

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 OCTOBER 22, 2015 AT**
5 **9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH OCTOBER 5, 2015, AND OCTOBER 12, 2015.**

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

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

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

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

15
16 Mr. Blankinship - Good morning, Mr. Chair, members of the Board,
17 ladies and gentlemen. The rules for this meeting are as follows: Acting as
18 secretary, I will call the case; we only actually have one to hear this morning. As
19 I'm speaking, everyone who intends to speak to that case should stand and then
20 will be sworn in. Then we will have a brief presentation, introduction to the issue
21 by the County attorney, and then a presentation by County staff. And then the
22 appellant will speak. After he has spoken and the Board has asked their
23 questions, anyone else who intends to speak will be given the opportunity.

24
25 This meeting is being recorded, so we will ask everyone who speaks to speak
26 directly into the microphone on the podium, state your name, and please spell
27 your last name so we get it correctly in the record.

28
29 There is one case on the agenda that has requested deferral, Mr. Chairman.
30 That is CUP2015-00030, Bill Phillips.

31
32 **CUP2015-00030** BILL PHILLIPS requests a conditional use permit
33 pursuant to Section 24-95(i)(4) of the County Code to build a detached garage in
34 the side yard at 9516 Arrowdel Court (RIVER ROAD FARMS) (Parcel 744-738-
35 7017) zoned One-Family Residence District (R-1) (Tuckahoe).
36

37 Mr. Blankinship - Is there anyone here to speak to this case? All right.
38
39 Mr. Phillips - Bill Phillips. I'm just here to state that we wish to defer
40 to pursue a solution that is within the current zoning code.
41
42 Mr. Blankinship - All right.
43
44 Mr. Baka - Would the deferral request be for one month, two
45 months?
46
47 Mr. Phillips - One more month.
48
49 Mr. Bell - Any other questions? Then shall we have a motion?
50
51 Mr. Baka - Yes, Mr. Chairman. I'll make a motion that we defer
52 CUP2015-00030 for one month until the November agenda.
53
54 Mr. Berman - I second the motion.
55
56 Mr. Bell - Any discussion? Hearing none, all those in favor of
57 the motion say aye. All those opposed say nay. Hearing none, the motion carries.
58 It will be deferred to our next meeting, which will be November 19th.
59
60 After an advertised public hearing and on a motion by Mr. Baka seconded by
61 Mr. Berman, the Board **deferred** application CUP2015-00030, Bill Phillips, to its
62 meeting on November 19, 2015.
63
64
65 Affirmative: Baka, Bell, Berman, Harris, Romers 5
66 Negative: 0
67 Absent: 0
68
69
70 Mr. Blankinship - All right. APL2015-00002, Charles Shade.
71
72 **APL2015-00002 CHARLES SHADE** appeals a decision of the director
73 of planning pursuant to Section 24-116(a) of the County Code regarding the
74 property at 7703 Wood Road (WESTHAM) (Parcel 760-737-3986) zoned One-
75 Family Residence District (R-3) (Tuckahoe).
76
77 Mr. Blankinship - Would everyone who intends to speak to this case
78 please stand and be sworn in. Raise your right hands. Do you swear the
79 testimony you're about to give is the truth, the whole truth, and nothing but the
80 truth so help you God?
81
82 Speakers (Standing) - I do.

83

84 Mr. Blankinship - Thank you. Mr. Rapisarda, if you would begin.

85

86 Mr. Rapisarda - Mr. Chairman, members of the Board, good morning.
87 For the record, my name is Joe Rapisarda, and I'll spell that—R-a-p-i-s-a-r-d-a. I
88 am here on behalf of the Director of Planning, who has asked me to address this
89 appeal.

90

91 Members of the Board, I want to start this briefly by giving an opening and giving
92 you the legal frame work that the Board should consider as their hear the matter
93 this morning. I think in your handout we had a little glitz in the copying. But
94 Virginia Code, Section 15.2-2309 sets out the powers of this Board. And I know
95 the Board is generally familiar with that. This morning, we're here on an appeal
96 by Mr. Shade, so it's paragraph 1 of that statute that the Board will be acting
97 under to hear an appeal from a determination made by the County's director of
98 Planning. And I want to note for the Board that the decision on the appeal,
99 according to state law, shall be based on the Board's judgment of whether
100 Mr. Emerson's decision was correct, which again is a commonsense notion in the
101 statute. But the statute goes on to say, very importantly for Mr. Emerson, the
102 determination of the administrative officer shall be presumed to be correct. So we
103 come to the hearing this morning, members of the Board, with a presumption that
104 the director's interpretation is correct according to Virginia law.

105

106 Now, at the hearing this morning—and again, if I may, indulge me, just to quote
107 briefly from this statute: The administrative officer shall explain the basis for his
108 determination. And in just a moment, I'm going to have Mr. Gidley, the County's
109 planner, address the Board with some detail on that. But after he does that,
110 members of the Board, then the law provides that the appellate, who is here, Mr.
111 Shade, of course, has the burden of proof to rebut the presumption of
112 correctness that the decision of Mr. Emerson is entitled to. And that presumption
113 and that burden of proof relates to what they call the preponderance of the
114 evidence. And that's a fancy legal term that's been interpreted and given to jurors
115 in jury trials. The simplest explanation that I can give the Board is if you consider
116 a football game, and you've got the 50-yard line there obviously. The person with
117 the burden of proof has to get across the 50. So in other words, his or her
118 evidence must be more persuasive and have greater weight, is the term, than
119 that of the other party. So I wanted just to frame for the Board that as you go in
120 and hear the matter, just remembering, if you will, that the decision is entitled to
121 that presumption, and Mr. Shade does have the burden to prove that it's wrong.

122

123 Now, this determination has to do with accessory structures in the rear yard of
124 Mr. Shade's property on Wood Road in Western Henrico, very nice
125 neighborhood. But the provision of our Zoning Ordinance, which is 24-95.12(a)—
126 and that's in your package as well—provides that these accessory structures
127 cannot occupy more than 30 percent of the required minimum rear yard. And

128 there's a calculation that you'll hear Mr. Gidley explain to you members of the
129 Board. So that's what we're focusing on in the appeal this morning.

130
131 After you hear Mr. Gidley, I think you will agree that this is a straightforward
132 determination that's been made by the director. It's not really one, in my humble
133 opinion, that involves the Board or anyone else interpreting what it means. It's a
134 rather straightforward mathematical calculation that's done according to the plain
135 words that are in the Zoning Ordinance section, as well as the numbers in the
136 Table of Regulations.

137
138 I'll ask the Board, if I may, if I could reserve two minutes, if needed, at the end of
139 Mr. Shade's remarks. I think that will expedite things, Mr. Chairman, if that's
140 acceptable.

141
142 Mr. Bell - Acceptable.

143
144 Mr. Rapisarda - Thank you, sir. And that's all I have.

145
146 Mr. Bell - Any questions?

147
148 Mr. Baka - Not at this time.

149
150 Mr. Bell - Thank you, sir.

151
152 Mr. Rapisarda - Thank you.

153
154 Mr. Gidley - Good morning, Mr. Secretary, members of the Board
155 of Zoning Appeals. This case is an appeal of a decision by the Director of
156 Planning. On February 24, 2014, the appellate, Mr. Shade, applied for a building
157 permit for a two-story guesthouse which actually contains an office on the second
158 floor. The building permit was issued on February 27, 2014. In the packet you
159 were given, the second page contains the application portion of that building
160 permit.

161
162 On June 6, 2014, the Permit Center received a complaint regarding the size of
163 the structure that was under construction. A zoning inspector and myself went
164 out to the site to see if it was being constructed in accordance with the building
165 permit and with the Zoning Ordinance. The biggest problem we noticed is that
166 there were four accessory structures on the property, whereas the building permit
167 had shown only three accessory structures. Even with the three accessory
168 structures, one building needed to be removed in order to comply with the lot
169 coverage requirement for accessory structures that Mr. Rapisarda just
170 mentioned. If you look at the plot plan that was submitted with the building permit
171 that's on your screen, you'll note here it says "shed to be removed," and that was
172 so Mr. Shade could come within his 960-square-foot coverage limit. So his new
173 building here and the remaining one here would comply with the 960 square feet.

174 When we went out there, this building was still here, and we noticed the building
175 in the back right-hand corner here.

176
177 Given our findings, on July 21, 2014, the Assistant Director of Planning, Mr.
178 O'Kelly, wrote Mr. Shade and asked him to revise his building permit to, amongst
179 other things, show all the accessory structures on the property and also to show
180 how he would comply with the coverage limit of the Code. The buildings out there
181 now are shown here, and you can see the fourth one here.

182
183 Since this time as noted on here, Mr. Shade has removed this shed here that
184 was 202 square feet in area. However, he's still over his coverage limit. Rather
185 than removing an additional building, he has decided to appeal the Planning
186 Department's interpretation of the Zoning Ordinance.

187
188 The handout that you were given, the first page is Powers and Duties of the
189 Board of Zoning Appeals. If you go to the third page, it contains County Code
190 Section 24-95. Mr. Rapisarda briefly referenced this. Under (i), it says, "Buildings
191 and projections in yards. The following buildings, parts of buildings and uses may
192 occupy or project into required minimum yards as indicated." And if you go down
193 to number 2 it says "In a rear yard of a one-family or semi-detached dwelling.
194 Any accessory use or detached accessory building or structure is permitted
195 subject to the following." And under "a" it says "In an R district," and Mr. Shade is
196 zoned R-3—this is page 3 of your handout. On page 3 of your handouts, i(2)a
197 says "In an R district, the buildings or structures in the aggregate may not occupy
198 more than 30 percent of the required minimum rear yard for the district. You will
199 note that it doesn't say 30 percent of the rear yard or 30 percent of the actual
200 rear yard, but specifically says 30 percent of the required minimum rear yard for
201 the district.

202
203 The required minimum rear yard is determined by looking at the following page,
204 which is headed Section 24-94, which should be the last page of your handout.
205 You see at the bottom left-hand part of the column the R-3 district, which is what
206 Mr. Shade is zoned. Under "Dwellings," you come over and it says "Minimum lot
207 width," that's the narrowest lot you can have in the R-3 district, and that is 80
208 feet. And then as far as your smallest yard or minimum yard, that's determined
209 by the rear-yard setback for the district, which is also highlighted, and that is 40
210 feet. So the smallest possible rear yard you can have in an R-3 district is an 80-
211 foot lot width by a 40-foot rear yard setback depth. So if you take 80 feet by 40
212 feet, you get 3,200 square feet. And under the section of Code where it says 30
213 percent of the required minimum yard, you take 30 percent of 3,200 square feet,
214 and this gives you a total of 960 square feet. On the plot plan that was submitted
215 with this building permit that was referenced just a while ago—and actually that's
216 here—you again see the 960 square feet total here. So that's what he needs to
217 meet.

218

219 At the current time, as shown on this summary here, Mr. Shade's buildings in
220 total come to 1,374 square feet, which is well in excess of the 960-square-foot
221 limit. As someone who used to review building permits in the pre-Permit Center
222 days, I can tell you this is how for years and years this section of Code has been
223 applied and applied consistently by the County. Accordingly, we ask you to
224 uphold the determination of the Planning Department. Thank you. Are there any
225 questions?

226
227 Mr. Bell - Yes, I have a question. The calculation on the
228 previous—where it shows where the 960 feet were calculated?

229
230 Mr. Gidley - Yes sir.

231
232 Mr. Bell - Whose calculations are those?

233
234 Mr. Blankinship - Go back to the plat.

235
236 Mr. Gidley - On the plat? I suspect that was done by the permit
237 reviewer in the Permit Center.

238
239 Mr. Blankinship - It is. That's the handwriting of the staff member who
240 reviewed the building permit at the time.

241
242 Mr. Bell - Thank you. Any questions?

243
244 Ms. Harris - Mr. Gidley, in the information that Mr. Shade
245 presented in the packet, he mentioned a lot of things about stormwater. What
246 relevance does that have to this particular case?

247
248 Mr. Gidley - Neither the County Attorney nor myself know what the
249 relevance of that is. We were discussing that yesterday, and we had no idea
250 what he was referring to and how it was relevant, to be honest with you.

251
252 Mr. Bell - So it looks like he's over about 114 square feet of the
253 requirement.

254
255 Mr. Gidley - Right now he's at 1,374. And with the 960 limit, that
256 would be 414, I believe, that he needs to remove.

257
258 Mr. Berman - By my calculation, he removed 202, so he's at 1,172.

259
260 Mr. Gidley - Oh, I'm sorry.

261
262 Mr. Berman - So he's 212 over.

263
264 Mr. Gidley - Okay.

265

266 Mr. Berman - Which would be the shed in the rear.

267

268 Mr. Bell - Any other questions?

269

270 Mr. Baka - Question for staff. If the ordinance says there in (2)a
271 "the aggregate may not occupy more than 30 percent of the required minimum
272 rear yard for the district", is there any other way that you can see that it could be
273 interpreted to allow 30 percent of the actual yard area whether you have a five-
274 acre lot and it's R-3 in Varina or whether you have a one-acre lot here in
275 Tuckahoe?

276

277 Mr. Gidley - Not if you're zoned residential. And to get at your
278 point, if you read the next sentence, this would deal with agricultural lots on the
279 next sentence. It says "unless otherwise provided by this chapter, accessory
280 buildings located on any other lot or parcel may occupy in the aggregate not
281 more than 30 percent of the actual rear yard area." So if you're zoned R
282 Residential, which Mr. Shade is, which is R-3, you're limited to the required
283 minimum rear yard. But if you have a 3-acre lot in Varina that's zoned
284 Agricultural, then you go with the actual rear yard, as the second sentence there
285 says.

286

287 Mr. Baka - So to clarify your point, Mr. Gidley, you're saying the
288 first sentence says in an R district, meaning any of the R, any of the residential
289 districts here in the Code.

290

291 Mr. Gidley - Yes sir.

292

293 Mr. Baka - The second sentence would apply to the greater
294 balance of all those other districts that are not an R district.

295

296 Mr. Gidley - Yes sir.

297

298 Mr. Baka - Anything other than that. So the way the Code's
299 bifurcated is that it allows anything that's not an R district to be computed as the
300 actual lot area, 30 percent of that actual lot.

301

302 Mr. Gidley - Actual rear yard, yes.

303

304 Mr. Baka - Interestingly enough, you're saying that it reads that
305 anything in an R district would not be actual, but it says right here required
306 minimum rear yard—

307

308 Mr. Gidley - Yes sir.

309

310 Mr. Baka - —40, 80, 3200, you get to 960.

311
312 Mr. Gidley - Yes sir, correct.
313
314 Mr. Baka - All right. Thanks for your clarification.
315
316 Mr. Blankinship - If I can expand on that just a bit, Mr. Chairman. Prior
317 to 1991, it began with the second sentence and without some of that preliminary
318 language. Prior to 1991, in any district, it was the rear yard area. And that was
319 interpreted as meaning the actual rear yard area. And then in 1991, the Board of
320 Supervisors amended the Code specifically to do this the way that it's been
321 constructed since then. There were several complaints about people in
322 residential areas having accessory structures that were felt to be out of character
323 with the district and out of proportion with the dwellings and with the lots sizes in
324 the district. And so in 1991, the Board of Supervisors amended the Code, put
325 that first sentence in there for the required minimum rear yard for the R district,
326 and then spelled out that it was actual rear yard area for the A-1 district and any
327 other district in which there's a dwelling.
328
329 Mr. Baka - And just to clarify your other comment you made,
330 Mr. Gidley, you're saying that the Permit Center in your work experience has
331 clearly and consistently said for R districts since the last several years, '91, that
332 the interpretation is 30 percent of what is the district requirement.
333
334 Mr. Gidley - Yes sir. In fact, before there was a Permit Center,
335 each department had their own front counter. And I supervised the Planning
336 Department's front counter for zoning approval. And that's how we applied this at
337 that time. And that would have been in the late 1990s.
338
339 Mr. Baka - Thank you.
340
341 Mr. Gidley - Yes sir.
342
343 Mr. Berman - I want to make sure I'm clear on the responsibility of
344 the Board on this decision today. And possibly Mr. Rapisarda can weigh in on
345 this. Is it just to affirm or reject the Planning Department or does it also include
346 any review of the occupancy or use of the structure?
347
348 Mr. Rapisarda - Mr. Berman, it would be simply to review the
349 correctness of the determination that's made. I don't want to get ahead of myself,
350 but if I can briefly—and I think this would address some of what Mr. Baka was
351 saying. This Board's role, of course, is just simply to determine with that
352 presumption I mentioned, is the director's decision correct. It's not for should the
353 ordinance read "actual," should it be other proportions. I know Mr. Shade in part
354 of his statement, for example, talked about the shape and the relationship to the
355 size of the dwelling. These might be good points, but the point is it's up to the
356 Board of Supervisors to write what the ordinance requirements are. As this Board

357 knows, that's not your function to do.

358

359 Again, I don't want to intrude on Mr. Shade's time at all, but if you'll look at his
360 appeal document, the first thing he says is the ordinance in and of itself is
361 erroneous. I hear his point that he's not satisfied with the ordinance, and certainly
362 that's his prerogative. But that doesn't have anything to do with the
363 determination. In other words, the ordinance—I hate to use the phrase "is what it
364 is," but it truly is what the legislature of this County has made it. And this Board
365 will simply then determine with those requirements in place did the Director of
366 Planning interpret it correctly. And as I said, I don't really think this is even a
367 matter of interpretation; it's very plain what was done.

368

369 Mr. Berman - And if the decision today is found against Mr. Shade,
370 will it be explained to him and others what his options are?

371

372 Mr. Rapisarda - Yes sir, absolutely.

373

374 Mr. Berman - Okay. Thanks.

375

376 Mr. Rapisarda - Does that answer your question Mr. Berman?

377

378 Mr. Berman - Yes.

379

380 Mr. Rapisarda - Thank you.

381

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

383

384 Mr. Gidley - Thank you.

385

386 Mr. Bell - Anybody else wish to speak to this issue right now?

387

388 Mr. Shade - Good morning. My name's Charles Shade. I'd first like
389 to open to apologize to the people of Henrico County for not providing complete
390 information on my building permit. They provided me a home for the last fifty
391 years, and my wife and family a home for the last thirty years. And I sincerely
392 apologize.

393

394 To Mr. Rapisarda's point, does this ordinance seek to limit the size of the
395 structure in relation to the primary dwelling. I submit that this is not the case.
396 There are many homes in R-3 zoning around the Sweetbriar and Hollins Road
397 areas that were originally constructed to be 28 feet wide and 22 feet deep. This is
398 a footprint of 616 square feet. Though there are covered porches that increase
399 this size, it is not heated, livable i.e. dwelling space. As written, the ordinance will
400 allow for a 960-square-foot accessory structure to be built in the rear yard. Taken
401 to one extreme, it can be two stories in height, or in the aggregate, 1,920 square

402 feet, far exceeding the scope of the primary residence. To Mr. Blankinship's
403 point, that would be totally out of character with the existing dwelling.

404
405 Does the ordinance seek to control the shape of the accessory structure?
406 Somewhat outside of the reach of this ordinance, but the shape could be quite
407 interesting given that you're allowed 5-foot side yard setbacks and I believe a 5-
408 or 10-foot rear yard setback. You could put this 60-foot-wide, 16-foot-deep two-
409 story structure in a backyard. Again, out of character with the existing dwellings.

410
411 To Ms. Harris's point about stormwater runoff on a given lot. Even though it
412 doesn't speak to that, even though Henrico County has no stormwater ordinance,
413 as written, the owner is allowed to blacktop, concrete, hard surface, pave front to
414 rear, left to right, and there's no worry given to coverage that way. Place a roof
415 over this and then you have a problem. There is only one logical conclusion to
416 this, that the roof is pitched. And since a hypotenuse is longer than the sides that
417 form it, then there must be more water falling on a given area in a storm, and
418 therefore more runoff. Logically, this makes no sense.

419
420 In the scope of the ordinance, is there thought given to the coverage of the lot by
421 the dwelling? Another owner in Henrico County that I know is adding an
422 accessory structure to his nearly four-acre parcel in the Varina area that is also
423 R-3. He has 174,240 square feet of land, yet he can only place a 960-square foot
424 accessory building on it.

425
426 What is crucial here are the front, side, and rear yard setbacks, the buildable
427 area, if you will. For R-3 these are 40 foot, a total a 40-foot front, a total of a 30-
428 foot side, and 40-foot rear, as well as the typical zoning requirements for a
429 dwelling. If we use the most common shape for an acre—originally one furlong
430 by one chain, or 660 feet by 66 feet—we can conclude that a dwelling of 135,720
431 square feet can be constructed on this property and be within the buildable area.
432 But a 960.1-square-foot accessory structure is out of bounds.

433
434 Again, stormwater runoff from hard surfaces obviously is not the concern. My
435 inclination is that no one has tried to do this yet anywhere within a residential
436 district. On my own lot, I could construct an 8,278-square-foot footprint for a
437 dwelling. Thinking about calling General Steel and seeing what I can put up.

438
439 If stormwater management is an issue, then once again the homes of the
440 Sweetbriar and Highland Roads areas have another interesting thing. Since
441 these lots are, on average, 70 feet wide and the minimum required width is 80
442 feet, there is an additional lot for each seven lots that are there. I quickly counted
443 200 lots in these areas that meet this criteria. Let's say we throw out 25 percent
444 and concede that a few are 80 feet and over. We're still left with 150 lots divided
445 by 7 or approximately 21 additional lots that otherwise should be provided for
446 within R-3 zoning, which has a minimum lot width of 80 feet. This would account
447 for 20,160 square feet more accessory structure than would otherwise be

448 allowed for a given area. Once again, stormwater management or coverage is
449 not the concern of this ordinance.

450
451 Does the ordinance provide an advantage to one owner over another? What I'm
452 showing here, the lighter lines that have the survey coordinates on them are my
453 lot lines. You can see the 85 feet, 115 feet, 100 feet, 102 feet, 100 feet, 165, and
454 then against the road, 110 feet. The heavy line that's represented in there at 70
455 by 145 is one of these typical lots in the Sweetbriar and Highland Roads areas. It
456 fits in my backyard.

457
458 These particular R-3 lots around Sweetbriar and Highland are typically 70 feet
459 wide. R-3 requires a minimum 80-foot-wide lot. So these owners are provided an
460 unfair advantage in the use of their real property. In a sense, they are allowed to
461 cover a greater percentage of their lot than another owner who happens to
462 purchase a lot wider than the required 80-foot minimum.

463
464 By the simple choice of an address, homeowners in Henrico are possibly put at a
465 disadvantage when it comes to the implementation of the Zoning Ordinance of
466 the County. Since a percentage of the lot being covered is not a concern, I can
467 relate on Hollins Road that has put the usual two-story bump-out and detached
468 garage in the rear that we so typically see in the Westham area. From the County
469 records, it can be gleaned that the lot is approximately 12,640 square feet, and that
470 though within the 960 square feet, the detached garage, the home, addition, and
471 garage cover 19.8 percent of this owner's lot. In my own property, the coverage
472 of structures equals to 13.8 percent of the property. By the simple choice of an
473 address, one Henrico citizen is given an advantage over another.

474
475 I have worked on a project in my neighborhood that is a 16,063-square-foot R-1
476 zoned property within the Westham community. R-1 allows for a 50-foot rear yard
477 setback and a minimum 150-foot lot width. In the case of this property, the
478 aggregate is 2,250 square feet that they are allowed to cover in their backyard.
479 Though nearly half the size of my lot, the owner of that address is allowed nearly
480 235 percent more area of their rear yard to be covered. The advantage that this
481 owner realizes, as do all of those whose property is less than the required
482 minimum width is the use of the required minimum width. Those whose property
483 is greater than the required minimum width are penalized and put at a
484 disadvantage.

485
486 In conclusion, Zoning Ordinance 24-95(i)(2)(a) neither controls the scope of the
487 detached building in relation to the existing dwelling, nor does it support
488 stormwater management within the community. The ordinance provides for an
489 unfair advantage to some owners while penalizing their neighbors. The City of
490 Richmond—and it grieves me to have to say this—seemed to understand the
491 purpose behind such a zoning ordinance. Though there are rules that govern the
492 size of the accessory structure and its height, the coverage of the lot is limited to
493 a percentage of the lot that increases as the lot decreases in size. By doing so,

494 they can provide for a fair and equitable relationship from address, okay, from
495 one neighbor to another.

496
497 I do understand that the zoning ordinance has been proffered through the years
498 and existing neighborhoods had to be pigeonholed into particular zoning districts;
499 that it is inevitable that each lot may not fall completely within the scope of the
500 zoning district that it is in. There are exceptions within the Code that allow for this
501 and quite rightfully should. This particular ordinance fails to even begin to
502 address the scope of the accessory structure in relation to the dwelling or lot
503 size. The ordinance fails to address the scope of the property in regards to
504 stormwater management, and frankly, should be seen as an environmental
505 concern. The polluting of our streams, rivers, and navigable water by excessive
506 runoff is a concern that needs to be addressed. Look at the property as whole
507 and not as bits and pieces.

508
509 I also have a couple of pictures of the rear yard. This is from our patio looking
510 back. Come around a little bit and you can start to see the structures, the
511 buildings. Again, from the patio looking back. Those are the three buildings that
512 are of concern. Thank you.

513
514 Mr. Bell - Any questions?

515
516 Ms. Harris - Yes. Mr. Shade, if we look at the rear yard accessory
517 structures plan here, I know one has been removed. Can you tell me about these
518 other two, when they were constructed?

519
520 Mr. Shade - The one that is in the far back was purchased when
521 we bought the home in August 2005 and placed on the property. And the building
522 that is in the middle, from the this photograph the lightest color building was
523 probably built in 2006. Soon after we moved in.

524
525 Ms. Harris - So they were there when you—

526
527 Mr. Shade - No ma'am. We placed both of those.

528
529 Ms. Harris - They were there during the new construction? In other
530 words, this new construction was in 2014, right? The garage we're talking about?

531
532 Mr. Shade - Yes, those were there.

533
534 Ms. Harris - So they were there during that time. Okay. When did
535 you complete the new construction for this garage/office?

536
537 Mr. Shade - Well I guess technically we haven't since we don't
538 have a CO. But it would have been near the end of December 2014.

539

540 Ms. Harris - I drove by there, and I don't see anything in the
541 neighborhood that looks nearly like that.

542
543 Mr. Shade - Thank you.

544
545 Ms. Harris - I was wondering are there any other structures in your
546 neighborhood that are similar to yours.

547
548 Mr. Shade - Yes, there are. On Lakewood Road there is a two-
549 store garage in the rear yard probably 24-foot square. But it is a two-story. I'm
550 not sure if it has siding or masonry on it. But yes, there is. I know of that
551 particular project that's in a rear yard of equal stature.

552
553 Ms. Harris - Have you noticed if they have accessory structures in
554 that particular yard?

555
556 Mr. Shade - No ma'am.

557
558 Ms. Harris - They do not.

559
560 Mr. Shade - I have not noticed because I have not trespassed on
561 their property.

562
563 Ms. Harris - Okay. Do you see a remedy to bringing this issue up
564 to code?

565
566 Mr. Shade - Yes, I do see a remedy to bringing this issue up to
567 code—rewriting this section of the Zoning Ordinance.

568
569 Ms. Harris - Other than rewriting the section of the ordinance.

570
571 Mr. Shade - Coming in compliance with the 960 square feet I
572 guess is the only way within the current structure of the Zoning Ordinance.

573
574 Ms. Harris - So that means you would have to remove one of
575 these accessory structures.

576
577 Mr. Shade - To be in accordance with that Zoning Ordinance, yes.

578
579 Ms. Harris - Okay. May I see this illustration, please? Rather than
580 that one, yes. I want the one that says "Rear Yard." It was in our packet of
581 information.

582
583 Mr. Shade - To Mr. Baka's question on the actual lot width, if an
584 actual lot width was allowed to be used instead of an 80-foot random given, 150-
585 foot random given. If an actual lot width was allowed to be used, then these

586 structures would fall in compliance with the ordinance. Again, going back to
587 someone who has a lot that's 70 feet wide in R-3 zoning is allowed an advantage
588 over someone who has a lot that's 100 feet wide.

589
590 Ms. Harris - My question in requesting the rear yard accessory
591 structure picture here on the screen. What houses the one in the back of the
592 garage? What houses that?

593
594 Mr. Shade - I'm not quite sure I understand.

595
596 Ms. Harris - What's in that accessory structure?

597
598 Mr. Shade - The 195-square-foot?

599
600 Ms. Harris - Yes.

601
602 Mr. Shade - Tools and—

603
604 Ms. Harris - Okay, that's fine.

605
606 Mr. Shade - Coolers.

607
608 Ms. Harris - The one that's in the middle?

609
610 Mr. Shade - Garden equipment and home files.

611
612 Ms. Harris - Okay. Those are my questions, thank you.

613
614 Mr. Bell - Any other questions?

615
616 Mr. Berman - Mr. Shade, please tell me if I'm accurately depicting
617 the situation here. I'm trying to boil down pages of your comments. Is it your
618 contention that the calculation that we are using is being applied to all yards
619 regardless of the size of the yard as opposed to a percentage?

620
621 Mr. Shade - Yes.

622
623 Mr. Berman - That's your issue.

624
625 Mr. Shade - Yes.

626
627 Mr. Berman - Okay. Thanks.

628
629 Mr. Baka - Your discussion points in your letter and your
630 presentation strive to point out your position of certain inequities or deficiencies
631 or even disadvantages in the Code. As you look at pointing out certain

632 disadvantages in what the legislative body adopted, I'm trying to understand the
633 same question I guess I asked Paul earlier. If the ordinance says that the
634 required yard for the district is measured as the actual required yard of 40 by 80
635 or 3,200, notwithstanding the discussion points about square footage of the
636 primary dwelling and stormwater management, how can this board interpret that
637 first sentence in 24-95(i)(2)(a) any differently than what's been presented by the
638 staff?

639
640 Mr. Shade - I understand exactly what you're saying. As was
641 pointed out, it is a simple math problem. I just don't believe that the ordinance
642 provides for an equitable solution across the County. I believe the ordinance is
643 erroneous. I believe the ordinance needs to be changed. I believe the ordinance
644 needs to reflect what is actually there, what the lot is as opposed to here's just
645 some numbers that as far as I know came out—when I go to Municode.com,
646 came out of something that was written I don't know where. I think it was just
647 boilerplate here we go. I don't think thought was put into it. I don't believe that
648 questions were asked. As I said, I don't think anyone has ever, to my
649 knowledge—and granted, I didn't go down and search through Board of Zoning
650 Appeals cases for the last couple of decades, but I don't know that anyone's ever
651 asked the question. Or if the question's ever come up.

652
653 Mr. Baka - I understand. And as a formed small business owner
654 myself—I had a land planner zoning business out of my home for seven years,
655 working in my living room. I almost wish I had an accessory structure that is—it's
656 a very beautiful property you have, very well done. My wife almost wishes I was
657 working out in the garage or out in the accessory structure, not in our living room.
658 However, I guess I'm compelled to look at some restraint in just reading the
659 actual language in seeing that when we read the Code on its face that, in my
660 opinion, it doesn't appear to give—I'm saying this board, but doesn't appear to
661 give me a whole lot of wiggle room from its current interpretation.

662
663 I did have one comment about the letter that you wrote on August 18th. This may
664 be a separate matter. In your first paragraph, number one, size of the structure in
665 relation to the primary dwelling. You could have a 616-square-foot home and you
666 could have an accessory dwelling that's about three times as large. Actually, the
667 only thing I was going to point out on that is if the accessory structure exceeds
668 the actual square footage of the primary dwelling it's no longer accessory. You
669 would not be allowed to have a 1,920-square-foot accessory dwelling because it
670 no longer meets the definition of accessory because it's not accessory because
671 it's not smaller in size.

672
673 Mr. Shade - Now this is the first that I've heard of accessory being
674 smaller in size.

675
676 Mr. Baka - The word *accessory*, standard zoning denotes that it
677 has to be some type of subordinate—it implies some type of subordination or

678 subordinate use. So in most of the zoning codes I've seen across Virginia, you
679 have to infer some type of subordination of size. It no longer implies that it's
680 accessory when the square footage is—

681
682 Mr. Shade - But subordinate use could be that it was a garage
683 below and an attic above. Then it would be subordinate to the existing structure
684 even though it was larger.

685
686 Mr. Baka - Not use, but actual square footage. I just wanted to
687 point that out. I don't want to go through—I'm not sure this morning is the
688 appropriate time to go through the five or six points you have here. Some were
689 interesting and some were, as I pointed out, perceived disadvantages or
690 deficiencies in the Code. Having said that, what also strikes my ear is that we've
691 heard the staff say that they've consistently interpreted that for a number of
692 years, whether it's been from 1991 or just in recent memory from long-term
693 service of staff and others that no one's been—from what we've heard, we don't
694 know of anyone that has been unfairly treated by that interpretation of the
695 ordinance.

696
697 At its face, I appreciate your comments this morning. I don't have any further
698 questions at this time other than I think the Board just has to look at the first
699 sentence in Section A and read on its face what the actual language says. The
700 other issues about legislative will be for another day.

701
702 Mr. Bell - In the comparison that was presented earlier about
703 the preponderance of evidence, we've got good opinions on both sides, good
704 arguments on both sides. However, we also have 15-2.2309. What we're
705 operating under now whether we like it or not. It's within the four corners of that
706 piece of paper. To change that piece of paper, that's not what we're here to do.
707 There is where conversation among ourselves will make the decision. I just
708 wanted you to understand that we might agree with you 100 percent that it
709 should be changed, but we're not here for that purpose. We're here to listen to
710 you, and to listen to what the County presents. Regardless, this is what it says.
711 Do you have any questions?

712
713 Mr. Shade - Or to allow an exemption to it.

714
715 Mr. Baka - No other questions.

716
717 Ms. Harris - No more questions.

718
719 Mr. Berman - One quick question. Is the two-story structure behind
720 the mass of the house, the primary structure?

721
722 Mr. Shade - Yes. It is in the rear yard. It is also constructed within
723 the primary residence's building setbacks. It is not in a side yard at all.

724
725 Mr. Berman - Okay. It's hard to tell from this. Thanks.
726
727 Mr. Shade - The shape of the lot being—if I can find it here. The
728 shape of a lot being at an angle away from the home. And you can see that it's
729 seventeen feet off of the right side property line.
730
731 Mr. Romers - I have a question.
732
733 Mr. Bell - Yes, go ahead.
734
735 Mr. Romers - The structure that's causing the overage in square
736 footage is the new two-story structure. Is that correct?
737
738 Mr. Shade - I guess you could look at it that way.
739
740 Mr. Romers - Is that the most recent structure?
741
742 Mr. Shade - That's the most recent, yes.
743
744 Mr. Romers - That's the building permit from 2014?
745
746 Mr. Shade - Yes.
747
748 Mr. Romers - And so you were issued a building permit at that time.
749
750 Mr. Shade - Yes.
751
752 Mr. Romers - And this may not be a question exactly for yourself,
753 but does the building permit process evaluate the square footage on a rear yard
754 setback and determine if it exceeds it at that time?
755
756 Mr. Blankinship - Yes sir, it does. I'll answer that. The Permit Center
757 staff member did go through the calculation based on the information that
758 Mr. Shade provided. He began his remarks by noting that he left off one of the
759 accessory structures; he did not show it on the plan. So the person reviewing the
760 plan did not add that one in because he wasn't aware that it existed. And also it
761 was noted on the building permit drawing at that time that one of the buildings
762 would be removed. So if you take out those two, then it would have met the 30
763 percent rule. The conflict was caused by two things. There was a building that
764 was not shown on the plans that was on the ground. And there was a building
765 shown on the plans to be removed that initially was not removed. Now that one I
766 understand has been removed now.
767
768 Mr. Romers - The 202-square-foot one is noted as being removed.
769

770 Mr. Blankinship - Yes, yes.
771
772 Mr. Romers - It appears to me that we've got a tool shed, a yard
773 shed, and ultimately the new structure that's there. Understanding the value of all
774 those sheds like I would have on my own property, what I'm noting, though, is
775 that the new structure without the porch, I'm not sure if the porch adds more
776 square footage to the calculation, but I think it does because it's a roof.
777
778 Mr. Shade - Because it's a roof. That's just—yes.
779
780 Mr. Romers - I understand that.
781
782 Mr. Shade - Again, I could pour another thousand yards of
783 concrete.
784
785 Mr. Romers - I don't remember seeing a roof in the picture that you
786 showed. I don't know if the roof was there at this time.
787
788 Mr. Blankinship - It is.
789
790 Mr. Romers - It is there. Okay.
791
792 Mr. Shade - Yes.
793
794 Mr. Romers - Okay. So without the roof and with the landscaping
795 shed behind it, over the 960 square feet, you're already 17 feet over at that point,
796 just those two. Even if you remove the far back shed—
797
798 Mr. Shade - I gotta cut—
799
800 Mr. Romers - You have to take off something else to make this
801 work. Again, I was going back to the building permit process. The original
802 document that you showed them that was not correct, the calculations from that,
803 was that within 960 square feet?
804
805 Mr. Shade - Yes, yes.
806
807 Mr. Romers - Is that why the building permit was issued at that
808 time?
809
810 Mr. Blankinship - Yes sir. And that calculation is actually shown on one
811 of our exhibits.
812
813 Mr. Romers - I did see it. And I guess the next question I'm asking
814 at that point is what triggered—
815

816 Mr. Shade - A complaint! It's interesting, but I finally understood
817 don't ask, don't tell. Unless there was a complaint filed, this never would have
818 been an issue.

819
820 Mr. Romers - Why was the complaint filed?

821
822 Mr. Shade - From what we understand, our neighbor objected to
823 the height of the building because they thought we were going to be looking
824 down upon them and spying on them. Quite frankly, they are not that interesting.

825
826 Mr. Romers - So their concern and their complaint at that time was
827 not that you had too many structures, too large of structures on the property, just
828 the—

829
830 Mr. Shade - The height.

831
832 Mr. Romers - —construction of the new facility being built. But what
833 that triggered was an inspection of the property and the determination that
834 ultimately there were too many structures on the property. This thing is built;
835 we've seen pictures of it.

836
837 Mr. Shade - Done, yes.

838
839 Mr. Romers - It's just in suspense at the moment. Built pending the
840 outcome of these buildings.

841
842 Mr. Shade - Correct. And built according to permit at well. The
843 structure as permitted was not altered.

844
845 Mr. Blankinship - Mr. Romers, we should probably note that the
846 complainant is not present and can't speak for themselves. We're inferring why
847 the complainant complained.

848
849 Mr. Romers - I hate to be slow to the finish line, but I was just
850 making sure I got the grasp of it. And I'm not sure at all what we're going to do
851 with this, but my next question will be if we don't do anything with this, and then it
852 goes back, what is your recourse at that point?

853
854 Mr. Shade - You're asking me what my recourse is?

855
856 Mr. Romers - I believe you're supposed to resubmit a plan to get
857 inside compliance.

858
859 Mr. Shade - Actually, I fully intend to petition the County of Henrico
860 to change the Zoning Ordinance.

861

862 Mr. Romers - Thank you, sir. That's all my questions.
863
864 Mr. Baka - If that recourse is not successful, then what is your
865 recourse at that time? I think that's what Mr. Romers question is getting at.
866
867 Mr. Shade - I think that you would have to backhoe over and take
868 it down. And I believe that the local television stations, I would do my best to
869 have them come film it.
870
871 Mr. Baka - You mean the small shed in the backyard not the—
872
873 Mr. Shade - Yes. Not the big one, no.
874
875 Mr. Romers - You would work from the back to the front to achieve
876 the square footage.
877
878 Mr. Shade - I don't believe in the ordinance at all.
879
880 Mr. Romers - I understand that, sir. I completely understand that.
881
882 Mr. Shade - And I think the ordinance is hugely deficient and
883 needs to be revised. And I truly think that I'm the first person to ask. Maybe not,
884 but I really do. And I think it is something that needs to be revisited.
885
886 Mr. Blankinship - He's raised that point about three times, so I feel
887 compelled to respond. As I said, in 1991, the Code was amended for the specific
888 reason of regulating cases like this. It was not an accident. It was not something
889 that occurred at random or numbers chosen out of the air. It was deliberately
890 done by the Board of Supervisors at that time to address what they perceived as
891 a problem. We have this conversation, I don't know, once every two weeks with a
892 building permit applicant who wants to build something in his rear yard and is
893 surprised to find that what he wants to build is larger than what the Code allows.
894 Mr. Shade is not within a thousandth of being the first person to raise this issue
895 since 1999 when I came here. We have this conversation all the time.
896
897 Mr. Romers - I think I'm up to speed on it. Thank you for your
898 answers.
899
900 Mr. Bell - Any other questions?
901
902 Mr. Berman - Yes. I'm sorry if you covered this one. On the
903 calculation of the structure in question, why are we including the porch if it's not a
904 livable space?
905
906 Mr. Blankinship - The words in the Code are "lot coverage," and the
907 way that is spelled out in terms of setbacks, that term is not specifically defined in

908 the Code. The way that is defined in terms setbacks and other regulations similar
909 to this one always refer to from the ground upward. And the roof is allowed to
910 overhang, in some cases, in a setback situation. But when we're determining the
911 area of the structure or the distance from a property line that a structure can
912 extend, it's always the roof that we're measuring from.

913

914 Mr. Berman - The reason I'm asking is because without that porch
915 coverage, the rear shed, if the 195-square-foot shed were removed, he would be
916 in compliance.

917

918 Mr. Blankinship - Yes. You mention the seventeen square feet. There
919 are other ways that we could probably come up with seventeen. We could go out
920 there and actually pull a tape measure on each of these buildings. No one at the
921 County is intending to be unfair to Mr. Shade in any way or to put any
922 unreasonable imposition on him. We'd just like to end up with what he showed on
923 the building permit that was approved.

924

925 Mr. Berman - And also, back to my question on the mass of the
926 house. I still don't see how it is completely behind the mass of the house. And I'm
927 not even sure if that's relevant to this request. If you put that picture back up
928 really quick; just indulge me.

929

930 Mr. Blankinship - He's not been cited for a violation of that. So even if
931 there were a violation, it's not really on the table this morning. But I would be
932 happy to address it with you. What we do to determine that is take the rear yard,
933 which is the one all the way to the right.

934

935 Mr. Baka - What about the 24-foot setback?

936

937 Mr. Blankinship - If we could go to where we just were, that was
938 actually the best one. There we are. At the very top of this page, you have a line
939 that's labeled 102.24 feet. Just draw a line parallel to that. Just picture yourself
940 pulling that line down the page until it touches the nearest point of the dwelling,
941 the principal building. And then everything behind that line is the rear yard of the
942 property.

943

944 Mr. Baka - So it's about twenty-four feet behind the house, if I
945 remember right.

946

947 Mr. Blankinship - Yes. On this page that you're looking at on the
948 screen, the road frontage, the front lot line is at the bottom of the page. The rear
949 lot line is at the top of the page. The dwelling is the one-story brick right there in
950 the middle. The rear line of the building is a little difficult to read here; it just got
951 faded by the copy machine.

952

953 Mr. Shade - Right there where the hand is sitting with the 17.444
954 feet, that's the rear corner.
955
956 Mr. Blankinship - Where it says "stone patio," that patio is entirely in the
957 rear yard. And the new building is behind the stone patio. So it is entirely in the
958 rear yard. The stone patio is only a patio; there's no roof over that.
959
960 Mr. Berman - Okay, thanks.
961
962 Mr. Romers - Could I see a picture of the structure again, the new
963 structure? Maybe my job isn't to help solve the problem by demolition of the
964 property, but obviously, depending on how this goes, the rear shed would
965 probably leave if we're trying to get down to 960 feet. But if the gutter were to
966 leave off the front of the—I assume that's coverage, too. That would save you
967 some square footage.
968
969 Mr. Blankinship - We would actually measure from the posts. The roof
970 is allowed to overhang beyond the post, so we wouldn't literally measure to the
971 very edge of the roof.
972
973 Mr. Romers - Thank you, sir.
974
975 Mr. Bell - Any other questions?
976
977 Mr. Berman - It's not currently occupied, correct?
978
979 Mr. Shade - Correct.
980
981 Mr. Bell - Thank you.
982
983 Mr. Shade - Thank you all.
984
985 Mr. Bell - Any rebuttal? Or anyone else who wishes to speak?
986
987 Mr. Blankinship - Mr. Rapisarda, do you want to go next or do you want
988 to see if anyone else wants to speak?
989
990 Mr. Rapisarda - I'll wait and see.
991
992 Mr. Blankinship - All right.
993
994 Mr. Bell - Anyone else?
995
996 Mr. Blankinship - No, all right. It's moot.
997

998 Mr. Rapisarda - Mr. Chairman, very briefly. I know we've been at it
999 nearly an hour. Just two quick points. I think Mr. Shade, in fairness—and I
1000 appreciate his candor. He really should be arguing to the Board of Supervisors. I
1001 think we all agree what the ordinance is. And I just want to point out one
1002 provision in your handout that I neglected to say earlier. This is that State Code
1003 15.2-2309 that the Chairman referenced. Paragraph 5 of that, which is on page
1004 2, provides just as I was staying, but these are in the words of the General
1005 Assembly that no provision of this section shall be construed as granting any
1006 board—and that means the Board of Zoning Appeals—the power to base board
1007 decisions on the merits of the purpose and intent of local ordinances duly
1008 adopted by the local governing body. Again, what we've heard here, Mr.
1009 Chairman and members of the Board, is a compassionate argument about the
1010 equities and fairness of what is a very clear ordinance. And so I respectfully
1011 suggest to the Board that it has no discretion but to uphold the determination by
1012 the Director of Planning and would respectfully ask you to do so and uphold the
1013 decision. Thank you.

1014

1015 Mr. Bell - Thank you. Any questions?

1016

1017 Mr. Shade - [Off microphone.] May approach again?

1018

1019 Ms. Harris - Not supposed to.

1020

1021 Mr. Bell - I have no problem with it, as long as you keep it short.

1022

1023 Mr. Shade - Yes sir. To that point about the discretion of the
1024 Director of Planning, there is no ombudsman for a citizen in Henrico County from
1025 Henrico County. There is no one within Henrico County on my side. Every one—
1026 as soon as this came up, it's all about here's what's written, here's the power that
1027 I can bring to the table. But no one from Henrico County to speak for me. And I
1028 just wanted to have that said. Thank you.

1029

1030 Ms. Harris - Before Mr. Shade sits down, the question was asked
1031 was this new accessory structure occupied. I thought you said no.

1032

1033 Mr. Shade - Yes ma'am.

1034

1035 Ms. Harris - Our report says that it has been occupied. So I was
1036 wondering which is it. On page 2 of 2 of the staff report. Do you have a packet of
1037 information? Under "background," page 2 of 2. Second paragraph from the
1038 bottom. The sentence says "Over the following year, the new accessory structure
1039 has been occupied although a certificate of occupancy had not been issued."

1040

1041 Mr. Shade - We have placed items in there, but we do not occupy
1042 it.

1043

1044 Ms. Harris - So there is no office space that you use?
1045
1046 Mr. Shade - It's a home office, yes. But it's not used regularly.
1047
1048 Ms. Harris - It is used, but not regularly.
1049
1050 Ms. Harris - Correct.
1051
1052 Mr. Shade - It's a home office space.
1053
1054 Ms. Harris - Okay, thank you.
1055
1056 Mr. Bell - Thank you.
1057
1058 Mr. Baka - Mr. Chairman, at this time, if it's appropriate, may I
1059 make a motion?
1060
1061 Mr. Bell - Yes.
1062
1063 Mr. Berman - One quick point; I'm sorry, Mr. Baka. Correct me if I'm
1064 wrong, but Virginia did appoint an ombudsman like two years ago. But it may just
1065 be associated with homeowners associations. That was fairly recent.
1066
1067 Mr. Blankinship - That was appointed by the state?
1068
1069 Mr. Berman - Virginia.
1070
1071 Mr. Blankinship - I'm not familiar. I'm not sure that's really—I don't
1072 know.
1073
1074 Mr. Berman - Okay.
1075
1076 Mr. Baka - Mr. Chairman, at this time, with due respect to the
1077 applicant and presentation presented, understanding it's a beautiful property and
1078 a beautiful addition has been done, reading the face of the ordinance, just the
1079 text of the ordinance, I think we need to get back to the fundamental question of
1080 the notice of violation that was issued on July 7, 2015, and whether the Planning
1081 director could have reasonably reached this decision, whether the Planning
1082 director was within his bounds of interpreting the ordinance correctly. It's my
1083 opinion that after hearing the information from the applicant and from the County
1084 Attorney that the Planning director did reach a reasonable conclusion. And at that
1085 point, I would make a motion that we deny the appeal for APL2015-00002,
1086 Charles Shade, on the grounds that the Planning director had the discretion to
1087 reach a reasonable decision based on the text of the current code.
1088
1089 Mr. Bell - Do I hear a second?

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Mr. Romers - I second it.

Mr. Bell - Is there any more discussion? Hearing no discussion, all those in favor say aye. All those opposed say nay. The ayes have it; the motion has been denied.

After an advertised public hearing and on a motion by Mr. Baka, seconded by Mr. Romers, the Board upheld the decision of the Director of Planning and **denied** application **APL2015-00002, Charles Shade**.

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

Mr. Bell - Let's go ahead and approve the minutes of the September 24th meeting.

Mr. Berman - Excuse me. At this point are we able—should we discuss what the options are or will that be handled off line?

Mr. Blankinship - We'll take care of that.

Mr. Berman - Okay.

Mr. Bell - Approval of the minutes, September 24th. Do I hear a motion on the minutes?

Mr. Baka - Any changes to the minutes?

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

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

Mr. Baka - Second.

Mr. Bell - Is there any discussion? Hearing none, all those in favor of the motion say aye. All those opposed say nay.

On a motion by Ms. Harris, seconded by Mr. Baka, the Board **approved as submitted** the **Minutes of the September 24, 2015**, Henrico County Board of Zoning Appeals meeting.

1136 Affirmative: Baka, Bell, Berman, Harris, Romers 5
 1137 Negative: 0
 1138 Absent: 0

1139
 1140

1141 Mr. Blankinship - Mr. Bell, I'll just note that you have signed this
 1142 morning a letter from the Board of Zoning Appeals to the Board of Supervisors as
 1143 directed and voted on last month. If anybody wants to review that, it's here. But I
 1144 basically just took the language straight from the minutes and inserted it.

1145

1146 Mr. Bell - Any other new business or old business?

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1148 Ms. Harris - Mr. Blankinship, when was that letter sent to the
 1149 Board? It's sitting right behind me right now. We'll probably mail it—I'm not sure
 1150 exactly how we distribute that. We just send it upstairs and it goes out in their
 1151 next packet.

1152

1153 Mr. Bell - Any other news or old business? Do I hear a motion
 1154 that we adjourn?

1155

1156 Mr. Berman - I move that we adjourn.

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1158 Mr. Bell - Do I hear a second?

1159

1160 Ms. Harris - Second.

1161

1162 Mr. Bell - All those in favor say aye. All those opposed day nay.
 1163 The ayes have it; we are adjourned.

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1166 Affirmative: Baka, Bell, Berman, Harris, Romers 5
 1167 Negative: 0
 1168 Absent: 0

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Gentry Bell
 Chairman



Benjamin Blankinship, AICP
 Secretary