

1644

1645 In conclusion, there is arguably an unreasonable restriction on the use of the two
1646 lots, if the existing lot width requirements push the location of the homes back
1647 onto the steep slope, resulting in a 20- or 25-foot rear foundation. A lot width
1648 variance would also appear to meet all five of the subtests. As a result, staff
1649 recommends approval of the lot width variances for both of these lots subject to
1650 the conditions found in the staff report.

1651

1652 Staff does not believe any of the two main tests are met with regard to the total
1653 side yard setback request at 8005 Edith Hill Court. Even if one of the two tests
1654 were met, the first and the third subtests and arguably the second subtest are not
1655 met. As a result, staff recommends denial of the total side yard setback variance
1656 at 8005 Edith Hill Court.

1657

1658 This concludes my presentation, and I'll be happy to answer any questions you
1659 may have.

1660

1661 Mr. Bell - Any questions?

1662

1663 Ms. Harris - Mr. Gidley, the other homes in Osborn Heights are
1664 one-story homes or are they tri-levels and bi-levels?

1665

1666 Mr. Gidley - They are one-story homes in this cul-de-sac, as I
1667 recall.

1668

1669 Ms. Harris - So the adjacent home that we see here on this aerial
1670 photo, that's a one-story?

1671

1672 Mr. Gidley - Let's see here. This is from the back. It's basically one
1673 story at the front. It does look like there's maybe a basement or something like
1674 that or somewhat of a larger foundation here.

1675

1676 Ms. Harris - Okay.

1677

1678 Mr. Gidley - Let's see here. Here is another view of the homes. As
1679 you can see, they are essentially one-story homes.

1680

1681 Ms. Harris - What we have in our packet that asks us to deny this
1682 request, do you think that's because of the side yard setbacks?

1683

1684 Mr. Gidley - Yes. There are two requests, Ms. Harris. One is for
1685 the lot width requirement, and we support that variance. If that's granted, it would
1686 allow them to move the homes up forward and be on the level portion of the lot.
1687 The side yard setback variance is what staff opposes, and that's on the home
1688 that would go at 8005 Edith Hill Court.
1689

1690 Mr. Blankinship - Another way to say that is that without the lot width
1691 variances, they can't build on the lots at all. But without the side yard variance,
1692 they can still put either that house in a slightly different location or a slightly
1693 different house on that location.
1694

1695 Mr. Gidley - Correct.
1696

1697 Ms. Harris - My concern is do we know why the neighbors are
1698 objecting.
1699

1700 Mr. Berman - Mr. Kiser.
1701

1702 Mr. Gidley - They called our office, and I spoke with them. They
1703 were fairly general saying they felt the code and the standards should be met.
1704 They seemed to be more concerned about the setback variance than the lot
1705 width variance. Actually, I think the lot width variance would benefit them
1706 because otherwise you're going to have the two homes to the rear of where the
1707 other homes are in the neighborhood. So I think that variance is actually
1708 beneficial to the neighbors.
1709

1710 The one I believe they were more concerned about was the setback variance
1711 because that would allow the home to go closer to their lot. I seemed to get the
1712 impression that they liked large lots, that's why they moved there. And they want
1713 people to adhere to that.
1714

1715 Mr. Bell - If you look at 8009, even the house on their lot is
1716 placed furthest away from where the property line is. It's not right next to the
1717 property line.
1718

1719 Mr. Baka - These are large lots; they just happen to be
1720 encumbered with a lot of slope.
1721

1722 Mr. Gidley - In the rear, yes.
1723

1724 Mr. Bell - Any other questions? Thank you, Paul.
1725

1726 Mr. Gidley - Thank you, Mr. Chairman.
1727

1728 Mr. Ferguson - Good morning. My name is Matt Ferguson. F-e-r-g-u-
1729 s-o-n. My representative just had to leave, so I'm going to step in here and see if
1730 I can answer any additional questions.

1731
1732 The slope does make building quite challenging. The lots were bought back in
1733 2006 in good faith. Different market, different time back then. I think in keeping
1734 with the houses in the neighborhood, the plan we've proposed is a good fit for the
1735 area, for the market. We can certainly, easily make adjustments to lot 24, as far
1736 as the house goes, if it does not meet the setback or if it's not approved. We can
1737 come up with a similar plan that fits that footprint a little bit better. The slopes
1738 certainly do make trying to build in that area a challenge. The ENS requirements
1739 are quite a bit different today than they were in 2006. Getting equipment on those
1740 hills to work and dig footers is quite challenging, if not impossible.

1741
1742 With 8009, my understanding from my representative is that house was granted
1743 a variance from the fifty-foot requirement and is thirty-seven feet off the road, I
1744 believe. From the information I got, they at some point for construction were
1745 granted a variance.

1746
1747 Mr. Blankinship - Yes, that's right.

1748
1749 Mr. Ferguson - Okay. But I believe the rest of it is pretty
1750 straightforward. Again, we can certainly make the adjustments for lot 24 to the
1751 house to meet setbacks that would be needed. If we're a few feet off here, we
1752 can certainly make those adjustments to the plan to give a better fit as long as
1753 we can build on the level area of the lot.

1754
1755 Mr. Bell - Questions? I have one. Have you read the conditions
1756 for 8001 and 8005 and do you agree with them as well for both?

1757
1758 Mr. Ferguson - Am I looking at the variance application for this?

1759
1760 Mr. Bell - It's the report that should have been mailed to you.

1761
1762 Mr. Blankinship - I guess another one getting caught up in the mail in
1763 the snow.

1764
1765 Mr. Berman - Page 5.

1766
1767 Mr. Bell - Page 5, yes.

1768
1769 Mr. Ferguson - Should I read each of them separately?

1770
1771 Mr. Blankinship - The two are the same, I believe. The only difference
1772 is that side yard issue.

1773

1774 [Pause for applicant to read conditions.]
1775
1776 Mr. Ferguson - I agree for 8001. I'd just like to review 8005, if I could.
1777
1778 [Pause for applicant to read conditions.]
1779
1780 Mr. Ferguson - I guess I would say I agree with 8005 with agreement
1781 to any adjustments that were deemed necessary for number two. It would vary
1782 the proposed plot plan by requiring us to change the house width to better meet
1783 the setbacks.
1784
1785 Mr. Berman - But you have two options on that. You don't have to
1786 necessarily decrease the house width to meet the setback if that front building
1787 line—there's a second option—
1788
1789 Mr. Ferguson - Push it back?
1790
1791 Mr. Berman - —to shift that same footprint back, realizing that that
1792 would create a slightly smaller rear yard.
1793
1794 Mr. Ferguson - I would agree with that, sir.
1795
1796 Mr. Berman - It gives you some options.
1797
1798 Mr. Ferguson - Sure. Yes, I agree.
1799
1800 Mr. Bell - So you agree with both 8001 and 8005.
1801
1802 Mr. Ferguson - I do, yes.
1803
1804 Mr. Bell - Thank you. Any other questions?
1805
1806 Ms. Harris - Do you know where Mr. Kiser lives? Can you point
1807 out that address? Where on this map?
1808
1809 Mr. Baka - By the road.
1810
1811 Mr. Gidley- 8009 is right here, Ms. Harris.
1812
1813 Ms. Harris - Okay. So we have not heard from the neighbor on the
1814 other side of these two parcels?
1815
1816 Mr. Gidley - Over here, no ma'am.
1817
1818 Ms. Harris - Okay. Thank you.
1819

1820 Mr. Bell - Any other questions?
1821
1822 Mr. Baka - No.
1823
1824 Mr. Bell - Thank you, sir. Is there anyone else who would like to
1825 speak to this issue? Hearing now, we'll continue and enter the voting process.
1826

1827 **[After the conclusion of the public hearings, the Board discussed the case**
1828 **and made its decision. This portion of the transcript is included here for**
1829 **convenience of reference.]**
1830

1831 Mr. Bell - Do I hear a motion on this case?
1832

1833 Mr. Berman - I move that we approve VAR2016-00003 without the
1834 side yard setbacks and with all the conditions remaining in that it satisfies the test
1835 for a variance.
1836

1837 Mr. Bell - Do I hear a second on this motion? I second the
1838 motion myself. Is there any discussion?
1839

1840 Mr. Gidley - If I can clarify, my understanding is the motion is to
1841 approve the lot width variance, but without the side yard setback variance being
1842 approved.
1843

1844 Mr. Berman - Correct. I apologize.
1845

1846 Mr. Bell - Do you want to restate that?
1847

1848 Mr. Berman - Yes. I move that we approve the variance for the lot
1849 width but not for the requested setback relief for the side yard.
1850

1851 Mr. Bell - Is there any other discussion? Hearing none, all those
1852 in favor of the motion say aye. All those opposed say nay. The ayes have it, and
1853 the motion passes.
1854

1855 After an advertised public hearing and on a motion by Mr. Berman, seconded by
1856 Mr. Bell, the Board **approved** application **VAR2016-00003, MATT FERGUSON**
1857 **PROPERTIES, LLC's** request for a variance from Section 24-94 (lot width) and
1858 **denied** the request for a variance from Section 24-94 (sum of side yards) of the
1859 County Code to build a one-family dwelling at 8005 Edith Hill Court (OSBORNE
1860 HEIGHTS) (Parcel 803-688-4810) zoned Agricultural District (A-1) (Varina). The
1861 Board approved the variance subject to the following conditions:
1862

1863 1. This variance applies only to the lot width requirement for one dwelling only.
1864 All other applicable regulations of the County Code shall remain in force.
1865

1866 2. Only the improvements shown on the plot plan and building design filed with
1867 the application may be constructed pursuant to this approval. The setbacks
1868 shown on the plot plan notwithstanding, the proposed home shall comply with the
1869 requirements of the zoning ordinance for the least side yard setback and the sum
1870 of side yard setbacks. Any additional improvements shall comply with the
1871 applicable regulations of the County Code. Any substantial changes or additions
1872 to the design or location of the improvements will require a new variance.
1873

1874 3. The home shall be constructed on a brick foundation with a crawl space.
1875

1876 4. Approval of this request does not imply that a building permit will be issued.
1877 Building permit approval is contingent on Health Department requirements,
1878 including, but not limited to, soil evaluation for a septic drainfield and reserve
1879 area, and approval of a well location.
1880

1881 5. Before beginning any clearing, grading, or other land disturbing activity, the
1882 applicant shall submit an environmental compliance plan to the Department of
1883 Public Works.
1884

1885			
1886	Affirmative:	Baka, Bell, Berman, Harris	4
1887	Negative:		0
1888	Absent:		0

1889

1890

1891 Mr. Bell - Do I hear a motion on this case?

1892

1893 Mr. Berman - I move that we approve VAR2016-00004 with the five
1894 stated conditions in that it meets the requirements for a variance.
1895

1896

1896 Mr. Bell - Do I hear a second on this motion?

1897

1898 Mr. Baka - Second.

1899

1900 Mr. Bell - Is there any discussion?

1901

1902 Ms. Harris - Yes. I think that to do other than approve this variance
1903 and the one before it we are keeping the property owners from using their
1904 property. It's like taking their property and saying you can't use it. So I quite
1905 agree with this even though I realize that the more we approve variances, the
1906 more the agenda will increase with more requests. But nevertheless, I feel that
1907 we're doing justice in this particular case to this applicant.
1908

1909

1909 Mr. Baka - I would agree with Ms. Harris's comments there. I
1910 definitely agree. Keep in mind this subdivision lot was created, and then shortly
1911 thereafter the ordinance came into effect to say now you have to measure lot

1912 width at the front building setback, changing where it was measured. So the lot
1913 came into existence prior to that legislative change. I would agree, and I support
1914 the motion.

1915
1916 Mr. Bell - Any other discussion? Hearing none, all those in favor
1917 of the motion say aye. All those opposed say nay. The ayes have it, and the
1918 motion passes.

1919
1920 After an advertised public hearing and on a motion by Mr. Berman, seconded by
1921 Mr. Baka, the Board **approved** application **VAR2016-00004, MATT FERGUSON**
1922 **PROPERTIES, LLC's** request for a variance from Section 24-94 of the County
1923 Code to build a one-family dwelling at 8001 Edith Hill Court (OSBORNE
1924 HEIGHTS) (Parcel 803-688-2402) zoned Agricultural District (A-1) (Varina). The
1925 Board approved the variance subject to the following conditions:

1926
1927 1. This variance applies only to the lot width requirement for one dwelling only.
1928 All other applicable regulations of the County Code shall remain in force.

1929
1930 2. Only the improvements shown on the plot plan and building design filed with
1931 the application and as amended by condition #3, may be constructed pursuant to
1932 this approval. Any additional improvements shall comply with the applicable
1933 regulations of the County Code. Any substantial changes or additions to the
1934 design or location of the improvements will require a new variance.

1935
1936 3. The home shall be constructed on a brick foundation with a crawl space.

1937
1938 4. Approval of this request does not imply that a building permit will be issued.
1939 Building permit approval is contingent on Health Department requirements,
1940 including, but not limited to, soil evaluation for a septic drainfield and reserve
1941 area, and approval of a well location.

1942
1943 5. Before beginning any clearing, grading, or other land disturbing activity, the
1944 applicant shall submit an environmental compliance plan to the Department of
1945 Public Works.

1946
1947
1948 Affirmative: Baka, Bell, Berman, Harris 4
1949 Negative: 0
1950 Absent: 0

1951
1952
1953 Mr. Bell - We'll go on to approval of the minutes for December
1954 17, 2015.

1955
1956 Mr. Berman - I move that we accept the minutes into record without
1957 reading.

1958
1959 Mr. Bell - Do I hear a second?
1960
1961 Ms. Harris - Second the motion.
1962
1963 Mr. Bell - Any discussion? Hearing none, all those in favor of
1964 the motion say aye. All those opposed say nay. The ayes have it; the motion
1965 passes.
1966
1967 On a motion by Mr. Berman, seconded by Ms. Harris, the Board **approved as**
1968 **submitted** the **Minutes of the December 17, 2015**, Henrico County Board of
1969 Zoning Appeals meeting.
1970
1971
1972 Affirmative: Baka, Bell, Berman, Harris 4
1973 Negative: 0
1974 Absent: 0
1975
1976
1977 Mr. Bell - Is there any other old or new business we need to
1978 discuss?
1979
1980 Mr. Berman - I wanted to bring back the Aldi case. I was wondering
1981 if there was resolution there or follow-up. During the meeting, I proposed several
1982 options for signage. Another one that I thought of after I left was a digital sign
1983 where they could rotate advertising for everybody. Is it up to us to contact them
1984 or is it up to them to take the next step?
1985
1986 Mr. Blankinship - Well it would be to them, I think. I have not heard any
1987 more since the meeting, so I guess they've found some way to solve the
1988 problem.
1989
1990 Mr. Berman - Okay.
1991
1992 Mr. Bell - And for the Board, I think we all know because it was
1993 mentioned earlier that we will have a new member next time. So we should have
1994 a full panel.
1995
1996 Mr. Blankinship - Yes. William—I'm not sure if it's Ma-kay or Mack-e.
1997 M-a-c-k-e-y. He's scheduled to be sworn in tomorrow.
1998
1999 Mr. Bell - All right, let's go on. If there is no more discussion of
2000 any old or new business, we'll vote on the adjournment. Do I hear a motion that
2001 we adjourn?
2002
2003 Mr. Baka - So moved.

2004
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Mr. Bell - Do I hear a second?

Ms. Harris - Second.

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

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



Gentry Bell
Chairman



Benjamin Blankinship, AICP
Secretary