

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 SEPTEMBER 22, 2016 AT  
5 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-  
6 DISPATCH SEPTEMBER 6, 2016, AND SEPTEMBER 12, 2016.  
7  
8

Members Present:

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

Also Present:

Jean M. Moore, Assistant Director of Planning  
Paul M. Gidley, County Planner  
R. Miguel Madrigal, County Planner  
Sally Ferrell, Account Clerk

9  
10 Mr. Baka - Good morning. Welcome to the September 2016  
11 meeting of the Henrico County Board of Zoning Appeals. Would you please join  
12 me in the Pledge of Allegiance.  
13

14  
15 Thank you. Good morning. At this time, Ms. Moore, would you please read  
16 through our rules?  
17

18 Ms. Moore - Good morning, Mr. Chair, members of the Board, I'm  
19 sitting in for Ben Blankinship today. I understand this is the first meeting he's  
20 missed in 17 years. So bear with me.  
21

22 Basically, the rules of the meeting are as follows: Acting as secretary, I'll call  
23 each case individually. Then at that time, we ask everyone who intends to speak  
24 to that case to stand and be sworn in. Then a member of Planning Department  
25 will give a brief staff presentation. Then the applicant will be allowed a chance to  
26 speak. Then anyone else who wishes to speak will be given that opportunity.  
27 After everyone has had a chance to speak, the applicant and only the applicant  
28 will have the opportunity for rebuttal.  
29

30 After the Board hears all the evidence and asks all their questions, they will  
31 proceed to the public hearing on the next case on the agenda. After all the public  
32 hearings, they will go back through the agenda and discuss each case. They will  
33 render all their decisions at the end of the meeting. If you wish to know the  
34 outcome on a specific case, you're welcome to stay until the end of the meeting.  
35 Or you can check the Planning Department website, which is usually updated  
36 with an hour after the end of the meeting.

37  
38 This meeting is recorded, so we do ask you if you are speaking to come up to the  
39 podium, state your name clearly, and your address.

40  
41 With that, we do have a full quorum, and we can proceed to the first case. I do  
42 understand we have a request for a deferral.

43  
44 Mr. Baka - Okay. One request for deferral? Which case is that?

45  
46 Ms. Moore - That is the first case, which is CUP2016-00020,  
47 Curles Neck Properties, LLC. This was a request for a conditional use permit to  
48 extract materials from the earth at 4721 Curles Neck Road. The applicant is  
49 requesting a deferral to the next BZA meeting on October 27th.

50  
51 **CUP2016-00020** CURLES NECK PROPERTIES, LLC requests a  
52 conditional use permit pursuant to Sections 24-52(d) and 24-103 of the County  
53 Code to extract materials from the earth at 4721 Curles Neck Road (Parcels 833-  
54 666-1289 and 834-666-2189) zoned Agricultural District (A-1) (Varina).

55  
56 Mr. Baka - So October 27th. Is the applicant here to request the  
57 deferral? Would you like to come forward and state your name, please?

58  
59 Mr. Lewis - Good morning. My name is Monte Lewis. I'm with  
60 Lewis and Associates. We represent the applicant on this case.

61  
62 Mr. Baka - Yes sir. Would you please spell your last name?

63  
64 Mr. Lewis - Lewis. L-e-w-i-s.

65  
66 Mr. Baka - Thank you.

67  
68 Mr. Lewis - We'd like to request a deferral so the owner can have  
69 time to work with adjacent landowners. They had some concerns about the plan  
70 and the wording in the description.

71  
72 Mr. Baka - Okay, very good. While Mr. Lewis is present, does the  
73 Board have any questions regarding any potential conditions of this case for  
74 Mr. Lewis?

75  
76 Mr. Berman - Yes I do. A revised condition is requested, #16, to  
77 change the review process before demolishing the buildings to the historical  
78 resource 401 and 404 process. Can you explain what that is, please?

79  
80 Mr. Lewis - Yes. Any time you get a wetlands permit for disturbing  
81 the wetlands or waters of the US, then all of the state and federal agencies get  
82 involved. One of them is that you have to satisfy the historical resources, the

83 Virginia Department of Historical Resources. They are working with them about  
84 saving some of the buildings, possibly moving some of them off site and bringing  
85 them back after the mining. We've been manipulating our mining plan based on  
86 that. They're still in the process of working with that permit. They're on like a  
87 parallel track with us. They have to get their permit first before I can get my  
88 permit from Public Works.

89  
90 Mr. Berman - Thank you. I'm very pleased that's under  
91 consideration. I appreciate it.

92  
93 Mr. Lewis - The reason we wanted the wording changed is what  
94 Recreation and Parks came up with was a little bit different from what the state  
95 requires. So we just figured it would be easier to have just one approval from the  
96 state.

97  
98 Mr. Baka - Okay. All right, thank you. Any other questions  
99 regarding the deferral?

100  
101 Ms. Harris - Mr. Chairman, I have a question. The revised  
102 conditions for this case, does Mr. Lewis have a copy of that?

103  
104 Mr. Lewis - Yes I do.

105  
106 Ms. Harris - Okay. Thank you.

107  
108 Mr. Baka - Okay.

109  
110 Mr. Lewis - Ben sent those to me before he took off.

111  
112 Mr. Baka - Very good. At this point, I believe a motion would be  
113 in order for the request for deferral, if someone would like to entertain that.

114  
115 Mr. Bell - I so move.

116  
117 Mr. Baka - Is there a second?

118  
119 Mr. Mackey - Second.

120  
121 Mr. Baka - Motion's been moved and seconded. All those in  
122 favor of deferring case CUP2016-00020, Curles Neck Properties, LLC, to the  
123 October agenda, signify by saying aye. All those opposed say nay. The ayes  
124 carry.

125  
126 Mr. Lewis - Thank you, sir.

128 After an advertised public hearing and on a motion by Mr. Bell, seconded by  
129 Mr. Mackey, the Board **deferred** application CUP2016-00020, CURLES NECK  
130 PROPERTIES, LLC's request for a conditional use permit pursuant to Sections  
131 24-52(d) and 24-103 of the County Code to extract materials from the earth at  
132 4721 Curles Neck Road (Parcels 833-666-1289 and 834-666-2189) zoned  
133 Agricultural District (A-1) (Varina).

134

135

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

139

140

141 Ms. Moore - The next case, Mr. Chair, is CUP2016-00021, Alyson  
142 Schlobohm.

143

144 **CUP2016-00021** **ALYSON SCHLOBOHM** requests a conditional use  
145 permit pursuant to Section 24-95(i)(4) of the County Code to allow a pool in the  
146 side yard at 2 Old Sellers Way (STERLING FOREST) (Parcel 797-751-1841)  
147 zoned One-Family Residence District (R-2C) (Fairfield).

148

149 Ms. Moore - Will all those who wish to speak please raise your  
150 right hand. Do you swear the testimony you're about to give is the truth, the  
151 whole truth, and nothing but the truth so help you God?

152

153 Mr. Schlobohm - I do.

154

155 Ms. Moore - Thank you.

156

157 Mr. Baka - Please proceed, Mr. Madrigal.

158

159 Mr. Madrigal - Thank you, Madam Secretary, Mr. Chairman,  
160 members of the Board.

161

162 Before you is a request to allow a swimming pool in the side yard of a one-family  
163 dwelling. The subject property is located in the Sterling Forest subdivision, which  
164 was established in 2003. The lot is 4.14 acres in size and is improved with a two-  
165 story, 2,716-square-foot residence with an attached two-car garage constructed  
166 in 2004. Although the property is over four acres in size, only one-third of an acre  
167 is being used by the applicants due to the severely sloping nature of the lot.

168

169 The applicants have a very shallow rear yard defined by a wooden fence built at  
170 the edge of a significant slope. The property drops approximately 60 feet from  
171 the rear fence line towards the rear of the lot. The majority of the lot behind the  
172 fence line is heavily wooded and abuts a Conservation District and a VEPCO  
173 easement containing electrical towers and transmission lines.

174  
175 The applicants purchased the lot in November 2015 and obtained a building  
176 permit in May 2016 to install a 576-square-foot in ground pool in the rear yard  
177 near the edge of the slope. You can see that here. This is the rear fence line  
178 here, and then here is the fence—or the pool; excuse me.  
179  
180 Due to the challenges presented by the slope of the lot, they decided to relocate  
181 the pool closer towards the front of the property, which has a gentler grade and  
182 will be less complicated to level.  
183  
184 The proposed pool location will project approximately 16 feet into the side yard,  
185 requiring the approval of a use permit. The property is zoned R-2C, One-Family  
186 Residence District (Conditional) and is designed as Suburban Residential 1 on  
187 the Land Use Plan. A one-family dwelling is consistent with both the zoning and  
188 Comprehensive Plan designations, and the proposed pool is an allowed  
189 accessory use.  
190  
191 Although the proposed pool location will be in a side yard, staff does not  
192 anticipate any substantial detrimental impacts on the neighborhood or the  
193 abutting property to the north. The applicant's intend to install a six-foot-tall  
194 privacy fence along the western and northern boundaries of the pool to provide  
195 screening and lessen its visual impact from the street and the adjacent neighbor  
196 to the north. The northern neighbor will be the most impacted by the proposed  
197 pool location, as it will be placed in between their two homes, which sit  
198 approximately 50 feet to 65 feet apart—50 feet at the front; 65 feet at the back as  
199 they widen out.  
200  
201 The physical nature of the lot along with the existing environmental constraints  
202 limit the amount of useable space on the property and present specific  
203 challenges relative to the placement of the pool. Locating the pool closer to  
204 toward the edge of the slope requires a significant amount of grading and soil  
205 retention to ensure the structural integrity of the pool. Moving the pool towards  
206 the front of the lot lessens these issues.  
207  
208 In conclusion, staff has found the proposed use consistent with both the Zoning  
209 Ordinance and Comprehensive Plan. The physical features of the lot create  
210 specific challenges which require more grading as the pool gets near the edge of  
211 the slope. The proposed location in the side yard lessens these issues and  
212 associated costs. No substantial detrimental impacts are anticipated by staff on  
213 the neighborhood or the adjacent property. And a six-foot-tall privacy fence  
214 should help mitigate any visual impacts associated with the pool.  
215  
216 Staff recommends approval of the request subject to conditions of approval. This  
217 concludes my presentation.  
218

219 Mr. Baka - Very good. Any questions of the staff from members  
220 of the Board?

221

222 Ms. Harris - Yes, Mr. Chairman. Have we received any comments  
223 from neighbors?

224

225 Mr. Madrigal - No, I haven't received any calls. Personally, I'm not  
226 aware of any.

227

228 Ms. Harris - Okay.

229

230 Mr. Baka - Any other questions? And just to clarify again. If this  
231 pool were in the rear yard, it would not need a conditional use permit. The  
232 reasons given in the application when they applied for the pool in the side yard  
233 necessitates this conditional use permit request today.

234

235 Mr. Madrigal - Yes sir.

236

237 Mr. Baka - Thank you. All right, I think we'll hear from the  
238 applicant. Good morning.

239

240 Mr. Schlobohm - Good morning. My name is Christopher Schlobohm.  
241 Do you want me to spell that out?

242

243 Mr. Baka - Yes, please,

244

245 Mr. Schlobohm - S-c-h-l-o-b-o-h-m.

246

247 Mr. Baka - Please go ahead and take a few minutes and explain  
248 your request.

249

250 Mr. Schlobohm - Originally when we bought this house, the whole  
251 purpose was to get a pool, to get a bigger yard. We originally applied in early  
252 May and we got approved for the—it was like a slanted pool. But our contractor  
253 said there's a little bit of a problem with the slope and we'll have to build a  
254 retaining wall. If you have the ability to move it to the side of the house, you can  
255 probably avoid messing up the forest in the back with the dirt and all that stuff or  
256 building a retaining wall in general. So we thought we would apply for this permit  
257 to see if we can build to the side of the house.

258

259 I talked to my neighbor. And either way he would be able to see the pool.  
260 Regardless of whether it was at the side of the house or the rear of the house, he  
261 was okay with it. He just wanted to make sure he could be invited to some of the  
262 parties.

263

264 Mr. Baka - Sounds good. Excellent. Questions from the Board?

- 265  
266 Ms. Harris - What type of privacy fence are you going to be  
267 erecting?
- 268  
269 Mr. Schlobohm - We're currently looking at a six-foot vinyl white privacy  
270 fence. We've already been approved for it when we previously applied for the  
271 permit.
- 272  
273 Mr. Bell - If this conditional use permit is approved, have you  
274 read the conditions, understand them, and agree with them?
- 275  
276 Mr. Schlobohm - Yes.
- 277  
278 Mr. Berman - When you said "approved," did you mean by your  
279 homeowners association?
- 280  
281 Mr. Schlobohm - The homeowners association and the County. With  
282 the homeowners association, you can't go any higher than six feet. If I could  
283 higher, I would go higher.
- 284  
285 Ms. Harris - We saw in the report that there would be a concrete  
286 walking surface around the pool.
- 287  
288 Mr. Schlobohm - Yes.
- 289  
290 Ms. Harris - Do you have a picture of that? I'm trying to visualize  
291 what you're talking about.
- 292  
293 Mr. Schlobohm - I do not have a picture, unfortunately.
- 294  
295 Ms. Harris - So a person would be able to walk around the pool on  
296 this concrete?
- 297  
298 Mr. Schlobohm - Yes.
- 299  
300 Ms. Harris - Okay. Thank you.
- 301  
302 Mr. Baka - Which would likely be a standard provision for most in  
303 ground pools. All right. Other questions of the applicant? Thank you very much.
- 304  
305 Mr. Schlobohm - Thank you.
- 306  
307 Mr. Baka - Is there anyone else here wishing to speak about this  
308 case? As is the typical practice of the Board, we'll hear all the cases first, and we  
309 make our votes and motions at the end of the meeting on the public hearings.
- 310

311 Mr. Schlobohm - Okay. Great, thank you.  
312  
313 Mr. Baka - Would you call our next case, please, Ms. Moore?  
314  
315 [After the conclusion of the public hearings, the Board discussed the case  
316 and made its decision. This portion of the transcript is included here for  
317 convenience of reference.]  
318  
319 Mr. Baka - Do I hear a motion on this case?  
320  
321 Ms. Harris - I move that we approve this request subject to the  
322 conditions that were spelled out. I believe that the shallowness of the rear yard  
323 has a lot to do with the placement of the pool. I don't see what they could do with  
324 that yard since it actually drops 60 feet. I cannot imagine. So I think that their  
325 placement is a good decision. I think they've thought it through. So I do move  
326 that we approve this request.  
327  
328 Mr. Baka - Motion to approve the conditional use permit. Is there  
329 a second?  
330  
331 Mr. Berman - I second.  
332  
333 Mr. Baka - Motion's been made and seconded. All in favor say  
334 aye. All opposed say no. The ayes have it; the motion passes.  
335  
336 After an advertised public hearing and on a motion by Ms. Harris, seconded by  
337 Mr. Berman, the Board **approved** application CUP2016-00021, ALYSON  
338 SCHLOBOHM's request for a conditional use permit pursuant to Section 24-  
339 95(i)(4) of the County Code to allow a pool in the side yard at 2 Old Sellers Way  
340 (STERLING FOREST) (Parcel 797-751-1841) zoned One-Family Residential  
341 District (R-2C) (Fairfield). The Board approved the conditional use permit subject  
342 to the following conditions:  
343  
344 1. This conditional use permit applies only to the construction of an in-ground  
345 pool in the side yard. All other applicable regulations of the County Code shall  
346 remain in force.  
347  
348 2. Only the improvements shown on the plot plan filed with the application may  
349 be constructed pursuant to this approval. Any additional improvements shall  
350 comply with the applicable regulations of the County Code. Any substantial  
351 changes or additions to the design or location of the improvements shall  
352 require a new conditional use permit.  
353  
354 3. The applicant shall provide a minimum 10-foot setback from the edge of the  
355 swimming pool to the principal residence and a minimum 10-foot setback  
356 from the side property line to the interior pool wall.  
357

- 358 4. Before beginning any clearing, grading, or other land disturbing activity, the  
359 applicant shall submit an environmental compliance plan to the Department of  
360 Public Works.  
361  
362 5. All exterior lighting shall be shielded to direct light away from adjacent  
363 property and streets.  
364  
365 6. The applicant shall install a six-foot tall privacy fence along the western and  
366 northern boundaries of the swimming pool. The pool shall be enclosed by a  
367 fence as required by the Building Code.  
368  
369

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

373  
374 375 Ms. Moore - We will proceed to the next case, VAR2016-00014.  
376

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

379 380 Ms. Moore - The next case is VAR2016-00014, Wesley Yates.

381  
382 **VAR2016-00014 WESLEY YATES** requests a variance from Section  
383 24-94 of the County Code to build a screened porch on an existing deck at 9100  
384 Peace Mill Place (DUNNCROFT) (Parcel 760-762-0518) zoned One-Family  
385 Residence District (R-3) (Brookland). The rear yard setback is not met. The  
386 applicant proposes 25 feet rear yard setback, where the Code requires 35 feet  
387 rear yard setback. The applicant requests a variance of 10 feet rear yard  
388 setback.

389  
390 Ms. Moore - Will everyone who intends to speak to this case  
391 please raise your right hand and be sworn in. Do you swear the testimony you're  
392 about to give is the truth, the whole truth, and nothing but the truth so help you  
393 God?

394  
395 Mr. Yates - I do.

396  
397 Ms. Moore - Thank you. You may proceed.

398  
399 Mr. Bell - I have a question.

400  
401 Mr. Baka - Yes sir.

402  
403 Mr. Bell - The Yates, one of them is a friend of mine. Should I  
404 excuse myself?

- 405  
406 Mr. Baka - That is your choice, your decision to do. Based on  
407 previous cases we've had, friendship alone does not necessarily require that  
408 under the Virginia Conflict of Interest Act (COI). So there's no direct conflict of  
409 interest unless you have a personal financial interest. I'm not an attorney, but  
410 unless you have a personal financial interest of over \$10,000 invested in  
411 something, you do not need to recuse yourself.
- 412  
413 Mr. Bell - That's what I thought. There is no money or marriage  
414 relationship, so I'll continue on then.
- 415  
416 Mr. Baka - Okay. Thank you.
- 417  
418 Ms. Harris - I was thinking, too, that in the past we've never given  
419 the reason why we recused ourselves. We just know in our hearts, you know,  
420 whether or not we should vote on the case or not. We kind of trust the judgment,  
421 I think, in the past of the Board member as to whether they want to make  
422 comments or vote on the case.
- 423  
424 Mr. Baka - I would agree with that. It's entirely your decision.
- 425  
426 Mr. Bell - In looking at other reasons, how good of a friendship  
427 could enter into it as well then.
- 428  
429 Ms. Harris - Almost anything could enter into it. It's your choice.
- 430  
431 Mr. Baka - It's entirely your choice.
- 432  
433 Mr. Bell - Then I'd rather excuse myself.
- 434  
435 Mr. Baka - Very good.
- 436  
437 Ms. Moore - Mr. Chair, I do want to make note with the new  
438 legislation in ex parte communication, staff did have a brief conversation stating  
439 some of the clarifications of the staff with Mr. Bell yesterday on this case. This is  
440 just full disclosure. And the applicant was notified about that communication.
- 441  
442 Mr. Baka - Thank you very much.
- 443  
444 Ms. Moore - Typically, we do step down.
- 445  
446 Mr. Bell - I'm gone.
- 447  
448 Ms. Moore - Okay.
- 449

450 Mr. Baka - Very good. With that, would you please proceed with  
451 the case?

452  
453 Mr. Madrigal - Yes sir. Mr. Chair, members of the Board, before you  
454 is a request to waive the rear yard setback requirement in order to build a screen  
455 porch over an existing deck. The property is located in Section L of the Dunncroft  
456 subdivision, a small 12-lot tract of homes within the neighborhood. This section  
457 was rezoned from A-1 to R-3AC in 1986, and the subdivision was recorded in  
458 1988. The subject lot is currently improved with a two-story, 2,139-square-foot  
459 residence with an attached two-car garage built in 1990.

460  
461 The applicant purchased the property in July 2009, and two months later he  
462 obtained a building permit to add a 13-by-15-foot deck onto the rear of his house.  
463 The rear setback was incorrectly stated on the submitted plot plan for the building  
464 permit, and the resulting deck was built too close to the rear property line by  
465 approximately two feet, resulting in a 23-foot offset instead of 25 feet. The deck  
466 also encroaches approximately two feet into an existing 25-foot-wide utility  
467 easement located in the rear yard. In an attempt to partially remedy the situation,  
468 the applicant formally requested a three-foot portion of the easement be vacated,  
469 but withdrew that request due to lack of support.

470  
471 With his current request, the applicant intends to modify his existing deck and  
472 remove a two-foot section in order to eliminate the setback violation and  
473 encroachment into the utility easement. Then he would like to build a screen  
474 porch over the deck. However, where a deck is allowed to extend 10 feet into the  
475 required rear yard setback, a screened porch must comply with principal building  
476 setbacks. In this case, the code requires not less than 35 feet. Thus, the  
477 applicant is requesting a variance to allow a 25-foot rear yard setback instead of  
478 35 feet for the screen porch.

479  
480 With respect to the threshold requirement, code requires that a variance be  
481 considered when one of two conditions are met. The first situation is when strict  
482 compliance of the code unreasonably restricts the utilization of the property, or  
483 second, when a variance alleviates a hardship resulting from a physical condition  
484 related to the property or improvements thereon at the time of the effective date  
485 of the ordinance.

486  
487 With respect to the first part of the threshold question, the property is improved  
488 with an existing two-story residence with an attached two-car garage.  
489 Furthermore, a deck was added onto the rear of the home. It is difficult to argue  
490 that the Zoning Ordinance unreasonably restricts the use of the property as it  
491 exists.

492  
493 With respect to the second part of the threshold question, the applicant wishes to  
494 convert his existing deck into a screened porch. Adding a roof structure over the  
495 deck converts it into an extension of the dwelling, which will then have to meet

496 principal building setbacks. Any rearward expansion of the home is prohibited  
497 due to the shallow nature of the lot, the siting of his existing residence, and the  
498 presence of a utility easement in the rear yard. These limitations are equally  
499 shared by the applicant and several of his neighbors in this section of the  
500 subdivision and is not a unique situation.

501  
502 Although the property is encumbered by a 25-foot-wide utility easement, the  
503 hardship provision due to a physical condition of the property at the time of the  
504 effective date of the ordinance cannot be claimed by the applicant. The  
505 subdivision, the property, and subsequent home were all created after the  
506 effective dates of the applicable ordinances. Thus, the property was developed in  
507 accordance with current code requirements and existing physical limitations.

508  
509 Since the applicant does meet either of the two conditions of the threshold  
510 question, staff is recommending denial of the applicant's request.

511  
512 This essentially concludes my presentation.

513  
514 Mr. Baka - Very good. Any questions from members of the Board  
515 for Mr. Madrigal?

516  
517 Mr. Berman - Yes. Would it be your recommendation to also  
518 remedy the two-foot encroachment if this was declined?

519  
520 Mr. Madrigal - Yes. He will have to remedy that situation. He is  
521 aware of it and that we will be following up with respect to that situation, either  
522 our department or our Community Maintenance Division.

523  
524 Mr. Berman - The reason why I ask is, is the remedy to chop off two  
525 feet or for us to vote on whether to excuse the two feet?

526  
527 Mr. Madrigal - Well, you can't excuse the two feet in the utility  
528 easement; it's just prohibited.

529  
530 Mr. Berman - Okay. Thank you.

531  
532 Ms. Moore - And just a little history on that. That was sort of what  
533 was intended when they withdrew for the vacation of the easement. They said  
534 they would go ahead and remedy that. So the question here is would the  
535 structure of the screened porch be allowed to encroach.

536  
537 Mr. Berman - My question was if the screened porch is not done?

538  
539 Ms. Moore - Right. They'd have to still remedy the two feet, yes.

540  
541 Mr. Berman - Okay, thank you.

542  
543 Mr. Baka - Any other questions of staff? Would you please come  
544 forward and state your case?  
545  
546 Mr. Wes Yates - Yes sir.  
547  
548 Mr. Baka - If you would, please state your name and spell your  
549 name for the record.  
550  
551 Mr. Wes Yates - Wes Yates. Y-a-t-e-s.  
552  
553 Mr. Baka - Thank you.  
554  
555 Mr. Wes Yates - Originally when we bought the property, we had to  
556 call pest control out to find out what was causing the mosquito infestation that  
557 we're experiencing. As they walked the perimeter of the property, they decided  
558 that it was the lot behind us, which is I guess maintained by Recreation and  
559 Parks and was overgrown with ivy. Mosquitoes from the neighborhood were  
560 roosting under the ivy. They come out to feed as the sun goes down and it gets  
561 cooler.  
562  
563 At that point, I had a conversation with Alvin Christian regarding the lot. I take  
564 that back. First, we went ahead to go forward with building the deck. My dad  
565 actually designed it. And we designed it to support a screened-in porch. As we  
566 were building it and the mosquitoes got worse, we put forward the plans to go  
567 ahead and put up the screened-in porch. As things went down, I spoke with Alvin  
568 Christian about the utility easement, and he told me they no longer needed 25  
569 feet to work on that or maintain it. I did put in writing, though, if I built the porch  
570 and he needed to get in there that we would take it down.  
571  
572 To go further, we then spoke with Al Azzarone from Recreation and Parks and  
573 asked him to maintain the property. We never had anyone come out in the 2-1/2  
574 years that we've been requesting that to treat for mosquitoes or just remove the  
575 ivy.  
576  
577 I offered to purchase the lot behind us and was told that I could, but although it  
578 was the last parcel that would be available, they did not want to sell it. Since  
579 then, I have gone ahead and put forward plans to remedy the porch to only be  
580 looking for I guess a 10-foot encroachment.  
581  
582 The main hardship we're having with this is the fear of Zika. My wife's trying to  
583 have a kid. She's in the last few years of having another child. I'm worried for my  
584 child and the fact that we cannot even use our yard because this land is not  
585 being maintained.  
586

587 Sir, with that, I can even point out that my neighbors do have screened-in  
588 porches right on this parcel. It just doesn't seem fair.

589

590 Mr. Baka - When you say your neighbors have screened-in  
591 porches, what are you referring to if you could point that out on the plat?

592

593 Mr. Wes Yates - Directly behind me.

594

595 Mr. Baka - On Kelly Court?

596

597 Mr. Wes Yates - I believe that's the name of the road, yes sir. I have  
598 pictures of everything if you need to see them.

599

600 Mr. Baka - Any questions at this time of the applicant from  
601 members of the Board?

602

603 Mr. Mackey - I have a question for Mr. Yates. Mr. Yates, when you  
604 first put forth your plans, were you aware that you would need the 10-foot  
605 variance for the encroachment?

606

607 Mr. Wes Yates - No sir.

608

609 Mr. Mackey - You were not.

610

611 Mr. Wes Yates - No.

612

613 Mr. Mackey - Okay.

614

615 Mr. Charles Yates - If I can step in for a minute. My name is Charles  
616 Yates. Spelled the same way as his.

617

618 Mr. Baka - Yes sir.

619

620 Mr. Charles Yates - I was in the architect business here in Richmond for  
621 roughly 15 years. Built a lot of decks and screened porches of course. I have a  
622 drawing of the plan that we submitted to the County for the building permit. If you  
623 look at this, you can clearly see that it was structured to support a screened-in  
624 porch to the point that there's screening underneath the decking boards to keep  
625 mosquitoes and things from coming up through the cracks in the decking boards  
626 once the screened-in porch is built. So the County approved the plan as it's  
627 drawn here to support a screened-in porch and never made any comments or  
628 mentioning of any reasons why that could not be built. If you want to see this-

629

630 Mr. Baka - Yes sir. So to clarify, this is a copy of the sketch plan  
631 that was turned in with the building permit?

632

633 Mr. Charles Yates - Yes, that's correct.

634

635 Mr. Berman - Did the County approve the permit with the known  
636 encroachment? Oh, it's ten feet. The ten feet's allowed. Okay.

637

638 Mr. Baka - This is showing a distance of 13 by 14 feet, as  
639 referenced in page 2 of the staff report.

640

641 Ms. Moore - Just to clarify. It's for a reinforced deck. It wasn't for  
642 the structure at that time, for the screened-in porch.

643

644 Ms. Charles Yates - That's true; however, as you can see, it's grossly  
645 overbuilt for just a deck. I mean the footings the —.

646

647 Mr. Baka - Okay, thank you. To clarify, the building permit is  
648 granted for a 13-by-14-foot, 182-square-foot deck, just for a deck. Overbuilt, but  
649 not for a screened-in porch. But that 13-by-14 foot deck protrudes two feet into  
650 the 25-foot setback that is required by the Zoning Ordinance and incidentally also  
651 two feet into an electric distribution easement. No? I'm sorry. I have a question  
652 on that. What does is protrude into?

653

654 Ms. Moore - The sewer easement.

655

656 Mr. Baka - Sewer easement. Excuse me. Can we see a copy of  
657 the plat? I guess my question is does it protrude into an electrical easement in  
658 addition to the sewer?

659

660 Ms. Moore - I believe it's just the two feet in the sewer easement,  
661 which will have to be remedied regardless.

662

663 Mr. Baka - Right. So a two-foot encroachment into the sewer  
664 easement and zero into the electrical easement.

665

666 Ms. Moore - That's my understanding.

667

668 Mr. Madrigal - There is no electrical.

669

670 Ms. Moore - No electrical.

671

672 Mr. Baka - There's not electrical.

673

674 Mr. Madrigal - That was the previous case.

675

676 Mr. Baka - Thank you. Sorry. Any other questions from  
677 members of the Board? One question I have of the applicant is the standards for  
678 a variance are stricter than the typical standards for a conditional use permit. A

679 conditional use permit basically says you can be approved if there's no adverse  
680 impact upon adjoining properties. One of the criteria, #3, for a variance says that  
681 the condition or situation of the property concerned is not of a so general  
682 recurring nature. How do you address the situation that other properties may face  
683 this same situation in the neighborhood, that it's not a general recurring nature?

684

685 Mr. Wes Yates - I feel that the lack of maintenance on the property  
686 behind me is causing the mosquito infestation, which is rendering the land  
687 partially useless. We can't go outside in the afternoons or evenings. My wife  
688 wants to have a child, and she's afraid to. I had a child when the whole West Nile  
689 thing was at its height. It scares the heck out of me.

690

691 My neighbors aren't complaining about the mosquito infestation, the ones who  
692 away from this lot. And all of their properties are maintained; ours is not.

693

694 Mr. Baka - All right. Any other questions?

695

696 Ms. Harris - You said you had complained about getting it sprayed  
697 and no one has come out?

698

699 Mr. Wes Yates - Yes. I asked Alvin Christian to maintain the property,  
700 please just remove the ivy. That is what pest control told me is causing the  
701 problem. He has spoken to me one time. I have never had anyone come out. I  
702 believe he told me that they would not treat for mosquitoes. I believe it was  
703 something about the chemicals, whatnot, and runoff.

704

705 Ms. Harris - I was just wondering about Public Works, if they could  
706 do something about it.

707

708 Mr. Wes Yates - I was told that Parks maintains the property and to  
709 speak to them.

710

711 Ms. Harris - Okay. But still, Public Works might be involved. I  
712 wondered if the supervisor might be involved then you'd have a couple of options  
713 if the case is not approved.

714

715 Mr. Wes Yates - Sure.

716

717 Ms. Moore - We certainly can follow up on that. We do have a  
718 mosquito program with the County, so we'll certainly do that regardless of the  
719 decision of the Board. Miguel can take note of that

720

721 Mr. Baka - Are there other questions? Thank you very much. Is  
722 there anyone else here would wishes to speak to this case? Seeing none, we'll  
723 move on to the next case.

724

725 [After the conclusion of the public hearings, the Board discussed the case  
726 and made its decision. This portion of the transcript is included here for  
727 convenience of reference.]

728  
729 Ms. Moore - Do we have a motion?

730  
731 Mr. Baka - Is there a motion on VAR2016-00014, Wesley Yates?

732  
733 Ms. Harris - Keeping with the staff's report, I'm going to move that  
734 we deny this request. Whereas I empathize with the problem that is going on with  
735 the mosquitoes and where to build a screened porch, this probably is not the best  
736 place to build it. And I know they need to seek other alternatives. We mentioned  
737 some during the presentation. So my motion is to deny this variance.

738  
739 Mr. Baka - Motion to deny. Is there a second?

740  
741 Mr. Mackey - Second.

742  
743 Mr. Baka - Second. At this time we can open up the floor to any  
744 discussion on the question.

745  
746 Mr. Berman - Yes, Mr. Chairman. I feel that the situation with  
747 mosquitoes does make the deck unusable and would not support the motion.

748  
749 Mr. Baka - Okay.

750  
751 Ms. Moore - I guess we could vote on the motion. We do have a  
752 motion on the floor to deny and seconded by Mr. Mackey. I guess we could vote  
753 on that to see if the motion passes.

754  
755 Mr. Baka - Okay. All in favor of the motion to deny the variance  
756 please signify by saying aye. All opposed say no. So the motion is two-to-two.  
757 With a two-to-two motion, it does not pass, and therefore the variance request is  
758 not granted under state law. State law requires at least three votes of a five-  
759 member board to pass. So that motion fails on a two-to-two vote.

760  
761 After an advertised public hearing and on a motion by Ms. Harris seconded by  
762 Mr. Mackey, with a two-to-two vote the Board **denied** application **VAR2016-**  
**763 00014, WESLEY YATES's** request for a variance from Section 24-94 of the  
764 County Code to build a screened porch on an existing deck at 9100 Peace Mill  
765 Place (DUNNCROFT) (Parcel 760-762-0518) zoned One-Family Residence  
766 District (R-3) (Brookland).

767  
768 Affirmative: Harris, Mackey 2  
769 Negative: Baka, Berman 2  
770 Abstain: Bell 1

771 Absent: 0  
772  
773  
774 Mr. Baka - At this time, we'll go forward to the next case.  
775  
776 [At this point, the transcript continues with the public hearing on the next  
777 case.]  
778  
779 Ms. Moore - The next one is for VAR2016-00015, Base Camp,  
780 LLC.  
781  
782 **VAR2016-00015** **BASE CAMP, LLC** requests a variance from Section  
783 24-9 of the County Code to build a two-family dwelling at 5116 W Leigh Street  
784 (MAYFIELD) (Parcel 773-738-9895) zoned General Residence District (R-5)  
785 (Brookland). The public street frontage requirement is not met. The applicant  
786 proposes 20 feet public street frontage, where the Code requires 50 feet public  
787 street frontage. The applicant requests a variance of 30 feet public street  
788 frontage.  
789  
790 Ms. Moore - Anyone who wants to speak to this case, please raise  
791 your right hand and be sworn in. Do you swear the testimony you're about to give  
792 is the truth, the whole truth, and nothing but the truth so help you God?  
793  
794 Mr. Carroll - I do.  
795  
796 Ms. Moore - Thank you.  
797  
798 Mr. Gidley - Thank you, Madam Secretary. Good morning,  
799 Mr. Chairman, members of the Board.  
800  
801 The subject property is at 5116 West Leigh Street, which is just northwest of the  
802 Broad Street and Staples Mill Road intersection. Before I get going, for the  
803 record, I handed out this morning an e-mail that came in last night to our e-mail  
804 site. It expressed opposition from one of the neighbors on Clover Street, which is  
805 to the north of the property. That was laid at the desk before you.  
806  
807 Mr. Berman - Could you please point out that property?  
808  
809 Mr. Gidley - I just saw it was on Clover Street. Does she have an  
810 address on there, Jean?  
811  
812 Mr. Berman - 2122.  
813  
814 Mr. Gidley - Right here.  
815  
816 Mr. Berman - Okay, thank you.

817  
818 Mr. Baka - Thanks.  
819  
820 Mr. Gidley - Yes sir.  
821  
822 The property consists of lot 75, right here in the Mayfield subdivision. It was  
823 recorded in 1940 and has been zoned R-5 since at least 1960. For those lots  
824 zoned R-5 prior to November 10th of 1993—which of course includes this  
825 property—both one-family dwellings and two-family dwellings, otherwise known  
826 as duplexes, are permitted uses.  
827  
828 If you look at the aerial, you can see there are warehouses across the street to  
829 the southwest and southeast. To the northeast and west is the Mayfield  
830 subdivision. While the property has direct access to West Leigh Street, there is  
831 only 20 feet of public street frontage versus the required 50 feet. You will also  
832 note the property is roughly twice the size of many of the adjacent lots.  
833  
834 On the screen before you is a picture of the lot, basically where all these trees  
835 are here. It complies with both the lot area and lot width requirements. As you  
836 can see, it slopes gently towards the rear. And although kudzu has taken over  
837 here, there is really no reason from a physical standpoint you can't build on the  
838 lot, other than not having the required 50 feet of public street frontage. As a  
839 result, the applicant is requesting a 30-foot-public-street-front variance to allow at  
840 least a one-family dwelling on the property. His preference, however, would be  
841 for permission to have a duplex on the property.  
842  
843 In order to grant a variance, the Board must find that at least one of two initial  
844 tests is met. One, is there a hardship related to the physical conditions of the  
845 property at the time of the effective date of the ordinance. The second one, does  
846 the ordinance unreasonably restrict the use of the property. In other words, is  
847 there a reasonable use of the property. In this case, the applicant actually  
848 appears to satisfy both potential avenues for a variance.  
849  
850 As I noted earlier, the subdivision was created in 1940, and the lot had direct  
851 access to West Leigh Street. The arrangement with the lot and its frontage on  
852 West Leigh Street was already in place by 1960 when the ordinance was  
853 changed to require a total of 50 feet of public street frontage. It was this  
854 ordinance amendment after the lot was created that essentially rendered it  
855 unbuildable. So there was a change in code that caused the hardship here. In  
856 addition, you have a legally platted lot that today has no reasonable, beneficial  
857 use of the property. As a result, the Zoning Ordinance unreasonably restricts the  
858 use of the property.  
859  
860 In the event one of the two tests just discussed are met, then all five of the  
861 subtests must also be met. First, the property interest for which the variance was  
862 requested was acquired in good faith and any hardship not created by the

applicant. Again, the hardship here was created by the Zoning Ordinance changing in 1960. It was not created by the applicant, by the property owner, or even any prior property owner. So that test is met.

866

867 The second test I think is important too. Will the variance have any substantial  
868 detrimental impact on adjacent or nearby property. The property is roughly twice  
869 the size of the adjacent parcels. So staff believes the applicant's request for a  
870 duplex is a reasonable use, especially since the property meets both the lot width  
871 and lot area requirements for a duplex under code. Furthermore, a duplex could  
872 serve as a good transition use from the warehouses located across the street to  
873 the single-family dwellings located to the rear. As a result, staff does not foresee  
874 a substantial detrimental impact from this request.

875

876 Third, the condition of the property is not so general or reoccurring where the  
877 Board could come in and amend the Zoning Ordinance to address this. In most  
878 cases, people either have public street frontage or they don't. This is somewhat  
879 unusual in that at the time the lot was created, it did have public street frontage.  
880 They addressed this in accordance with the code requirements when the lot was  
881 created. It's just that they don't have enough based upon the 1960 amendment to  
882 the code. So it is a rather unusual situation and I don't think something that's  
883 readily addressed through an ordinance amendment.

884

885 Four, is this a use variance or a change in the zoning classification. Again, as I  
886 mentioned, for properties zoned R-5 prior to 1993, a duplex is a permitted use by  
887 right on these properties. So this would not be a use variance or a change in the  
888 zoning classification.

889

890 And finally, a special exception or modification is not an option to address the 30  
891 feet of public street frontage that's missing.

892

893 In conclusion, the property was legally platted in 1940. It meets both the lot area  
894 and lot width requirements. In addition, it has 20 feet of public street frontage, but  
895 was simply rendered non-conforming due to the 1960 ordinance amendment  
896 requiring 50 feet. Granting the variance would satisfy state code by providing a  
897 reasonable use for a property that at present is without one and is thus  
898 unreasonably restricted by the Zoning Ordinance. The granting of the variance  
899 would also meet the five subtests, including the avoidance of any substantial  
900 detrimental impact on nearby property. As a result, staff recommends approval of  
901 this case subject to the conditions found in the staff report.

902

903 This concludes my presentation. I will be happy to answer any questions you  
904 may have. Thank you.

905

906 Mr. Baka -

Any questions of Mr. Gidley?

908 Ms. Harris - Yes. Mr. Gidley, are there any duplexes in this  
909 community? I know most of them are single-family.

910

911 Mr. Gidley - Not that I'm aware of, Ms. Harris, no ma'am.

912

913 Ms. Harris - Okay. The adjacent properties on West Leigh, are  
914 they substandard lots when it comes to building single-family or duplexes? Are  
915 they considered substandard lots?

916

917 Mr. Gidley - Let me get the subdivision plat.

918

919 Ms. Moore - Looking at the plat, it does look like they do meet the  
920 50-foot road requirement.

921

922 Mr. Baka - Each of them with 50 feet. Okay.

923

924 Mr. Gidley - And R-6 exception standards, which are a totally  
925 different section of the code from what I was quoting earlier, it does allow single-  
926 family dwellings with a 50-foot-wide lot width. Looking at the plat here, it does  
927 show 50 feet. So I believe those lots do in fact conform.

928

929 For the record, the applicant has requested a zoning conformance letter from the  
930 County. Since multi-family uses are permitted under the R-5 zoning classification,  
931 he was looking at combining these lots and doing a multi-family development in  
932 the future as a potential use of those properties. But at this time, nothing's been  
933 submitted other than the request for the zoning letter, which was written.

934

935 Ms. Harris - We're asking for either a single-family or a duplex,  
936 according to this variance application, right? We're not addressing a multi-family  
937 dwelling outside of the fact of it being a duplex.

938

939 Mr. Gidley - Yes ma'am, that's correct. The request here is simply  
940 for a variance of 30 feet for public street frontage, which is required for both  
941 single-family and two-family dwellings. Once that's granted, typically the  
942 applicant, since he meets the lot area and lot width requirement for both a single-  
943 family and a duplex dwelling, could go ahead and apply for a building permit for  
944 either one. If the Board wanted to limit it to a single-family dwelling, they could  
945 put a condition on the request. But since the lot, as I said, is basically twice the  
946 size of the adjoining lots, staff is not opposed to the request for a duplex.

947

948 Ms. Harris - Would you approve a multi-family dwelling? It seems  
949 we're confined to single or a duplex family dwelling. But if we approve this, can  
950 someone come under the same plans and try to put an apartment in there, for  
951 example?

952

953 Mr. Gidley - The applicant would have to go ahead and rearrange  
954 the lot configuration for not only this lot, but also some of the adjacent lots to  
955 comply with code in order to make use of that possibility. As I indicated, further  
956 down the road that was something they were considering, namely combining a  
957 bunch of those lots to increase their road frontage and increase their lot area so  
958 they could meet code requirements. In this case, if the Board wanted to limit it to  
959 a duplex and not have it become multi-family in the future, they could put a  
960 condition on there limiting it to a duplex. At the same point, if the applicant in the  
961 future came along and merged it with other lots where the street frontage at that  
962 point would be met and the variance was no longer needed, then of course the  
963 conditions would no longer bind the applicant.

964  
965 Mr. Bell - So any way you look at it, the answer is yes. If he  
966 gets the other lots in the future, it could be multi-family.  
967

968 Mr. Gidley - If he meets the requirements of code, then certainly  
969 that's his right to develop under the Zoning Ordinance what's allowed, yes sir.  
970

971 Mr. Baka - What is the extent of the R-5 zoning along Leigh  
972 Street? Does it go all the way back to—it's the entire neighborhood.  
973

974 Mr. Gidley - Yes. Mr. Chairman, my understanding is that the line  
975 goes down West Leigh Street. It's cut off here, but I believe it runs right down  
976 here. The M-1 encompasses the warehouses, and then the entire subdivision is  
977 R-5.  
978

979 Ms. Moore - Mr. Gidley, could you clarify—going back to  
980 Ms. Harris's question. If this same configuration of lot size, based on the lot size,  
981 they could only possibly do two dwellings, is that correct? Because otherwise  
982 they would not meet code? Sorry to put you on the spot like that.  
983

984 Mr. Gidley - That's fine.  
985

986 Mr. Baka - Your question is that an apartment building would not  
987 be possible on this current lot, correct?  
988

989 Ms. Moore - That's my question, correct.  
990

991 Mr. Baka - I follow what you're saying.  
992

993 Ms. Moore - While he's looking at that, I guess more questions, if  
994 you have any.  
995

996 Mr. Baka - Okay. I have a question—I'm sorry; would you like to  
997 continue?  
998

- 999 Ms. Harris - I was just going to say something about the letter that  
1000 we received. I think the homeowner was concerned about a multi-family dwelling.  
1001 That's why I was trying to make an issue of whether or not it would or would not  
1002 be other than a duplex.
- 1003
- 1004 Ms. Moore - I was curious what it would look like if it was in  
1005 keeping with the rest of the single-family should it be a duplex. I don't know if we  
1006 have an elevation or not.
- 1007
- 1008 Mr. Baka - The architectural elevation of the proposed structure  
1009 to be built?
- 1010
- 1011 Mr. Gidley - I'm actually ready to answer Ms. Harris's and  
1012 Ms. Moore's question.
- 1013
- 1014 Mr. Baka - Yes.
- 1015
- 1016 Mr. Gidley - For three or more family dwellings in the R-5 district,  
1017 probably the most restrictive requirement is a 100-foot lot-width requirement. In  
1018 this case, the property has over 100 feet of lot width. That's not what I really  
1019 looked into, but I can say right offhand, if the variance is not limited to a duplex,  
1020 then arguably the applicant could develop it as multi-family, just looking at it  
1021 briefly here.
- 1022
- 1023 Mr. Baka - As long as you had 100 feet.
- 1024
- 1025 Mr. Gidley - Yes sir, of lot width.
- 1026
- 1027 Ms. Moore - And then the lot area requirement?
- 1028
- 1029 Mr. Gidley - Yes ma'am. The minimum is 12,000 square feet, and  
1030 you also need 3,000 square feet per dwelling unit. Since they have a hundred  
1031 feet of lot width, looking at it right offhand, I would think they could utilize it for  
1032 multi-family use unless the Board in granting the public street frontage variance  
1033 went ahead and restricted it to a single-family or a duplex dwelling.
- 1034
- 1035 Mr. Baka - A question for the staff. The key question here is  
1036 whether to accept the applicant's request to reduce the public street frontage  
1037 from 50 feet to 20 feet, leaving a 30-foot variance.
- 1038
- 1039 Mr. Gidley - Yes, that's it.
- 1040
- 1041 Mr. Baka - When I looked over in the neighborhood, anyone on  
1042 R-5 could construct a duplex so long as they had a 100-foot width. So, for  
1043 example, 2143 or 2127 or other lots on this neighborhood plat we have up on the

1044 screen, property owners would have the same ability in an R-5 today to build a  
1045 duplex at 100 feet.

1046  
1047 Mr. Gidley -                   Actually, a duplex requires 80 feet of lot width. So if  
1048 they have 80 feet of lot width—say they put two lots together, they could in fact  
1049 build a duplex.

1050  
1051 Mr. Baka -                   So here we're faced with a situation that a single-  
1052 family or duplex is practically accessible to many residents. Whereas, an  
1053 apartment building would not be.

1054  
1055 Mr. Gidley -                   It would be more difficult, yes sir.

1056  
1057 Mr. Baka -                   Have there been other requests or phone calls about  
1058 developing the other properties on West Leigh Street from 5104 up to this  
1059 property?

1060  
1061 Mr. Gidley -                   The only one I'm familiar with is when the applicant  
1062 came in and sat down to discuss their options with us. As I said, they requested a  
1063 code letter asking for the requirements for a multi-family dwelling further down  
1064 the road in the event they would combine those parcels. The applicant could  
1065 probably speak in more detail where they are on that.

1066  
1067 Mr. Baka -                   To go back a couple minutes in your presentation,  
1068 you had mentioned something to the effect that a duplex could be a good  
1069 transition between the commercial zone and the single-family residences. Can  
1070 you explain what you meant by a transition?

1071  
1072 Mr. Gidley -                   Yes sir. Having worked in the section that deals with  
1073 rezoning cases in the County, one thing that's looked at is you want to protect  
1074 single-family dwellings. So you wouldn't necessarily want to take M-1 zoning and  
1075 allow a warehouse to be built over here. A transition use is something that helps  
1076 to blend between one set of uses and an entirely different set of uses. In this  
1077 case, you have warehouses and self-storage units, which aren't really compatible  
1078 with the residential district across the road. By putting a duplex here, a small  
1079 office, something like that, it helps to transition from the more intensive industrial  
1080 use to the less intensive single-family use. That's what I mean by a transition.

1081  
1082 Mr. Baka -                   Okay. Thank you.

1083  
1084 Mr. Gidley -                   Yes sir.

1085  
1086 Mr. Berman -                  Mr. Gidley, does the staff recommendation for  
1087 condition 1 cover that we're not granting the establishment of a duplex? This is  
1088 just the public street frontage. Do you feel that satisfies that? I don't want them to  
1089 misinterpret that we're here to grant the building of a duplex.

1090  
1091 Mr. Gidley - Given what we know now and the opposition letter  
1092 that came in, if the Board was going to approve a one-family or a two-family  
1093 dwelling, I would go ahead and put in a condition that specifically states that. The  
1094 conditions are designed with that in mind, but I would go ahead and specifically  
1095 state that this is for the purpose of constructing a one-family or a two-family  
1096 dwelling only. I think that's a good point.

1097  
1098 Mr. Berman - Okay, thank you.

1099  
1100 Mr. Gidley - Yes sir.

1101  
1102 Mr. Baka - Other questions of staff?

1103  
1104 Mr. Mackey - Yes. Mr. Gidley, other than the e-mail from  
1105 Ms. Priddy, were there any other calls or complaints?

1106  
1107 Mr. Gidley - No other complaints. When Mr. Madrigal and I were  
1108 out on the site visit, one of the people who actually lives adjacent to the  
1109 complainant came up and complained about the kudzu constantly coming over  
1110 his fence and invading his yard. He was looking forward to somebody having  
1111 some sort of development back there that may give them some relief. The same  
1112 gentleman called in the office later on to reiterate his support for the case.

1113  
1114 Mr. Mackey - Okay. All right, thank you.

1115  
1116 Mr. Gidley - Yes sir.

1117  
1118 Mr. Baka - All right. Thank you, Mr. Gidley.

1119  
1120 Mr. Gidley - Thank you, Mr. Chairman.

1121  
1122 Mr. Baka - Do you want to hear from the applicant at this time?  
1123 Would the applicant come forward? And then any other opposition will have a  
1124 chance to speak after that. Thank you.

1125  
1126 Mr. Carroll - Good morning.

1127  
1128 Mr. Baka - Good morning.

1129  
1130 Mr. Carroll - My name is Mike Carroll. C-a, two r's, o, two l's. I live  
1131 at 5800 Morningside. I have a small commercial real estate company called  
1132 General Land.

1133  
1134 We came across these lots a couple different ways. The property owner is  
1135 looking for relief. He wants to sell them, so we're a purchase contractor, Base

1136 Camp LLC. Our intent of coming in here is we are buying four lots to the east.  
1137 There are two lots next door that we are not acquiring. We talked to both property  
1138 owners. One property owner told us hey, we're really excited about this because  
1139 there are snakes and all kinds of stuff living back in here, rats and whatever. So  
1140 they're excited about having it built. It's not the same individual that contacted the  
1141 County. This individual owned one of the lots behind them.

1142  
1143 So there's this property, two lots, and an additional four lots. We have bought five  
1144 of those on a contract. For four lots, we initially looked at using the County's  
1145 ordinance to build townhomes with 18 feet of frontage and sort of developing a  
1146 strip there. Once we got into it, we kind of realized that that would be out of  
1147 character for the neighborhood. So then we dropped back and said okay, we're  
1148 going to do single-family homes on each one.

1149  
1150 And on this particular lot, what we said was hey, if you give us a variance, we will  
1151 not build more than two units on this property. Because it is so wide, with the 18  
1152 feet, we could potentially go in there a build three, maybe even four units there.  
1153 What we were trying to do is say hey, we're not going to build any more than two.

1154  
1155 To answer your question, I went out and took some pictures of homes that were  
1156 recently built in this neighborhood. They're nice homes. They're two stories. Most  
1157 of them have vinyl siding, but they're nice looking homes. I took pictures of them,  
1158 and then I couldn't find them this morning. So I apologize.

1159  
1160 I don't really know what else I could add except—I'm even thinking of moving  
1161 over here. I think it would be an off the grid, quiet neighborhood.

1162  
1163 If I can answer any questions.

1164  
1165 Mr. Baka -                          Questions for Mr. Carroll?

1166  
1167 Mr. Berman -                          Could you please point to the lots in question that you  
1168 have under contract? In addition to #75.

1169  
1170 Mr. Carroll -                          We have obviously the one outlined in red. These two  
1171 lots are owned by others. They're actually owned by the two people that front  
1172 Clover Road, 68 owns 76 and 67 owns 77, I believe. I would also have 78, 79,  
1173 80, and 81 on our contract. And those were the initial four lots that we said hey,  
1174 we could take the 200 feet of frontage, divide it by 18, and that's how many  
1175 townhomes we could get. As was pointed out, that is a good transitional use. We  
1176 just feel it would kind of be out of character for the neighborhood.

1177  
1178 Mr. Berman -                          Thank you.

1179  
1180 Mr. Baka -                          Other questions?

1182 Ms. Harris - Mr. Carroll, you filled out this variance application, did  
1183 you not?  
1184  
1185 Mr. Carroll - I did.  
1186  
1187 Ms. Harris - Okay. And so it was for a single-family or a two-family  
1188 residence.  
1189  
1190 Mr. Carroll - Yes ma'am.  
1191  
1192 Ms. Harris - Okay. So we're sticking with that.  
1193  
1194 Mr. Carroll - Yes ma'am.  
1195  
1196 Ms. Harris - Okay, thank you.  
1197  
1198 Mr. Bell - If we would add it to a condition, you wouldn't have  
1199 any problems with that.  
1200  
1201 Mr. Carroll - I'm sorry?  
1202  
1203 Mr. Bell - If we were to add it as a new condition you wouldn't  
1204 have any problem?  
1205  
1206 Mr. Carroll - That's correct.  
1207  
1208 Mr. Bell - Have you read the conditions and understand them,  
1209 the ones that we already have?  
1210  
1211 Ms. Moore - In the staff report.  
1212  
1213 Mr. Carroll - Yes. Yes sir.  
1214  
1215 Mr. Baka - Do you have any architectural elevations of either the  
1216 single-family home or the duplex you were looking to build on lot 75?  
1217  
1218 Mr. Carroll - No sir.  
1219  
1220 Mr. Baka - All right. Unless there are any other questions of  
1221 Mr. Carroll, we'll hear from others at this time. Ma'am, would you like to come  
1222 forward and state your name and spell your name for the record, please?  
1223  
1224 Ms. Searls - Betty Searls. 2126 Clover Road.  
1225  
1226 Mr. Baka - 2126?  
1227

1228 Ms. Searls - Yes sir.  
1229  
1230 Mr. Baka - Thank you.  
1231  
1232 Ms. Searls - Well for one thing, it's a single-family neighborhood.  
1233 It's a quiet neighborhood. And we'd like to keep it that way. I've already had to  
1234 put up "No Trespassing" signs because of people coming back and forth taking  
1235 shortcuts, drunks coming down through the yard. I'm not saying this is going to  
1236 happen, but if you have a two-family home, you're going to start the apartments  
1237 again. Which there's nothing wrong with apartments, but not in that area. Dogs.  
1238 They're going to have dogs running back and forth. Are they going to keep them  
1239 on a leash? Half of them down there don't.  
1240  
1241 So anyway, I just oppose altogether.  
1242  
1243 Mr. Baka - Would you please spell your name for the record,  
1244 ma'am?  
1245  
1246 Ms. Searls - S-e-a-r-l-s, Betty.  
1247  
1248 Mr. Baka - Any questions for Ms. Searls?  
1249  
1250 Ms. Harris - Ms. Searls, do you think it would improve the  
1251 neighborhood if you had property improved rather than just vacant lots?  
1252  
1253 Ms. Searls - Personally, I have no problem with a vacant lot. I had  
1254 the kudzu come down. I cut it down. I have no problem with it. When it grows, it  
1255 keeps people from going back and forth. When it's not grown, they're going to go.  
1256 I've had problems with them ever since I've lived there. I'm trying to keep from  
1257 putting up a fence, but if I have to I will. I'd put it up all the way around.  
1258  
1259 Ms. Harris - Thank you.  
1260  
1261 Mr. Bell - You've had this problem how long?  
1262  
1263 Ms. Searls - I've lived there since 1987. For the last year or two, I  
1264 haven't had the problem because everybody that was doing it moved out. But if  
1265 you start putting two-family homes, a duplex, it's going to start an apartment  
1266 building. And sooner or later, you're going to want another one and another one.  
1267 I get a card every day to buy my property. I don't want to sell it. And I'm not going  
1268 to sell it because they want it for nothing, and then they're going to make all the  
1269 money off of it. I want to wait until I can make money off it.  
1270  
1271 Mr. Bell - Thank you.  
1272  
1273 Ms. Searls - Is that it?

1274  
1275 Mr. Baka - One question. The case before us, the applicant  
1276 requested either a single-family home or a duplex on the property. An apartment  
1277 would refer to—  
1278  
1279 Ms. Searls - But still they're going to have to back up to my—see  
1280 it's right at my property.  
1281  
1282 Mr. Baka - Right at 2126.  
1283  
1284 Ms. Searls - They would have to back right up to it, and I'm not  
1285 going to have that extra little spot. And I try to keep it nice. Whoever it is that has  
1286 the problem lives on Park Lane, which it probably would come to his, too, I don't  
1287 know. But I don't see him here today. So to me, we must be the only ones that  
1288 care about the neighborhood.  
1289  
1290 Mr. Baka - Thank you for your comments. Any other questions of  
1291 Ms. Searls? Thank you.  
1292  
1293 Ms. Searls - All right.  
1294  
1295 Mr. Baka - Is there anyone here who would also like to speak to  
1296 this matter?  
1297  
1298 Ms. Moore - Ma'am, before you begin, can you raise your right  
1299 hand, please, and be sworn in? Do you swear the testimony you're about to give  
1300 is the truth, the whole truth, and nothing but the truth so help you God?  
1301  
1302 Ms. Chalkley - Yes.  
1303  
1304 Ms. Moore - Thank you. And please state your name, please.  
1305  
1306 Ms. Chalkley - My name is Ida L. Chalkley.  
1307  
1308 Mr. Baka - And please spell your last name.  
1309  
1310 Ms. Chalkley - C-h-a-l-k-l-e-y.  
1311  
1312 Mr. Baka - Thank you, Ms. Chalkley. Please proceed.  
1313  
1314 Ms. Chalkley - I don't want to have anybody else back there. I live at  
1315 2124 Clover. It's a quiet neighborhood. We've been there—well my husband has  
1316 been there all his life. He has never moved. He has a speech problem. I just  
1317 wanted to say that I don't think they should have it done.  
1318

1319 Mr. Baka - Okay. Any questions from members of the Board?  
1320 Thank you very much, ma'am.

1321

1322 Ms. Chalkley - Okay. Thank you.

1323

1324 Mr. Baka - All right. Is there anyone else wishing to speak to this  
1325 case? Seeing none, we'll move on to the next case.

1326

1327 [After the conclusion of the public hearings, the Board discussed the case  
1328 and made its decision. This portion of the transcript is included here for  
1329 convenience of reference.]

1330

1331 Ms. Moore - Do we have a motion on the floor?

1332

1333 Mr. Bell - I move that we approve it as stated in the  
1334 presentation. It is a good transition for this neighborhood on Leigh Street  
1335 because you're going from a strong warehouse business area to an established  
1336 community of residential homes. This will be a good addition for that transition.  
1337 That's why I move to approve it.

1338

1339 Mr. Baka - Is there a second to that motion?

1340

1341 Ms. Harris - I second it. Do we want to add the condition that the  
1342 variance is for a single—

1343

1344 Mr. Bell - Yes. I would also like to add the condition that single  
1345 or residential homes be built on this lot only.

1346

1347 Ms. Moore - So we could craft a condition that the variance only  
1348 applies to a one- or two-family dwelling on the property?

1349

1350 Mr. Baka - But not to apartments.

1351

1352 Ms. Moore - Correct.

1353

1354 Mr. Baka - No apartments.

1355

1356 Mr. Berman - Should it be a duplex or two-family or are they  
1357 synonymous?

1358

1359 Ms. Moore - Duplex and two-family are the same in our ordinance.

1360

1361 Mr. Berman - Okay, thank you.

1362

1363 Ms. Harris - And I had seconded the motion.

1364

1365 Mr. Baka - All right. All in favor say aye. All opposed say no. The  
1366 ayes have it; the motion passes.

1367

1368 Mr. Berman - Was there discussion?

1369

1370 Mr. Baka - Oh, I'm sorry. Is there further discussion on that  
1371 motion?

1372

1373 Mr. Berman - Yes. The last two cases today had some similarities  
1374 and the people objecting. So in deference to Ms. Searls and Ms. Chalkley and  
1375 Ms. Priddy, I feel that it's not reasonable to restrict the development of empty lots  
1376 because surrounding neighbors just got used to there being nothing there. I just  
1377 wanted to state that.

1378

1379 Mr. Baka - Very good.

1380

1381 Mr. Berman - I feel for them, but it's an unreasonable restriction of  
1382 commerce.

1383

1384 Ms. Harris - I do too. I hear the persons who have opposed this  
1385 particular case, and I empathize with them. If it happened in my neighborhood, I  
1386 would like to do the same thing or say the same thing. But I really don't own the  
1387 property, so we have to be careful about confiscating another person's property,  
1388 telling them what they can do with it and what they cannot do with it. We can only  
1389 go by the code. I think that's the area of our jurisdiction. This was why I seconded  
1390 the motion for that.

1391

1392 Mr. Berman - Mr. Wright would appreciate that.

1393

1394 Ms. Harris - I thought of Mr. Wright when I said "confiscating."

1395

1396 Ms. Moore - So just to reiterate, we have a motion on the floor for  
1397 approval and we have second with the modified condition—or adding the  
1398 condition.

1399

1400 Mr. Baka - Okay. All in favor say aye. All opposed say no. The  
1401 ayes have it; the motion passes.

1402

1403 After an advertised public hearing and on a motion by Mr. Bell, seconded by  
1404 Ms. Harris, the Board **approved** application VAR2016-00015, **BASE CAMP**,  
1405 **LLC**'s request for a variance from Section 24-9 of the County Code to build a  
1406 two-family dwelling at 5116 W Leigh Street (MAYFIELD) (Parcel 773-738-9895)  
1407 zoned General Residence District (R-5) (Brookland). The Board approved the  
1408 variance subject to the following conditions:

1409

- 1410 1. This variance applies only to the public street frontage requirement for a one-  
1411 family or two-family dwelling subject to § 24-30.1 of the County Code (not for a  
1412 multifamily development). All other applicable regulations of the County Code  
1413 shall remain in force.
- 1414
- 1415 2. Before beginning any clearing, grading, or other land disturbing activity, the  
1416 applicant shall submit an environmental compliance plan to the Department of  
1417 Public Works.
- 1418
- 1419 3. Any dwelling on the property shall be served by public water and sewer. The  
1420 builder or developer shall be responsible for the design, installation, acquisition of  
1421 easements, and any other work needed to serve the property with public water  
1422 and sewer.
- 1423
- 1424 4. A minimum of four parking spaces shall be provided for a two-family dwelling  
1425 or two spaces for a one-family dwelling. Each parking space shall have a  
1426 minimum area of 162 square feet (18'x9'), exclusive of access drives and aisles  
1427 as required by the zoning ordinance.

1428

1430 Affirmative:	Baka, Bell, Berman, Harris, Mackey	5
1431 Negative:		0
1432 Absent:		0

1433

1434 [At this point, the transcript continues with the public hearing on the next  
1435 case.]

1436

1437 Ms. Moore - The next case, Mr. Chair, is VAR2016-00017, Ridge  
1438 Homes LLC.

1439

1440 **VAR2016-00017 RIDGE HOMES LLC** requests a variance from  
1441 Sections 24-95(b)(6) and 24-95(k) of the County Code to build a one-family  
1442 dwelling at 5409 Edgefield Street (CHAMBERLAYNE ESTATES) (Parcel 790-  
1443 746-1537) zoned One-Family Residence District (R-4) (Fairfield). The total lot  
1444 area requirement, lot width requirement, and street side yard setback  
1445 requirement are not met. The applicant has 4,920 square feet lot area, 40 feet lot  
1446 width, and 7 feet street side yard setback, where the Code requires 6,000 square  
1447 feet lot area, 50 feet lot width, and 10 feet street side yard setback. The applicant  
1448 requests variances of 1,080 square feet lot area, 10 feet lot width, and 3 feet  
1449 street side yard setback.

1450

1451 Ms. Moore - Please raise your right hand to be sworn in. Do you  
1452 swear the testimony you're about to give is the truth, the whole truth, and nothing  
1453 but the truth so help you God?

1456 Mr. Gidley - Thank you, Madam Secretary. Mr. Chairman,  
1457 members of the Board.

1458  
1459 The subject property is located at 5409 Edgefield Street, which is a little bit north  
1460 of Azalea Avenue. The property consists of Lot 1, Block 6 of Chamberlayne  
1461 Estates, which was recorded in 1935. It is zoned R-4 and is subject to the  
1462 exception standards for lots of record prior to 1960.

1463  
1464 As indicated, the applicant is requesting variances for both lot area and lot width,  
1465 along with the street side yard setback, which would be to the south here against  
1466 O'Brien Road.

1467  
1468 I'd like to note for the record also that the street side yard setback requirement  
1469 today against O'Brien Road is 10 feet. On the front of the staff report, it said 7.5  
1470 feet. In reality, the survey that was submitted was erroneous. It is a 7-foot  
1471 setback the applicant is requesting rather than 7.5 feet. So there was some  
1472 discrepancy there between the survey that was submitted and the actual request.  
1473

1474 When considering a variance, the key question is, is there a hardship due to a  
1475 physical condition of the property related to an ordinance change or does the  
1476 Zoning Ordinance unreasonably restrict the use of the property. Due to the lack  
1477 of required lot area and lot width, the Zoning Ordinance does not allow  
1478 construction of a dwelling on the property.

1479  
1480 In addition, you'll note here you have right of way on three sides of this property.  
1481 You have Edgefield Street to the west and unapproved O'Brien Road to the  
1482 south. What you see here is actually a private driveway accessing this dwelling  
1483 here. To the east is an alley that's been dedicated. And to the north, you have a  
1484 lot that itself is substandard as far as lot width and lot area, and it received a  
1485 variance previously.

1486  
1487 The result of this is the applicant has a lot that was legally platted at the time. It  
1488 was platted back in 1935, but under today's code does not meet lot area and lot  
1489 width requirements. Because there is right of way on three sides and a property  
1490 to the north that itself received a lot area and lot width variance, there's really no  
1491 possibility to acquire additional land. So the only reasonable avenue for the  
1492 applicant to build on the property is through the variance process.

1493  
1494 As I noted earlier, the applicant is requesting three variances, including a street  
1495 side yard setback variance. As indicated in the staff report, staff is supportive of  
1496 this request, which it's somewhat unusual for staff to support a setback variance.  
1497 And I wanted to briefly discuss this decision so the Board has an understanding  
1498 where we're coming from.

1499  
1500 When the lot was created in 1935, the Zoning Ordinance in effect at the time  
1501 actually only required a five-foot street side yard setback. The applicant today is

1502 requesting to build at seven feet. So he would exceed the requirement that was  
1503 in effect at the time the lot was created. The ten feet didn't come into effect until  
1504 1945, which was ten years after the lot's creation. Therefore, in line with the  
1505 above tests, it arguably constitutes a hardship caused by an amendment to the  
1506 ordinance. This took an already small lot and further reduced its buildable area.  
1507 So this arguably is a hardship due to a code change.

1508  
1509 In the event the Board agrees that one or both of the aforementioned key tests  
1510 are met, there are five subtests all of which must also be met. First, the property  
1511 was acquired in the good faith and the hardship was not created by the applicant.  
1512 The current owner purchased the property in May of this year. And purchasing a  
1513 lot knowing a variance is needed does not constitute a self-inflicted hardship per  
1514 the Virginia Supreme Court. The applicant today I believe is the contract  
1515 purchaser of the property rather than the actual owner.

1516  
1517 Second, the granting of the variance will not pose a substantial detriment to  
1518 adjacent or nearby property. The property in question is located right here where  
1519 all the woods are. This is a lot immediately to the north. Both this lot and the one  
1520 to the north received variances to allow these homes to be built. So when it  
1521 comes to looking at detrimental impact, although the lot size is almost 20 percent  
1522 smaller than even the exception standards, in this case as you can see here, two  
1523 similar-sized lots have been built on just to the north. As a result, this has led to a  
1524 development pattern in this area with similar-sized lots constructed on. So staff  
1525 doesn't believe it's going to be detrimental in that regard.

1526  
1527 This is a view of the home that is proposed to be built. As you can see, the home  
1528 design is very similar to the two homes up here. So again, it should fit in well with  
1529 what's being built out there on the neighboring properties to the north. And  
1530 because of these two issues, staff does believe this would be substantially  
1531 detrimental to nearby property.

1532  
1533 Third, the condition is not so generally reoccurring as to allow for the adoption of  
1534 an ordinance amendment. As I mentioned earlier, it is subject to the exception  
1535 standards for lots of record prior to 1960. These standards address many of the  
1536 undersized lots in the County, but not all. Oftentimes, an applicant may be able to  
1537 come in and combine two or three lots to create a buildable lot. But as I've said,  
1538 in this case he can't acquire additional lots or additional property because he has  
1539 right-of-way on three sides of him and a lot to the north that itself doesn't meet  
1540 the lot area requirement. So in this case, it doesn't really appear that there is any  
1541 option for a Zoning Ordinance amendment to address this issue.

1542  
1543 Fourth, is this a use variance which would not be permitted? In this case, one-  
1544 family dwellings are a permitted use in the R-4 district, so it's not really a use  
1545 variance.

1546

1547 And finally, the relief or remedy sought by the variance is not available through a  
1548 special exception or modification, and that is correct. Neither of those is an option  
1549 here.

1550

1551 In conclusion, the property was legally platted in 1935; however, due to  
1552 subsequent amendments to the Zoning Ordinance, it does not meet the lot area and  
1553 lot width requirements and therefore is unbuildable absent a variance. This is a  
1554 hardship caused by an ordinance change that occurred at the time of the lot's  
1555 existence. In addition, the variance request would satisfy state code by providing  
1556 a reasonable use for a property that at present does not have one and thus is  
1557 unreasonably restricted by the Zoning Ordinance. The granting of the variance  
1558 would also meet the five subtests, including the avoidance of any substantial  
1559 detrimental impact on nearby property. As a result, staff recommends approval of  
1560 this request subject to the conditions found in the staff report.

1561

1562 This concludes my presentation, and I'll be happy to answer any questions you  
1563 may have. Thank you.

1564

1565 Mr. Baka - Any questions of staff?

1566

1567 Ms. Harris - I did have one question. The properties that we're  
1568 looking at here on the screen, do you know the front yard setback for these two  
1569 properties?

1570

1571 Mr. Gidley - I believe they're set back at 35 feet, Ms. Harris. The  
1572 applicant is proposing 35 feet as well. He wasn't requesting a front yard setback  
1573 variance. He's showing this at 35 feet to the front porch, which would be similar  
1574 to the one you're seeing here. That would meet the setback requirements. The  
1575 homes to the north, just for the record, their side yard requirement is 7 feet and  
1576 they are at 7 feet to 7-1/2 feet. So what the applicant would actually be having  
1577 here would be in line with what was built on the two lots to the north.

1578

1579 Ms. Harris - Thank you.

1580

1581 Mr. Baka - Other questions? Thank you, Mr. Gidley.

1582

1583 Mr. Gidley - Thank you, Mr. Chairman.

1584

1585 Mr. Baka - Please come forward. Good morning

1586

1587 Mr. Walker - Good morning. My name is Eric Walker, and I'm here  
1588 requesting a variance, I believe 5409 Edgefield Street, to build a single-family  
1589 dwelling. That dwelling, as Mr. Gidley mentioned, is going to be very similar if not  
1590 exactly like the homes just to the north. And ironically, I was the applicant and  
1591 builder for both variance and build jobs there. So essentially, I'm going to build a  
1592 house that's very similar if not exactly to what's there.

1593  
1594 Mr. Mackey - Are you saying you were the builder for these two  
1595 homes we're looking at?  
1596  
1597 Mr. Walker - Yes sir.  
1598  
1599 Mr. Mackey - Okay.  
1600  
1601 Mr. Baka - Other questions for Mr. Walker?  
1602  
1603 Ms. Harris - You don't have to answer this, but do you plan to  
1604 build anymore houses on the substandard lots in this neighborhood?  
1605  
1606 Mr. Walker - I think that's an excellent question. The answer is the  
1607 majority of the lots that you've classified as substandard are in the subdivision  
1608 and the lots that are behind here that would require road improvements and  
1609 sewer extensions. I've built a number of homes in this neighborhood. In fact, I  
1610 believe I've built about 15. The reason why the remaining property, from my  
1611 standing, is undeveloped is because you can't gravity-service the sewer to make  
1612 the rest of the lots buildable. So although on paper they're buildable lots, I don't  
1613 think they'll ever be developed unless something changes with the topography  
1614 out there.  
1615  
1616 Ms. Harris - Thank you.  
1617  
1618 Mr. Baka - Very good. Other questions? Thank you, Mr. Walker.  
1619 Is there anyone here who would like to speak to this case?  
1620  
1621 Ms. Moore - Can you raise your right hand, please, and be sworn  
1622 in? Do you swear the testimony you're about to give is the truth, the whole truth,  
1623 and nothing but the truth so help you God?  
1624  
1625 Ms. Baker - Yes. My name is Faith Baker. B-a-k-e-r. And I live at  
1626 5410 Edgefield Street.  
1627  
1628 Mr. Baka - 5410?  
1629  
1630 Ms. Baker - Yes.  
1631  
1632 Mr. Baka - Thank you.  
1633  
1634 Ms. Baker - We oppose for the new house to be built directly  
1635 across from our house due to the fact that there is a lot of congestion as it is.  
1636 When these new houses are typically built, the owners or whoever tend to only  
1637 rent them out. Anybody can go and live over there. I know directly across from us  
1638 there are maybe a couple of families that live over there. It's a lot of different

1639 activities, criminal activities or whatever that's going on between that house and  
1640 the house on the corner. Within the last year or so, there have been a lot of  
1641 crimes and shooting in our neighborhood. I feel if this house is built, it's just going  
1642 to be even more congested. It's going to be a lot of trash because there's trash  
1643 thrown about on the streets now as it is. A lot of noise. People coming in and out.  
1644

1645 And that picture did not actually show how small the lot is between the house to  
1646 its right and then the private property on O'Brien Road itself. If you build on that  
1647 lot, there's not going to be—there's not enough room. In my opinion it's not. And  
1648 then it's going to be congested when you do have people living over there,  
1649 coming and visiting. And there's already too much traffic coming down the street  
1650 going to the other subdivision.

1651  
1652 Mr. Baka - Thank you. Any questions for Ms. Baker?

1653  
1654 Ms. Harris - Yes. Ms. Baker, those two houses that are adjacent to  
1655 the property in question, do you know if they are renters are owners?

1656  
1657 Ms. Baker - They are renters.

1658  
1659 Ms. Harris - Both of them are renters?

1660  
1661 Ms. Baker - Yes.

1662  
1663 Ms. Harris - Thank you.

1664  
1665 Mr. Baka - One comment I would make. For any criminal activity  
1666 whatsoever that you see, please contact the police department.

1667  
1668 Ms. Baker - We have.

1669  
1670 Mr. Baka - No exceptions. For trash and noise complaints, that  
1671 can be referred to the Department of Community Revitalization?

1672  
1673 Ms. Moore - As well as police for noise, right.

1674  
1675 Mr. Baka - As well as police. Okay, thank you. So for those  
1676 instances, you have an opportunity to take specific action.

1677  
1678 Ms. Baker - And we have. But it doesn't—I guess it doesn't matter  
1679 when it comes to whoever comes in and out of their homes. Their neighbors or  
1680 their friends, I mean, that come in and out.

1681  
1682 Ms. Harris - Do you know the owners of the property?

1683  
1684 Ms. Baker - I don't personally know the owners.

- 1685  
1686 Ms. Harris - Do you know if it's the same owner for each of those  
1687 homes?
- 1688  
1689 Ms. Baker - My mother or my next door neighbor may know, but I  
1690 don't know if it's the same owner or not. But I do know that those two houses are  
1691 rented out.
- 1692  
1693 Ms. Harris - I was thinking you could speak to the owner about  
1694 that too. Okay, thank you.
- 1695  
1696 Mr. Baka - Thank you very much.
- 1697  
1698 Mr. Walker - I just want to take a brief minute. I definitely  
1699 appreciate their concerns in regards to congestion, noise, vandalism, trash. I did  
1700 speak with both occupants of the two homes that are existing there. I believe the  
1701 house that's furthest away to the left, they are renters in that home. But I believe  
1702 the people that occupy the next one, they purchased it recently.
- 1703  
1704 In regards to the impact, again, it's very similar to what's already there. I  
1705 personally don't think building a home is going to add to the issues that she  
1706 mentioned. But if there's anything that I can do to help mitigate that, I'm willing to  
1707 do that.
- 1708  
1709 Mr. Baka - Very good. And one question I have. As I look at the  
1710 plat, there is absolutely no opportunity to add additional land to this parcel. Is that  
1711 correct?
- 1712  
1713 Mr. Walker - That is correct.
- 1714  
1715 Mr. Baka - Okay. It's bounded on four sides.
- 1716  
1717 Mr. Walker - And this lot is very similar to the two next door in  
1718 terms of side yard, rear yard, and front yard.
- 1719  
1720 Mr. Baka - Very good. Any other questions for Mr. Walker in his  
1721 follow-up? Thank you, sir.
- 1722  
1723 Mr. Walker - Thank you.
- 1724  
1725 Mr. Baka - At this time, that concludes the five cases, so we'll  
1726 proceed back to the votes.
- 1727  
1728 Mr. Bell - Mr. Chairman, should I leave on the vote on the one  
1729 case or just stay here?
- 1730

1731 Mr. Baka - That's your option. I believe Mr. Blankinship has  
1732 typically said you can—you've already recused yourself from the hearing, so you  
1733 can stay present.

1734  
1735 [After the conclusion of the public hearings, the Board discussed the case  
1736 and made its decision. This portion of the transcript is included here for  
1737 convenience of reference.]

1738  
1739 Ms. Moore - This is to build a one-family dwelling. Okay. Is there a  
1740 motion?

1741  
1742 Ms. Harris - I move that we approve this request for a variance.  
1743 We know that the ordinance change had a lot to do with creating this problem. In  
1744 line with the neighboring properties, I think that aesthetically it's going to be a  
1745 lovely neighborhood. I know that the community has other things to work on, and  
1746 they need to pursue those things that they need to work on.

1747  
1748 Mr. Baka - I'll second that motion.

1749  
1750 Ms. Moore - So we have a motion for approval and a second. Do  
1751 we have a vote?

1752  
1753 Mr. Baka - All in favor say aye. All opposed say no. The ayes  
1754 have it; the motion passes.

1755  
1756 After an advertised public hearing and on a motion by Ms. Harris, seconded by  
1757 Mr. Baka, the Board **approved** application VAR2016-00017, RIDGE HOMES  
1758 LLC's request for a variance from Sections 24-95(b)(6) and 24-95(k) of the  
1759 County Code to build a one-family dwelling at 5409 Edgefield Street  
1760 (CHAMBERLAYNE ESTATES) (Parcel 790-746-1537) zoned One-Family  
1761 Residence District (R-4) (Fairfield). The total lot area requirement, lot width  
1762 requirement, and street side yard setback requirement are not met. The Board  
1763 approved the variance subject to the following conditions:

1764  
1765 1. This variance applies only to the lot area, lot width and street side setback  
1766 requirements for one dwelling only. All other applicable regulations of the County  
1767 Code shall remain in force.

1768  
1769 2. Only the improvements shown on the plot plan and building design filed with  
1770 the application may be constructed pursuant to this approval. Any additional  
1771 improvements shall comply with the applicable regulations of the County Code.  
1772 Any substantial changes or additions to the design or location of the  
1773 improvements will require a new variance.

1774  
1775 3. The home shall be connected to public utilities.

- 1777 4. The home shall have a brick foundation.
- 1778
- 1779 5. Before beginning any clearing, grading, or other land disturbing activity, the  
1780 applicant shall submit an environmental compliance plan to the Department of  
1781 Public Works.
- 1782
- 1783
- 1784 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
- 1785 Negative: 0
- 1786 Absent: 0
- 1787
- 1788
- 1789 Mr. Baka - That concludes our public hearings for today. The  
1790 other items on the agenda include the approval of the minutes from the August  
1791 25, 2016 meeting. Has the Board had a chance to review the minutes of August  
1792 25th? Any questions or comments about the minutes? Is there a motion?
- 1793
- 1794 Mr. Berman - Mr. Chairman, I move that we enter the minutes into  
1795 record without reading.
- 1796
- 1797 Mr. Baka - Motion made to approve the minutes. Is there a  
1798 second?
- 1799
- 1800 Ms. Harris - Second.
- 1801
- 1802 Mr. Baka - All in favor of approving the minutes as written say  
1803 aye. All opposed say no. The ayes have it; the motion passes.
- 1804
- 1805 On a motion by Mr. Berman, seconded by Ms. Harris, the Board **approved as**  
1806 **submitted the Minutes of the August 25, 2016**, Henrico County Board of  
1807 Zoning Appeals meeting.
- 1808
- 1809 Affirmative: Baka, Bell, Berman, Harris, Mackey 5
- 1810 Negative: 0
- 1811 Absent: 0
- 1812
- 1813 Mr. Baka - At this point, is there any other discussion or other  
1814 business from members of the Board?
- 1815
- 1816 Mr. Berman - The Board appreciates Ms. Moore standing in for  
1817 Mr. Blankinship.
- 1818
- 1819 Ms. Moore - Thank you. It keeps me on my toes. Thank you. And I  
1820 have nothing further to discuss either.
- 1821

1822 Mr. Baka - Thank you so much for your help, Ms. Moore. We  
1823 wish Mr. Blankinship and his family well. At this point, do I hear a motion to  
1824 adjourn the meeting?

1825

1826 Ms. Harris - So moved.

1827

1828 Mr. Bell - Second.

1829

1830 Mr. Baka - Very good. The meeting stands adjourned. Thank  
1831 you.

1832

1833

1834 Affirmative: Baka, Bell, Berman, Harris, Mackey 5

1835 Negative: 0

1836 Absent: 0

1837

1838

1839

1840

1841

1842

1843 Greg Baka

1844 Chairman

1845

1846

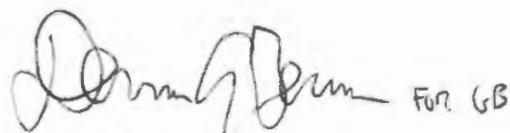
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1850

1851



Greg Baka

Chairman



Jean Moore

Acting Secretary