

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 APRIL 26, 2018 AT 9:00
5 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-
6 DISPATCH APRIL 9, 2018 AND APRIL 16, 2018.
7
8

Members Present: William M. Mackey, Jr., Chair
Helen E. Harris, Vice Chair
Gentry Bell
Terone B. Green
James W. Reid

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

9
10
11 Mr. Mackey - Good morning and welcome to the April 26, 2018
12 meeting of the Henrico County Board of Zoning Appeals. All who are able, will
13 you please stand and join us in the Pledge of Allegiance.
14

15 Thank you. Now I'll ask Mr. Ben Blankinship, our Board secretary, if he will read
16 the rules for today's meeting.
17

18 Mr. Blankinship - Good morning, Mr. Chair, members of the Board,
19 ladies and gentleman, the rules for this meeting are as follows: Acting as
20 secretary, I will announce each case. At that time, we will ask everyone who
21 intends to speak to that case to stand and be sworn in. Then a member of the
22 staff will give a brief introduction to the case. Then the applicant will present their
23 case to the Board. After the applicant has spoken, anyone else who wishes to
24 speak to that case will be given an opportunity. After everyone has had a chance
25 to speak, the applicant, and only the applicant, will have an opportunity for
26 rebuttal.
27

28 After the Board finishes each public hearing, they will take that matter under
29 advisement and go on to the next public hearing. At the end of the public
30 hearings, they'll go back through the agenda and render all of their decisions. If
31 you wish to hear their decision on a specific case, you can either stay until the
32 end of the meeting, or you can check the Planning Department website—we
33 usually get it updated within an hour of when the meeting ends—or you can call
34 the Planning Department this afternoon.
35

36 This meeting is being recorded, so we'll ask everyone who speaks to speak
37 directly into the microphone on the podium. State your name, and please spell
38 your last name just to make sure we get it correct in the record.

39
40 Mr. Chair, we do have two requests for deferral this morning, so we'll begin by
41 calling those. CUP2018-00006, Westhampton Memorial Park. I see Mr. Wilson is
42 here.

43
44 **CUP2018-00006 WESTHAMPTON MEMORIAL PARK** requests a
45 conditional use permit pursuant to Section 24-52(h) of the County Code to
46 expand an existing cemetery at 10000 Patterson Avenue (Parcel 744-742-5871)
47 zoned Agricultural District (A-1) and One-Family Residence District (R-1)
48 (Tuckahoe).

49
50 Mr. Wilson - Good morning, Mr. Chair, members of the Board, my
51 name is Jack Wilson, W-i-l-s-o-n, and I represent the applicant. We are
52 requesting a thirty-day deferral. We did get some conversation started yesterday
53 with some of the adjacent neighborhood, and we think we can resolve those
54 issues pretty quickly, but not between yesterday and this morning. So within thirty
55 days we'll be able to come back and I think have everybody happy.

56
57 Mr. Mackey - Okay. Mr. Wilson, our next meeting is May 24, 2018.

58
59 Mr. Wilson - Yes sir, that's fine.

60
61 Mr. Mackey - All right. Do you want me to go ahead and make a
62 motion on that?

63
64 Mr. Wilson - Yes.

65
66 Mr. Mackey - All right. There's a motion for deferral by the applicant
67 to May 24, 2018. I'm sorry.

68
69 Mr. Blankinship - Requested by the applicant.

70
71 Mr. Mackey - I'm sorry. Requested by the applicant to defer their
72 hearing to May 24, 2018. What is the pleasure of the Board?

73
74 Ms. Harris - I so move that we defer the case until the next
75 meeting.

76
77 Mr. Reid - Second.

78
79 Mr. Mackey - Okay, it's been moved and seconded. All in favor say
80 aye. Any opposed? The ayes have it 5 to 0.

81

82 After an advertised public hearing and on a motion by Ms. Harris, seconded by
83 Mr. Reid, **CUP2018-00006, WESTHAMPTON MEMORIAL PARK**, has been
84 deferred until the May 24, 2018 meeting.

85
86
87 Affirmative: Bell, Green, Harris, Mackey, Reid 5
88 Negative: 0
89 Absent: 0
90

91
92 Mr. Blankinship - All right, thank you. The other request for deferral is
93 CUP2018-00008, Midtown Land Partners, LLC.
94

95
96 **CUP2018-00008 MIDTOWN LAND PARTNERS, LLC** requests a
97 conditional use permit pursuant to Section 24-116(d)(1) of the County Code to
98 hold a festival at Libbie Lake West Street (Parcel 773-739-3784) zoned Urban
99 Mixed Use District (UMUC) (Brookland).
100

101 Ms. Long - Good morning. Hi, my name is Micki Long. It's L-o-
102 n-g. I am representing the applicant. We had requested a deferral because I had
103 a meeting with Fire, Police, and Planning a week ago. They wanted me to go
104 back and redo a contingency policy, get back with some of the details on the
105 event, and then defer it so that we can reconvene again in May.
106

107 Mr. Mackey - May 24th is good, Ms. Long?
108

109 Ms. Long - Yes sir.
110

111 Mr. Mackey - Okay. There has been a request by the applicant to
112 defer their hearing to May 24, 2018.
113

114 Mr. Bell - I move that we defer this to the May meeting.
115

116 Mr. Mackey - Is there a second?
117

118 Ms. Harris - Second.
119

120 Mr. Mackey - It's been moved and properly seconded. All in favor
121 say aye. Any opposed? The motion is carried 5 to 0.
122

123 After an advertised public hearing and on a motion by Mr. Bell, seconded by
124 Ms. Harris, **CUP2018-00008, MIDTOWN LAND PARTNERS, LLC**, has been
125 deferred until the May 24, 2018 meeting.
126
127

128 Affirmative: Bell, Green, Harris, Mackey, Reid 5
129 Negative: 0
130 Absent: 0

131
132

133 Mr. Blankinship - All right, Mr. Chair, we do have one request that was
134 deferred from last month's meeting, and that is CUP2018-00005, Roger C. and
135 Brenda C. Brown.

136
137

138 **CUP2018-00005 ROGER C. AND BRENDA C. BROWN** request a
139 conditional use permit pursuant to Section 24-95(i)(4) of the County Code to build
140 an accessory structure at 9001 Lydell Drive (Parcel 778-757-7278) zoned One-
141 Family Residence District (R-2) (Fairfield).

142
143

143 Mr. Blankinship - Would everyone who intends to speak to this case
144 please stand and be sworn in. Raise your right hands, please. Do you swear the
145 testimony you're about to give is the truth, the whole truth, and nothing but the
146 truth so help you God? Thank you. Mr. Madrigal?

147
148

148 Mr. Madrigal - Thank you, Mr. Secretary, Mr. Chair. Good morning
149 members of the Board.

150
151

151 This is a returning item to allow a detached garage in the front yard of a corner
152 lot. This case was heard last month, but was deferred to allow the applicant
153 additional time to research and modify the proposed building design.

154
155

155 The Board's concern was that the proposed steel building was overly large and
156 industrial looking, inconsistent with the residential character of the neighborhood.
157 The applicant has since submitted a revised floor plan and elevation which calls
158 for a smaller and traditional wood frame structure that is more in line with the
159 architectural character of the existing home and neighborhood.

160
161

161 As you may recall, the subject property is located at the northeast corner of
162 Lydell Drive and Parham Road. It is improved with a one-story, 3,700-square-foot
163 home with a finished walkout basement and an attached carport built in 1968.
164 Access to the property is by way of an asphalt drive off of Lydell. Although the lot
165 fronts on Parham Road, the home is oriented towards Lydell Drive, consistent
166 with the homes to the north of it.

167
168

168 The location of the proposed garage has not changed, but the footprint has
169 gotten smaller. The applicant's initial request was to allow a 36-foot-wide-by-24-
170 foot-deep steel building. The new design calls for a 24-foot-deep-by-30-foot-wide
171 structure, 10 feet distant from the existing carport in what is the lot's front yard.

172

173 The property is zoned R-2 and is designated SR-2 on the 2026 Land Use Plan. A
174 one-family residence is a principal permitted use in an R-2 District and is
175 consistent with the land use designation. Although the proposed garage is an
176 accessory use that is customary and incidental to a one-family dwelling, it is
177 required to be placed in the rear yard. In this case, it will be technically located in
178 the front yard, which requires the approval of a conditional use permit. The
179 applicants have a one-story brick rancher with a walkout basement off the rear of
180 the home. It has an attached carport at the southern end of the home. This
181 design is consistent with most of the homes along Lydell Drive, which have either
182 open parking or carport parking integrated to the design of the home.

183
184 There is only one example of a detached garage along this block face. In that
185 example, the garage is in the rear yard and is of typical wood frame construction
186 with matching finish materials.

187
188 The applicant's proposed garage has been redesigned to occupy a smaller
189 footprint and uses more consistent finish materials. As proposed, the front facade
190 will be clad of brick and remaining facades will be finished with horizontal vinyl
191 siding. The roof will be covered with asphalt shingle. The colors of the finish
192 materials will match the existing dwelling as best as possible, ensuring
193 architectural consistency.

194
195 In conclusion, the proposed garage will be in the lot's front yard in full view of two
196 public streets, and it will impact the streetscape. The proposed design is
197 consistent with the architectural context of the existing home and the
198 neighborhood. The proposed finish materials are in line with the neighborhood's
199 established character. Based on the facts of the case, staff does recommend
200 approval subject to conditions.

201
202 This concludes my presentation. I'll be happy to answer any questions.

203
204 Mr. Mackey - Thank you, Mr. Madrigal. Are there any questions
205 from the Board or from staff?

206
207 Ms. Harris - Yes. Just two quick questions, Mr. Madrigal. Rather
208 than a three-car garage, it's going to be a two-car garage. Is that correct?

209
210 Mr. Madrigal - That's correct. It's going to be an oversized two-car
211 garage essentially.

212
213 Ms. Harris - Okay. And rather than the 24 by 30 feet, they're
214 proposing 24 by 24 feet.

215
216 Mr. Madrigal - Twenty-four by thirty is what they're asking.

217
218 Ms. Harris - They are asking 24 by 30 feet?

219
220 Mr. Madrigal - Yes. Twenty-four feet deep by thirty feet wide.
221
222 Ms. Harris - Okay. And can we go back to the picture that shows
223 the carport? I was just wondering where will the garage be positioned?
224
225 Mr. Madrigal - Oh sure. Essentially, it's going to be placed right here
226 at the back of the drive.
227
228 Ms. Harris - Okay.
229
230 Mr. Mackey - I'd say about ten feet.
231
232 Mr. Madrigal - Here's another view so you can see the carport here,
233 and the garage is going to be right in that area, ten feet distant from that carport.
234 There's the site plan there.
235
236 Ms. Harris - That's still eighty-eight feet from Parham Road?
237
238 Mr. Madrigal - It would probably be a little bit more now that the
239 footprint has shrunk. It will probably be another six feet more than that.
240
241 Ms. Harris - Okay, thank you.
242
243 Mr. Mackey - Are there any other questions?
244
245 Mr. Bell - On this we have twenty feet to the back line, and
246 there are two houses back there. What does the back of this look like for their
247 view?
248
249 Mr. Madrigal - I don't have a rear elevation of the garage. But
250 essentially it's going to have horizontal siding on that back.
251
252 Mr. Bell - Like on the side?
253
254 Mr. Madrigal - Yes.
255
256 Mr. Bell - Any doors, windows?
257
258 Mr. Madrigal - He's proposing a couple of garage doors on the front
259 and then two windows on the side facade, and then a man door on this facade
260 here. Here you can see the window and the door. That's going to be facing the
261 interior of the lot. The one facing the street is going to have a window on it.
262
263 Mr. Bell - Thank you.
264

265 Mr. Mackey - Are there any other questions for Mr. Madrigal?
266 Thank you, sir.
267
268 Mr. Madrigal - Thank you.
269
270 Mr. Mackey - Can we hear from the applicants, please?
271
272 Mr. Brown - Good morning to the committee and Chair. Roger
273 Brown, B-r-o-w-n.
274
275 My statement is from the last hearing I truly understand the appearance that you
276 were first presented with. And after the review, it is that we needed to change to
277 be in accommodation with the community.
278
279 Mr. Mackey - All right. Thank you, Mr. Brown. We really appreciate
280 you taking the time to go back and look at it and seeing what you could come up
281 with. Are there any questions from the Board for Mr. Brown? All right. Thank you,
282 sir.
283
284 Mr. Brown - Thank you.
285
286 Mr. Mackey - Is there anyone here who would like to speak in favor
287 of the applicant? Is there anyone who would like to oppose the request? All right,
288 thank you.
289
290 **[After the conclusion of the public hearings, the Board discussed the case**
291 **and made its decision. This portion of the transcript is included here for**
292 **convenience of reference.]**
293
294 Mr. Mackey - What is the pleasure of the Board?
295
296 Ms. Harris - Mr. Chairman, I move that we approve this conditional
297 use permit. The Browns addressed the issues that were brought up at the last
298 meeting, and this does not adversely affect the health, safety, or welfare of the
299 community.
300
301 Mr. Mackey - All right. It's been moved by Ms. Harris. Is there a
302 second?
303
304 Mr. Bell - Second it.
305
306 Mr. Mackey - It's been seconded by Mr. Bell. Discussion? No
307 discussion. All in favor of granting this CUP say aye. Any opposed? The ayes
308 have it, the motion is granted 5 to 0.
309

310 After an advertised public hearing and on a motion by Ms. Harris, seconded by
311 Mr. Bell, the Board **approved** application **CUP2018-00005, ROGER C. AND**
312 **BRENDA C. BROWN** request a conditional use permit pursuant to Section 24-
313 95(i)(4) of the County Code to build an accessory structure at 9001 Lydell Drive
314 (Parcel 778-757-7278) zoned One-Family Residence District (R-2) (Fairfield).
315 The Board approved the conditional use permit subject to the following
316 conditions:

- 317
- 318 1. This conditional use permit applies only to the location of garage in the front
319 yard. All other applicable regulations of the County Code shall remain in force.
320
 - 321 2. Only the improvements shown on the plot plan and building design filed
322 submitted April 10, 2018, as amended by these conditions, may be constructed
323 pursuant to this approval. Any additional improvements shall comply with the
324 applicable regulations of the County Code. Any substantial changes or additions
325 to the location of the improvements shall require a new conditional use permit.
326
 - 327 3. The proposed garage shall be limited in size to no greater than 30 feet wide by
328 24 feet deep and shall be built of typical wood framing construction with brick
329 veneer on the street facing facades and horizontal vinyl siding on the remaining
330 facades.
331
 - 332 4. The new construction shall match the existing dwelling as nearly as practical in
333 materials and color.
334
 - 335 5. The proposed garage shall not encroach into any recorded drainage and utility
336 easements.
337
 - 338 6. Before beginning any clearing, grading, or other land disturbing activity, the
339 applicant shall obtain approval of an environmental compliance plan from the
340 Department of Public Works.
341
 - 342 7. All exterior lighting shall be shielded to direct light away from adjacent property
343 and streets.
344

345

346 Affirmative:	Bell, Green, Harris, Mackey, Reid	5
347 Negative:		0
348 Absent:		0

349

350

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

353

354 Mr. Blankinship - CUP2018-00006 has been deferred. CUP2018-
355 00007, Shri Ram Chandra Mission.

356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401

CUP2018-00007 SHRI RAM CHANDRA MISSION requests a conditional use permit pursuant to Section 24-116(d)(1) of the County Code to hold a festival at 2230 E Parham Road (Parcels 775-758-3658 and 775-758-5763) zoned General Residence District (R-6C) (Fairfield).

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

Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the Board, before you is a request to allow a festival at an existing place of worship. The applicant is proposing to host a one-day festival at the Natural Path Meditation Center. The event is entitled Heartfest 2018 and is scheduled for Saturday, August 25, 2018, from 9 a.m. to 7 p.m. with an alternate rain date of September 1st.

The emphasis of the festival is to celebrate peace and harmony and explain the many health benefits associated with meditation and also to provide a venue for local health and related businesses and organizations. This will be a free event for the public and is expected to draw approximately 1,000 to 1,500 visitors throughout the day.

The festival will occur on the approximately four-acre site with meditation sessions and expert discussions occurring within the existing building. Food and vendor displays will occur on the treed lot to the east. Limited parking will be provided on site with the majority of the parking being provided on neighboring lots to the west and across Parham Road to the south.

Setup for the festival will occur the day before, and breakdown will occur immediately after the public portion of the event. This will be the applicant's third annual festival at this location. Staff is not aware of any complaints resulting from the last two events.

The property is zoned R-6C and is designated Office and Suburban Residential 2 on the 2026 Land Use Plan. A place of worship is a permitted use in the R-6 District and is consistent with the Comprehensive Plan designations. With the exception of parking, the property is sufficiently sized to host the proposed festival.

Because outreach is customary and incidental to a place of worship, a festival is considered an accessory use. Consequently, staff finds the proposed use consistent with the zoning and Comprehensive Plan designations. Staff does not anticipate any lasting or negative impacts to adjoining properties or the community at large.

402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447

The closest homes are approximately 300 feet north of the site, and adjacent commercial uses are either closed or have limited operating hours on the day of the event. Although there is insufficient on-site parking, the applicant has procured parking on adjacent sites by way of shared parking agreements. To mitigate any potential safety issues with guests parking across Parham Road, volunteers will be shuttling visitors by way of vans across the street during the event. Additionally, pedestrian traffic across Parham Road will be prohibited during the event as a condition of approval to ensure safety.

In conclusion, the applicant's request is consistent with both the zoning and Comprehensive Plan designations. There appear to be no lasting or substantial impacts associated with the proposed festival. Past events have resulted in no complaints or issues that staff is aware of. Specific conditions of approval have been prepared to mitigate any adverse impacts on the adjacent homes and businesses and to ensure public safety. For these reasons, staff recommends approval subject to conditions.

Mr. Mackey - Thank you, Mr. Madrigal. Is there anyone from the Board or from the staff that has any questions? Yes, Ms. Harris.

Mrs. Harris - Mr. Madrigal, did you resolve the concern from the Building Inspections office about the number of portable toilets in condition 9?

Mr. Madrigal - Basically, it was just coming up with a number, a specific number. There are restroom facilities within the existing building that they'll be using as well. So between the combined restroom facilities existing onsite plus the additional portable ones they'll be providing, it should be sufficient for the festival. And it's pretty much consistent with what was done last year.

Ms. Harris - Okay. I was looking at the memo, the email that we received. They also had information about the case that's been deferred.

Mr. Madrigal - Yes.

Ms. Harris - They are requiring ten portable toilets for the same amount of people, one thousand.

Mr. Madrigal - That event is a bit different in that they're expecting a larger attendance for the fireworks festival or the fireworks component of it.

Ms. Harris - Right. And alcohol will be served there too.

Mr. Madrigal - Right.

Ms. Harris - Okay.

448
449 Mr. Madrigal - A lot more consumption of liquids.
450
451 Ms. Harris - Yes. Thank you.
452
453 Mr. Mackey - All right. Any other questions for Mr. Madrigal? All
454 right. Thank you, sir.
455
456 Mr. Madrigal - Thank you.
457
458 Mr. Mackey - Can we hear from the applicant?
459
460 Mr. Lodha - Good morning, Board, and Chair, and everybody
461 present here. My name is Tanmay Lodha. Last name, Lodha, L-o-d-h-a. I'm
462 representing the applicant.
463
464 The objective of the program is to organize a local festival with the goal of
465 bringing all of humanity together for peace and harmony. The festival will
466 primarily include booths for wellness and health-related groups such as yogi
467 studios, natural healers, wellness centers. They will be promoting their services
468 in addition to a handful of vendors providing food for the visitors. Talks by experts
469 on topics like nutrition, scientific research, and meditation, etcetera, and hourly
470 practical meditation sessions will also be scheduled.
471
472 This is our third annual festival. In fact, I'm actually extending an invitation to
473 anybody and everybody. It's free, and there's no charge. It's just to get
474 everybody together and enjoy. That's it.
475
476 Mr. Mackey - I have one question, Mr. Lodha. How did the festival
477 go last year?
478
479 Mr. Lodha - It went really well. We had a lot of good reviews from
480 folks saying they enjoyed it. I think it was almost like some people were like it
481 was a good break from their regular day that they have. Because you are just in
482 the magical environment kind of stuff.
483
484 Mr. Mackey - Were you aware of any complaints?
485
486 Mr. Lodha - No, not that I'm aware of.
487
488 Mr. Mackey - All right. Thank you, sir. Any other questions?
489
490 Ms. Harris - Yes. What is your position with this mission?
491
492 Mr. Lodha - I volunteer at the organization.
493

494 Ms. Harris - Volunteer. Thank you.
495
496 Mr. Bell - Did you have any problems last year getting the
497 people across the street, crossing Parham Road to get over to the festival? Were
498 they parked on the other side of the street?
499
500 Mr. Lodha - No. We had some security personnel on both sides.
501 And then we had the volunteers actually shuttling people, and we had signs on
502 the sides of the road saying do not cross kind of stuff so that we can actually
503 manage that piece.
504
505 Mr. Bell - Thank you.
506
507 Mr. Mackey - Any other questions from the Board or from staff for
508 Mr. Lodha? All right, thank you, sir.
509
510 Mr. Lodha - Thank you.
511
512 Mr. Mackey - Is there anyone here who would like to speak in
513 support of the request? Anyone who would like to speak in opposition? All right,
514 may we have our next case?
515
516 **[After the conclusion of the public hearings, the Board discussed the case**
517 **and made its decision. This portion of the transcript is included here for**
518 **convenience of reference.]**
519
520 Mr. Mackey - What is the pleasure of the Board?
521
522 Ms. Harris - Mr. Chairman, again I recommend that we approve
523 this conditional use permit. I think all of the concerns that we had were
524 addressed. If anything, this helps the community. The spirit of unity and wellness
525 and health helps the community. So I do move that we approve this conditional
526 use permit.
527
528 Mr. Mackey - All right, thank you, Ms. Harris. It's been moved by
529 Ms. Harris. Is there a second?
530
531 Mr. Green - Second.
532
533 Mr. Mackey - Seconded by Mr. Green. Discussion? None. All in
534 favor of granting this CUP say aye. Any opposed? The ayes have it, the motion is
535 granted 5 to 0.
536
537 After an advertised public hearing and on a motion by Ms. Harris, seconded by
538 Mr. Green, the Board **approved** application **CUP2018-00007, SHRI RAM**
539 **CHANDRA MISSION** requests a conditional use permit pursuant to Section 24-

540 116(d)(1) of the County Code to hold a festival at 2230 E Parham Road (Parcels
541 775-758-3658 and 775-758-5763) zoned General Residence District (R-6C)
542 (Fairfield). The Board approved the conditional use permit subject to the
543 following conditions:
544

545 1. This conditional use permit is for the approval of a one-day festival to be held on
546 Saturday, August 25, 2018, between the hours of 9:00 am to 7:00 pm, at the
547 Natural Path Meditation Center. In case of event cancelation due to inclement
548 weather, a "rain" date is scheduled for Saturday, September 1, 2018. All other
549 applicable regulations of the County Code shall remain in force.
550

551 2. The special event shall be limited to the main building and the 1.22-acre,
552 undeveloped lot to the east (identified as Parcel C on the site plan). Set-up shall
553 commence on Friday, August 24, 2018, between the hours of 7:00 am to 7:00
554 pm. Breakdown can commence immediately after the event and conclude on
555 Monday, August 27, 2018, at 7:00 pm. If the festival is held on the "rain" date,
556 set-up shall commence on Friday, August 31, 2018, between the hours of 7:00
557 am and 7:00 pm. Breakdown can commence immediately after the event and
558 conclude on Monday, September 3, 2018, at 7:00 pm.
559

560 3. Parking for the temporary event shall be provided on-site and at the following
561 properties: 2240 E. Parham Road (day care center), 2250 E. Parham Road
562 (accounting office), 9023 Woodman Road (veterinary clinic), 2231 E. Parham
563 Road, (adult day care). Guests parking at 2231 E. Parham Road shall be
564 shuttled between the sites. Pedestrian traffic across E. Parham Road shall be
565 prohibited during the event.
566

567 4. The applicant shall establish temporary pedestrian loading and unloading zones
568 on parcel B (of the site plan), and at 2231 E. Parham Road. The loading and
569 unloading zones shall occur within the property boundaries and shall not impede
570 traffic circulation on the shared access road or public right-of-way.
571

572 5. Only the temporary improvements shown on the plot plan filed with the
573 application may be erected pursuant to this approval. Any additional
574 improvements shall comply with the applicable regulations of the County Code
575 or as specified in the conditions of approval.
576

577 6. The applicant shall obtain any required building permits for items including large
578 tents (over 900 square feet), temporary stairs, platforms, elevated stages, and
579 electrical generators to be used during the event. The applicant shall request
580 building permits no later than August 13, 2018, and shall schedule required
581 inspections no later than 8:00 am on the day of the event.
582

583 7. Temporary tents shall maintain the following setbacks from property lines: 35-
584 foot front setback, 30-foot rear setback, and 20-foot side setbacks. Temporary
585 tents shall also maintain a minimum 10-foot setback from buildings. All

586 temporary tents shall be properly tethered as required by the Building
587 Inspections Department and the Division of Fire.

588

589 8. Food trucks shall be parked in designated parking stalls on Parcel B or in
590 designated areas on Parcel C, subject to minimum required setbacks. The
591 applicant shall adhere to Health Department requirements as outline in their
592 Memo dated April 12, 2018.

593

594 9. The applicant shall provide adequate restroom facilities and handwashing
595 stations as required by the Building Inspections Department (see email dated
596 April 11, 2018).

597

598 10. The applicant shall maintain the property so that noise and debris are
599 controlled. The site shall be kept clean and adequate trash receptacles shall be
600 provided during the event.

601

602 11. This approval is subject to the conditions of plan of development POD2014-
603 00088.

604

605 12. On-site landscaping planters shall be kept free and clear of vehicles, trailers,
606 equipment, and displays. All approved landscaping shall be maintained in a
607 healthy condition at all times. Dead plant materials shall be removed within a
608 reasonable time and replaced during the normal planting season.

609

610 13. Emergency preparedness protocols shall be developed in accordance with the
611 requirements of the Division of Fire as outlined in their Inter- Office
612 Memorandum dated April 12, 2018.

613

614 14. Event parking on the shared internal access road shall be prohibited. All on-site
615 fire lanes shall remain open and accessible during the temporary event.

616

617 15. Speakers for amplified sound and music shall be directed toward the main
618 event to limit its impact on adjoining businesses and residential neighborhoods
619 and shall not exceed 65 dB at the property line.

620

621 16. Security and safety requirements shall be provided in accordance with the
622 written requirements of the Division of Police (see memo dated April 12, 2018).

623

624 17. The sale of alcoholic beverages shall be prohibited at the event.

625

626 18. The applicant shall prohibit loitering on the property.

627

628

629 Affirmative:	Bell, Green, Harris, Mackey, Reid	5
630 Negative:		0
631 Absent:		0

632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677

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

Mr. Blankinship - CUP2018-00008 has been deferred until next month. Next is CUP2018-00009, Collegiate School.

CUP2018-00009 COLLEGIATE SCHOOL requests a conditional use permit pursuant to Section 24-95(a)(1) of the County Code to allow a structure to exceed 50 feet in height at 201 N Moreland Road (Parcels 747-735-6082, 748-736-1139 and 748-737-1411) zoned One-Family Residence District (R-1 and R-2) (Tuckahoe).

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

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

This is a request from the Collegiate School, which is located at the northeast corner of River and North Moreland Roads. As part of their recreational amenities, Collegiate wishes to install a ropes course. This would be located just east of Moreland Road near an existing business office and parking lot. Right up through here.

The ropes course would consist of five posts, shown here, in the main area of the course. Then there would be one post to the north and an additional two posts down here to the south. And again, North Moreland Road is right here. You see the distance is roughly ninety feet from the course to the street's right-of-way.

This is an elevation view of the course. As you can see, only the top part of the main five posts would exceed the fifty-foot height limit. At this point, it would go up to sixty feet. So the use permit is requesting permission to go from the fifty feet permitted height up to sixty feet for this part of the ropes course.

In evaluating this request, the property is zoned R-1 and R-2, General Residence District. It's shown as Semi-Public on the Comprehensive Plan. A private school is consistent with these designations, and a ropes course is consistent with the school's mission.

As far as detrimental impact, as I noted earlier, the ropes course would be located approximately ninety feet east of Moreland Road, and it would be within 300 feet of homes on the opposite side of the street. This grassy area here is roughly where the ropes course would go. This is a business office for the

678 school. Then Moreland Road is right through here. You can see one of the
679 homes across the way, roughly 300 feet distance. Then this is the view from the
680 home side of the street. Again, the course would go back here where you see the
681 grassy area. As you'll note, there are several trees in this area which exceed
682 sixty feet in height, which will help to screen the ropes course. So any detrimental
683 impact from this course will be minimal.

684

685 In conclusion, the proposal is consistent with the mission of the school along with
686 the Comprehensive Plan and Zoning Ordinance. Any impact from the course
687 should be minimal. As a result, staff can recommend approval of this request
688 subject to the conditions in your staff report.

689

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

692

693 Mr. Bell - This parking lot here is part of the school?

694

695 Mr. Gidley - Yes sir.

696

697 Mr. Bell - So the house is on the other side of the road, right?

698

699 Mr. Gidley - Yes.

700

701 Mr. Bell - So therefore you've probably got a good distance
702 from the road back to the house?

703

704 Mr. Gidley - From the house to the ropes course is roughly 300
705 feet.

706

707 Mr. Bell - Okay. All right. Thank you.

708

709 Ms. Harris - Mr. Gidley, are we familiar with any other schools in
710 Henrico County offering a ropes course?

711

712 Mr. Gidley - I'm not aware of any right off hand.

713

714 Mr. Blankinship - Apparently, the University of Richmond has one.
715 We're not sure which side of the city/county boundary it's on, but we think it's in
716 the county.

717

718 Ms. Harris - Okay. I have some questions about the construction,
719 but I'll save that for the applicant. Thank you.

720

721 Mr. Mackey - Any other questions for Mr. Gidley? Paul, I hate to put
722 you on the spot. I have one quick question. Was Collegiate the school that we
723 had a conditional use permit for the safety netting for the baseball field?

724

Mr. Gidley - That was Steward School.

725

726

Mr. Mackey - Okay, thank you. Any other questions? All right.

727

Thank you, Mr. Gidley.

728

729

Mr. Gidley - Sure.

730

731

Mr. Mackey - Can we hear from the applicant?

732

733

Mr. Carson - Good morning, everybody. My name is Scott Carson. I'm the director of Facilities Management and Construction at Collegiate School. My last name is spelled C-a-r-s-o-n. It's a pleasure to come and see you folks again. I have a prepared statement I'll just read, and then we can get to questions.

734

735

736

737

738

739

Collegiate School will soon begin the installation of a challenging outdoor personal development and team-building activity, which consists of high and low ropes elements. Low elements take place on the ground or slightly above the ground, and high elements will be constructed within trees and require a belay for safety. The high-and-low ropes course supports our middle and upper school curricular programs.

740

741

742

743

744

745

746

The facility is named in honor of Steven Adamson, class of 1992 graduate, who enjoyed challenging himself and others and who held a love and appreciation of outdoor adventure.

747

748

749

750

The course will be located within an existing stand of mature trees behind the business office, set approximately ninety feet back from Moreland Road. The site is very convenient for access and use by our students during the school day and also has the benefit of being surrounded by mature vegetation. The existing wooded canopy will add a sense of place and an element of excitement to the course experience. We expect to begin using the course during the fall term of 2018.

751

752

753

754

755

756

757

758

The intent, obviously, of the new activity is to intentionally support middle school PE and our outdoor Collegiate program, which has grown over about the past five or six years with various activities both on this campus, at our Blair Campus in Goochland County, and travel to other sites within and outside of the Richmond area. It's important for our curriculum to develop young leaders, and this course will only add to that level of curricular sojourn.

759

760

761

762

763

764

765

I'm happy to take any questions from the Board.

766

767

768

Mr. Reid - How will these children climb up on those things?

769

770 Mr. Carson - Could we switch to the elevation, please? Thank you.
771 The facilities and the activity in general will consist of ground-level activities and
772 three tiers of activity set within what's called the discovery course, which forms
773 the core of the project.

774
775 The first level is approximately sixteen feet in the area. It's accessible through a
776 wooden crib, which is locked from below. So it restricts access to that first level.
777 Climbing activities take place at the 16-, 26-, and 36-foot level. Primarily those
778 three levels, with the ability to go up to approximately 40 feet in height at what's
779 called the crow's nest, which is kind of right at the top of that course structure.
780 But there are also components on the ground, which we call ground school,
781 where we demonstrate safety techniques, delay, clip in, clip out, things of that
782 nature.

783
784 Mr. Bell - Is it located right behind the business office on that
785 sort of narrow strip? There's a sidewalk that goes down to the football field.

786
787 Mr. Carson - Let me go into the site map here. Okay. The business
788 office is an early 1960's structure. There is an existing stand of mature oak and
789 pine located directly behind the existing parking lot. Between the parking lot and
790 our stormwater BMP we have roughly a forty-foot square of relatively open
791 space. The discovery course would be located—it's actually very unique, and
792 we're working with a designer to actually set the timber frame within that stand of
793 trees. So as you're climbing up through those course components, literally right
794 in the middle of that thirty-foot square of timber frame we're going to have a
795 rather large pine and an oak actually coming up through the course. It's pretty
796 cool.

797
798 There's really nothing like this outside of Go Ape in Williamsburg. Richmond
799 does have a course, which we've looked at and previewed. It's sort of a different
800 character. The Chesterfield Zoo has a zipline as well, but it doesn't have the
801 discovery course. So it will be sort of a unique installation here in Henrico. But
802 yes, to your point, within the grove of trees.

803
804 Mr. Bell - Thank you.

805
806 Ms. Harris - Mr. Carson, in this plan that we have, are there
807 steps? How does one navigate the ropes? Do they step from one cedar plank—
808 What do the steps look like?

809
810 Mr. Carson - I'm going to the elevation view. The participants will
811 climb up through that cribbing, that solid cribbing, which is shown on the lower
812 left side as sort of a solid yellowish piece. It's locked from below. And once they
813 get up to that sixteen-foot platform the way—the components, there are roughly
814 twenty-four components to the discovery course. In terms of difficulty, they range
815 from low, medium, to high, depending on how high you go.

816

817 So as our students explore this course and ultimately gain confidence, they may
818 not, on their first attempt, go much further than that first level or even through that
819 cribbing. But over time, as they develop the confidence and leadership, they'll go
820 higher up to that zipline platform. At the lower level, just by way of example, there
821 may be a component consisting of a wide balance beam with rope guides and
822 belay clips above. So you're on fairly stable footing at the lower level. At the
823 highest level, there may be a similar component that consists of simply a high
824 wire, so to speak, a rope with rope holds and the belay clip up top. So your
825 footing will change as the components go up a level of complexity. That's
826 purposeful because as our students gain confidence or our participants gain
827 confidence, we would expect to challenge them the higher they go. Plus the thrill
828 of seeing the landscape around you.

829

830 Ms. Harris - Will there will be supervision for this?

831

832 Mr. Carson - Absolutely. The course designer is a company called
833 Challenge Towers, and they're out of Asheville, North Carolina. They've done
834 this throughout the US, Canada, and Mexico. One of their big emphases is on
835 course safety. We have actually bought into a training program for up to twelve
836 instructors, which would actually include some of our seniors as student
837 instructors. They go through that program about how to teach, maintain, and
838 oversee safety. So we fully intend to be purposeful about having some of our
839 student leadership actually be able to manage this course, obviously supervised
840 by our outdoor Collegiate leader. But yes, there will be supervision and safety.
841 From our own risk management standpoint, and I will tell you the school's risk
842 manager has participated lovingly in all of our design charette workshops. And
843 our insurance carrier is very aware of the project. But safety is paramount. And
844 we wanted to make that a purposeful decision starting at day one with the
845 charette process.

846

847 Ms. Harris - Did you increase your insurance?

848

849 Mr. Carson - I wish I had my risk manager. We're very well insured.

850

851 Ms. Harris - Okay. This is my first experience dealing with a ropes
852 course. How often will you go through this process with these students? Is it a
853 course that will be taught daily, monthly, quarterly?

854

855 Mr. Carson - We're going to work that purposefully into the middle
856 school PE program, as well as the outdoor Collegiate program. So the facility will
857 only be open during school operational hours. They tend to run about 7 a.m. to
858 dusk, depending on your fall/spring sports season. I don't have a very good
859 answer for you about the specific scheduling of the facility. But middle school PE
860 runs throughout the day. I would expect that that would happen during more
861 seasonal times, in the fall and in the spring.

862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907

Ms. Harris - In my reading, I found that they said supervision should be right there, it cannot be from the ground.

Mr. Carson - Absolutely.

Ms. Harris - I was just concerned about that. You started off saying for personal development and team-building reasons—. Please tell me how it involves personal development.

Mr. Carson - Right. My background is as a landscape architect. Over the course of a very rewarding career, I've designed a lot of play areas. Not just at Collegiate, but outside of Collegiate School, too. One thing I've noticed—and I've got a few gray hairs here—even when I was growing up, the element of risk in play is a huge component when I was growing up. And challenging young minds as they're—the brain kind of stops fully developing at about sixteen, eighteen. But challenging young minds to take risk and be okay with that and build confidence really starts at a very young age.

What I've seen in the playground industry is within about the last fifteen years the element of risk is starting to be taken out of play, and we're developing bubbles around our children in many ways. Not entirely, but in many ways. But what I'm starting to see with the playground industry now is we're bringing some of that element of risk back, which is a good thing.

Age-appropriate risk-taking is very appropriate, not only for mental development, thinking through a problem and not having it sort of delivered to you is very rewarding for young people. A facility like this—obviously where there's a large amount of risk with some inherent safety built into that—is going to challenge our community a little bit more and help them take risks, learn, communicate, lead, follow, make decisions on their own. And it's only going to help, in a very purposeful way, help us grow our young leaders and make them that much stronger as they move on to college and the real world. It's very important for our curriculum development.

Ms. Harris - Okay.

Mr. Mackey - Mr. Carson, on a public safety note, what steps will be taken to secure the facility when the school isn't open?

Mr. Carson - The school has 24/7 campus security. We made that purposeful after the Newtown, Connecticut, mass shooting. So we'll always have campus security. We're very fortunate to have two of Henrico's finest on campus all day while school activities are ongoing. There will be a perimeter fence that we intend to build, and that was part of our risk management program.

908 I wanted to talk to you about the lighting a little bit too, because we wanted to add
909 motion-activated lighting so that during off-hours if there was a trespass, lights
910 would go on, and having a motion-activated security camera, too, that's maybe
911 squirrel proof.

912

913 Mr. Mackey - All right. The conditions of approval, condition 6 says
914 no lighting is included in the approval. But I believe that's something we can
915 address. But I believe we also may need you to add something about the
916 perimeter fencing as well.

917

918 Mr. Carson - That will actually be on our site plan that Draper Aden
919 will submit for formal approval with the Planning folks. The site plan—

920

921 Mr. Blankinship - Not necessarily, as long as it's something that's
922 allowed by code.

923

924 Mr. Mackey - Okay. All right. Okay. Thank you, Mr. Carson. Any
925 other questions?

926

927 Mr. Carson - May I add one more thing?

928

929 Mr. Mackey - Go ahead.

930

931 Mr. Carson - Condition #3, we do want to open this facility up for
932 faculty and staff. We actually have a leadership program for faculty and staff.
933 This is going to be one of the first things they want to do.

934

935 Mr. Mackey - So we should add that the ropes course should only
936 be open to students of Collegiate School as well as faculty and staff?

937

938 Mr. Carson - Students, faculty, and staff. And we actually have a
939 parent who wants to come and try it too. And our donor community, who may not
940 be. So Steven Adamson's family. Things like that.

941

942 Mr. Blankinship - We'll think of an appropriate wording for that.

943

944 Mr. Green - Knowing Collegiate as I do, you have a very strong
945 and active board, as well as parents. So I know they have vetted this project. I
946 feel comfortable, knowing some of the key players over there, that they wouldn't
947 just allow something like this to go up without proper vetting. So when you talk
948 about the vetting that occurred, I'm glad you mentioned that the faculty and staff
949 will participate. But at some point, I'm not sure, but a lot of folks, corporate
950 especially, have gone through these team-building kinds of exercises. I could
951 potentially see at some point some corporate entity or business may want to use
952 that as a team-builder. I think that's an excellent project idea because, like I say,
953 you see it at the corporate level. So for them to start it at the level that they are is

954 complimentary and leads to good team-building. And the fact that they're
955 exercising, that you're getting kids out there to exercise, take challenges, and do
956 all that. But could you speak to your internal vetting, because I think it's important
957 that folks realize that your board is tough.

958
959 Mr. Carson - Thank you. I've been at Collegiate for eleven years.
960 One of the things that I've tried to do in that amount of time is when projects like
961 this go through our process and we sort of have that concept on paper, I make a
962 call over to Kevin Wilhite at Planning saying "I've got something I want to talk to
963 you about." So about four to six weeks ago, something like that, Mr. Wilhite,
964 Mr. Baka, Mrs. O'Bannon and I met. I showed them the rough outlines of what
965 we were talking about. It was an interesting conversation. Kind of unique in a
966 way. Through the course of our discussion, you know, maybe we could invite the
967 County administration over for some team-building.

968
969 So I think those opportunities will come up, and we've had those discussions with
970 our board. Our board most recently met a week ago Monday. This project was
971 presented to them and has been blessed. Also, it's been very purposeful, these
972 discussions we've been having with the school administration. And obviously
973 before the board meeting, vetting the project with them. We have a large board.
974 They're very active, as you have mentioned, and very supportive of our curricular
975 development and our leadership program. It's not always an easy sell. But this
976 opportunity really is unique, and we see it really growing, and I think our board
977 recognizes that it's important for our curriculum and our student development.

978
979 Mr. Mackey - Thank you, Mr. Carson. Any other questions for
980 Mr. Carson? All right, thank you, sir. Is there anyone here who would like to
981 speak in support of the request? Anyone to speak in opposition? All right, thank
982 you. Can we have the next case?

983
984 **[After the conclusion of the public hearings, the Board discussed the case**
985 **and made its decision. This portion of the transcript is included here for**
986 **convenience of reference.]**

987
988 Mr. Mackey - What is the pleasure of the Board?

989
990 Mr. Reid - Mr. Chairman, I move that we approve the conditional
991 use permit 2018-00009 to permit Collegiate School to put up the ropes course,
992 which will exceed fifty feet in height, on their campus at 201 North Moreland
993 Road. And also, item 3 of the conditions of approval be changed to say that it'll
994 be open to both faculty and the students of the school.

995
996 Mr. Mackey - And you may want to specify guests of the school as
997 well.
998

999 Mr. Blankinship - Right. And I believe the applicant also asked for a
1000 modification of condition 6 to allow motion-activated security lights.

1001
1002 Mr. Mackey - Is that consistent with your motion as well Mr. Reid?
1003

1004 Mr. Reid - Yes.

1005
1006 Mr. Green - Second.

1007
1008 Mr. Mackey - It's been moved by Mr. Reid and seconded by Mr.
1009 Green with the amended conditions. Discussion?

1010
1011 Ms. Harris - Yes. I just have some reservations about this, but I'm
1012 not going to vote against it. I don't want to hold up progress. But I do have fears
1013 as a mother and grandmother that we're putting our children in danger. But this is
1014 the way the tide is moving; I'm not going to try to block the tide.

1015
1016 Mr. Mackey - I understand. Other discussion?

1017
1018 Mr. Green - Ms. Harris, you have a very active parental group at
1019 Collegiate. And I don't think any parent or grandparent would put their kid at risk.
1020 I suspect that they're going to go to great lengths to make sure that they're safe.
1021 If anybody can afford to do that, it certainly is Collegiate. But they have very
1022 active parental involvement over there. I'm comfortable with that. I think they're
1023 going to come back to us and say corporations are going to want to start asking
1024 them to use this.

1025
1026 Then we just need to look at the history. If the University of Richmond has one,
1027 look at the history of accidents or issues that have occurred there. I'm not familiar
1028 with hearing any news where there have been problems. This is just the thing.
1029 It's just an activity. We complain about our kids not having activities, sitting
1030 around getting fat and obese. If this is an opportunity to get them out and active
1031 and build team-building activities—which is critical, because I think that's what's
1032 necessary in today's society. We don't spend enough time on building team-
1033 building activities, even among ourselves. That's my view.

1034
1035 Ms. Harris - Mr. Green, I respect your opinion so much. But I'm
1036 opposed to bungee jumping. I would have to think about other ways for my
1037 grandchildren to get all of those things.

1038
1039 Mr. Green - They have a clip. So they're not just going up there
1040 without safety harnesses.

1041
1042 Ms. Harris - Right, thirty feet off the ground. Right.

1043

1044 Mr. Mackey - All right, that was a very healthy discussion. It's been
1045 moved by Mr. Reid, seconded by Mr. Green. All in favor say aye. Any opposed?
1046 None. The ayes have it and the motion is granted 5 to 0.

1047
1048 After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr.
1049 Green, the Board **approved** application **CUP2018-00009, COLLEGIATE**
1050 **SCHOOL** requests a conditional use permit pursuant to Section 24-95(a)(1) of
1051 the County Code to allow a structure to exceed 50 feet in height at 201 N
1052 Mooreland Road (Parcels 747-735-6082, 748-736-1139 and 748-737-1411)
1053 zoned One-Family Residence District (R-1 and R-2) (Tuckahoe). The Board
1054 approved the conditional use permit subject to the following conditions:

- 1055
1056 1. This conditional use permit applies only to the height of the proposed structures.
1057 All other applicable regulations of the County Code shall remain in force.
1058
1059 2. Only the improvements shown on the plans titled "Collegiate School Ropes
1060 Course" by Draper Aden Associates dated March 22, 2018, may be constructed
1061 pursuant to this approval. Any additional improvements shall comply with the
1062 applicable regulations of the County Code. Any substantial changes or additions
1063 to the design or location of the improvements shall require a new conditional
1064 use permit.
1065
1066 3. The ropes course shall only be open to students, faculty, staff, and invited
1067 guests of the Collegiate School.
1068
1069 4. Hours of operation for the ropes course shall be limited to the normal hours of
1070 operation for the school.
1071
1072 5. The existing trees and other landscaping in the area of the ropes course shall
1073 be maintained in a healthy condition at all times. Dead plant materials shall be
1074 removed within a reasonable time and replaced during the normal planting
1075 season.
1076
1077 6. No lighting is included in this approval except motion-activated security lights.

1078
1079
1080 Affirmative: Bell, Green, Harris, Mackey, Reid 5
1081 Negative: 0
1082 Absent: 0

1083
1084
1085 **[At this point, the transcript continues with the public hearing on the next**
1086 **case.]**
1087

1088 Mr. Blankinship - That completes the conditional use permit portion of
1089 the agenda for this morning. There are also four variance requests on the
1090 agenda. The first is VAR2018-00007, Stephen Charles.

1091
1092 **VAR2018-00007** **STEPHEN CHARLES** requests a variance from
1093 Section 24-9 of the County Code to build a one-family dwelling at 600 N Mullens
1094 Lane (Parcel 827-727-8687) zoned One-Family Residence District (R-3) and
1095 Conservation District (C-1) (Varina). The public street frontage requirement is not
1096 met. The applicant proposes 27 feet public street frontage, where the Code
1097 requires 50 feet public street frontage. The applicant requests a variance of 23
1098 feet public street frontage.

1099
1100 Mr. Blankinship - Members of the Board, I'll call your attention to a set
1101 of plans and elevations that were left on the table for you this morning.

1102
1103 Would everyone who intends to speak to this case please stand and be sworn in.
1104 Raise your right hands, please. Do you swear the testimony you're about to give
1105 is the truth, the whole truth, and nothing but the truth so help you God? Thank
1106 you. Mr. Madrigal?

1107
1108 Mr. Madrigal - Before you is a request to allow the construction of a
1109 one-family dwelling in an R-3 district. From 1925 to 1972, the subject property
1110 and the adjoining lot to the east composed one parcel that was improved with a
1111 one-family dwelling. These two parcels here were at one time one property. The
1112 property is located at the terminus of Mullens Lane. So in 1960 when the public
1113 street frontage requirement was added to the Zoning Ordinance, the dwelling
1114 was rendered nonconforming.

1115
1116 In 1972, the Board granted a variance from the public street frontage requirement
1117 to divide the property and build a second dwelling at 599 North Mullens Lane.
1118 This property here. Then in 1980, the property to the south at 590 North Mullens
1119 Lane dedicated land to the County for the development of a permanent cul-de-
1120 sac. The bulb of that cul-de-sac is located approximately twenty-six feet south of
1121 the subject property. So here you can see the cul-de-sac and you can see that
1122 little leg there that separates the property from the cul-de-sac.

1123
1124 Although the subject lot is served by a public street, it does not front on a public
1125 street, and there is little chance of the County extending the street to the north
1126 due to the existing floodplain.

1127
1128 The applicant acquired the property in 2013. Over the years, the original 1925
1129 house deteriorated and was finally demolished in January of this year. Although
1130 the applicant would like to build a new dwelling on the property, he did not submit
1131 plans with his application. Plans and elevations were submitted two days ago
1132 and have been provided to you today for this hearing.

1133

1134 With respect to the threshold question, as long as the original home remained on
1135 the property, the owner had a right to its continued use. However, the theory
1136 holds that nonconformities are eventually eliminated over time. For that reason,
1137 nonconforming buildings may not be rebuilt except in conformance with the
1138 Zoning Ordinance. In this case, that means that any new dwelling on the property
1139 must be served by a public street. Because of the physical layout of the cul-de-
1140 sac, the subject lot is approximately twenty-six feet distant from it, and there is no
1141 way for the lot to meet the street frontage requirement. As a result the property
1142 cannot be used for a dwelling, and it's too small for any other permitted use in the
1143 A-1 District.

1144
1145 With respect to the five subtests, item 1 requires that the property in question
1146 was acquired in good faith and any hardship is not self-imposed. As mentioned
1147 earlier, the applicant acquired the nonconforming property in 2013. There is no
1148 reason to believe he acted in bad faith with that purchase. Also, when he applied
1149 for the demo permit to remove the existing house, he was informed that it could
1150 not be rebuilt without a variance. The State Supreme Court has determined that it
1151 is not a violation of good faith for a property owner to acquire property knowing
1152 that a variance is required for its development.

1153
1154 Item 2, the granting of the variance will not result in substantial detriment to
1155 adjacent or nearby property. Until recently, the property had a dwelling on it for
1156 almost a hundred years. Although the lot lacks street frontage, it does have
1157 access to a public street by way of its location on a terminus. A dwelling would be
1158 consistent with both the zoning and Comprehensive Plan designations, as well
1159 as the existing development pattern in the area. Staff is not aware of any
1160 detrimental impacts that would result from the proposed variance if appropriate
1161 setbacks are applied to a new dwelling.

1162
1163 Item 3, the condition of situation of the property is not of a general or recurring
1164 nature as to adopt a code amendment. Over the past ten years, the Board has
1165 received an average of six applications per year for variances from the public
1166 street frontage requirement. This case, however, is unusual in that a
1167 nonconforming dwelling had deteriorated over a period of almost a hundred
1168 years and the cul-de-sac is twenty-six feet distance from the property. It would
1169 not be reasonable to amend the regulations to deal with such an unusual
1170 circumstance.

1171
1172 Items 4 and 5, staff concedes that they're satisfied as per the staff report.

1173
1174 In conclusion, staff finds the property suitable for a dwelling in that it cannot be
1175 used for any other reasonable use in the A-1 District. The proximity of the lot to
1176 the public street meets the intent of the Code and extending the street further
1177 north is not practical. The proposed variance would alleviate a hardship without
1178 causing any substantial detriment to nearby property. As such, staff recommends
1179 approval subject to conditions. I'll be happy to answer any questions.

1180
1181 Mr. Mackey - Thank you, Mr. Madrigal. Are there any questions
1182 from the Board or from staff for Mr. Madrigal? All right. Thank you, sir. Can we
1183 hear from the applicant?

1184
1185 Mr. Rollins - Good morning, Mr. Chairman and to the members of
1186 the BZA Board. I am Ernest Rollins with Rollins LLC Construction. We speak on
1187 behalf of Mr. and Mrs. Charles.

1188
1189 I truly appreciate the fine work that Mr. Blankinship and others did on this job to
1190 get such wonderful history of this particular piece of property. And we appreciate
1191 the recommendation that a variance be approved with an eighty-foot setback and
1192 a twenty-five common setback line. But there are a couple of concerns that we
1193 have that we'd like to address this Board with.

1194
1195 The property is a very unique piece of property for us as builders. It has an
1196 existing well that has been reviewed by the public health department. And they
1197 substantiated that the well is fine and we can use the well. Also, meeting with
1198 Mrs. Kirkland, the topography of the land has a quick falloff shortly behind the old
1199 existing dwelling, which was 125 feet from the cul-de-sac that we've been
1200 speaking of.

1201
1202 Our job is to please Mr. and Mrs. Charles and work in compliance with the rules
1203 and the guidelines of the Board and the municipality. What we have to deal with
1204 now is a house, which is larger than the old, previously existing dwelling, and a
1205 three-car garage. We have checked the setback requirements, and the setback
1206 requirements speak of forty feet from the cul-de-sac. And our garage has to be
1207 ten feet from the rear of Mr. and Mrs. Charles's new home.

1208
1209 We are requesting that this Board consider us for a sixty-foot front setback. The
1210 reason is because we have a ten-foot setback from the rear of the house to the
1211 garage, and it would work much better for them if we could have a sixty-foot
1212 distance between the house and the garage so they can easily ingress and
1213 egress out of the property and not have them at the very rear of the property,
1214 which is about maybe ten feet from that fall.

1215
1216 The property layout, I mean the soil up there is good. It's great for ground control
1217 as far as the water is concerned. It has a tremendous runoff. It's no problem. We
1218 have had a soil scientist go out to test the soil, which is one of the requirements
1219 from the Building Permit Office. We have approved documents stating exactly
1220 what they want us to do in terms of the soil.

1221
1222 So our biggest concern now is if the Board could consider us for sixty feet.

1223
1224 Mr. Blankinship - What is the depth of the dwelling? I can see a
1225 dimension on the plan, but it's too small to read.

1226
1227 Mr. Rollins - It's thirty-six feet on the dwelling and twenty-four feet
1228 on the garage. And by guidelines, there must be ten feet between the house and
1229 the garage.
1230
1231 Mr. Blankinship - Right. So with a 60-foot setback and a 36-foot depth,
1232 that would put the rear line of the house at 96 feet. Is that right?
1233
1234 Mr. Rollins - Right.
1235
1236 Mr. Blankinship - Mr. Chair, I drafted that eighty-foot recommendation
1237 because there was no plan included, based on the adjoining house there, 599.
1238 That would put them at roughly the same plane. Sixty feet would pull you forward
1239 of that somewhat, but given the shape of that cul-de-sac, it's not unusual for the
1240 house to be a little bit differently located. The main concern is that we don't want
1241 the front plane of one house to be behind the rear plane of the other so that
1242 you're stepping out of your front door and looking at somebody else's backyard.
1243 Given the depth of the house, a sixty-foot setback would be sufficient to prevent
1244 that from happening. So I don't have any objection if the Board would prefer to
1245 change that.
1246
1247 Mr. Mackey - So we would have to change condition #2?
1248
1249 Mr. Blankinship - Yes sir.
1250
1251 Mr. Mackey - Any dwelling on the property shall be set back of at
1252 least—and that would change to ninety-six feet?
1253
1254 Mr. Blankinship - Sixty for the front.
1255
1256 Mr. Mackey - Okay, sixty feet for the front.
1257
1258 Mr. Blankinship - And we should probably add a condition referring to
1259 these submitted plans.
1260
1261 Mr. Mackey - Okay.
1262
1263 Mr. Blankinship - The standard condition wasn't in there because we
1264 didn't have any plans.
1265
1266 Mr. Mackey - Okay.
1267
1268 Mr. Blankinship - If you would like, we can also add it in.
1269
1270 Mr. Mackey - Yes.
1271

1272 Mr. Blankinship - You were okay, sir, with the 25-foot side yard
1273 setback?
1274
1275 Mr. Rollins - Yes.
1276
1277 Mr. Blankinship - Okay, good.
1278
1279 Mr. Mackey - Okay. So that side setback stays the same.
1280
1281 Mr. Blankinship - That's also greater than the required setback, but it
1282 was based on the location of the old house, the 1925 house.
1283
1284 Mr. Mackey - Because ten feet—
1285
1286 Mr. Blankinship - Yes, would be the requirement.
1287
1288 Ms. Moore - Mr. Blankinship, because you do the conditions,
1289 they're not necessarily advertised a certain way, correct?
1290
1291 Mr. Blankinship - That's correct, yes.
1292
1293 Mr. Mackey - All right. So we would need to add a fifth condition?
1294
1295 Mr. Blankinship - Yes. I would recommend the standard condition, only
1296 the dwelling shown on the approved plans can be constructed pursuant to this.
1297
1298 Mr. Mackey - So the fifth condition would read only the dwelling
1299 shown on the approved plan can be constructed on the site. You're willing to
1300 agree with that?
1301
1302 Mr. Rollins - Yes sir.
1303
1304 Mr. Mackey - Okay, Mr. Rollins. Give us a second to write this
1305 down, and then we may have some more questions for you.
1306
1307 Mr. Rollins - Okay.
1308
1309 Ms. Harris - Mr. Chairman, there would be a change in condition
1310 #2 also?
1311
1312 Mr. Blankinship - Yes ma'am.
1313
1314 Mr. Mackey - Yes ma'am. Going from sixty feet in the front—excuse
1315 me. Going from eighty feet in the front, changing it to sixty feet. The side setback
1316 will remain at twenty-five feet.
1317

1318 Ms. Harris - Okay.
1319
1320 Mr. Mackey - Were there any questions from the Board for
1321 Mr. Rollins?
1322
1323 Ms. Moore - I just have one. If the house is moving forward closer
1324 to the adjacent home, you might want to consider a wider side yard setback. Is
1325 that possible? Just throwing that out.
1326
1327 Mr. Rollins - No, it would be difficult because of the well.
1328
1329 Ms. Moore - Okay. I see.
1330
1331 Mr. Mackey - All right. Have you seen the complete list of all the
1332 conditions, if it were approved?
1333
1334 Mr. Rollins - Yes.
1335
1336 Mr. Mackey - And you agree to what is now all five?
1337
1338 Mr. Rollins - Yes sir.
1339
1340 Mr. Mackey - Okay. Any other questions?
1341
1342 Ms. Harris - Mr. Rollins, you have some serious ditches around
1343 that property, do you not?
1344
1345 Mr. Rollins - Yes.
1346
1347 Ms. Harris - Yes. Because I went by there, and I was very
1348 concerned that I might fall in one of those.
1349
1350 Mr. Rollins - Like I said earlier, our responsibility is to take care of
1351 Mr. and Mrs. Charles. And we're going to do everything within our ability while
1352 there to make this property a blessing to them.
1353
1354 Mr. Mackey - We appreciate that. Any other questions? All right.
1355 Thank you, Mr. Rollins. We appreciate it.
1356
1357 Mr. Rollins - Thank you.
1358
1359 Mr. Mackey - Is there anyone here who would like to speak in
1360 support of the request? Anyone that would like to speak in opposition? All right,
1361 can we hear our next case please?
1362

1363 [After the conclusion of the public hearings, the Board discussed the case
1364 and made its decision. This portion of the transcript is included here for
1365 convenience of reference.]
1366

1367 Mr. Mackey - What is the pleasure of the Board? Being the Varina
1368 magistrate, I make a motion that we approve the variance. It appears that it has
1369 met all five of the subtests. It doesn't appear to be any detrimental effect on the
1370 community. We need to amend conditions #2 and #5. For condition #2—the
1371 dwelling built on the property shall be set back—is changing from eighty feet to
1372 sixty feet. And we were adding condition #5 that only the approved drawing can
1373 be constructed on this lot.
1374

1375 Ms. Harris - I second the motion.
1376

1377 Mr. Mackey - It's been moved and seconded. Discussion? None. All
1378 in favor of the motion say aye. Any opposed? The ayes have it. It's been
1379 approved 5 to 0.
1380

1381 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
1382 Ms. Harris, the Board **approved** application **VAR2018-00007, STEPHEN**
1383 **CHARLES** requests a variance from Section 24-9 of the County Code to build a
1384 one-family dwelling at 600 N Mullens Lane (Parcel 827-727-8687) zoned One-
1385 Family Residence District (R-3) and Conservation District (C-1) (Varina). The
1386 Board approved the variance subject to the following conditions:
1387

- 1388 1. This variance applies only to the public street frontage requirement for one
1389 dwelling only. All other applicable regulations of the County Code shall remain in
1390 force.
1391
- 1392 2. Any dwelling built on the property shall be set back at least 60 feet from the front
1393 (southern) lot line and at least 25 feet from the common lot line with 599 N
1394 Mullens Lane (the eastern lot line).
1395
- 1396 3. Approval of this request does not imply that a building permit will be issued.
1397 Building permit approval is contingent on Health Department requirements,
1398 including, but not limited to, soil evaluation for a septic drainfield and reserve
1399 area, and approval of a well location.
1400
- 1401 4. Clearing, grading, or other land disturbing activity shall not begin until the
1402 applicant has submitted, and the Department of Public Works has approved, an
1403 environmental compliance plan.
1404
- 1405 5. Only the dwelling shown on the plans and elevations submitted April 25, 2018
1406 may be constructed pursuant to this approval. Any additional improvements
1407 shall comply with the applicable regulations of the County Code. Any substantial
1408 changes to the design of the dwelling will require a new variance.

1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453

Affirmative:	Bell, Green, Harris, Mackey, Reid	5
Negative:		0
Absent:		0

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

VAR2018-00008 **JAMES MEADE** requests a variance from Section 24-94 of the County Code to build a one-family dwelling at 2370 Caliber Drive (BATTERY HILLS) (Parcel 813-685-7178) zoned Agricultural District (A-1) (Varina). The lot width requirement and total lot area requirement are not met. The applicant proposes 0.99 acre lot area and 149 feet lot width, where the Code requires 1 acre lot area and 150 feet lot width. The applicant requests a variance of 0.01 acre lot area and 1 foot lot width.

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

Mr. Gidley - Thank you, Mr. Secretary. Mr. Chairman, members of the Board, this is a request for both lot width and lot area variances. The subject property is located off of Caliber Drive just west of Recreation Road.

As you can see on the screen, the subdivision plat originally showed this land as reserved for future development. As technology has improved for well and septic, the site has evidently become developable over time. The area, as you can see here, was originally shown as 450 feet of lot width. And also if you do the math, it's just over three acres of land. In the A-1 District, you require 1 acre of lot area and 150 feet of lot width per lot. So in theory, that's three lots there.

In 1972, two-thirds of this area was sold. The following year, the remaining one acre, which is the subject property today, was sold as well, along with 150 feet of lot width. This acre has since been sold four more times with the current owner purchasing it in January of this year. After he purchased it, the new owner found out the lot was in fact not one acre with 150 feet for lot width, as described by deed and survey over the years, but actually .999 acres and 149.57 feet in width. And after he purchased it in January, this survey came out in March. This shows the property here. And again you see it's .999 acres and over 149 feet in width. As a result of this, the applicant is here today requesting variances for lot area and lot width.

1454 In evaluating this request, does the Zoning Ordinance unreasonably restrict the
1455 utilization of the property or is there a hardship due to a physical condition that
1456 existed at the time of the ordinance. A surveying error cannot be the basis of a
1457 hardship relating to a physical condition of the property; however, the other
1458 avenue for a variance is an unreasonable restriction on the use of the property.
1459 While it is reasonable for the County to require 1 acre and 150 feet of lot width in
1460 the A-1 District, it is arguably an unreasonable restriction in this case to allow no
1461 use of a property due to an error the purchaser found out only after he purchased
1462 the lot in good faith. This is especially true since the purchaser did nothing to
1463 cause the situation in the first place. This is a street view of the property looking
1464 across Caliber Drive.

1465
1466 As far as the five subtests, again, the applicant purchased the property in good
1467 faith with the understanding that it met the requirements of code for a buildable
1468 lot. The applicant did nothing to cause the hardship.

1469
1470 As far as substantial detrimental impact, the two blocks of Caliber Drive here
1471 contain twenty-five homes, twenty-one of which are on 150-foot-wide lots. So
1472 having a home built on a lot that's a half a foot shorter would not change the
1473 development pattern of this area or cause a detrimental impact to anybody.

1474
1475 As far as an ordinance to address this, it's rather unusual where you have an
1476 actual subdivision plat that is in error itself, followed by a survey that went with
1477 the deeds over the years that was also in error. So it's not something a Zoning
1478 Ordinance amendment would readily address.

1479
1480 It's not a use variance because the property is zoned A-1, and a home is
1481 permitted use in the A-1 District. A special exception or modification is not an
1482 option in this case.

1483
1484 To conclude, the property has been sold four times since 1973, each time with a
1485 deed and survey showing it met the requirements of the Zoning Ordinance. It is
1486 arguably an unreasonable restriction on the use of the property to preclude any
1487 reasonable use due to an error of less than a half of foot of measurement made
1488 on the original subdivision plat, especially since the applicant did not cause it.
1489 Staff believes the required subtests are met, including the lack of any substantial
1490 detrimental impact. As a result, we can recommend approval of this request
1491 subject to the conditions found in your staff report.

1492
1493 This concludes my presentation. If you have any questions, I will be happy to
1494 answer them.

1495
1496 Mr. Mackey - All right. Thank you, Mr. Gidley. Any questions from
1497 the Board or from staff? All right. Thank you, sir.

1498
1499 Mr. Gidley - Thank you, Mr. Chair.

1500
1501 Mr. Mackey - Can we hear from the applicant?
1502
1503 Mr. Palmore - Good morning, Mr. Chair, members of the Board. I'm
1504 Cameron Palmore from Balzer and Associates representing the applicant today.
1505
1506 Mr. Mackey - Can you spell your last name, please?
1507
1508 Mr. Palmore - Yes. P-a-l-m-o-r-e.
1509
1510 Mr. Mackey - Thank you, sir.
1511
1512 Mr. Palmore - We have reviewed the staff report and are in
1513 agreement with all the conditions. This is a very unique situation. In the surveying
1514 world, this is a classic race to the courthouse. The original plat as shown called
1515 for 450 feet. One owner was sold 300 feet and another was sold 150 feet. The
1516 first purchaser of the 300 feet recorded his deed first. So based on the recent
1517 survey, we're just short of the 450 total feet by about .43 feet or about 4 inches.
1518 But because the 300-foot deed was recorded first, we have to honor that. So
1519 that's what's causing this hardship over the years.
1520
1521 We know that we have to comply with all the other regular setbacks. We have
1522 had an AOSE look at this lot, and there is a drain field option available. So it is a
1523 developable lot, and we're just asking to be able to build one single-family home.
1524 With that, we ask for your favorable vote on this application. I will answer any
1525 questions that you may have.
1526
1527 Mr. Mackey - Like you said, basically we're talking about less than
1528 five inches.
1529
1530 Mr. Blankinship - Five inches.
1531
1532 Mr. Mackey - All right, Mr. Palmore. Are there any questions?
1533
1534 Ms. Harris - Just one quick question. Does the lot have problems?
1535 I think you said something about the survey for—
1536
1537 Mr. Palmore - The septic.
1538
1539 Ms. Harris - Yes.
1540
1541 Mr. Palmore - No ma'am. I think originally when this subdivision was
1542 done in I believe the late '60s, it was difficult getting a drainfield on that site. But
1543 with current technology, we have had an authorized on-site soil evaluator go and
1544 look and have identified a drainfield area that can be used with advanced
1545 systems. So that's all taken care of, yes ma'am.

1546
1547 Ms. Harris - Thank you.
1548
1549 Mr. Mackey - All right.
1550
1551 Mr. Blankinship - There's also a little bit of a drainage swale that cuts
1552 almost diagonally across the property.
1553
1554 Mr. Palmore - Yes. That will be addressed through the building
1555 permit process with grading around the lot and making sure that the finished floor
1556 elevation is correctly set so that we can get our six feet and ten inches of
1557 drainage away from the house to meet all the Building Code requirements.
1558
1559 Mr. Mackey - Any other questions for Mr. Palmore? All right. Thank
1560 you, sir.
1561
1562 Mr. Palmore - Thank you.
1563
1564 Mr. Mackey - Is there anyone here who would like to speak in
1565 support of the request? Anyone who would like to speak in opposition? All right,
1566 can we hear our next case, please?
1567
1568 **[After the conclusion of the public hearings, the Board discussed the case**
1569 **and made its decision. This portion of the transcript is included here for**
1570 **convenience of reference.]**
1571
1572 Mr. Mackey - What is the pleasure of the Board?
1573
1574 Mr. Bell - I move that we accept the motion.
1575
1576 Mr. Mackey - Okay. It's been moved by Mr. Bell.
1577
1578 Mr. Bell - Because there is no detrimental or safety impact on
1579 the property. We're also looking at a minute amount of difference between what's
1580 allowed and what's not allowed. So therefore I move that we accept the variance.
1581
1582 Mr. Mackey - It's been moved by Mr. Bell. Is there a second?
1583
1584 Mr. Reid - Second.
1585
1586 Mr. Mackey - Seconded by Mr. Reid. Discussion?
1587
1588 Ms. Harris -
1589 Yes. That was the survey error, a County survey error. I think we have to take
1590 that into consideration.
1591

1592 Mr. Mackey - Absolutely. Any other discussion? All right. It's been
1593 properly moved and seconded. All in favor say aye. Any opposed? The ayes
1594 have it. The motion is granted 5 to 0.

1595

1596 After an advertised public hearing and on a motion by Mr. Bell, seconded by Mr.
1597 Reid, the Board **approved** application **VAR2018-00008, JAMES MEADE**
1598 requests a variance from Section 24-94 of the County Code to build a one-family
1599 dwelling at 2370 Caliber Drive (BATTERY HILLS) (Parcel 813-685-7178) zoned
1600 Agricultural District (A-1) (Varina). The Board approved the variance subject to
1601 the following conditions:

1602

1603 1. This variance applies only to the lot area and lot width requirements for one
1604 dwelling only. All other applicable regulations of the County Code shall remain in
1605 force.

1606

1607 2. Approval of this request does not imply that a building permit will be issued.
1608 Building permit approval is contingent on Health Department requirements,
1609 including, but not limited to, soil evaluation for a septic drainfield and reserve
1610 area, and approval of a well location.

1611

1612 3. Clearing, grading, or other land disturbing activity shall not begin until the
1613 applicant has submitted, and the Department of Public Works has approved, an
1614 environmental compliance plan.

1615

1616

1617 Affirmative: Bell, Green, Harris, Mackey, Reid 5

1618 Negative: 0

1619 Absent: 0

1620

1621

1622 **[At this point, the transcript continues with the public hearing on the next**
1623 **case.]**

1624

1625 **VAR2018-00009 ANTHONY CRAWLEY** requests a variance from
1626 Section 24-94 of the County Code to build a one-family dwelling at 470 East
1627 Richmond Road (Parcel 808-725-6757) zoned Agricultural District (A-1) (Varina).
1628 The lot width requirement and total lot area requirement are not met. The
1629 applicant proposes 0.6 acre lot area and 135 feet lot width, where the Code
1630 requires 1 acre lot area and 150 feet lot width. The applicant requests a variance
1631 of 0.4 acre lot area and 15 feet lot width.

1632

1633 Mr. Blankinship - Would everyone who intends to speak to this case
1634 please stand and be sworn in. Raise your right hands, please. Do you swear the
1635 testimony you're about to give is the truth, the whole truth, and nothing but the
1636 truth so help you God?

1637

1638 Mr. Madrigal - Mr. Secretary, thank you. Mr. Chair. Before you is a
1639 request to build a one-family dwelling in an A-1 District. Prior to 1960, the
1640 property was part of a parcel of land with frontage on East Richmond and Dabbs
1641 House Roads. Although it was described in the deed and real estate records as 4
1642 acres, the property actually measured 3.6 acres in size. Between 1965 and 1969,
1643 3 one-acre lots were sold leaving the residual .6-acre property. Here you can see
1644 the three lots that were developed, and that's the residual property.

1645
1646 When it sold in 1970, the deed correctly listed the lot area as .6 acres. In 2016, a
1647 strip of land was acquired for road widening, leaving the lot area at .567 acres.
1648 The applicant acquired the property in June 2017. He subsequently inquired to
1649 see if the lot could be developed. Staff determined that a variance was required
1650 due to the reduced size of the lot.

1651
1652 With respect to the threshold question, if the .567-acre parcel is considered the
1653 property taken as a whole, it has no reasonable beneficial use under the current
1654 regulations. The minimum lot area for a dwelling in the A-1 District is one acre.
1655 There is no other principal use with a smaller lot area requirement in the A-1
1656 District. As a result, the property cannot be put to any reasonable use absent a
1657 variance.

1658
1659 With respect to the five subtests, the applicant appears to satisfy item #1. The
1660 property was divided by the McKeys in 1966 and sold to a Mr. Woolfolk, Jr. in
1661 1970. Mr. Woolfolk held onto the property for forty-seven years before selling it to
1662 Mr. Crawley in 2017. Mr. Crawley did not create the hardship and appears to
1663 have acquired the property in good faith. As mentioned in the previous case, the
1664 State Supreme Court has determined that it is not a violation of good faith for a
1665 property owner to acquire property knowing that a variance is required.

1666
1667 Item #2, substantial detriment. Although the other three lots created from the
1668 original parcel are one acre in size, the surrounding development pattern is not
1669 consistent with that one-acre lot pattern. The abutting property to the south was
1670 subdivided in 2000 into lots as small as 9,500 square feet in size. The property
1671 directly across East Richmond Road has been approved for lots of 11,000
1672 square feet, and the remaining twenty acres of that project have been approved
1673 for townhouse and multi-family development.

1674
1675 The property to the southeast was approved for sixty-four homes on lots as small
1676 as 7,000 square feet. The two most comparable dwellings are at 410 and 412
1677 East Richmond. Those two homes contain 2,300 and 2,700 square feet of
1678 finished floor area respectively. The home at 410 East Richmond is finished in
1679 brick with exception to the second story. The 412 East Richmond home is built of
1680 all brick construction.

1681
1682 If the proposed variance is approved, staff recommends conditions that would
1683 require the proposed dwelling to be compatible with those of neighboring homes.

1684

1685 Item #3, general or recurring in nature necessitating a code amendment. The
1686 size and shape of the property is unusual. While not unique, the situation is not of
1687 a general or recurring nature. The County did consider rezoning the property, but
1688 decided that a variance was more appropriate at this time. For that reason, staff
1689 considers this test to be met.

1690

1691 Items 4 and 5 have been satisfied as outlined in the staff report.

1692

1693 In conclusion, the applicant purchased the property in good faith and was willing
1694 to pursue whatever means the County recommended to make it a buildable lot.
1695 As it stands, the Zoning Ordinance affectively prohibits any reasonable use of the
1696 property. Any detrimental impact on surrounding property can be addressed
1697 through the proposed conditions. Staff recommends approval subject to
1698 conditions.

1699

1700 This concludes my presentation.

1701

1702 Mr. Mackey - Thank you, Mr. Madrigal. Any questions from the
1703 Board or staff for Mr. Madrigal? All right, thank you, sir. Can we hear from the
1704 applicant?

1705

1706 Mr. Christian - Good morning, Mr. Chairman and Board. My name is
1707 Brent Christian. I'm with United Real Estate in Richmond. I'm representing Mr.
1708 Anthony Crawley.

1709

1710 Mr. Crawley and Mrs. Crawley, whose name is not on the application, are
1711 pursuing this variance in order to build a single-family, owner-occupied, one-level
1712 residence. They have not firmed up their plans for the home yet, but their plans
1713 and the conditions that you have here with the variance are consistent with the
1714 neighboring properties. Mr. and Mrs. Crawley are in agreement with all the
1715 conditions as you have put forth here in the variance for it to be approved. I thank
1716 you for your recommendation for approval. Any questions?

1717

1718 Mr. Mackey - All right.

1719

1720 Ms. Harris - There are a lot of trees on that property, right?

1721

1722 Mr. Christian - Yes ma'am.

1723

1724 Ms. Harris - What are they going to do with the trees, do you
1725 know?

1726

1727 Mr. Christian - I know all trees will be taken down in order to create a
1728 front yard and an area for the home. I'm not exactly sure what Mr. Crawley is

1729 intending—if he's intending to have a buffer around the sides and the rear of the
1730 property.

1731
1732 Ms. Harris - Thank you.

1733
1734 Mr. Christian - Now he is in agreement with building within the
1735 required setbacks of the property. That will be addressed on a site plan.

1736
1737 Mr. Mackey - Any other questions? All right. Thank you, Mr.
1738 Christian. Appreciate it.

1739
1740 Mr. Christian - Thank you, sir.

1741
1742 Mr. Mackey - Is there anyone here would like to speak in support of
1743 the request? Anyone to speak in opposition? All right. Can we hear our final
1744 case, please?

1745
1746 **[After the conclusion of the public hearings, the Board discussed the case**
1747 **and made its decision. This portion of the transcript is included here for**
1748 **convenience of reference.]**

1749
1750 Mr. Mackey - What is the pleasure of the Board? Being the Varina
1751 magistrate, I make a motion that we approve the variance. This case also met
1752 the five subtests, and without granting a variance it wouldn't have any other good
1753 use for the County. So I make a motion that we approve this variance. Is there a
1754 second?

1755
1756 Mr. Bell - Second it.

1757
1758 Mr. Mackey - All right. It's been moved and seconded. Discussion?
1759 None. All in favor say aye. Any opposed? The ayes have it. The motion is
1760 granted 5 to 0.

1761
1762 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
1763 Mr. Bell, the Board **approved** application **VAR2018-00009, ANTHONY**
1764 **CRAWLEY** requests a variance from Section 24-94 of the County Code to build
1765 a one-family dwelling at 470 East Richmond Road (Parcel 808-725-6757) zoned
1766 Agricultural District (A-1) (Varina). The Board approved the variance subject to
1767 the following conditions:

1768
1769 1. This variance applies only to the lot area and lot width requirements for one
1770 dwelling only. All other applicable regulations of the County Code shall remain in
1771 force.

1772

- 1773 2. Clearing, grading, or other land disturbing activity shall not begin until the
 1774 applicant has submitted, and the Department of Public Works has approved, an
 1775 environmental compliance plan.
 1776
 1777 3. Any dwelling on the property shall be connected to public sewer.
 1778
 1779 4. Approval of this request does not imply that a building permit will be issued.
 1780 Building permit approval is contingent on Health Department requirements,
 1781 including approval of a well location.
 1782
 1783 5. Any dwelling on the property shall contain at least 1,500 square feet of livable
 1784 floor area. The foundation on all sides, and the first floor on the side facing East
 1785 Richmond Road, shall be constructed of brick, stone, or similar material.
 1786

1787
 1788 Affirmative: Bell, Green, Harris, Mackey, Reid 5
 1789 Negative: 0
 1790 Absent: 0
 1791
 1792

1793 **[At this point, the transcript continues with the public hearing on the next**
 1794 **case.]**
 1795

1796 **VAR2018-00010 WILLIAM A. SMITH, JR.** requests a variance from
 1797 Section 24-9 of the County Code to build a one-family dwelling at 1110 Oakland
 1798 Road (Parcel 801-707-6025) zoned One-Family Residence District (R-3)
 1799 (Varina). The public street frontage requirement is not met. The applicant
 1800 proposes 0 feet public street frontage, where the Code requires 50 feet public
 1801 street frontage. The applicant requests a variance of 50 feet public street
 1802 frontage.
 1803

1804 Mr. Blankinship - Would everyone who intends to speak to this case
 1805 please stand and be sworn in. Raise your right hands, please. Do you swear the
 1806 testimony you're about to give is the truth, the whole truth, and nothing but the
 1807 truth so help you God? Thank you. Mr. Gidley?
 1808

1809 Mr. Gidley - Thank you, Mr. Secretary and members of the Board.
 1810 This variance is a request for public street frontage. As you can see here, the
 1811 property is a 3.2-acre parcel that is located out in a field approximately 480 feet
 1812 off of Oakland Road. It was divided off of a larger 6-acre parcel back in 1909.
 1813 Because this was prior to the first Zoning Ordinance, there was no public street
 1814 frontage requirement in effect at the time.
 1815

1816 In 2001, this Board heard and approved a variance for lack of public street
 1817 frontage on this property. The variance subsequently expired, though, and in
 1818 2006 the property was sold to Rebecca Mumpower, who is the current owner.

1819 Today's applicant is William Smith. He would like to purchase the property in
1820 order to construct a one-family dwelling here. But again it's in need of a new
1821 variance for the lack of public street frontage.

1822
1823 As with the previous approval, access is proposed to come in off of Oakland
1824 Road, and it would be via a twenty-foot ingress/egress easement and a thirty-foot
1825 private road easement. The applicant has also indicated he may be interested in
1826 purchasing a narrow strip along the northern side of the property. As you can see
1827 here, it runs from there over to New Osborne Turnpike. So this could be a
1828 secondary access to the property.

1829
1830 In evaluating this request, does the ordinance unreasonably restrict the utilization
1831 of the property or is there a hardship due to a physical condition related to the
1832 property at the time of the effective date of the ordinance. Again, the property
1833 was created in 1909, which was prior to the Zoning Ordinance taking effect and
1834 prior to the 1960 adoption of the public street frontage requirement. The lack of
1835 public street frontage is therefore a hardship due to a physical condition of the
1836 property that existed at the time of the effective date of the ordinance. So this
1837 main test is met.

1838
1839 As far as the five subtests, the applicant did not cause the hardship and is taking
1840 the necessary proper steps before purchasing the lot for his home.

1841
1842 When it comes to substantial detrimental impact, as you can see here, this is the
1843 site out here on the left side of the picture. There are homes all along Oakland
1844 Road. There are a couple of them right here. The proposed use of the property
1845 would be consistent with the development pattern of the area for single-family
1846 homes. The applicant has not submitted any elevations showing their proposed
1847 home, so we can't really render any judgment on that, although they did produce
1848 a proposed site plan, which is shown here. Again, Oakland Road is down at the
1849 bottom of the picture, and the home would be roughly centered, a little bit more to
1850 the front and to the right.

1851
1852 As far as an ordinance amendment to address this, the Board receives maybe an
1853 average of six applications a year for lack of public street frontage. The Board of
1854 Supervisors has adopted legislation dealing with new lots that lack public street
1855 frontage, but for those already in existence, the BZA should review these on a
1856 case-by-case basis.

1857
1858 This is zoned R-3. A single-family home is proposed and is a permitted use in the
1859 R-3 District, so this is not a use variance.

1860
1861 A special exception is not an option in this case.

1862
1863 In conclusion, the property was created in 1909 prior to the adoption of the public
1864 street frontage requirement. As a result, the hardship was in existence at the time

1865 of the effective date of the ordinance. The proposed use of the property for a
1866 one-family dwelling is consistent with the site's R-3 zoning designation, along
1867 with the surrounding uses. As a result, no substantial detrimental impact is
1868 anticipated.

1869
1870 Staff recommends approval of this request subject to the attached conditions. I'll
1871 be happy to answer any questions you may have. Thank you.

1872
1873 Mr. Mackey - Thank you. Mr. Gidley. Are there any questions from
1874 the Board or from staff for Mr. Gidley? All right, thank you, sir. Oh, I'm sorry.

1875
1876 Mr. Bell - Is it divided by different lots or is it just one piece of
1877 property?

1878
1879 Mr. Gidley - The application today is for this one parcel here,
1880 which is just over three acres in size. This is the outline of the parcel, as you can
1881 tell, it doesn't abut Oakland Road, therefore it has no public street frontage.

1882
1883 Mr. Bell - But on the back side another road could possibly
1884 come in.

1885
1886 Mr. Gidley - Yes sir. After the applicant filed the request for the
1887 variance, he called me and said that he may have the ability to purchase this
1888 strip as well. If they did that, then they could also have access to New Osborne
1889 Turnpike. Later on, I did receive a call I believe from the property owner here who
1890 indicated some concern about access off Oakland Road and whether or not that
1891 was permitted. I'm not a real estate attorney, but the research I did looking at the
1892 deeds, it appears to me certainly the twenty-foot ingress and egress easement
1893 on the left side of this line would allow for access off of Oakland Road. And there
1894 is this thirty-foot private road shown on the plat.

1895
1896 Mr. Mackey - And Paul, that's the main access?

1897
1898 Mr. Gidley - The main access off of Oakland Road, yes sir. And
1899 then there is this thirty-foot unimproved road. Again, I'm not a real estate
1900 attorney, but from what I saw it looked to me like it was granted by the owner at
1901 time for all of this and that it ran with the land rather than a set individual. So I
1902 would think they would have access off of Oakland Road.

1903
1904 Mr. Bell - Thank you.

1905
1906 Mr. Green - So the sense is that that person thinks that they
1907 control that strip and don't want someone to build back there? Is that what I'm
1908 hearing?

1909

1910 Mr. Gidley - Yes. As you can see here, where we parked it was
1911 fenced off, and there's actually a gate right here. The applicant called me and
1912 said, "How do I get access through the gate?" I indicated that they should have
1913 their real estate attorney contact the property owner about providing them access
1914 through the easement. Later on, I had a call from someone who, again, I believe
1915 owned this property here. They had some concern as to whether or not access
1916 was permitted.

1917
1918 If you go back to the parcel map, there are really two ways to access. There is
1919 this twenty-foot ingress/egress easement right here. I think that certainly allows
1920 access up to the property. And then there's this thirty-foot road, unimproved,
1921 shown here that's adjacent to it. Again, looking at the deeds over time and where
1922 this was granted, in my opinion it would also allow access, although again, I'm
1923 not a land use attorney. But it looked to me like it would go ahead and run with
1924 the land rather than the actual person. So future owners could also take
1925 advantage of this.

1926
1927 So I think if nothing else, they have access through this ingress/egress easement
1928 and probably this thirty-foot road as well. And then finally, as I said, they
1929 indicated they may purchase this narrow strip up here, which would go off to the
1930 west and afford a secondary access. I don't really think access is a problem. And
1931 as one of the conditions, they always have to prove that they do have access to
1932 the property before they get a building permit approved.

1933
1934 Mr. Green - What I'm hearing is that somebody put up a gate to
1935 block the access.

1936
1937 Mr. Gidley - Yes sir. When we were out there, there was a gate
1938 up. When the applicant called and indicated some concern about that again I—
1939 it's not really a County issue to get involved in someone putting up a gate on their
1940 private property, so I indicated to him that he should go ahead and get their
1941 attorney to reach out to the property owner saying we have a legal access to the
1942 property, and we need to be provided a key or a combination or something to be
1943 able to get through there.

1944
1945 Mr. Mackey - All right. Any other questions for Mr. Gidley? All right,
1946 thank you, sir.

1947
1948 Mr. Gidley - Yes sir.

1949
1950 Mr. Mackey - Can we hear from the applicant?

1951
1952 Mr. Smith - Good morning. Thank you for having me. I appreciate
1953 this opportunity. Mr. Gidley has been very helpful in this matter, I might add.

1954
1955 Mr. Blankinship - Sir, would you state your name for us, please?

1956
1957 Mr. Smith - Sorry. William H. Smith, Jr.
1958
1959 Mr. Blankinship - Thank you.
1960
1961 Mr. Smith - I'm not an attorney either. I'm just a builder. And I'm
1962 looking for access. Everything that I see in the title work—and we certainly have
1963 done—we've had a title company involved in this. Everything that I read is that
1964 the access is there. The thirty feet has been there for some time. My neighbor,
1965 Ms. Wright, added that twenty feet in I think it was 1998. I'm going on memory.
1966 But it was every intention that I can see for there to be access to that parcel.
1967 Otherwise, I can't imagine Ms. Mumpower buying the thing back in '06.
1968
1969 The gate just went up, by the way. When Ms. Mumpower listed the property just
1970 a number of months ago, not very long, that thing mysteriously showed up.
1971
1972 Female - [Off microphone] It's been there for—
1973
1974 Mr. Mackey - Excuse me, ma'am.
1975
1976 Mr. Blankinship - Go ahead, sir.
1977
1978 Mr. Smith - However long it's been there, it's been months, of
1979 course. But it just showed up. So I would dispute that they can just block the
1980 thing off like they have. All the residents that have been there for a number of
1981 years, they caught them by surprise as well, for whatever that's worth. But I know
1982 the gentleman in the back, the estate of the Arnold people. And then there were
1983 still some Madisons just to the east. In fact, she just died.
1984
1985 But I'm just looking for access to a piece of property. That's what I'm looking for.
1986 And thank you again, Mr. Gidley.
1987
1988 Mr. Mackey - I have a question, Mr. Smith. There is also a
1989 possibility of a back access you were looking into?
1990
1991 Mr. Smith - Well, I'm glad you brought that up before I stepped
1992 down. I actually have that under contract.
1993
1994 Mr. Mackey - Okay. All right.
1995
1996 Mr. Smith - So if need be, it's there. Mr. Gidley did make it known
1997 to me that it's nonconforming because of the—is it 150 feet requirement?
1998
1999 Mr. Blankinship - Fifty feet of public street frontage.
2000

2001 Mr. Smith - That and the fact that I was more than 150 feet off
2002 that street. So yes, there are two items there. But it is under contract.

2003
2004 Mr. Green - So you're only looking at that strip because you don't
2005 have potential access from the front or you want both?
2006

2007 Mr. Smith - I want both. Just flexibility. Just to have that flexibility.
2008 Plus I don't—I haven't contacted VEPCO yet—Dominion, that is. It would
2009 certainly be a shorter run if I came from Oakland—there's a transformer there—
2010 as opposed to that long run from New Osborne. It's just flexibility.

2011
2012 Mr. Green - But legally he has access.

2013
2014 Mr. Blankinship - From what we can tell, yes sir.

2015
2016 Mr. Green - So someone needs to get to that—well. Why does an
2017 attorney have to deal with that? If that's an easement and he has a right to it, why
2018 can't the County just let the person know that he has a right to that?
2019

2020 Mr. Blankinship - Well we can certainly let them know that. But we can't
2021 require them to take down the gate; it's private property. As long as all the people
2022 who have a right to use it are in agreement that there should be a gate, then
2023 there's no reason they can't have a gate. If one owner is preventing another
2024 owner from accessing their property, then there's an issue with the gate. But it's
2025 not something the County government would be involved in. It's something that
2026 they would handle as a civil matter.

2027
2028 Mr. Green - Do you feel that's happening?

2029
2030 Mr. Smith - I'm sorry?

2031
2032 Mr. Green - Do you feel that's happening?
2033

2034 Mr. Smith - I think the gate went up without asking anybody, and
2035 it's locked. And there was no conversation about it. In fact, the farmer that farms
2036 all those properties that are touching each other, he doesn't have access there
2037 either, and he used to. Now there is, also, as part of the title work that we found,
2038 a road agreement that if anybody builds back there, they would be responsible
2039 for the road and its maintenance until such time as there are other settlers, if you
2040 will. At that time, it would be divided according to the parcel size or whatever the
2041 agreement states.

2042
2043 Mr. Mackey - All right. Thank you, Mr. Smith.
2044

2045 Ms. Harris - Mr. Smith, a quick question. The home that we're
2046 seeing here, are you going to build that diagonally on the lot? I was wondering
2047 why it was sketched like that.

2048
2049 Mr. Smith - You all made a comment just a little bit ago about
2050 facing somebody's back. For me it's an architectural thing. Pardon my opinion,
2051 but that's what it is. But just facing straight on to me is just boring. It's as simple
2052 as that and my opinion. This is kind of unique in that it's pretty much
2053 east/west/north/south. I mean it's a straight line right there. So it would allow me
2054 a little bit of southern exposure to the back of the house. So it's a light issue too.

2055
2056 Ms. Harris - Okay. I was going to ask this of the person who's
2057 contesting this. Isn't it just an enforcement problem if you have a legal right?
2058 Because I think that easement is mentioned in the deed, is it not?

2059
2060 Mr. Smith - Yes ma'am.

2061
2062 Ms. Harris - To me it's just a law enforcement problem. We all like
2063 to get along with our neighbors without having law enforcement involved. But I
2064 don't see why that would be blocked to you unless there is more information we
2065 don't know.

2066
2067 Mr. Blankinship - At this point, there are no other homes accessed by it.
2068 So at this point, the gate's not doing any harm.

2069
2070 Ms. Harris - Okay.

2071
2072 Mr. Smith - It's just a little bit of hardship on the farmer.

2073
2074 Mr. Blankinship - That I don't know about.

2075
2076 Mr. Mackey - All right. Are there any other questions?

2077
2078 Mr. Green - But it'll be a hardship on you.

2079
2080 Mr. Smith - If I can't get in it, yes sir.

2081
2082 Mr. Blankinship - They'll have to resolve the issue.

2083
2084 Mr. Mackey - All right. Any other questions for Mr. Smith? All right,
2085 thank you, sir.

2086
2087 Mr. Smith - All right. Thank you.

2088
2089 Mr. Mackey - Is there anyone here who would like to speak in
2090 support? Anyone who would like to speak in opposition?

2091

2092 Ms. Higgins - Hi. My name is Shannon Higgins. H-i-g-g-i-n-s. My
2093 husband and I own the land that has the access and the gate belongs to us. First
2094 of all, I'm going to say I'm not very good at this stuff. My husband should be the
2095 one here talking to you, but he had to go up to Boston for work this week. So I'm
2096 here to briefly discuss what little I know and ask for a delay on this decision.

2097

2098 My husband and I bought the piece of property here, including that private drive,
2099 last—it was in the fall of '17. We had started the process of purchasing the land
2100 in the fall of 2016, and we actually came before you for an easement. I remember
2101 Ms. Harris was really impressed with the house that we were going to build on
2102 the land. After a year of searching for a builder, we were unable to find one. In
2103 the meantime, we bought another house that we're living in until we can build the
2104 house that we want to on this piece of property. We did hire an architect, though,
2105 and we do have plans.

2106

2107 Anyway, I would like to say that this survey that was provided with the application
2108 is for 2001. It is not up to date, and it does not show us as the current owners.
2109 We have had a chance to look at our deed, and our deed did not say anything
2110 about a right-of-way. It did reference an earlier deed, which we have not yet been
2111 able to get access to. So we need to do some research. We need to talk to our
2112 real estate attorney, and we need to do some research with the courthouse.

2113

2114 We did understand that at one point there was a right-of-way to use this land that
2115 I have the mouse over right now. There's a pond on this land, and the person
2116 who had access to this, he would use it for hunting and would come through this
2117 way. But since we have purchased the land, this piece and this piece were sold
2118 together, and so that right-of-way is no longer needed because the same person
2119 owns these two pieces of property.

2120

2121 My husband and I put up the gate a considerable amount of time—I can't
2122 remember. I think it might have been last—I know it was really hot when he did it,
2123 because they were really like hot and sweaty when they came back from doing it.
2124 So it was definitely before this parcel went for sale. Because I remember when
2125 we found out this parcel went for sale, we were like how on earth is somebody
2126 going to get to that because there is no access. We thought it was ridiculous also
2127 the price that it was being sold for, which was twice as much as our land, which
2128 was larger and has street access.

2129

2130 But anyway, we put up a gate because there were a lot of people trespassing on
2131 our land. There were a lot of people hunting on our land. There was somebody
2132 farming on it. My husband gave his business card to all the neighbors and talked
2133 to them about the fact that we had purchased the land there. He did talk to them
2134 about the gate being put up and why. So I don't appreciate the accusation that it
2135 just appeared there one day. But we put it up there so that there would be no

2136 more trespassing and dumping, because there was also an issue of people
2137 dumping on our land.

2138

2139 Also, someone was farming on our land without our permission. We had marked
2140 off a whole bunch of trees that we intended to keep and grow, and they had
2141 plowed down all the trees that we had marked off. So my husband is still trying to
2142 figure out who it is that was farming on that land so we can have a conversation
2143 with him. We are happy to let him farm on the part of the land that there are no
2144 trees as long as he doesn't knock down things that we had very clearly marked
2145 that we wanted to grow for our future home.

2146

2147 If we do end up having to share this driveway with somebody, which we had
2148 never intended, that completely changes our entire landscaping plan for the
2149 property. It changes where we put our house, and it changes if we even possibly
2150 would build our house on this piece of property anymore.

2151

2152 This has taken us by surprise. At the time we purchased it, we were not aware of
2153 anybody else having access to this driveway but us. And that's why we put our
2154 own private fence there. Because as we understood it, it was our private
2155 property. So we need more time to research this to find out what this other deed
2156 might be referring to. And again, like he said, there is this other unimproved
2157 County road back here, which does grant access to this. We would hope that the
2158 compromise would be that that would be the access that the person uses.

2159

2160 Again, this is not my thing. My husband knows way more about this, and he's
2161 been trying to talk with the attorney. But he's been in Boston all week, so it's
2162 been difficult to get the research and information that we need. So I'd really ask
2163 that we postpone this decision so my husband can do some more research, and
2164 he can come talk to you himself.

2165

2166 Mr. Mackey - Ms. Higgins, Mr. Blankinship will correct me if I'm
2167 wrong, but I believe the applicant would have to request.

2168

2169 Mr. Blankinship - He wouldn't have to. The Board can defer the matter
2170 if the Board feels that there is not sufficient information to make a decision and
2171 that more information may be made available.

2172

2173 Mr. Green - What does Planning say? Does Planning say that's
2174 an easement or is it their land?

2175

2176 Mr. Blankinship - As far as we can tell from the information in the public
2177 records, it appears to be a legitimate easement that Mr. Smith or the purchaser
2178 would have the right to use, to access. As Ms. Higgins points out, the records
2179 we're looking at are a few years old. And it could be that something was filed in
2180 between then and now that rescinded that easement. The owner may have sold
2181 that easement back to the other property owner. We would not necessarily be

2182 aware of that. You'd have to do a title search. Somebody's lawyer would have to
2183 do a title search to work that out. I believe Mr. Smith suggested that he's had a
2184 title search done on the property.

2185
2186 These things go to court all the time where two people dispute the ownership of a
2187 piece of land or part of a piece of land or the rights to a piece of land. In the end,
2188 sometimes it takes a judge to weigh all the evidence and say well we find that the
2189 preponderance of evidence is in this person's favor.

2190
2191 The way we avoid all that is with the condition that says at the time of building
2192 permit application, they have to show us evidence that they have a legal right to
2193 access the property.

2194
2195 Mr. Mackey - Before we go too far, one quick question. What's
2196 before us is the variance, not the access.

2197
2198 Mr. Blankinship - Right. Whether it's appropriate to build on this piece
2199 of property given the fact that it doesn't front on a public street. Clearly, whether
2200 there is access to the property is a key element of that decision.

2201
2202 Mr. Mackey - Right. Considering that the applicant has multiple
2203 options, we could go forward with the case.

2204
2205 Mr. Blankinship - You certainly could, yes.

2206
2207 Mr. Mackey - If we felt we had enough information.

2208
2209 Ms. Harris - Condition #5 does address that, so we will be
2210 covered.

2211
2212 Mr. Green - Ms. Higgins said that they were just here last year
2213 presenting plans. What did that file show? Did that file show that there was an
2214 easement? I mean you would have that record.

2215
2216 Mr. Blankinship - Yes, we would.

2217
2218 Mr. Green - Could we see that?

2219
2220 Mr. Blankinship - We don't have it in the room. If the Board were to
2221 defer the case, we could certainly provide that.

2222
2223 Mr. Green - That would help clarify. I don't want to see folks get in
2224 a bunch of—having lawyers and fighting it out.

2225
2226 Mr. Blankinship - We certainly try to avoid that.

2227

2228 Mr. Green - When we can kind of look at some things and
2229 understand—

2230
2231 Ms. Higgins - We don't want that. And like I said, this took us by
2232 surprise when we got a letter in the mail stating that somebody was wanting to
2233 use a portion of our land that we really, honestly did not think that anybody else
2234 had the right to use. Like I said, it very much changes what our plans are for the
2235 land and where we would put the house and multiple other factors. We don't
2236 want to go into—we just need more time to, like I said, research this.

2237
2238 We were here before you because the frontage was only thirty feet and the
2239 frontage requirement is fifty feet. So we were here for the easement for twenty
2240 feet so that we could use the driveway to access the land. That's what we were
2241 before you guys for.

2242
2243 Like I said, we don't want an issue. We feel like we've been very misrepresented
2244 as to what our rights are on our property, and we need to do more research on it.

2245
2246 Mr. Mackey - All right. Thank you. Are there any other questions for
2247 Ms. Higgins? All right, thank you, Ms. Higgins. I think Paul and Mr. Smith have
2248 something to rebut.

2249
2250 Mr. Gidley - One thing I would show that Mr. Madrigal pointed out.
2251 This is the property line here. The twenty-foot ingress/egress easement isn't on
2252 Ms. Higgins's property.

2253
2254 Mr. Blankinship - Yes, the twenty feet is on the other property.

2255
2256 Mr. Gidley - It seemed pretty clear to me in the deeds that I
2257 researched—and I went back through them this week—that the applicant does
2258 have a legal access this way independent of her property.

2259
2260 Mr. Green - So she's right. She's correct, then.

2261
2262 Mr. Blankinship - There appear to be two easements, one on her
2263 property and one on the adjoining. As well as the one in the rear. So in a sense,
2264 three separate.

2265
2266 Mr. Smith - Once again, I'm just looking for access to a piece of
2267 property to put a house on. Simple as that. Everything that I read—once again,
2268 I'm not an attorney. Everything that I read is that there were easements
2269 conveyed and recorded.

2270
2271 I'm sorry that they feel like they have to do more research. Is it appropriate to call
2272 for a vote?

2273

2274 Mr. Blankinship - Do you have a contract pending? Is there some
2275 reason that you would not accept a deferral until May 24th?
2276

2277 Mr. Smith - I have a contract on the property. It is not closed.
2278 That's why the reference to the owner is Mumpower, because she is the owner.
2279

2280 Mr. Blankinship - Okay.
2281

2282 Mr. Smith - But it's due to close . . . my wife was handling
2283 that . . . the end of May.
2284

2285 Mr. Blankinship - Well this would be May 24th.
2286

2287 Mr. Mackey - As the chairman, I feel that we have enough
2288 information to make a decision. It's not his only access, and we're not here to
2289 grant him access. We're here to either grant him or deny him a variance.
2290

2291 Mr. Blankinship - Certainly no decision this Board makes is going to
2292 affect the decision of whether or not—
2293

2294 Mr. Mackey - Right. You could get the variance and still not get any
2295 access. That is possible.
2296

2297 Mr. Blankinship - Or they could not get the variance but still have a
2298 legal right to access the property.
2299

2300 Mr. Mackey - Exactly.
2301

2302 Mr. Blankinship - So the decision of this Board is not going to affect the
2303 question of—
2304

2305 Mr. Mackey - Right. So if you want to, then, we can go forward and
2306 go to vote.
2307

2308 Mr. Smith - Fine.
2309

2310 Mr. Mackey - All right. All right, is there anyone else here who
2311 would like to speak in opposition? All right. Thank you, Mr. Smith.
2312

2313 Mr. Green - But us voting—I went to make sure we're fair. That
2314 still gives her and her husband the opportunity—
2315

2316 Mr. Mackey - That changes nothing.
2317

2318 Mr. Green - Do you feel comfortable that if we vote for the
2319 variance it's not voting to say that he can plow your fence down and come
2320 through.

2321
2322 Ms. Higgins - [Off microphone] No, we have no problem with
2323 somebody [inaudible] driving up in there. We just want to make sure that we
2324 understand what our rights to be and what our property—

2325
2326 Mr. Mackey - Ms. Higgins, can you come to the microphone,
2327 please?

2328
2329 Ms. Higgins - If his access would be directly next to our driveway
2330 and not on our driveway, then that's a whole different thing. And like I said, we
2331 put the fence up there not to be jerks but because people were dumping on our
2332 property, people were hunting, and we didn't—I'm not pro-hunting. So that's why
2333 we had put the fence up there. And we did talk with all the neighbors when we
2334 did it.

2335
2336 Mr. Blankinship - You have a right to put a gate on your property, even
2337 if there's an easement there. As long as you and anyone else who has a right
2338 can resolve the issue of the gate, there is no reason you can't have a gate on
2339 your own property.

2340
2341 Ms. Higgins - As long as it doesn't take away what I guess our
2342 rights are and our ability to determine what we need to do for ourselves and our
2343 future home, we have no opposition to somebody building a house on this parcel.
2344 Our concern is how it will affect our property and where our house will be.

2345
2346 Mr. Mackey - All right, thank you. Okay, we're going to our motions'
2347 portion.

2348
2349 **[After the conclusion of the public hearings, the Board discussed the case**
2350 **and made its decision. This portion of the transcript is included here for**
2351 **convenience of reference.]**

2352
2353 Mr. Mackey - What is the pleasure of the Board? I make a motion
2354 that we approve the application for the variance. Mr. Smith has shown that he
2355 has several options of getting to his lot. And without granting this variance this,
2356 too, would be a useless piece of property. So therefore I make that motion. Is
2357 there a second?

2358
2359 Ms. Harris - Second.

2360
2361 Mr. Mackey - It's been moved and seconded. Discussion? None. All
2362 in favor of granting the variance say aye. Any opposed? The variance is granted.
2363 The ayes have it 5 to 0.

2364

2365 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
2366 Ms. Harris, the Board **approved** application **VAR2018-00010, WILLIAM A.**
2367 **SMITH, JR.** requests a variance from Section 24-9 of the County Code to build a
2368 one-family dwelling at 1110 Oakland Road (Parcel 801-707-6025) zoned One-
2369 Family Residence District (R-3) (Varina). The Board approved the variance
2370 subject to the following conditions:

2371

2372 1. This variance applies only to the public street frontage requirement for one
2373 dwelling only. All other applicable regulations of the County Code shall remain
2374 in force.

2375

2376 2. Only the improvements shown on the plot plan filed with the application may be
2377 constructed pursuant to this approval. Any additional improvements shall
2378 comply with the applicable regulations of the County Code. Any substantial
2379 changes or additions to the design or location of the improvements will require a
2380 new variance.

2381

2382 3. Approval of this request does not imply that a building permit will be issued.
2383 Building permit approval is contingent on Health Department requirements,
2384 including, but not limited to, soil evaluation for a septic drainfield and reserve
2385 area, and approval of a well location.

2386

2387 4. Clearing, grading, or other land disturbing activity shall not begin until the
2388 applicant has submitted, and the Department of Public Works has approved, an
2389 environmental compliance plan.

2390

2391 5. The applicant shall submit proof with the building permit that a legal access to
2392 the property has been obtained. The driveway shall be improved with a durable
2393 asphalt or compacted gravel surface at least 10 feet wide with 12 feet of
2394 horizontal clearance and 14 feet of overhead clearance to provide access for
2395 police, fire, emergency medical services, and other vehicles. The owners of the
2396 property, and their heirs or assigns, shall accept responsibility for maintaining
2397 access to the property.

2398

2399 6. No further division of the property shall occur, except in conformance with
2400 Henrico County Code.

2401

2402

2403 Affirmative: Bell, Green, Harris, Mackey, Reid 5

2404 Negative: 0

2405 Absent: 0

2406

2407

2408 Mr. Mackey - That was the last case. Is there a motion for approval
2409 of the minutes?

2410
 2411 Mr. Bell - So moved.
 2412
 2413 Mr. Mackey - Is there a second?
 2414
 2415 Mr. Green - Second.
 2416
 2417 Mr. Mackey - It's been moved by Mr. Bell, seconded by Mr. Green
 2418 that we accept the minutes as presented. All in favor say aye. Any opposed? The
 2419 ayes have it 5 to 0.
 2420
 2421 On a motion by Mr. Bell, seconded by Mr. Green, the Board **approved as**
 2422 **presented the Minutes of the March 22, 2018**, Henrico County Board of Zoning
 2423 Appeals meeting.
 2424
 2425
 2426 Affirmative: Bell, Green, Harris, Mackey, Reid 5
 2427 Negative: 0
 2428 Absent: 0
 2429
 2430
 2431 Mr. Green - I have a question. I'm going to bring up some new
 2432 business. I'd like to know if in fact we can get placards at least for our car so if
 2433 you go visit this property, any of these properties. I'm very uncomfortable going
 2434 to look at property with no formal form of identification. Ms. Harris is doing it and
 2435 can get away with it. But in today's . . . culture, you know, I'm very sensitive to
 2436 someone that looks like me walking around or stopping to look at something. And
 2437 if I'm approached, they don't know who I am. I think it's only fair that we have
 2438 some form of identification, a placard that you can put in your car that shows who
 2439 you are or identification. But I feel I'm at a disadvantage. I want to do it more, but
 2440 I'm nervous to do it, but I want protection.
 2441
 2442 Ms. Harris - Right. Let me just clarify something. I don't get out on
 2443 private property. I stay on the street, and I observe what I can observe from
 2444 looking from my car. I don't get out of my car. I don't go on private property. So I
 2445 have not had any problem. But I can see that it might be a problem for some
 2446 people. And if that's what we want to do, that's fine with me.
 2447
 2448 Mr. Green - Even in my neighborhood I get nervous when I see a
 2449 car drive slow because I never know what they're doing. And I always pay
 2450 attention to that. But as a bona fide Board, there is no way other than what's
 2451 listed here on our agenda sheet as to who we are and what we represent. If it's
 2452 part of our fiduciary responsibility to at least look at some of this property, then I
 2453 think we need to have some kind of identification. I've asked for this before.
 2454 We've just let it go. If I have to keep asking for it at every meeting, I'm going to do
 2455 it. I'd like to know how can we resolve this.

2456

2457 Mr. Mackey - Jean, is there any way that we can set up a meeting
2458 and discuss some steps we can take to address this issue?

2459

2460 Ms. Moore - Yes. I think it's very valid and we'll bring this up again.

2461

2462 Mr. Mackey - Okay. All right. I'll contact you, and I'll keep in touch
2463 with you to let you know what we're doing. We'll get together and see what we
2464 can come up with.

2465

2466 Mr. Green - I don't want to make it a racial issue, but I'm sorry.
2467 When I see African Americans that are arrested for sitting in a Starbucks that
2468 look like me, I can only imagine what could happen if I'm stopping to look at
2469 somebody's property, especially if I'm driving by. I'm not picking on you, but if
2470 you feel like somebody's dumping on your property, and you drive by, you're like
2471 well what is that guy doing here? Is he the one dumping? Is he the one hunting?
2472 No, this is who I am. Your case is coming up, and I want to see this, I want to do
2473 that. I've never been on a Board—and I've been on seventeen of them—where
2474 you've never had any kind of identification as to who you are.

2475

2476 Ms. Harris - It might be a good idea. What helps me is the fact that
2477 we have the sign in the yard, we have the sign on the property. So I think that
2478 when people see us slow down or stop, they realize the sign is in the yard. It's
2479 almost like a "for sale" sign. You expect people to come by and look and stop
2480 and all that. But I would definitely be in favor of what you suggest.

2481

2482 Mr. Mackey - All right. Anything else?

2483

2484 Mr. Blankinship - Along those same lines, sort of, let me just mention to
2485 you. One of the cases submitted for next month is the Republic Landfill on
2486 Charles City Road. That is a site that you can't just go and look at. You can't see
2487 anything from the road. You need to get on the property. And of course for
2488 security reasons, it is a secured site. If more than two of you go at the same time,
2489 that's public news. So we are working on getting an invitation for you to go visit
2490 that site, which would then have to be advertised and notified to the media. So
2491 that may be coming; it might not. But something along those lines should be
2492 coming in the next two weeks or so, just to let you know.

2493

2494 Ms. Harris - Good.

2495

2496 Mr. Mackey - All right. Any other new business? All right. If not,
2497 meeting adjourned.

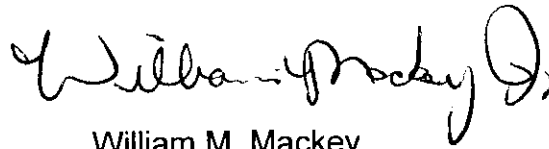
2498

2499

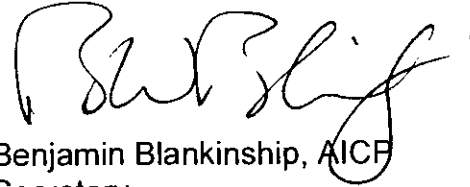
2500

2501

2502
2503
2504
2505
2506
2507
2508
2509
2510
2511
2512
2513
2514
2515
2516
2517
2518



William M. Mackey
Chairman



Benjamin Blankinship, AICF
Secretary