

1
2 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
3 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
4 **GOVERNMENT CENTER AT PARHAM AND HUNGARY SPRING ROADS, ON**
5 **THURSDAY APRIL 22, 2021 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN**
6 **THE *RICHMOND TIMES-DISPATCH* APRIL 5, 2021 AND APRIL 12, 2021.**
7
8

9 Members Present: Terone B. Green, Chair
10 Walter L. Johnson, Jr., Vice-Chair
11 Gentry Bell
12 Terrell A. Pollard
13 James W. Reid
14

15 Also Present: Benjamin Blankinship, Secretary
16 Paul M. Gidley, County Planner
17 R. Miguel Madrigal, County Planner
18 Rosemary Deemer County Planner
19 Kristin Smith, County Planner
20 Kuronda Powell, Account Clerk
21

22
23 Mr. Green - Welcome to the April meeting of the Henrico County Board of
24 Zoning Appeals. For those who are able, please join and stand in the Pledge of
25 Allegiance.
26

27 **[Recitation of the Pledge of Allegiance]**
28

29 Mr. Blankinship will now read our rules.
30

31 Mr. Blankinship - Good morning, Mr. Chair, members of the Board, and those
32 of you who are in the room with us today. There are also two remote options for
33 participating in this meeting. There is a livestream on the Planning Department web page
34 and we are hosting a video conference using Webex.
35

36 I'd like to welcome everyone who's joining us remotely. If you wish to observe the
37 meeting, but you do not intend to speak welcome, and thank you for joining us. For those
38 of you on Webex, if you wish to speak you need to know that -- we need to know that in
39 advance so we can connect you at the appropriate time.
40

41 So if you're an applicant, or if you have questions or comments on one of the cases,
42 please press the chat button now. It's located on the bottom-right corner of the screen.
43 And when the chat window opens, please select Kristin Smith from the list of participants
44 and let her know your name and which case you're interested in. The chat feature is only
45 being used to identify speakers, so please do not type questions or comments into a chat,
46 but please send a chat to Kristin Smith now so we can organize the queue.

47
48 Now acting as secretary I will call each case and then we will ask everyone who is in the
49 room who wishes to speak to that case to stand and be sworn in. Then a member of the
50 Planning Department staff will give a brief presentation and then the applicant will speak
51 at the podium in the back of the room. Then anyone else who wishes to speak will be
52 given the opportunity. We'll take people in the room first, and then people on Webex.
53 After everyone has had a chance to speak, the applicant and only the applicant will have
54 an opportunity for rebuttal.

55
56 This meeting is being recorded, so we'll ask everyone in the room when you speak, please
57 speak into the microphone in the lectern at the back of the room. We'll ask everyone,
58 please state your name and please spell your last name, so we get it correctly in the
59 record.

60
61 We do not have any members absent, and we do not have any deferrals or withdrawals,
62 so with that, Mr. Chair, would you like me to call the first case?

63
64 Mr. Green - Yes, sir.

65
66 Mr. Blankinship - All right. We have three conditional use permits on this
67 morning's agenda. Conditional use permit 2021, number 7 Frederic Farrar.

68
69 **CUP2021-00007** **FREDERIC FARRAR** requests a conditional use permit
70 pursuant to Section 24-95(i)(4) of the County Code to build a detached garage in the side
71 yard at 11407 Brendonridge Lane (TUCKAHOE VILLAGE) (Parcel 737-746-6117) zoned
72 One-Family Residence District (R-2A) (Tuckahoe).

73
74 Mr. Blankinship - Would everyone who intends to speak to this case please
75 stand and be sworn in. Raise your right hands, please. Do you swear the testimony
76 you're about to give is the truth, the whole truth, and nothing but the truth so help you
77 God?

78
79 Mr. Farrar - I do.

80
81 Mr. Blankinship - All right-. Thank you, Mr. Farrar. You may be seated. And,
82 Mr. Madrigal, you can present your report.

83
84 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the Board,
85 good morning. Before you is a request to build a detached garage in the street side-yard
86 of a one-family dwelling.

87
88 The subject property is a reverse-corner lot located on the eastern side of Brendonridge
89 Court, which is a shallow cul-de-sac. The parcel is approximately 17,000 square feet in
90 area, and is improved with an 1,800-square-foot tri-level home constructed in 1970. Other
91 improvements include an attached 300-square-foot sunroom, a 200-square-foot shed,
92 and a 4-foot wooden fence outlining the rear yard.

93

94 The lot fronts on Brendonridge Lane, and rears on the side of 11409 Brendonridge Court,
95 which is property to the rear. The home has an existing street-side setback of 37 feet
96 and a rear-yard setback of 61 feet.

97

98 The applicant would like to construct a one-story, 672-square-foot two-car garage in the
99 rear yard. Approximately 13 to 15 feet from the street-side property line. Because the
100 property is a reverse-corner lot, the zoning ordinance requires a 65-foot street-side
101 setback to the proposed detached garage. The applicant is requesting a CUP to place
102 the garage in a street side-yard as allowed by code. The property is zoned R-2A and is
103 designated Suburban Residential 2 on the 2026 Future Land Use Map. A one-family
104 dwelling is consistent with both designations.

105

106 Accessory structures are permitted by right in the rear yard and can be approved by CUP
107 when located in the side yard. Although the proposed garage would be in the rear yard,
108 it does not meet the 65-foot street-side setback requirement for a reverse-corner lot.

109

110 The applicant is proposing to align the new garage with the existing house. Because the
111 lot follows the curve of the cul-de-sac, the street-side setback to the garage is reduced
112 from 37 feet on the north end of the structure to approximately 13 feet at the south end of
113 the building.

114

115 The proposed layout conflicts with the intent to the code, creating a visual impact, and
116 potentially causing vehicles to overhand into the right-of-way part there. This would
117 negatively impact the neighbors and the streetscape. It would also directly affect the
118 neighbor to the rear.

119

120 To mitigate these detrimental impacts, staff recommends the applicant locate the
121 proposed garage further back from the right-of-way. This would allow for a deeper
122 driveway in front of the garage doors to accommodate a parked vehicle without
123 overhanging it into the public right-of-way.

124

125 Recessing the garage further into the lot would also alleviate the visual impacts on the
126 rear neighbor and streetscape. Since accessory buildings must be at least six feet apart,
127 it may be necessary to either remove the existing shed or combine it with the new building.

128

129 In conclusion, the applicant wishes to build a detached garage in the street side-yard.
130 Because the property is a reverse-corner lot it is subject to an increased street-side
131 setback that is aggravated by the curve of the cul-de-sac. To avoid the negative impact
132 of the visual intrusion on the streetscape and adjacent neighbor and to avoid vehicles
133 overhanging into the public right-of-way, the applicant should recess the garage further
134 onto the lot.

135

136 Staff has developed specific conditions of approval to mitigate any detrimental impacts.
137 As long as the applicant adheres to the suggested conditions, staff recommends approval
138 of this request.

139
140 We have not received any letters or correspondence on this request. This essentially
141 concludes my presentation. I'll be happy to answer any questions you may have.
142
143 Mr. Green - Thank you. Are there any questions from the Board for the
144 staff?
145
146 Mr. Reid - Miguel, let me ask you one question just out of curiosity. In
147 item number 5 on the conditions of approval says there must be no windows or doors on
148 a southern elevation.
149
150 Mr. Madrigal - Yes, sir. Basically, here's the southern elevation of the
151 garage. So any windows or doors would potentially impact the neighbor to the -- to the
152 south. Whether it be light glare or just, you know, noise, activity, movement. So that's
153 the reason for the condition.
154
155 Mr. Reid - Yeah. Thank you.
156
157 Mr. Green - Any other questions from the Board for the staff? We'll now
158 hear from the applicant.
159
160 Mr. Farrar - Morning.
161
162 Mr. Green - He's been sworn in.
163
164 Mr. Farrar - My name is Fredric Farrar. F-a-r-r-a-r. And I made this
165 request to the Board to build this garage. My questions really are -- and this -- already
166 talked with the other gentleman. I wanted to keep it in line with the current home just, to
167 me, for the aesthetic look of it and my measurements from the southern corner of the
168 garage to the current curb cut is 27 feet, 6 inches.
169
170 In the front of my house, the pin marking to the street is 6 foot. My understanding is that
171 is an easement owned by the county that they maintain for future endeavors. If that is a
172 consistent line around the house, it would still give me 21 feet, 6 inches from the street,
173 or from the lot line to the corner of the house. Which is more than ample room to park a
174 vehicle. Obviously with a garage, my objective is to park the vehicles inside.
175
176 I have a letter from my neighbor who owns the property at 11409, Brendonridge Court
177 stating she has no objections to the proposed garage that I submitted initially. She claims
178 that it would not affect her at all. I have a copy of those for anyone who would like to see
179 it. Sir, I ask that you reconsider and allow me to build it the way I originally planned it. If
180 I have to change it and set it back, I probably won't do it, because it, in my calculation, is
181 going to add about \$22,000 in cost for additional pavement and elevation of the back of
182 the garage. Thank you.
183

184 Mr. Green - So it's my understanding that you are rejecting staff's
185 recommendation.

186
187 Mr. Blankinship - On condition number 3.
188

189 Mr. Farrar - On condition three of starting the front of the garage where my
190 current fence is. That's 14 feet, 6 inches back from the line of which I originally requested.

191
192 Mr. Green - And staff, what are your thoughts on this?
193

194 Mr. Madrigal - Well the requirement, well the condition that we
195 recommended was basically two-fold. One would be to address the overhang issue into
196 the public right of way for a vehicle that's parked there. And then the other aspect would
197 be the visual intrusion not only on the streetscape, but the impact on the adjacent
198 neighborhood.

199
200 Mr. Green - So you stand by your recommendation.
201

202 Mr. Madrigal - Yes, sir.
203

204 Mr. Green - Are any other members with questions of the applicant?
205

206 Mr. Reid - Mr. Farrar, you're in agreement with all the conditions of
207 approval except item number 3?
208

209 Mr. Farrar - Yes, sir. Yes, sir. I was, kinda like you, I wasn't sure about
210 wanting no windows on the south side, but I have no problem with that. All of the materials
211 and the look of the house -- of the garage would match identically the house that's
212 currently there.
213

214 Mr. Green - Again, how many feet you said the county had -- that was on
215 the entrance there?
216

217 Mr. Farrar - How many feet back?
218

219 Mr. Green - Right.
220

221 Mr. Farrar - From what I measured it to the fence from the front of the
222 house line is 14 feet, 6 inches.
223

224 Mr. Green - You mentioned about the county having, what, six feet or
225 something?
226

227 Mr. Madrigal - From the curb to the property line I'm not sure what that
228 dimension is, sir. We don't have those dimensions. What I did do is I used our GIS
229 system to approximate the location of the garage and the, you know, using that system I

230 came back with about 13 to 15 feet at the southern end of the structure to the property
231 line. That dimension was not provided on this plat.

232
233 Mr. Green - Okay.

234
235 Mr. Madrigal - We had to kind of figure out, you know, what distances we're
236 dealing with.

237
238 Mr. Farrar - So, again, by my calculations from that farthest southern
239 point, the actual tape measure to the curb today is 27 feet, six. So if it's 15 feet, that's
240 telling me that the county owns 12 feet of that, whereas all the rest of the property the
241 lines are at 6 feet. I wasn't sure the exact number there.

242
243 Mr. Blankinship - Well the right-of-way usually is a little wider around the bulb
244 of a cul-de-sac.

245
246 Mr. Farrar - Okay. But that would be a little over twice the size as the front.

247
248 Mr. Green - So you are not in support of the county's recommendation for
249 condition three?

250
251 Mr. Farrar - No, sir. Again, it would mean that I have to demolish the
252 current shed that's there. Again, the additional cost of the asphalt or concrete driveway.
253 And at the rear of the garage, I would have to elevate it. Because it's the garage -- the
254 yard does have a slight down slope. I would have to elevate the back of it. And, like I
255 said, we've calculated between 14 and \$22,000 in additional cost to do that.

256
257 Mr. Green - Okay.

258
259 Mr. Johnson - I have a question. He'd mentioned the shed that he had to
260 demolish if he had to move it. Is that the one in the back there?

261
262 Mr. Farrar - It's that shed right there. If I go back to the fence, just, like I
263 said, move it back 14 feet, 6 inches and go from that point, 24 feet, the back-corner of the
264 garage would be at 2 and 1/2 feet into the current shed and it basically takes up my entire
265 back yard.

266
267 Mr. Green - Are there any other questions from the Board for the
268 applicant? Does anyone else wish to speak in support of this request?

269
270 Mr. Blankinship - There is no one on Webex for this application.

271
272 Mr. Green - Does anyone wish to speak in opposition of this request?
273 Public hearing is now closed and a motion -- yes, sir.

274

275 Mr. Johnson - I was just noticing we had some opposition on paper that
276 someone sent.

277
278 Mr. Madrigal - I don't believe it's for this case. I believe that's for, more than
279 likely, variance number 7.

280
281 Mr. Blankinship - We have a conditional use permit and a variance, both
282 number 7 and both number 8 this morning. So.

283
284 Mr. Green - Okay. The public hearing is now closed and a motion would
285 be in order. What is the pleasure of the Board?

286
287 Mr. Reid - Yes. Since Mr. Farrar does not agree with condition number
288 3 in the conditions of approval, I move that we deny the conditional use permit. Because
289 of the way the lot line follows the curve of the street, there is not much extra room on that
290 side of the house. There's already a storage building in the rear yard, and there's not
291 enough room to add a garage. If approved, the garage would have a detrimental impact
292 on the neighbors, so I think we should deny it.

293
294 Mr. Green - Do I hear a second?

295
296 Mr. Pollard - I second.

297
298 Mr. Green - The motion was seconded by Mr. Pollard. Is there any
299 discussion? All in favor of the motion say aye. All opposed say nay.

300
301 On a motion by Mr. Reid, seconded by Mr. Pollard, the Board **denied** application
302 **CUP2021-00007 FREDERIC FARRAR's** request for a conditional use permit pursuant to
303 Section 24-95(i)(4) of the County Code to build a detached garage in the side yard at
304 11407 Brendonridge Lane (TUCKAHOE VILLAGE) (Parcel 737-746-6117) zoned One-
305 Family Residence District (R-2A) (Tuckahoe).

306
307
308 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5
309 **Negative:** 0
310 **Absent:** 0

311
312
313 Mr. Blankinship - All right. The next case is conditional use permit 2021,
314 number 8 Gillies Creek Industrial Recycling, LLC.

315
316 **CUP2021-00008 GILLIES CREEK INDUSTRIAL RECYCLING, LLC** requests
317 a conditional use permit pursuant to Sections 24-89(c) and 24-103 of the County Code to
318 continue development of a wetlands mitigation bank at Cables Farm Road (Parcel 860-
319 709-5622) zoned Conservation District (C-1) (Varina).

^20

321 Mr. Blankinship - I don't believe there is anyone in the room to speak to this
322 case. The applicant and representative are both with us on Webex.

323
324 Mr. Green - Okay.

325
326 Mr. Blankinship - So, Mr. Gidley, if you'd like to begin.

327
328 Mr. Gidley - Good morning Mr. Chair, members of the Board. The subject
329 property is actually a wetlands mitigation bank and it is located on the western side of the
330 Chickahominy River opposite from New Kent County. It was previously of sand and
331 gravel on borrow pit in the 1970s, but has existed as a wetlands mitigation bank since
332 2006. This request is to renew their existing conditional use permit.

333
334 There are a total of four mines, as they call the wetlands banks. Numbers 1, 2, 3, and 4,
335 as you see here. Mine 1, mine 2, and mine 3 are complete at this time. This request
336 would allow them to begin work on mine number 4, over here, which is the
337 northwesternmost one.

338
339 As in previous years, access to and from the site is via U.S. Route 60 in New Kent County
340 by way of a bridge over the Chickahominy River. And you can make this out briefly here.
341 This is Route 60 in New Kent, and the access comes in here over the river and then once
342 you're inside the work area there are internal roads.

343
344 In evaluating this request, the property is zoned C-1, Conservation District, and it is
345 designated as Environmental Protection Area on the Land Use Plan. The wetlands
346 mitigation bank is consistent with these designations and the site would be preserved as
347 wetlands once complete.

348
349 As far as any substantial detrimental impact, there would be no substantial detrimental
350 impact on property in Henrico County.

351
352 As noted, access to the site is via U.S. 60 in New Kent County. And during the initial use
353 permit approval in 2006, New Kent County had numerous objections regarding traffic from
354 the mine. These issues were worked out between VDOT, New Kent, Henrico and the
355 operator. And, since this time, staff is unaware of any complaints on this issue.

356
357 In conclusion, work began on the wetlands mitigation bank in 2006, and has been ongoing
358 since then. The proposed use is consistent with the zoning ordinance and the
359 Comprehensive Plan. Staff does not anticipate any substantial detrimental impacts from
360 this issue. As a result, we recommend approval of this request subject to the conditions
361 in your staff report. If you have any questions, I will be happy to answer those. Thank
362 you.

363
364 Mr. Green - Thank you. Are there any questions from the Board for staff?

365

366 Mr. Bell - Do we even know the schedule of the -- how they're coming
367 along with this? By schedule I mean from where they are now to where they expect to
368 be later on, and as close to finishing. And they actually have to start filling in this place.

369
370 Mr. Gidley - Okay. As I noted, mines 1, 2, and 3 have been completed.
371 This would allow them to begin work on mine 4, which is the last one. I'll let the engineer
372 anticipate or give you an idea of when they anticipate being done. I suspect a lot of it has
373 to do with, you know, the material and the weather and things like that. But this is the last
374 mine that they have out there. And, again, the engineer can probably give you a more
375 specific date.

376
377 Mr. Bell - Thank you. With this being the last one, and they didn't have
378 any problem with the other three as well. What's the difference with the wetland mitigation
379 bank? I mean, what's the difference in the mining here and the mitigation banks that they
380 --

381
382 Mr. Gidley - I would say that, if I understand you correctly, initially there
383 was a borrow pit here, where they would come in to remove sand and gravel and, you
384 know, they truck that out and they sell it to people building roads, for instance, for
385 construction sites, you know, foundations for buildings. They do have to mitigate that.
386 Typically they level the site and plant vegetation on top of it.

387
388 Now with the wetland mitigation bank, the way that works, is there are times during
389 development where they have a road or access to a property that you have to impact
390 wetlands that are protected. And one way you compensate for that, so to speak, is you
391 say, I have a project in Hopewell and I'm going to impact wetlands, but I can go to this
392 mitigation bank in this watershed and go ahead and buy credits here to make up for that.

393
394 So net net you're not really losing wetlands, as I understand it, it's just a matter of, you
395 know, where they are located at. But they're still within the same river basin.

396
397 Obviously when you build a wetland mitigation bank, they adjust the elevation to allow
398 water to remain there and then go ahead and put plants there that are wetland plants
399 rather than just, say, you know, pines and oaks that you would have after a borrow pit.

400
401 Mr. Bell - Yes.

402
403 Mr. Gidley - So that's how that works.

404
405 Mr. Bell - Okay. Thank you. That answered my question.

406
407 Mr. Gidley - Thank you.

408
409 Mr. Green - Are there any more questions from the Board for staff? We'll
410 now hear from the applicant.

411

412 Ms. Deemer - Mr. Chairman, we are now going to unmute Mr. Chris Liesfeld.
413 He is now unmuted.

414
415 Mr. Liesfeld - Good morning, Board. Thank you for your time. My name is
416 Chris Liesfeld. It's L-i-e-s-f-e-l-d. And I'm with Gillies Creek Recycling and I'm here with
417 Randy Hooker.

418
419 Mr. Blankinship - Good morning. Can we have a description of how the project
420 is progressing? And perhaps you can answer Mr. Johnson's question -- I'm sorry. It was
421 Mr. Bell's question about how much longer you expect this process to continue.

422
423 Mr. Liesfeld - Sure. Absolutely. As it's been stated already, the first three
424 mines have been filled and completed and are now wetland banks. So we have mine
425 four left to go. We have not started in the actual clearing and preparing the site so that
426 we can remove some of the sand material that's there and then so we can bring in
427 materials to start building the bank.

428
429 The timing of that is somewhat depending on jobs in the area as well as -- it's a bit of a
430 timing issue as far as our own resources. So with the availability of equipment and
431 manpower.

432
433 To give you some, you know, range of time, it would be something that we would start,
434 possibly, in the next six months to a year from this time right now.

435
436 Mr. Johnson - Thank you.

437
438 Mr. Green - Are there any questions from the Board to the applicant?

439
440 Mr. Johnson - So they don't have a possible ending time?

441
442 Mr. Liesfeld - Well once the project starts -- so if we start sometime, like I
443 said, in the next six months to a year, the filling of that operation to create the bank, you
444 know, it can take a year to two years. It really depends on the type of work that is
445 happening in the area where we source the dirt for the filling portion of the project. You
446 know, some of that is out of my control. It's really depending on what the economy is
447 doing and how developments are occurring in the area. So, typically over several years,
448 you know, historically I would say we could estimate about a two-year window of having
449 it completed. Possibly three.

450
451 Mr. Green - Okay. Are there any other questions for the applicant? Does
452 anyone else wish to speak in support of this request?

453
454 Ms. Deemer - We have no one on Webex.

455
456 Mr. Green - Does anyone wish to speak in opposition of this request?
457 Public hearing is now closed, and a motion is --

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Mr. Johnson - One more question. Also, with the other three projects that they have already finished, I noticed that there are roads that come in from the Henrico side. They are not going to use those roads, are they? Just the one from New Kent?

Mr. Gidley - Yes, sir. Access to the site is restricted to the route from U.S. Route 60. The only exception would be if there was an emergency, you know, situation. If you had to get an ambulance, perhaps, in there and it worked out it was coming from the west side.

Mr. Johnson - Okay. Because I noticed from that side the roadway is really treacherous trying to, you know, trying to get in there. And plus you got a couple of houses on that Route 60 side, too, that -- I just wanted -- only in an emergency would they have to do that. Okay.

Mr. Blankinship - Yes. Condition number 7, Mr. Johnson, provides that all means of access to the property must be from the established entrance on the U.S. Route 60 in New Kent County.

Mr. Johnson - Okay.

Mr. Green - Okay. Are there any additional questions from the Board for the applicant? Once again, the hearing is now closed and a motion would be in order. What is the pleasure of the Board?

Mr. Johnson - Mr. Chairman, I move that we approve the conditional use permit subject to conditions recommended by staff. And this property has been under development for 10 years and there have been no complaints. Preparation for the wetlands is good for the county and is good for the environment. Completing the project will not be detrimental to the neighborhood. So I think we should approve it.

Mr. Green - Is there a second?

Mr. Bell - Second.

Mr. Green - There's a motion by Mr. Johnson and a second by Mr. Bell. Is there any discussion? Hearing no discussion, all in favor say aye. All opposed say nay.

On a motion by Mr. Johnson, seconded by Mr. Bell, the Board **approved** application **CUP2021-00008 GILLIES CREEK INDUSTRIAL RECYCLING, LLC's** request for a conditional use permit pursuant to Sections 24-89(c) and 24-103 of the County Code to continue development of a wetlands mitigation bank at Cables Farm Road (Parcel 860-709-5622) zoned Conservation District (C-1) (Varina). The Board approved the request subject to the following conditions:

- 503 1. This use permit is subject to all requirements of Section 24-103 of the County Code.
504 The operation must be conducted in accordance with the plans and narrative approved
505 with the use permit, except as noted below.
506
- 507 2. The applicant must maintain a financial guaranty in an amount of \$3,000 for each acre
508 of land to be disturbed, for a total of \$204,000, guaranteeing that the land will be restored
509 to a safe, stable, and usable condition, consistent with its elevation before excavation.
510
- 511 3. Throughout the life of the operation, the applicant must continuously satisfy the
512 Department of Public Works that erosion and sedimentation control is performed and
513 maintained in accordance with the approved plan. The erosion control bond must remain
514 active throughout the life of the project.
515
- 516 4. The applicant must maintain all necessary permits from the United States Army Corps
517 of Engineers and the Virginia Department of Environmental Quality.
518
- 519 5. The applicant must comply with the Chesapeake Bay Preservation Act and all state
520 and local regulations administered under such act applicable to the property, and must
521 furnish to the Planning Department copies of all reports required by such act or
522 regulations.
523
- 524 6. Operations audible at the property line must not be conducted before 6:00 am or after
525 6:00 pm when Daylight Saving Time is in effect, or before 7:00 am or after 5:00 pm when
526 Eastern Standard Time is in effect. Operations audible at the property line must not be
527 conducted at the site on Saturdays, Sundays, or national holidays.
528
- 529 7. All means of access to the property must be from the established entrance onto U.S.
530 Route 60 in New Kent County. This condition will be enforced in cooperation with the
531 Virginia Department of Transportation and New Kent County.
532
- 533 8. The applicant must maintain all necessary approvals for the access road from the
534 Virginia Department of Transportation (VDOT) and New Kent County. These include, but
535 are not limited to, site plan approval of the road, including stormwater management and
536 erosion and sediment control, County land disturbance permit and VDOT Land Use
537 Permit.
538
- 539 9. The applicant must maintain the 30-foot wide entrance, right turn lane with 200 feet of
540 taper and 100 feet of storage, and left turn lane with 200 feet of taper and 200 feet of
541 storage, all to VDOT specifications.
542
- 543 10. The applicant must maintain gates at all entrances to the property. These gates must
544 be locked at all times except when authorized representatives of the applicant are on the
545 property. This condition will be enforced in cooperation with VDOT and New Kent County.
546
- 547 11. The applicant must maintain the sign at the entrance to the site stating the use permit
548 number, the name of the operator, and a telephone number to be used in emergencies.

549
550 12. The applicant must maintain "No Trespassing" signs every 250 feet along the
551 perimeter of the property. The letters must be 3 inches in height. The applicant must
552 furnish the Chief of Police a letter authorizing the Virginia State Police, the New Kent
553 County Sheriff's Office, and the Henrico County Division of Police to enforce the "No
554 Trespassing" regulations, and agreeing to send a representative to testify in court as
555 requested.

556
557 13. The applicant must maintain standard "Truck Crossing" signs (MUTCD W8-6) on U.S.
558 Route 60 on each side of the entrances to the property, at locations approved by VDOT.
559 This condition will be enforced in cooperation with VDOT and New Kent County.

560
561 14. The applicant must maintain the entrance road, which must be paved for a distance
562 of 300 feet from its intersection with U.S. Route 60 and a width of 24 feet. All roads used
563 in connection with this use permit must be effectively treated with calcium chloride or
564 other wetting agents to eliminate any dust nuisance. Wash racks must be installed as
565 necessary to prevent the tracking of mud onto any public street. This condition will be
566 enforced in cooperation with VDOT and New Kent County.

567
568 15. Trucks must not leave the site in groups of three or more.

569
570 16. For nine months of each year, the average number of trucks entering and leaving the
571 site must not exceed 28 per day. For three months of each year, the average number of
572 trucks entering and leaving the site must not exceed 56 per day. This condition will be
573 enforced in cooperation with VDOT and New Kent County. The applicant must maintain
574 records on site documenting all trucks entering or leaving the site. Such records must be
575 available to staff of Henrico County, New Kent County, and VDOT during normal hours
576 of operation. At the request of the New Kent County Zoning Administrator, the Henrico
577 County Director of Planning may approve increases in the volume of trucks allowed by
578 this condition. All requests for exceptions must contain the reason, duration, and
579 magnitude of the exception requested.

580
581 17. To limit the total number of truck trips into and out of the site, each truck hauling
582 material away from the site must also be used to haul a full load of material to the site.

583
584 18. Trucks must be loaded in a way to prevent overloading or spilling of materials of any
585 kind onto any public road. This condition will be enforced in cooperation with VDOT and
586 New Kent County.

587
588 19. The applicant must maintain the property, fences, roads, and bridge in a safe and
589 secure condition until the property is converted to some other safe use.

590
591 20. If, in the course of its operations, the applicant discovers evidence of cultural or
592 historical resources, or an endangered species, or a significant habitat, it must notify
593 appropriate authorities and provide them with an opportunity to investigate the site. The
594 applicant must report the results of any such investigation to the Planning Department.

641 Mr. Green - Just a point of clarification.

642
643 Mr. Blankinship - Sorry.

644
645 Mr. Green - For my Board members. Twice I've closed the public hearing
646 and then questions have come in afterwards. I would ask that, you know, for continuity
647 and to keep the confusion down, that if you have questions, ask your questions before I
648 close the public hearing. Because under Robert's Rules of Order once you close a public
649 hearing, it's closed. But then I'm getting questions back.

650
651 So please just let me know that, you know, you have additional questions and I will not
652 close the public hearing. I just want to be consistent and fair and follow Robert's Rules
653 of Order. Thank you. Mr. Blankinship.

654
655 Mr. Blankinship - Yes, Mr. Chair. Our last conditional use permit for this
656 morning is conditional use permit 2021, number 9 Discovery United Methodist Church.

657
658 **CUP2021-00009 DISCOVERY UNITED METHODIST CHURCH** requests a
659 conditional use permit pursuant to Section 24-116(d)(1) of the County Code to hold a
660 temporary farmers market at 13000 Gayton Road (Parcel 732-754-3534) zoned
661 Residential Townhouse District (RTH) (Tuckahoe).

662
663 Mr. Blankinship - We have three people in the room and at least two on Webex
664 to speak to this. If you all would stand and be sworn in. Raise your right hands, please.
665 And do you swear the testimony you're about to give is the truth, the whole truth, and
666 nothing but the truth so help you God? Thank you. All right. Mr. Madrigal, you can begin.

667
668 Mr. Madrigal - Thank you Mr. Secretary. Mr. Chair, members of the Board,
669 before you is a request to allow a temporary use in an existing place of worship. The
670 subject property was acquired by the Methodist church in 1983, and in 1987 they built the
671 church. They've operated at this location for the last 33 years.

672
673 In 2009 the Board of Supervisors approved a provisional use permit to allow the West
674 End Farmer's Market at the Gayton Centre Shopping Center, which is less than half a
675 mile due south of the church location. The farmer's market is looking for a new location,
676 and the church has offered the use of their parking lot when it is not in use.

677
678 This request is to allow the operation of a farmer's market every Saturday from 9:00 am
679 to noon starting in April of this year through March 2023. The proposed plans show the
680 market on the west side of the church, adjacent to Lauderdale Drive.

681
682 The market will occupy approximately 38,400 square feet of the church's parking lot,
683 containing approximately 114 parking spaces. The plan calls for each vendor to occupy
684 two spaces, two parking spaces, equating to 57 vendors in this area.

685

686 The church has a total of 342 on-site parking spaces. On market days these will be
687 reduced to 228 parking spaces which will be available for customers to use.

688
689 The farmer's market vending rules require that at least 75 percent of the vendors sell
690 fresh produce, herbs, baked goods, meats, and other food products, while up to 25
691 percent will sell original works of art, jewelry, and other handmade merchandise. Only
692 producers will sell at the market, and all goods must be produced in Virginia with
693 exception to seafood products, which may originate from Maryland or North Carolina.

694
695 All food products will also have to be approved by the Virginia Department of Agriculture,
696 or the Department of Health, as applicable.

697
698 The subject property is zoned RTH and is designated semi-public on the 2026 Future
699 Land Use map. The church is consistent with both of these designations. A farmer's
700 market is not necessarily consistent. Under the current interpretation of the zoning
701 ordinance, a farmer's market requires a provisional use permit in the B-3 district. That
702 interpretation is based on the outdoor nature of the use.

703
704 In the B-1 and B-2 districts, the use may be conducted entirely with an enclosed building,
705 and most outdoor uses in a B-3 district require a provisional use permit. Over the past
706 few years, however, farmer's markets have grown in popularity and many people consider
707 them to be compatible with less intensive uses.

708
709 The proposed code update will make it easier for the county to approve this type of use
710 on a temporary basis without the need for a CUP if adopted as drafted. While the farmer's
711 market may not be consistent with some residential settings, the size and configuration
712 of the subject property does appear to be appropriate for the proposed use.

713
714 Similar requests from other churches have been discouraged because of the potential
715 impacts on adjacent property. Traffic, noise, parking, litter, and similar impacts could be
716 detrimental to adjacent property, particularly when the proposed site is on a neighborhood
717 street with minimal buffering to homes. In this case, however, the property is served by
718 an arterial road, so traffic impacts should be minimal.

719
720 The proposed market area at the church is approximately three times larger than at the
721 Gayton Centre Shopping Center location.

722
723 Also, there are homes within 100 feet of the designated market area. If this area were
724 reduced to 79 parking spaces adjacent the Lauderdale Drive entrance, it would contain
725 approximately 27,000 square feet of area and allow for approximately 40 vendors, while
726 providing 125-foot buffer between the market and the nearest home.

727
728 Staff recommends limiting the market area to a smaller footprint and has included several
729 other conditions drawn from several previous approvals associated with the farmer's
730 market at the Gayton Centre Shopping Center.

731

732 If the market follows the recommended conditions, there should be no substantial
733 detrimental impact on nearby property.

734
735 In conclusion, the subject property has been used by the church for 33 years. For the
736 past 12 years, the farmer's market has operated at the Gayton Centre Shopping Center
737 approximately half a mile south of the church site.

738
739 While the introduction of commercial activity into a neighborhood can have a detrimental
740 impact, the farmer's market is known to be well-organized and professionally managed.
741 The proposed location is large and paved, providing safe access to an arterial road. The
742 use would also be limited in size and operation. It would only occur on Saturday mornings
743 for approximately three hours.

744
745 Based on these circumstances, staff recommends approval subject to conditions. And
746 this concludes my presentation. I'll be happy to answer any questions.

747
748 Mr. Green - Are there any questions from the Board for staff?

749
750 Mr. Bell - This is a couple and this is to either one. I'm just curious.
751 We've got group -- and sound and lighting and all of that as to one sentence. Are they
752 aware of what we mean by sound? I mean, are they going to have record players or
753 music that's going to be playing out from where they're located? It's not a, you know, at
754 the shopping mall that they're located is the lighting going to be effective enough at
755 nighttime when they close down? They're aware they got to make certain that they follow
756 our recommendations.

757
758 Mr. Madrigal - Right. Well they've been operating at the Gayton Centre
759 Shopping Center for several years now. So at this location it's only a daytime operation,
760 so it's only going to be a morning use for three hours. So there really no -- is no
761 requirement for exterior lighting other than what's existing at the church now, and that's
762 not going to be affected.

763
764 As far as, you know, sound amplification, music, and all that stuff, I don't think they have
765 that now at the Gayton Centre Shopping Center. Ben, are you aware of anything?

766
767 Mr. Blankinship - No. That's correct. It's prohibited under their current
768 conditions.

769
770 Mr. Madrigal - Yeah. So they wouldn't have it here as well.

771
772 Mr. Bell - All right. Thank you.

773
774 Mr. Green - Living not too far from that -- well, I'm in the Three Chopt
775 District. but I'm very familiar with that area. That church is very large and, to be quite
776 honest with you, I think it would be an excellent site for a farmer's market. I would prefer
777 that site to some other sites. Because you really have to go south, like you say. But this

778 would, I think, draw a lot of attention and be good for the community. And it's outdoors,
779 so I think that, you know, the restrictions as it relates to distance would be adhered to.
780

781 And I've seen them do other things on that site. I think with the Boy Scouts and others.
782 I've never seen any detrimental impact as I've passed that. But I think that's a perfect
783 location for that. And I would use it.
784

785 Are there any other questions from Board of staff?
786

787 Mr. Reid - I would say with their success at their previous location and
788 the fact that they operate under such a stringent sets of rules and regulations which I
789 thought were very, very thorough. I think it's just a good move. Excellent location.
790

791 Mr. Green - Any other comments from Board to staff? Or questions from
792 the Board to staff? Hearing none we will now hear from the applicant.
793

794 Ms. Sullivan - Good morning, gentlemen. My name is Jennifer Sullivan.
795 Sullivan is spelled S-u-l-l-i-v-a-n. And I have the pleasure of being the market manager
796 for the West End Farmer's Market. Joining us by Webex today we also have the
797 Reverend Dr. Adam Sowder from Discover United Methodist Church and Mark Clements,
798 who is one of the co-owners of the farmer's market.
799

800 I'll be short and sweet. We sincerely appreciate the staff's recommendation to approve.
801 And we are in agreement with all the conditions of approval as well.
802

803 Mr. Green - And are there any questions from the Board to the applicant?
804

805 Mr. Bell - Are the vendors only from the surrounding areas?
806

807 Ms. Sullivan - Yes, sir. We require that all of our vendors are from Virginia
808 and selling products that they have made in Virginia with the exception of the seafood,
809 which is from Maryland or North Carolina.
810

811 Mr. Green - We will now hear from the other applicant who's on Webex if
812 necessary.
813

814 Ms. Deemer - Mr. Chairman, would you like to hear from Anthony Clemens?
815

816 Mr. Green - If he wishes to say something. Yes.
817

818 Ms. Deemer - He is now unmuted.
819

820 Mr. Clements - Good morning, Mr. Chair, good morning, Board, how are you?
821 We appreciate the opportunity, again, to hear the requests that we have. I think there's
822 been a lot of really good support that we've heard already. The market has operated for
823 numerous years and I hope it's enough to think it's doing some, you know, some really

824 good and unique and special things with the community. I thank, also, Jennifer, our
825 Market Manager for being there in person and speaking to the market's growth and
826 opportunities as we move forward.

827
828 I just look to potentially continue to grow the community involvement with the market and
829 I'll thank all of those of whom are in support. And if there's any questions or concerns,
830 please don't hesitate at all to reach out.

831
832 Mr. Green - Thank you. Does anyone else wish to speak in support of this
833 request? Does anyone wish to speak in opposition of this request? Hearing none the
834 public hearing is now closed and a motion will be in order. What is the pleasure of the
835 Board?

836
837 Mr. Reid - As the Tuckahoe representative on the Board, I move that we
838 approve the conditional use permit subject to the conditions recommended by the staff.
839 This farmer's market is a popular activity. It'll only be active on Saturday mornings. The
840 proposed plan is far enough away from the neighbors that it should not be detrimental.
841 Lauderdale is an arterial road and traffic should not be a problem. As long as the applicant
842 follows the recommended conditions, I do not think the farmer's market will be detrimental
843 to the neighbors. So I think we should approve it.

844
845 Mr. Green - Do I hear a second?

846
847 Mr. Bell - Second.

848
849 Mr. Green - The motion was made by Mr. Reid and it was seconded by
850 Mr. Bell. Is there discussion? The only thing I would say is I, once again, would be
851 supportive. I don't live that far from it. And the only thing I was regretting that you'd be
852 closing early because by the time I've gotten to the other farmer's market it is wrapping
853 up.

854
855 But I think it's an excellent location. I don't see any problems with it. Because I travel --
856 will travel Lauderdale and, like I say, that church sits on a well -- large lot and can do a
857 lot of things. And I think it would be great for the community. And especially as we are
858 moving out of this whole COVID process it would give folks an opportunity to be outside
859 and doing some more positive things and buy fresh products and support local vendors.
860 So, I can't disagree with that.

861
862 So the motion was made and seconded. Are there any other discussions? All in favor of
863 the motion say aye. All opposed say nay. Passed.

864
865 On a motion by Mr. Reid, seconded by Mr. Bell, the Board **approved** application
866 **CUP2021-00009 DISCOVERY UNITED METHODIST CHURCH's** request for a
867 conditional use permit pursuant to Section 24-116(d)(1) of the County Code to hold a
868 temporary farmers market at 13000 Gayton Road (Parcel 732-754-3534) zoned

869 Residential Townhouse District (RTH) (Tuckahoe). The Board approved the request
870 subject to the following conditions:

871
872 1. This conditional use permit applies only to the operation of West End Farmers Market.
873 All other applicable regulations of the County Code remain in force.

874
875 2. The farmers market will be limited to the 79 parking spaces between Lauderdale Drive
876 and the church building (measuring approximately 220 feet by 120 feet and 125 feet from
877 the southern property line).

878
879 3. No permanent buildings or structures of any kind will be erected on the property for the
880 farmers market.

881
882 4. Hours of operation will be limited to Saturdays from 9:00 am to 12:00 noon. Tables,
883 booths, temporary structures or storage containers must not be moved onto the property
884 before 7:00 am and must be removed from the property no later than 1:00 pm on each
885 Saturday.

886
887 5. The farmers market must operate according to the "West End Farmers Market Rules
888 & Regulations" submitted with the application. The applicant must designate a Market
889 Manager who will be responsible for vendor selection, implementation of the Rules &
890 Regulations, and ensuring compliance with all local, state, and federal laws and
891 regulations.

892
893 6. When the farmers market is in operation, the market area must be limited to pedestrian
894 traffic, and all vehicular traffic must be directed around the north end of the church building
895 to park in the parking lot on the Gayton Road side of the property.

896
897 7. There must be no more than two signs clearly visible from any public street, each of
898 which must not exceed 32 square feet in area or eight feet in height. Signs for individual
899 vendors must face the interior of the farmers market and must not be clearly visible from
900 any public street.

901
902 8. No more than eight mobile food vendors are allowed at a time.

903
904 9. All trash and debris must be removed from the property by 1:00 pm each market day.

905
906 10. The following will be prohibited on the property: generators (other than those
907 supporting food trucks), portable toilets, outside live music performances, and amplified
908 sound systems.

909
910 11. This permit will expire on April 21, 2023. Under the County Code there is no authority
911 for the renewal or extension of this permit.

912
913
914

915	Affirmative:	Bell, Green, Johnson, Pollard, Reid	5
916	Negative:		0
917	Absent:		0

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960

Mr. Blankinship - All right, Mr. Chair, that completes the conditional use permit portion of our agenda. There are two variances on this morning's agenda and the first is variance 2021, number 7 Anthony Mcinnis.

VAR2021-00007 ANTHONY MCINNIS requests a variance from Section 24-94 of the County Code to build a screened porch in place of an existing deck at 6052 Brentmoor Drive (BRENTMOOR @ WYNDHAM) (Parcel 740-778-0427) zoned One-Family Residence District (R-4C) (Three Chopt). The rear yard setback is not met. The applicant proposes 29 feet rear yard setback, where the Code requires 35 feet rear yard setback. The applicant requests a variance of 6 feet rear yard setback.

Mr. Blankinship - The applicant is on Webex. And, Mr. Madrigal, you can begin.

Mr. Madrigal - All right. Thank you, Mr. Secretary, Mr. Chair, members of the Board. Before you is a request to build a screen porch in place of an existing rear deck. The subject property is part of the Brentmoor at Wyndham subdivision recorded in 1995. It is a cul-de-sac lot that gently slopes toward the rear and is approximately 13,500 square feet in area.

The property is identified on the subdivision plat as having development limitations on the shape, size, and location of the dwelling. The lot is improved with a two-story, 3,000-square-foot home with an attached 2-car garage built in 1997. In January of this year the applicant submitted a building permit to replace his existing deck with a screen porch. His request was failed due to the setback requirements of the R-4 District.

Because of the shape of the lot, the existing house was placed further back onto the property, resulting in it having a 45-foot front-yard setback instead of 35 feet, which is the minimum for the R-4 District. This increased front-setback resulted in the house having a 35-foot rear-yard setback, which is again the minimum for the district.

An open deck is allowed to project 10 feet into the required rear-yard setback an enclosed porch is required to adhere to the same setbacks as the principal dwelling.

The applicant's proposal would encroach six feet into the required setback, contrary to code requirements. He is requesting a variance to have a 29-foot rear-yard setback instead of 35 feet.

With respect to the threshold question, the subject property is improved with an existing home served by an attached two-car garage and a rear-yard deck. As a result, the property has an existing beneficial use, and it does not appear that the code unreasonably restricts the use of the property.

961
962 Like all cul-de-sac lots, it has limitations on the shape, size, and location of the home that
963 can be placed on it. It is subject to the same setback requirements as the other lots
964 fronting on the cul-de-sac and is no more or less encumbered than its neighbors. Based
965 on these facts, the threshold question has not been met and the Board has no authority
966 to grant this request.

967
968 Furthermore, the applicant suggests that the variance was necessary to make a
969 reasonable accommodation for a person with a disability, because his wife has a bee
970 allergy and never goes outside from spring to fall. Under state law a disability may satisfy
971 the threshold requirement for a variance if the variance would alleviate a hardship related
972 to that disability.

973
974 By law, the burden of proof is on the applicant to demonstrate that the allergy is disabling
975 and creates a hardship that would be relieved by the variance. Although the applicant
976 has submitted a document addressing this issue, and that was provided to you, staff does
977 not believe this burden has been met.

978
979 Even if we were to assume the existence of a disability and hardship, alternative
980 accommodations to address any hardship have been identified by both staff and the
981 applicant. This includes a modified screen porch, as you see here, meeting setback
982 requirements or a detached structure in the rear yard.

983
984 With respect to the five subtests, items one through three have not been satisfied, as
985 outlined in the staff report.

986
987 In conclusion, the subject property was recorded in 1995, and a one-family dwelling was
988 constructed 1997. The lot was clearly identified on the subdivision plat as having
989 development limitations due to the location on a cul-de-sac and its unique configuration.

990
991 The property has an existing beneficial use and does not enjoy any less rights than similar
992 properties on the cul-de-sac. As a result, the zoning ordinance does not unreasonably
993 restrict the use of the property and any hardship faced by the applicant is self-created.
994 Furthermore, the proposed porch would establish a negative precedent and have a
995 detrimental impact on nearby property.

996
997 Based on these facts, staff recommends denial. Additionally, staff has received
998 approximately four letters of opposition, which have been provided to you. This concludes
999 my presentation. I'll be happy to answer any questions.

1000
1001 Mr. Green - Thank you. Are there any questions from the Board for the
1002 staff? Okay. Mr. Blankinship, we will now hear from the applicant.

1003
1004 Ms. Deemer - Mr. Chairman, Mr. Anthony Mcinnis is now unmuted.

1005
1006 Mr Green - Good morning, Mr. Mcinnis. Hello?'

1007
1008 Mr. Blankinship - Ms. Deemer, we're not getting any sound.
1009
1010 Ms. Deemer - Mr. Blankinship, we have Mr. Mcinnis showing as in
1011 attendance and he had messaged us. We can try again to ask if he is available to speak?
1012
1013 Mr. Green - Yes.
1014
1015 Mr. Blankinship - Mr. Mcinnis, if you can hear me, we're waiting for you.
1016
1017 Mr. Mcinnis - Hello.
1018
1019 Mr. Blankinship - Yes.
1020
1021 Mr. Mcinnis - Can you hear me now?
1022
1023 Mr. Blankinship - Here we are. Thank you.
1024
1025 Mr. Mcinnis - Oh, boy. Sorry about that. I'm here. So my name is Anthony
1026 Mcinnis, M-c-i-n-n-i-s. Thank you for having me here and thank you for being patient with
1027 me. There was an issue here with my microphone. So we are requesting this variance
1028 due to my wife's severe bee allergy, which causes anaphylaxis. She had a life-
1029 threatening bee sting incident when she was 13 years old. We need to put a roof on any
1030 new deck that we build in order to provide a screened enclosure that she can step directly
1031 into from our house.
1032
1033 My wife -- if my wife is stung, she has to use her EpiPen in order to have enough time to
1034 make it to the hospital. If she does not have an EpiPen, or if the EpiPen malfunctions,
1035 she will likely die before making it to the hospital. Epi-pens do malfunction and many
1036 deaths have been reported due to malfunctioning EpiPens.
1037
1038 I am requesting this variance in order for my wife to be protected from bees while
1039 spending time with our children outside. Due to the pizza-shaped nature of our lot, along
1040 with the position of our house on the lot, the rear of our house sits within six inches of the
1041 step-back zone. This is why I am here.
1042
1043 The screened porch that we want to build needs 5 and 1/2 and 6 feet of the setback zone.
1044 We are requesting that you grant us the use of six feet deep by 24-foot-wide section of
1045 the setback zone.
1046
1047 Lastly, I have driven around the neighborhood looking for other houses, even those in the
1048 cul-de-sac, that have the same limitations. And I have found not a single one. This
1049 hardship is unique to my property. Here's what I mean, all right, I've looked for houses
1050 that currently do not have a cover in their screen porch. That was my specific site criteria
1051 as I looked around. And I went to find houses that, since they do not currently have a

1052 covered screened porch if they wanted to build one of the same size, would they have
1053 the same limitation.

1054
1055 I did not find any house matching that specific criteria. This is to say that all of the other
1056 houses that I found that did not currently have a covered screen porch right now that did
1057 not currently have one. They would all be able to build the exact same screen porch that
1058 I am building. And so I think this is a unique limitation.

1059
1060 And so now I'd like to -- I sent some pictures in and I'd like to start discussing the pictures
1061 with the staff. Please display picture 1A on the screen.

1062
1063 Mr. Blankinship - Yes, sir.

1064
1065 Mr. Mcinnis - I'm not sure if I'm able to see it with you. Oh there it is.

1066
1067 Staff - It's displaying.

1068
1069 Mr. Mcinnis - Okay. So this is a letter from my wife's doctor confirming that
1070 she does have a bee allergy. Could you please go to the next picture? Okay. The next
1071 two pictures are -- you can go to the second one. This is a letter from CVS pharmacy
1072 detailing the last couple years of history of EpiPen purchases. And so I wanted to provide
1073 these because in the initial staff report before I'd given this it was stated I hadn't met the
1074 burden of proof, and now I hope that this does. And if it doesn't, I can do whatever is
1075 needed later.

1076
1077 So could you please go to the next picture, 1D? Yes. Just wanted to mention that in
1078 2008 the ADA was changed to include more people in the definition of disabled.
1079 Conditions that only show symptoms at certain times are now included: asthma and
1080 allergies fit this definition. The ADA protects people with asthma and allergies. Even if
1081 reactions or attacks happen only when they are triggered.

1082
1083 Could you please go to the next one? Please. The use of medical aids such as an EpiPen
1084 can no longer exclude them from ADA coverage. For example, it used to be that people
1085 with asthma who got an inhaler were not covered by the ADA, because the inhaler would
1086 start to remove the disability. With the 2008 changes, the ADA covers people with asthma
1087 that have to use inhalers or, conversely, people with bee-sting allergies that can use an
1088 EpiPen.

1089
1090 But it's important to keep in mind that EpiPens do malfunction and, also, it's all dependent
1091 on how quickly the subject can make it to the hospital. Miguel, would you please go to
1092 the next picture.

1093
1094 Mr. Madrigal - Sure.

1095
1096 Mr. Mcinnis - This is the screen porch that we would like to build. We initially
1097 set out to build it before we discovered there was a variance limitation. And this was

1098 already approved by the Wyndham Foundation's Homeowners Association. And they
1099 approved it conditionally based on, you know, me getting the variance.

1100
1101 This allows my wife to spend some, you know, have a decent space because she'll be,
1102 you know, pretty much, you know, she pretty much is limited there. And she has some
1103 room. Could you please go to the second picture? The next picture. I'm sorry.

1104
1105 Mr. Madrigal - Yes.

1106
1107 Mr. Mcinnis - So after discovering that we were limited, I then decided to
1108 meet the setback guidelines. And this is what I came up with. By the way, I did all the
1109 architectural work for these plans, and I used a college student to enter them into a
1110 drawing after I had drawn them up by pencil. It was fun. My wife asked me how did I
1111 have time to do this stuff. But it was sort of a hobby.

1112
1113 But this particular screen porch, though, had a problem. So it only has 5 and 1/2 feet of
1114 depth inside. And, also, if you consider there is a fireplace bump-out that will not be
1115 removed. There's a fireplace bump out that will not be removed. And so, thus, it's really
1116 very, very small in there. 5 and 1/2 feet deep by 24-feet wide. And then in addition to
1117 that there's a bump-out that's taking a lot of the 5 and 1/2 feet depth away from us.

1118
1119 And so the point I want to make about this is I was not happy about it, but I was willing to
1120 go along with this. I had two contractors that are bidding against each other to build this.
1121 And, you know, both of them after receiving the new plans, both of them said, you know,
1122 I'm paraphrasing, they said, Look, you know, I can build this for you, but I feel really bad,
1123 because you're really not going to be able to have much useful space in there at all. But
1124 I can do it for you if you want.

1125
1126 And they even -- they both told me I won't even be able to have a ceiling fan in there. So
1127 after those comments were made to me, I then decided to pursue a variance and request
1128 a variance. And so I just wanted to point that out.

1129
1130 Could you please go to the next picture? Okay. And so what I want to do now is show,
1131 because I know I have some objections and I'll speak to those later. But for now I just
1132 wanted to show what the perspective is for my neighbors. And this picture right here is
1133 while standing inside my own yard, though. It's a very wide lot, by the way. You know.
1134 The pizza shape. And, by the way, the pizza shape is like a flat-top. It's not a rounded
1135 pizza.

1136
1137 But this is while standing inside my own yard what my neighbor to the east will see right
1138 now. That's my current deck and so would you please go to the -- but don't go yet. Please
1139 go back. So the proposed enclosed deck would stick out -- would look exactly like that.
1140 The difference being that it will be 5 and 1/2 to 6 feet taller.

1141
1142 Please go to the next slide. And so this is basically, you know, what it would look like to
1143 that -- from that side. Could you please go to the next slide? And looking out at that

1144 neighbor to the east from my deck, this is what I see. And you notice his house is tilted
1145 away from mine, which further reduces any impact that I have on his house. He did
1146 object, and I want to get to that later. I'll have an opportunity to rebut that.

1147
1148 Could you please go to the next slide? This is the view from my neighbor directly to the
1149 south -- to the north of me. A very nice gentleman, Mr. Wetmore. This is what he sees
1150 right now. Please go to the next slide. If I'm able to build the enclosed deck -- this is the
1151 only angle I could get of it -- this is what he would see. So it's the -- it won't be any closer
1152 at all. It will only be taller.

1153
1154 And also since the spacing between the vertical posts are, you know, further apart, it's
1155 more of a transparent -- what he sees will be more transparent versus the previous picture
1156 of where it almost looks like a solid structure. And so would you please go to the next
1157 screen?

1158
1159 And so when I'm looking out of my deck I see this for my neighbor, the very nice
1160 gentleman to the north of me. This is what I see. He has a pool structure there, and it,
1161 in my opinion, it blocks anything he sees anyway for me. So.

1162
1163 Would you please go to the next screen please. And there's another neighbor. You can
1164 see that neighbor off in the distance there. Not behind my property, but behind my
1165 neighbor to my west. My neighbor to my west is in full support of this -- he's not objecting
1166 at all.

1167
1168 But this neighbor, you see the house back there, that's the house that's -- and, you know,
1169 there's really not a lot of -- it's far enough away that it's not, you know, the neighbor that
1170 she is really behind has his own screen porch.

1171
1172 So and then could you please go to the next slide? And so this is what that neighbor sees
1173 right now. It's, you know, it's pretty obstructed. And also behind those bushes are my
1174 gate that I just installed there are some bushes that would even further prevent, you know,
1175 viewing of -- or this neighbor from that side from seeing it.

1176
1177 I think this is the last one. Could you please go to the next one? Okay. So I will reserve
1178 this one for the rebuttal section. So, that pretty much ends my presentation.

1179
1180 I just wanted to, you know, make a point again that, you know, it's very important to us.
1181 I'd like her to be able to be outside and enjoy some outdoors and have some decent-sized
1182 room versus being, you know, limited to that structure that we would be able to build.

1183
1184 Additionally, I know that we can build a stand-alone separate structure, but that would
1185 require she go outside again. And also, in my opinion, that would even -- that would
1186 further impact my neighbor, the nice gentleman behind me. He's, you know, he has a
1187 pool house there, but still my structure would not be directly behind his pool house, it
1188 would be over in -- in my opinion that would -- that would impact him.

1189

1190 But so I'm just hopeful that you are able to allow us to have the 6 feet by 24 feet portion
1191 of the setback zone to use to build this deck, this enclosed porch. And so I'll conclude
1192 right now. I think I've said enough. So.

1193
1194 Mr. Green - Are there any questions of the Board for the applicant?

1195
1196 Mr. Blankinship - I'd like to ask him a question.

1197
1198 Mr. Green - Yes, sir.

1199
1200 Mr. Blankinship - Yes, sir. Mr. Mcinnis, I misunderstood or wasn't sure I
1201 understood what you were saying toward the beginning of your presentation about other
1202 similar property on your cul-de-sac. And, Mr. Madrigal, if you would put up the aerial
1203 photograph and maybe zoom in on those seven houses.

1204
1205 There are seven houses around the cul-de-sac, five of them, including yours, have a deck
1206 that extends to between 30 and 40 feet of the property line. So, five of your seven
1207 neighbors, including you, have the same situation where if they wanted to build a screen
1208 porch over the existing deck, it would not be permitted.

1209
1210 Mr. Mcinnis - Well, my response is that I'm looking at the picture, by the
1211 way, I guess I'm in yellow, correct?

1212
1213 Mr. Blankinship - Yes.

1214
1215 Mr. Mcinnis - And so if you go immediately to the right of me, that's who the
1216 -- east of me to the -- to the right of that picture.

1217
1218 Mr. Green - Yes.

1219
1220 Mr. Mcinnis - I'm certain he has 35 over his existing deck or somewhere
1221 even if it's not over his existing deck, it's, you know, somewhere else then in front -- to the
1222 right -- I'm sorry, my wife is pointing to something. I don't -- I believe he does have 35
1223 feet there over to a different side. Maybe not over the existing deck, but I believe he does
1224 have slightly more than 35 where he can go beyond where his existing deck is at.

1225
1226 Mr. Blankinship - Oh, okay. I see what you mean now.

1227
1228 Mr. Mcinnis - Yes. And then, insofar as pretty much all of them -- let's look
1229 at the house -- I'm in the yellow, so go to the house immediately to the left of that and
1230 then the house to the -- immediately to the left of that one.

1231
1232 Mr. Blankinship - Yes. Those are the two of the seven that have additional rear-
1233 yard area.

1234
1235 Mr. Mcinnis - Beg your pardon now.

1236
1237 Mr. Blankinship - Yes. I agree with you. Those two have some additional area.
1238 They could cover their decks and would not be extending into the rear-yard setback, but
1239 the other five their existing decks are close enough that if they covered them with a screen
1240 porch, they would violate the setback.
1241
1242 Mr. Mcinnis - Well I'm not able to really see -- so keep one -- I'm not really
1243 able to determine that right now. But if you're -- if you're saying that you're sure about
1244 that, then I'm going to --
1245
1246 Mr. Blankinship - But I think I see your point that even if they couldn't build over
1247 their existing deck, there is someplace else on each of those lots where they could build
1248 a screen porch.
1249
1250 Mr. Mcinnis - That's the point. That's the major point that I am making.
1251
1252 Mr. Blankinship - Okay.
1253
1254 Mr. Mcinnis - I don't have anywhere on the property that I could go.
1255
1256 Mr. Blankinship - Okay. I think I understand the distinction now. Thank you.
1257
1258 Mr. Mcinnis - Thank you, sir.
1259
1260 Mr. Blankinship - Are there any other questions from the Board members for the
1261 applicant?
1262
1263 Mr. Bell - One question, quick question. The EpiPen. Is it --
1264
1265 Mr. Mcinnis - Yes.
1266
1267 Mr. Bell - Does your wife have any other allergies?
1268
1269 Mr. Mcinnis - No. I don't think my wife has -- do you have any other
1270 allergies?
1271
1272 Mr. Bell - It's just the bees?
1273
1274 Mr. Mcinnis - It's just the bees. Yes.
1275
1276 Mr. Bell - Okay. What does she do now when she goes outside?
1277
1278 Mr. Mcinnis - It's very difficult. Let's say, for instance, we go for a walk to
1279 the lake behind there. Then before we go, I go and take the car and a pre-position the
1280 car to a halfway point. I'm not able to walk with them, initially. I go and pre-position the
1281 car and then I go back home. We begin our walk and we're walking towards the car.

1282 When we get to the car, where I prepositioned it somewhere in a street somewhere, I
1283 then go and I get inside the car and, as they are walking, I drive ahead of them and I go
1284 down that street, over one street, and I put the car there. And then I go back and I meet
1285 up with them and walk up with them. Then we'll get to the car.
1286

1287 These are the types of things that we do right now. When we go for walks, and it's a
1288 harrowing experience. She takes it very seriously and she's very, very fearful. I hope
1289 that answers your question. I'm not sure if I remember the exact question.
1290

1291 Mr. Bell - Well thank you. That answers it.
1292

1293 Mr. Johnson - The question I have is, that house immediately behind yours,
1294 your say it has a pool?
1295

1296 Mr. Mcinnis - Yes.
1297

1298 Mr. Johnson - That looks like it's pretty close, too.
1299

1300 Mr. Mcinnis - No. So that house there, if you zoom in a little bit more, but
1301 I'll get to the rebut -- this in the rebuttal section. I could not tell you, I've never had a nicer
1302 neighbor, even though he objects. But if you zoom in a little bit more -- I can't really see
1303 -- yeah.
1304

1305 Mr. Johnson - That's his house. Whose house is that?
1306

1307 Mr. Mcinnis - That's his house. Yeah. So that structure he built. But from
1308 his back door where he would likely have built an enclosed porch like I am doing, then he
1309 would have had the room for it. But I think that the decision was made because there
1310 was a pool back there already.
1311

1312 I think it's nicer to have a gazebo back there by the pool versus having a, you know, a
1313 roof added and then having it part of the house. And so he has lots of room. Because
1314 between that structure right there and his property line, he has about 8 feet, or 8 and 1/2
1315 feet. That structure and his property line. The structure itself looks to be -- but I'm only
1316 guessing 25 feet deep or wide going from this way to the other side of it. Twenty-five or
1317 so feet. I'm not sure, though.
1318

1319 And then he has space between that and his actual backdoor. In looking at his property,
1320 it's very clear to me, I believe, he just decided that building this separate gazebo structure
1321 was cooler. And I agree with that. He has a pool and I would want a separate structure
1322 too.
1323

1324 And, also, they don't -- he, you know, I don't believe he has the same limitation of the --
1325 of a family member with a bee allergy. So people make those decisions for -- but I believe
1326 he has much more than 35 feet from his back door.
1327

1328 Mr. Pollard - I have a question. I can't find it at the moment, but, as I
1329 understand it, variance is for 6 feet. But it was also a mention of inches making a
1330 difference.

1331
1332 Mr. Mcinnis - No. What I mean -- what I meant by that is the current rear of
1333 my house is, I think, 35 and 1/2 feet, so it was 6 inches. And so if I were to build a deck,
1334 an enclosed porch, that extended out 7 inches, then I would be in violation. So that's the
1335 point I'm making. It's 35 and 1/2 feet.

1336
1337 Mr. Pollard - So you're saying it wouldn't matter what type of porch you had.

1338
1339 Mr. Mcinnis - Say that again.

1340
1341 Mr. Pollard - You'd be in violation.

1342
1343 Mr. Mcinnis - Say that again now.

1344
1345 Mr. Pollard - If you enclose any type of porch that's usable, you will be
1346 automatically in violation. Any type of enclosed porch.

1347
1348 Mr. Mcinnis - Automatically.

1349
1350 Mr. Pollard - Okay.

1351
1352 Mr. Mcinnis - Automatically. Yeah. That's what I'm saying.

1353
1354 Mr. Green - So even if you enclose your existing deck you would be in
1355 violation?

1356
1357 Mr. Mcinnis - Well, remember, keep in mind, that's what I'm trying to do is
1358 I'm trying to enclose -- the new deck that I am proposing is the exact same footprint, the
1359 exact same location, the exact same everything of the existing deck. It fits, you know, if
1360 they were to drop from space, it would land right in the footprint. The only difference is
1361 that now I have a roof on top of it.

1362
1363 Mr. Green - Okay. Are there any other questions from the Board from the
1364 applicant?

1365
1366 Mr. Pollard - I have a question for staff.

1367
1368 Mr. Blankinship - Yes, sir.

1369
1370 Mr. Pollard - There was a mention of the burden for the disability not being
1371 met. And I kind of noted that a doctor's note came in at the 19th. So, is that still the case?
1372 Or had the burden of proving a disability been met?

1373

1374 Mr. Blankinship - I'm not sure that any of us are really competent to answer that
1375 question, Mr. Pollard. The Code of Virginia doesn't give a really specific definition of what
1376 is meant by disability in the context of a variance. We have always applied the definition
1377 from the Americans with Disabilities Act. And, as the applicant has stated, that is
1378 somewhat of a moving target as well. I don't mean to bail out on you, but I think it's really
1379 going to be the Board's responsibility to make that determination.

1380
1381 Mr. Pollard - Okay.

1382
1383 Mr. Mcinnis - Can I make a point?

1384
1385 Mr. Green - Yes.

1386
1387 Mr. Mcinnis - Yes. Okay. I don't believe that the ADA's current guidelines
1388 is a moving target when it comes to people with allergies and disabilities now. They are
1389 very clear that they are considered a disability. I don't think it's a moving target.

1390
1391 Mr. Blankinship - Yeah. The current definition is not a moving target. What I
1392 mean by that phrase was just that the definition has changed over time.

1393
1394 Mr. Mcinnis - Yes.

1395
1396 Mr. Green - Okay. Let's move forward. Are there any other questions
1397 from the Board for the applicant? Are there, you know, are there any other individuals to
1398 speak in support of this application?

1399
1400 Mr. Blankinship - There is no one else on Webex.

1401
1402 Ms. Deemer - We have no one on Webex.

1403
1404 Mr. Green - Are there any individuals to speak in opposition of this
1405 application? Public hearing is now closed and a motion would be in order. Given that I
1406 am the Three Chopt District Representative, I move that we approve the variance subject
1407 to the conditions recommended by staff. I agree with the applicant that a bee allergy is a
1408 disability and approval to build a screen porch is a reasonable accommodation, so I think
1409 we should approve the variance.

1410
1411 I also have reviewed the various letters of objection, and it seems to be the only concern
1412 that individuals have are property values, but I have seen no indication that this will
1413 decrease anyone's property value. It's only a speculation.

1414
1415 And then also the other thing I'm seeing is that folks talk about they have obeyed the
1416 rules, but that is the process of why this individual came in to ask for a variance that we
1417 can grant, and we have granted variances of this nature in the past. And so I don't see
1418 where this would be outside. So I've made that motion. Is there a second?

1420 Mr. Reid - I second it.

1421
1422 Mr. Green - Okay. Motion has been made by myself, Mr. Green, and
1423 seconded by Mr. Reid. Is there any discussion? Hearing no discussion, all in favor of the
1424 motion say aye. All opposed say nay. Motion is approved.

1425
1426 On a motion by Mr. Green, seconded by Mr. Reid, the Board **approved** application
1427 **VAR2021-00007 ANTHONY MCINNIS'** request for a variance from Section 24-94 of the
1428 County Code to build a screened porch in place of an existing deck at 6052 Brentmoor
1429 Drive (BRENTMOOR @ WYNDHAM) (Parcel 740-778-0427) zoned One-Family
1430 Residence District (R-4C) (Three Chopt). The Board approved the request subject to the
1431 following conditions:

1432
1433 1. This variance applies only to the rear yard setback requirement for the proposed
1434 screened porch. All other applicable regulations of the County Code remain in force.

1435
1436 2. Only the improvements shown on the drawings titled "McInnis Residence Enclosed
1437 Deck & Patio" may be constructed pursuant to this approval. Any additional improvements
1438 must comply with the applicable regulations of the County Code. Any substantial changes
1439 or additions to the design or location of the improvements will require a new variance.

1440
1441 3. The new construction must match the existing dwelling as nearly as practical in
1442 materials and color. The exterior foundation supporting the enclosed porch must be
1443 covered with brick or dryvit as required by the conditions proffered with rezoning case C-
1444 84C-94.

1445
1446 4. The applicant must obtain a building permit for the proposed enclosed porch by April
1447 24, 2023 or this variance will expire. After that date, if the building permit is cancelled or
1448 revoked due to failure to diligently pursue construction, this variance will expire at that
1449 time.

1450
1451
1452 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5
1453 **Negative:** 0
1454 **Absent:** 0

1455
1456
1457 Mr. Green - Before we go to the next case, I would like to take a five-
1458 minute break.

1459
1460 [Break in audio]

1461
1462 Mr. Blankinship - Sir, the last case on the agenda is variance 2021, number 8
1463 Liberty Homes of Virginia, Incorporated.

1465 **VAR2021-00008** **LIBERTY HOMES OF VIRGINIA, INC.** requests a variance
1466 from Section 24-95(b)(5) of the County Code to build a one-family dwelling at 129
1467 Westover Avenue (Bungalow City) (Parcels 816-727-6066 and 6164), zoned R-3, One-
1468 family Residence District (Varina). The total lot area requirement and lot width
1469 requirement are not met. The applicant has 6,880 square feet lot area and 50 feet lot
1470 width where the Code requires 8,000 square feet lot area and 65 feet lot width. The
1471 applicant requests a variance of 1,120 square feet lot area and 15 feet lot width.
1472

1473 Mr. Blankinship - Would everyone who intends to speak to this case please
1474 stand and be sworn in. Do you swear the testimony you're about to give is the truth, the
1475 whole truth, and nothing but the truth so help you God? Thank you. Mr. Gidley.
1476

1477 Mr. Gidley - Thank you, Mr. Secretary. And good morning again Mr. Chair,
1478 members of the Board.
1479

1480 The subject property is located in the Bungalow City subdivision, which is just north of
1481 Nine Mile Road and Highland Springs. Bungalow City was established in 1924 and mostly
1482 consists of 25-foot-wide lots. Because of this, buyers would purchase more than one lot.
1483 They'd typically purchase two, three, four lots depending upon how large of a lot they
1484 ultimately wanted. And also keeping in mind what the code was in effect at the time to
1485 enable them to meet the lot-width requirements.
1486

1487 This has resulted in a variety of lot sizes in this neighborhood. And on this side of
1488 Westover Avenue there are 19 homes. Two are on 50-foot-wide lots, the remainder on
1489 lots that are 65 feet wide or greater.
1490

1491 The lot is in the center here. This property actually owns over to around right here. And
1492 the property in question to date consists of two lots. These are zoned R-3 and are subject
1493 to the exception, standards for lots of record prior to 1960. The zoning ordinance requires
1494 a minimum lot area of 8,000 square feet and a minimum lot width of 65 feet. The applicant
1495 has 6,880 square feet of lot area and 50 feet of lot width. As a result, he is requesting
1496 variances for both lot area and lot width.
1497

1498 In evaluating this request -- let's go back to the aerial. The two lots that compose the
1499 property have been under common ownership since 1950. At one time they did contain
1500 a dwelling. However, this dwelling was removed in the early 1980s. Absent of variance
1501 the lot would be unbuildable and the property would have no reasonable beneficial use,
1502 which is one of the required threshold tests for a variance.
1503

1504 Given that, we can move on to the five subtests. As noted in the staff report, staff believes
1505 all five subtests are met. Briefly looking at substantial detrimental impact: as mentioned
1506 the minimum lot width requirement is 65 feet. The home to the north, right here at 133
1507 Westover, they have 75 feet of lot width. The lots to the rear have 75 and 100 feet
1508 respectively. However, the lot to the south has 55 feet of lot width, which is just 5 feet
1509 more than the subject property.
1510

1511 Mr. Green - You said 55. I thought it was 65 that --
1512
1513 Mr. Gidley - To the north is 65 feet and to the south this lot is 55 feet.
1514
1515 Mr. Green - But they want -- the lot in yellow is what?
1516
1517 Mr. Gidley - Is 50 feet.
1518
1519 Mr. Green - And then when you come all the way down to this other lot
1520 which is down a little further, the empty lot, what is that? Down a little further. Right there.
1521
1522 Mr. Johnson - Where the car is at.
1523
1524 Mr. Green - No. that one.
1525
1526 Mr. Gidley - I believe that's a 50-foot wide lot. I'm not totally sure on that.
1527
1528 Mr. Green - Fifty-five.
1529
1530 Mr. Gidley - I believe it's 50 feet.
1531
1532 Mr. Green - Fifty.
1533
1534 Mr. Gidley - Yes, sir. I believe --
1535
1536 Mr. Green - And the one they proposing, that's 55.
1537
1538 Mr. Gidley - They have 50 feet here. Let me go over this again. The
1539 subject property is 50 feet in lot width. The requirement is 65 feet. Therefore they need
1540 a variance for 15 feet of lot width. This property up here has 75 feet of lot width, which is
1541 10 feet in excess. This property here is 100 feet of lot width. This one here has 75 feet
1542 of lot width. This one is closer to the subject property. It has 55 feet of lot width.
1543
1544 Mr. Green - Got you.
1545
1546 Mr. Gidley - Which is just five feet more than the subject property's 50 feet.
1547
1548 Mr. Green - Fifty.
1549
1550 Mr. Gidley - Yes, sir.
1551
1552 Mr. Blankinship - And the other one is also 50 feet.
1553
1554 Mr. Gidley - Okay.
1555

1556 Mr. Green - Because someone would come in and request a variance for
1557 the one that is at the bottom for the same thing.

1558
1559 Mr. Gidley - They'd have a right to request a variance and then we would
1560 review it case by case. Bungalow City is a unique subdivision.

1561
1562 Mr. Green - I'm familiar with it. Yeah.

1563
1564 Mr. Gidley - I'll get to that in just a moment.

1565
1566 Mr. Green - Okay.

1567
1568 Mr. Gidley - Anyway, this is the home on the left, here, which is a one-story
1569 home. And then to the right it's also a one-story home. The applicant in this case is
1570 proposing a two-story home. And given the lack of lot-width and lot area, staff was
1571 concerned placing a two-story home on the lot could impact the nearby property. And as
1572 a result, we are recommending in our conditions that the home built on the subject
1573 property be a one-story or a one-and-a-half-story home that would make it more in line
1574 with what's already out there.

1575
1576 Mr. Green - But the property behind it looks like a two-story.

1577
1578 Mr. Gidley - Yes, sir. It is. That's for the road behind it. I'm looking at the
1579 two immediate adjacent ones that would be most impacted. And that's something the
1580 Board can look into, but if we do look at what they're building and whether or not it's
1581 consistent with what's there. And, obviously, if you're one of the next-door neighbors,
1582 that might be an issue.

1583
1584 Mr. Green - Yes.

1585
1586 Mr. Gidley - Item number three on the subtest deals with whether or not
1587 the condition is general and reoccurring, which would allow the Board of Supervisors to
1588 amend the zoning ordinance amendment to address it. And that kind of goes to what you
1589 were hitting at just a moment ago, Mr. Chair. Bungalow City is an older subdivision that
1590 is almost 100 years old. There have been different lot-width requirements over time, so
1591 you have a variety of lot-width sizes in this neighborhood and that makes it difficult to
1592 come up with a single ordinance amendment to address it. Sort of what you said.

1593
1594 In these cases it's best for the Board to look at each lot on a case-by-case basis. We've
1595 had variances we've supported in here and we've had variances we've opposed. In large
1596 part, you know, based upon whether or not we feel there was a detrimental impact to
1597 nearby property.

1598
1599 So staff believes the five subtests are met. And, in conclusion, the property lacks the
1600 required lot area and lot width to build a dwelling. The two lots have been under common
1601 ownership since 1950. Absent of variance it would have no reasonable use at all. It'd

1602 just continue to sit vacant. Staff believes the five subtests are met assuming the design
1603 of the home is consistent with the neighbor's homes. As a result, staff recommends
1604 approval of this request subject to the conditions in your staff report. This concludes my
1605 presentation. If you have any questions, I'll be happy to answer those.

1606

1607 Mr. Green - Are there any questions from the Board for staff?

1608

1609 Mr. Johnson - Yes. The lot that you're referring to now, even though you're
1610 taking their land from two projects, two properties, are they related? Were these --

1611

1612 Mr. Gidley - These two lots here are under common ownership and have
1613 been since 1950.

1614

1615 Mr. Green - Now I guess the question is who owns them?

1616

1617 Mr. Johnson - Yeah.

1618

1619 Mr. Gidley - Oh who owns them?

1620

1621 Mr. Johnson - Yes.

1622

1623 Mr. Gidley - The owner is listed is Jordan River Real Estate.

1624

1625 Mr. Green - Okay. The other question I have which is, you know, typically
1626 when you see lots like that vacant who cuts the grass? Who maintains? Are the two
1627 property owners responsible for that? Because that would take the burden off of them.

1628

1629 Mr. Gidley - Legally the property owner is responsible. If it's not cut,
1630 they're --

1631

1632 Mr. Green - Legally, but who's doing it?

1633

1634 Mr. Gidley - It's quite possible the neighbors may go over and cut it.

1635

1636 Mr. Johnson - Yes. I would go out there looking around, and I noticed they're
1637 keeping the grass cut down. It looks pretty nice. But I noticed on Liberty Avenue, the
1638 street behind there, there are several of the two-stories. But on the front side of Westover
1639 they're one-levels.

1640

1641 Mr. Gidley - Yes, sir.

1642

1643 Mr. Johnson - You understand that. Yes. And also there is several other
1644 lots that's open. That nothing is on. And I think we're probably going to have a similar
1645 situation whenever they -- someone decides to take those on.

1646

1647 With that, I think -- well, looking at it, you know, they're keeping it pretty neat. And also
1648 right across the street from here is also --

1649
1650 Mr. Green - Sonic Home?

1651
1652 Mr. Johnson - No it's a park that right across the street from right in --

1653
1654 Mr. Blankinship - Perhaps show the photograph.

1655
1656 Mr. Johnson - Yes.

1657
1658 Mr. Gidley - There you go.

1659
1660 Mr. Johnson - You got a basketball court and different things. It's a nice
1661 area. And also a little walking path as well.

1662
1663 Mr. Gidley - Yes, sir.

1664
1665 Mr. Johnson - I was just kind of curious who owned it and was it just one
1666 person. one company or something. You answered my question.

1667
1668 Mr. Gidley - Thank you.

1669
1670 Mr. Green - Yes. The real question is who's really cutting that grass.
1671 Because it's, you know, my mother-in-law had a similar situation and I would have to go
1672 out there every Saturday and cut that grass. And you would think the owner was doing
1673 the cutting. And, fortunately, when the house was sold, when the land was sold, when
1674 they built a house, that took the burden off of the two brother-in-laws.

1675
1676 Mr. Johnson - But it seemed like each one of them of was maintained
1677 because the grass was usually the same height. There didn't seem to be any growth over
1678 there. So that's why I was kind of curious about this. You know. Usually family would
1679 keep all that taken care of. Because one of the other members come in. And that's what
1680 I was thinking that maybe the family members that was owning these properties. And
1681 that's why I was --

1682
1683 Mr. Green - Well it's a corporation that they said owned it.

1684
1685 Mr. Johnson - Yes. He said it's a corporation.

1686
1687 Mr. Gidley - Yes. They may hire someone just to come in and do it.

1688
1689 Mr. Green - I'll bet you a dollar to a donut that one of the neighbors is
1690 keeping that yard cut because they don't want to be bothered. And once it's sold, they'll
1691 be happy to know that it's stuck with somebody else now.

1692

1693 Mr. Reid - Paul, since most of the houses on that street are frame, I
1694 noticed one of the conditions or approval that the exterior of this house has to be brick.
1695 What is the reason?
1696

1697 Mr. Gidley - I don't --
1698

1699 Mr. Blankinship - Is it the whole foundation? Or the whole exterior, or just the
1700 foundation?
1701

1702 Mr. Gidley - Just the foundation.
1703

1704 Mr. Blankinship - Just the foundation. Yes.
1705

1706 Mr. Gidley - Any home on the property must either be a single-story or a
1707 one-and-a-half-story home. The exterior of the front building foundation must be brick.
1708

1709 Mr. Reid - Oh.
1710

1711 Mr. Gidley - And just the front of it, too.
1712

1713 Mr. Reid - Yeah. I'm sorry. I didn't --
1714

1715 Mr. Green - Are there any other questions from staff? I mean from the
1716 Board to staff. All right. Time to hear from the applicant.
1717

1718 Mr. Rempe - Good morning, Mr. Chair, Board members.
1719

1720 Mr. Johnson - Can you speak a little louder or turn the mic up?
1721

1722 Mr. Blankinship - Fred just turned him on. Go ahead.
1723

1724 Mr. Rempe - Good morning, Mr. Chairman, Board members, and staff. My
1725 name is Mark Rempe, I'm here to speak on behalf of the applicant. I'd like to thank the
1726 staff for taking their time and doing their presentation on this case. And we do concur
1727 with the staff that the tests for the variance have been met, and we would like to move
1728 forward and ask the Board to approve the variance.
1729

1730 I would also just like to point out that there was a variance just down the street on the
1731 same street that was approved by the Board just a few years back. And that this new
1732 house will be sold to a first-time homebuyer and will be an affordable house. And that's
1733 needed in this market. So. Any questions.
1734

1735 Mr. Green - Yeah. Mr. Rempe, I've noticed that since I've been on this
1736 Board you've come before us quite a bit with building houses on these smaller lot sizes.
1737 That seems to be your specialty?
1738

1739 Mr. Rempe - I work for, a lot of times, with Liberty Homes and some other
1740 builders, and sometimes we -- they find lots that are in this area and I have a background
1741 that's conducive to this stuff. So I do do a lot of this type of stuff. So, yes sir.

1742
1743 Mr. Green - And when you do that and the homes are completed, do you
1744 ever get any complaints from individuals? Because it seems like you're very successful
1745 in taking houses and putting them on these types of lots.

1746
1747 Mr. Rempe - You know, we try to go through the process and work with
1748 staff and we -- sometimes we disagree with staff and just -- but they're very good to work
1749 with and we appreciate everything they do.

1750
1751 You know, I believe that lots like this should be put into their highest and best use, and
1752 they should generate revenue and be used for, you know, home buyers. And the owners
1753 of the lots have rights that they should be able to sell the lots to a home builder.

1754
1755 And I think Liberty builds beautiful houses and a lot of their houses go to affordable
1756 housing and for first-time homebuyers. So.

1757
1758 Mr. Green - Okay. Any other questions for the applicant? Mr. Johnson.

1759
1760 Mr. Johnson - In addition to what was mentioned about that, have you
1761 considered the homeowners? Say, for instance, a lot like this, that each one of the
1762 homeowners might want to buy that property and rather than building a house can say,
1763 Look, we'll just sell half of it to you and half to the other, or vice versa?

1764
1765 Mr. Rempe - You know, lot of times with these spot lots and in-fill situations
1766 the neighbors always had the opportunity to step in and buy the lots. Sometimes when
1767 something happens the owner puts the lot on the market and then, you know, everyone
1768 has an opportunity to buy the lot. And when we -- when the home -- Liberty sees the lot
1769 they say, Hey, Mark, can you help out? And that's kind of when all this happens.

1770
1771 Mr. Johnson - Yeah. But there's evidence that this lot wasn't up for sale
1772 before you decided to put homes on there.

1773
1774 Mr. Rempe - You know, I can't remember if this was put on the market or
1775 not. I think it was. I think it was on the MLS and that's how it came to our attention. So.

1776
1777 Mr. Johnson - Okay.

1778
1779 Mr. Green - Mr. Johnson, what I've noticed is that, and speaking from the
1780 lot that my mother-in-law had next to her home for 30 years, they were asking some
1781 astronomical price, you know, when they wanted to sell it. So a lot of times when these
1782 entities, corporations come in and build houses, you know, they're trying to put the --
1783 building the house and the lot at the same time.

1784

1785 So it appears to me, and I don't know if it's easy, if you can speak to that, but when you
1786 seem to be putting a house and selling a lot, putting a house on a lot and selling it, that's
1787 better than just selling the land out. Because the price that they wanted next to my
1788 mother-in-law was just astronomical.

1789
1790 Mr. Rempe - Correct. The builder buyer can pay a higher price than the
1791 neighbor next door, typically.

1792
1793 Mr. Johnson - Okay.

1794
1795 Mr. Green - Any other questions for the applicant? Is there anyone else
1796 that wishes to speak in favor of this?

1797
1798 Mr. Blankinship - There is no one on Webex.

1799
1800 Mr. Green - So is there anyone who wishes to speak in opposition?
1801 Hearing none, the public hearing is now closed and a motion is in order.

1802
1803 Mr. Johnson - Mr. Chairman, I move that we approve the variance subject to
1804 conditions recommended by staff. And also as recorded almost 100 years ago most of
1805 the lots have been combined and to meet the 65-foot lot requirement. In this case the
1806 lots on both sides already have homes on them and if the variance is denied, this 50-foot
1807 lot cannot be used for any beneficial use. The other tests are met as stated in the staff
1808 report. And so I think we should approve this variance.

1809
1810 Mr. Green - The motion was made by Mr. Johnson. Is there -- do I hear a
1811 second?

1812
1813 Mr. Reid - Second.

1814
1815 Mr. Green - The motion was seconded by Mr. Reid. Is there any
1816 discussion? All in favor of the motion say aye. All opposed say nay. Motion passes.

1817
1818 On a motion by Mr. Johnson, seconded by Mr. Reid, the Board **approved** application
1819 **VAR2021-00008 LIBERTY HOMES OF VIRGINIA, INC's** request for a variance from
1820 Section 24-95(b)(5) of the County Code to build a one-family dwelling at 129 Westover
1821 Avenue (Bungalow City) (Parcels 816-727-6066 and 6164), zoned R-3, One-family
1822 Residence District (Varina). The total lot area requirement and lot width requirement are
1823 not met. The Board approved the request subject to the following conditions:

1824
1825 1. This variance applies only to the lot area and lot width requirements for one dwelling
1826 only. All other applicable regulations of the County Code remain in force.

1827
1828 2. Any home on the property must be either a single-story or one and one-half story home.
1829 The exterior of the front building foundation must be brick.

1830

1877 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5
1878 **Negative:** 0
1879 **Absent:** 0

1880
1881

1882 Mr. Gidley - Thank you, Mr. Chair.

1883

1884 Mr. Green - Do I hear a motion for adjournment?

1885

1886 Mr. Pollard - Make a motion that we adjourn.

1887

1888 Mr. Green - Is there a second?

1889

1890 Mr. Johnson - Second.

1891

1892 Mr. Green - We're adjourned.

1893

1894

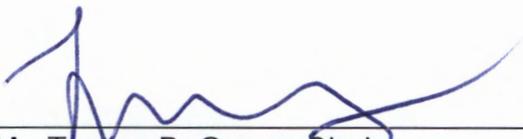
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Mr. Terone B. Green, Chair

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Mr. Benjamin W. Blankinsip, Secretary