

1 MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF  
2 HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE  
3 GOVERNMENT CENTER AT PARHAM AND HUNGARY SPRING ROADS, ON  
4 THURSDAY AUGUST 22, 2019 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN  
5 THE *RICHMOND TIMES-DISPATCH* AUGUST 5, 2019 AND AUGUST 12, 2019.  
6  
7

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

14 Also Present: Jean M. Moore, Assistant Director of Planning  
15 Benjamin Blankinship, Secretary  
16 Paul M. Gidley, County Planner  
17 R. Miguel Madrigal, County Planner  
18 Kuronda Powell, Account Clerk  
19  
20

21 Mr. Bell - Good morning and welcome to the meeting of August 22 for  
22 the Henrico County Board of Zoning Appeals. For those of you who are able please stand  
23 and join us in the Pledge of Allegiance.  
24

25 **[Recitation of the Pledge of Allegiance]**  
26

27 Mr. Blankinship will now read our rules.  
28

29 Mr. Blankinship - Good morning, Mr. Chair, members of the board, ladies and  
30 gentlemen.  
31

32 The rules for this meeting are as follows. Acting as secretary I will announce each case,  
33 and then we will ask everyone who intends to speak to that case to stand and be sworn  
34 in. For conditional use permits and variances, which is all we have this morning, a  
35 member of the Planning Department staff will then give a brief presentation, and then the  
36 applicant will present their case to the board. Then anyone else who wishes to speak will  
37 be given the opportunity. After everyone has had a chance to speak, the applicant and  
38 only the applicant will have an opportunity for rebuttal.  
39

40 This meeting is being recorded, so we will ask everyone who speaks to speak directly  
41 into the microphone on the podium. State your name, and please spell your last name,  
42 so we get it correctly in the record.  
43

44 All five members are present, and I do not know of any requests for deferral or withdrawal.  
45 So, with that, I think we're ready to proceed.  
46

47 Mr. Bell - Yes, sir.

48  
49 Mr. Blankinship - All right. Before you is one conditional use permit on this  
50 morning's agenda. Conditional use permit 2019 number 28, Jonathan T. Evans.

51  
52 **CUP2019-00028** **JONATHAN T. EVANS** requests a conditional use permit  
53 pursuant to Section 24-95(i)(4) of the County Code to build a garage in the front yard at  
54 8000 Upper Western Run Lane (Parcel 855-687-6511) zoned Agricultural District (A-1)  
55 (Varina).

56  
57 Mr. Blankinship - Would everyone who intends to speak to this case please  
58 stand and be sworn in? Raise your right hand please. Do you swear the testimony you're  
59 about to give is the truth, the whole truth, and nothing but the truth, so help you God?  
60 Thank you. Mr. Madrigal.

61  
62 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the board,  
63 good morning. Before you is a request to allow a garage in the front yard of an agricultural  
64 tract of land. The subject property is a landlocked acreage parcel accessed by way of a  
65 private road off Charles City Road. The property was originally part of 102-acre tract of  
66 land that has been divided by way of family divisions. The applicant's family received 20  
67 acres of land that were recently reconfigured into two parcels, a 12-acre parcel and an 8-  
68 acre parcel.

69  
70 In 1999 the applicant's mother received a variance for lack of public street frontage to  
71 build a 2100-square-foot home on the subject property. A building permit was obtained,  
72 and the foundation was built, but the home was never completed, resulting in the  
73 expiration of the permits.

74  
75 Earlier this year the applicant obtained a variance for lack of public street frontage to build  
76 a 1600-square-foot home on the property. As a condition of approval, the applicant was  
77 required to remove the foundation for the unfinished dwelling prior to the issuance of a  
78 certificate of occupancy on the new home. Instead of removing the foundation, he would  
79 like to repurpose it for a large garage.

80  
81 Because of its location in the front yard, he is requesting a conditional use permit as  
82 allowed by code. And you can see the proposed garage here. The property is zoned A-  
83 1 and is designated prime agriculture and environmental protection area on the Future  
84 Land Use Map. A one-family dwelling is a principal permitted use in the A-1 district and  
85 is consistent with the prime agricultural designation of the comprehensive plan. Although  
86 a garage is customary and incidental to a one-family dwelling, because of its location, it  
87 requires the approval of a conditional use permit.

88  
89 The property is a relatively -- excuse me. The property is in a relatively rural area,  
90 consisting of large tracts of land and large lot development. The property is 12 acres in  
91 size, measuring approximately 200 feet wide by 2000 feet long. The northern portion of  
92 the property, where the house and garage will be built, is surrounded by the applicant's

93 brother's property on the north, east, and west. The closest home is approximately 600  
94 feet away to the southeast, and view to the garage will be obscured by existing trees and  
95 natural vegetation.

96  
97 Because of the character of the area, distances between homes, and existing vegetation  
98 staff does not anticipate any detrimental impacts on nearby property if this request is  
99 approved.

100  
101 In conclusion, the proposed use is consistent with the zoning and comprehensive plan  
102 designations on the property. The surrounding area is rural in nature, and the closest  
103 residence is over 600 feet away. The proposed garage is surrounded by the applicant's  
104 brother's property and should not be visible to adjoining homes due to existing vegetation.  
105 Staff does not anticipate any detrimental impacts on nearby property. Based on these  
106 facts, staff recommends approval subject to conditions.

107  
108 That concludes my presentation. I'll be happy to answer questions.

109  
110 Mr. Bell - Any questions? If there's no questions, then let's go ahead  
111 and ask the applicant to tell us the facts that he's brought with him today.

112  
113 Mr. Collins - Yes. My name is Martin Collins, C-o-l-l-i-n-s, and I'm  
114 representing my brother, Jonathan for today's hearing.

115  
116 Yeah. Like the gentleman was stating, it was going to be a house built there. Mother,  
117 she passed away, the house was, you know, never finished. And my brother wants to  
118 repurpose it for a garage. The foundation, you know, has been inspected for -- by Mr.  
119 Duncan of Duncan Associates. It's structurally sound to build on. And, you know, I don't  
120 see where it'll have any impact on the environment. You know. It's surrounded by trees,  
121 no one can see it. And I think it would be a great opportunity to repurpose the structure.

122  
123 Mr. Bell - Any questions? Thank you. Hearing none, are there any  
124 questions from anybody else who's here for this particular case? No positives or no  
125 negative statements? Thank you. Thank you, Mr. Collins.

126  
127 Mr. Collins - Thank you.

128  
129 Mr. Bell - Let's go on to the --

130  
131 Mr. Johnson - We need to vote.

132  
133 Mr. Bell - Oh, that's right, we started voting after each case. All right.  
134 We're going to go ahead and conduct the vote. Is there any motion to approve this  
135 particular application?

136  
137 Mr. Johnson - I move that we approve the conditional use permit subject to  
138 the conditions recommended by staff.

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Mr. Green - Second.

Mr. Johnson - The dwelling is on a large parcel and is surrounded on its sides by his brother's land, allowing the garage in the front and side yard, would not cause any harm and would allow him to make use of the existing foundation. I motion that we approve this.

Mr. Green - Second.

Mr. Bell - We've had a motion to approve, and we've had a second. Is there any discussion? Hearing no discussion, we will vote. All those in favor say aye. All those opposed say nay. The ayes have it, motion approved.

After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr. Green, the Board **approved** application **CUP2019-00028 JONATHAN T. EVAN'S** request for a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to build a garage in the front yard at 8000 Upper Western Run Lane (Parcel 855-687-6511) zoned Agricultural District (A-1) (Varina). The Board approved this request subject to the following conditions:

1. This conditional use permit applies only to the placement of a garage in the front and side yards. All other applicable regulations of the County Code shall remain in force.
2. Only the improvements shown on the plot plan filed with the application may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements shall require a new conditional use permit.
3. The proposed garage shall match the new dwelling as nearly as practical in materials and color.
4. The garage shall not be used as separate dwelling unit.
5. This approval is subject to the conditions of variance VAR2019-00006 except the removal of the existing foundation.
6. A building permit must be approved by July 23, 2021, or this conditional use permit will expire. If the building permit is cancelled or revoked because it was not diligently pursued, this conditional use permit will expire at that time.

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

185  
186 Mr. Bell - Let's go on to the next case, which is VAR2019-00020.

187  
188 Mr. Blankinship - Yes, sir. That one is the only conditional use permit on this  
189 morning's agenda. There are four variances. The first is variance 2019, number 20, Alba  
190 G. Garces.

191  
192 **VAR2019-00020** **ALBA G. GARCES** requests a variance from Section 24-  
193 95(b)(6) of the County Code to build a one-family dwelling at 9321 Brook Road  
194 (BILTMORE) (Parcel 784-762-2412) zoned One-Family Residence District (R-4)  
195 (Fairfield). The lot width requirement is not met. The applicant proposes 45 feet lot width,  
196 where the Code requires 50 feet lot width. The applicant requests a variance of 5 feet lot  
197 width.

198  
199 Mr. Blankinship - Would everyone who intends to speak to this case please  
200 stand and be sworn in. Raise your right hand, please. Do you swear the testimony you're  
201 about to give is the truth, the whole truth, and nothing but the truth, so help you God?  
202 Thank you. Mr. Madrigal.

203  
204 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the board,  
205 before you is a request to build a one-family dwelling on an R-4 exception lot. The subject  
206 property is located at the southeast corner of Brook Road and Pennsylvania Avenue in  
207 Section B of the Biltmore subdivision, which was established in 1926. The lot is  
208 trapezoidal in shape and is approximately 12,500 square feet in area. It has 40 feet of  
209 frontage on Brook Road, is 92 feet wide at the rear, and is approximately 193 foot deep.  
210 The lot is undeveloped, heavily wooded, and slopes up in an easterly direction at a seven  
211 percent slope. County water and sewer is available along Brook Road and Pennsylvania  
212 Avenue.

213  
214 The subdivision was established prior to the county adopting a zoning ordinance. The  
215 property has been zoned R-4 since 1945 and is subject to the exception standards due  
216 to the age of the subdivision. Under these standards the minimum lot area is 6,000  
217 square feet, and lot width is 50 feet.

218  
219 The applicant purchased the property and the two adjacent lots in November of 2018.  
220 The two adjacent lots are 50 feet wide and exceed the lot size requirement for  
221 development. The subject lot is only 45 feet wide instead of the required 50. Although  
222 they are under the same ownership, the applicant cannot widen the subject lot by  
223 adjusting the boundaries of the other lots, because that would leave the adjoining lots  
224 less than 50 feet wide. Therefore, the applicant is requesting a variance for lot width in  
225 order to build a one-family dwelling.

226  
227 Although the zoning is R-4, the property is designated as office in the comprehensive  
228 plan. The variance would allow the residential development of the property, which would  
229 be consistent with the zoning ordinance, but contrary to the long-term goals outlined in  
230 the Land Use Plan.

231  
232 The applicant's request satisfies two of the items of the threshold question. As previously  
233 mentioned, the lot is part of a subdivision that predates the zoning ordinance. Although  
234 it exceeds the minimum lot area requirement, because of its unique shape, it does not  
235 meet the minimum lot width requirement. This unreasonably restricts its use, creating a  
236 hardship for the property owner.

237  
238 Relative to the five subtests, item number one, good faith acquisition, it appears that she  
239 acquired the property in good faith. She did not play a role in creating the hardship  
240 affecting the property.

241  
242 Item number two, substantial detriment, the subdivision is bisected by Brook Road, and  
243 zoning designations along this section of Brook Road are a combination of residential,  
244 office, and business districts. Development on the east side of Brook Road consists of  
245 several one-family dwellings interspersed with office, commercial, and utility uses.  
246 Several of the homes have been oriented towards a side street, and access has also  
247 been provided on the side streets as a matter of traffic safety. As long as the applicant  
248 adheres to the established development pattern, granting the request should not pose  
249 any detrimental impacts to adjacent or nearby properties.

250  
251 Item three, general recurring nature, the subject lot is part of a subdivision that is over 90  
252 years old. It was recorded prior to the adoption of lot area and lot width requirements. In  
253 1993 VDOT widened Brook Road, which impacted the frontage of the property. The  
254 combination of these factors resulted in the unique situation affecting the property.

255  
256 Items four and five are satisfied, as outlined in the staff report.

257  
258 In conclusion, the subject property is part of an older subdivision platted over 90 years  
259 ago. The lot was created prior to the county adopting the zoning ordinance, or zone-  
260 specific development standards. It was further affected by roadway improvements along  
261 Brook Road. Although it exceeds the minimum lot area, its unique shape renders it  
262 undevelopable, falling short of the 50-foot lot width requirement by 5 feet. The proposed  
263 use is consistent with the underlying zoning designation but is inconsistent with the Land  
264 Use Plan. Without a variance the owner cannot develop the property consistent with the  
265 R-4 designation and the existing development pattern. Based on the facts of the case,  
266 staff recommends approval subject to conditions.

267  
268 That concludes my presentation. I'll be happy to answer your questions. Yes, sir.

269  
270 Mr. Johnson - With regard to the impact of VDOT, when they came in for the  
271 facility, did they do anything with the drainage right in front of it?

272  
273 Mr. Madrigal - When VDOT came in, in '93, they did do a pretty substantial  
274 drainage project. And you can see the impact. This used to be, well, this used to be a  
275 lot here that was part of the subdivision. I guess they took that, and they created some  
276 drainage improvements here on the corners. They cut the corners too, I guess, as part

277 of that project, as well as here across the street.  
278  
279 Mr. Johnson - Okay.  
280  
281 Mr. Madrigal - So they did do quite a bit of drainage improvements at that  
282 time.  
283  
284 Mr. Johnson - Yes, so that's good.  
285  
286 Mr. Bell - Questions?  
287  
288 Mr. Johnson - That answered my question.  
289  
290 Mr. Bell - Thank you. Any other questions? Thank you.  
291  
292 Mr. Madrigal - Thank you.  
293  
294 Mr. Bell - Will the applicant please come up and present their case.  
295  
296 Ms. Garces - Good morning.  
297  
298 Mr. Bell - Good morning.  
299  
300 Ms. Garces - My name is Alba Garces, G-a-r-c-e-s. And I'm requesting that  
301 variance.  
302  
303 Mr. Blankinship - Can you tell us a little bit about how and why you bought the  
304 property, and what you intend to do?  
305  
306 Ms. Garces - I bought the property back in November 2018 as one piece.  
307 In looking at the history, I went to the county, and found out it was, originally, it was three  
308 separate lots. So I request -- I'd like to go back to the three separate lots and build a  
309 single dwelling family homes. And on this particular I find out that we need five feet of  
310 variance to build. And I think it's doable, because we have enough width and enough  
311 depth of the property if we set back 70 feet and build a property the way that we propose.  
312  
313 Mr. Reid - Is this house you're going to build for yourself, or is it  
314 something you're going to rent?  
315  
316 Ms. Garces - Relatives. I'm planning on build something for my relatives.  
317  
318 Mr. Blankinship - On all three lots?  
319  
320 Ms. Garces - Not on this one.  
321  
322 Mr. Blankinship - Just on this one.

323  
324 Ms. Garces - On this one, and the other two might be a rental or sell them  
325 later.  
326  
327 Mr. Reid - Have you read the conditions and understand them all?  
328  
329 Ms. Garces - Yeah. I understand the conditions and I'm --  
330  
331 Mr. Reid - Do you agree with them?  
332  
333 Ms. Garces - I'm agree with them.  
334  
335 Mr. Reid - All right.  
336  
337 Mr. Bell - Any questions?  
338  
339 Mr. Johnson - Just one real quick. The lot behind that, is that one of your  
340 lots?  
341  
342 Ms. Garces - Behind -- no.  
343  
344 Mr. Johnson - Behind -- okay. Yes, right there.  
345  
346 Mr. Blankinship - Well those three, yeah, the three along Brook Road.  
347  
348 Ms. Garces - But the three are mine. The three are all in my name.  
349  
350 Mr. Johnson - Oh, okay.  
351  
352 Mr. Blankinship - The one behind it, on Pennsylvania Avenue, isn't --  
353  
354 Ms. Graces - The one on Pennsylvania Avenue, no.  
355  
356 Mr. Johnson - Right.  
357  
358 Ms. Garces - It belong to somebody else.  
359  
360 Mr. Bell - No more questions. Thank you, Ms. Garces.  
361  
362 Ms. Garces - Thank you.  
363  
364 Mr. Bell - Is there anyone here who wishes to speak either for the  
365 application or against it? If so, please stand up and come to the front. Seeing none, we'll  
366 go ahead and vote on this one.  
367  
368 Mr. Pollard - I move that we approve the variance subject to the conditions

369 recommended by staff.

370

371 Mr. Blankinship - Could you state some of the basis of the decisions?

372

373 Mr. Pollard - The lot was created in 1926, and without a variance. There is  
374 no reasonable use of the property. The applicant did not cause the hardship, and it is  
375 unique to this property. There will be no detrimental impact on nearby property because  
376 the conditions recommended by staff would require the driveway to be located on  
377 Pennsylvania Avenue.

378

379 Mr. Bell - Is there a second?

380

381 Mr. Johnson - I second.

382

383 Mr. Reid - Second.

384

385 Mr. Bell - We have a motion that's been first and seconded. Any  
386 discussion? We shall vote. All those in favor say aye. All those opposed say nay. Ayes  
387 have it, and motion carries.

388

389 After an advertised public hearing and on a motion by Mr. Pollard, seconded by Mr.  
390 Johnson, the Board **approved** application **VAR2019-00020 ALBA G. GARCE'S** requests  
391 a variance from Section 24-95(b)(6) of the County Code to build a one-family dwelling at  
392 9321 Brook Road (BILTMORE) (Parcel 784-762-2412) zoned One-Family Residence  
393 District (R-4) (Fairfield). The lot width requirement is not met. The applicant proposes 45  
394 feet lot width, where the Code requires 50 feet lot width. The applicant requests a variance  
395 of 5 feet lot width. The Board approved this request subject to the following conditions:

396

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

399

400 2. Any dwelling on the property shall be served by public water and sewer.

401

402 3. Curb and gutter shall be provided along Pennsylvania Avenue as required by the  
403 Department of Public Works.

404

405 4. The proposed dwelling shall be set back a minimum of 70 feet from Brook Road and  
406 22.5 feet from Pennsylvania Avenue. The front of the house shall be oriented towards  
407 Pennsylvania Avenue.

408

409 5. The driveway shall be located on Pennsylvania Avenue as far from Brook Road as  
410 practical. The applicant shall provide a 20-foot-wide access and utility easement to the  
411 adjoining lots (lots 4 and 5) to facilitate their future development.

412

413 6. A building permit must be approved by August 23, 2021, or this variance will expire. If  
414 the building permit is cancelled or revoked because it was not diligently pursued, this  
415 variance will expire at that time.

416

417

418 Affirmative: Bell, Green, Johnson, Pollard, Reid 5

419 Negative: 0

420 Absent: 0

421

422

423 **VAR2019-00021 THOMAS GOLDEN** requests a variance from Section 24-95(c)(2) of the  
424 County Code to build a roof over the existing deck at 1751 Francis Road (GREENWOOD  
425 HEIGHTS) (Parcel 780-766-9344) zoned One-Family Residence District (R-4) (Fairfield).  
426 The rear yard setback is not met. The applicant proposes 16 feet rear yard setback, where  
427 the Code requires 25 feet rear yard setback. The applicant requests a variance of 9 feet  
428 rear yard setback.

429

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

434

435 Mr. Gidley - Thank you, Mr. Secretary. And good morning members of the  
436 board.

437

438 The subject property is located off of Francis Road, and contains an existing residence.  
439 And this is the home here with the street upfront. As you can see here, the existing  
440 residence is set 26 feet back from the rear property line, which is in compliance with the  
441 25-foot rear-yard setback. There is also a deck that extends out an additional 10 feet, or  
442 to within 16 feet of the rear property line. Because decks are allowed to extend up to 10  
443 feet into the setback this is permitted.

444

445 This is the view of the deck there. The applicant, however, wants to convert the deck to  
446 a screened porch. As you know, while an exception is made for decks to encroach up to  
447 10 feet into the setback, covered space, like a porch or a sunroom, is required to meet  
448 the standard setback just like the house. As a result, the applicant has applied for a 9-  
449 foot variance.

450

451 In evaluating this request, there are three threshold tests, at least one of which must be  
452 met for a variance to be approved. Test one deals with unreasonable restriction of the  
453 property. In this case, the property contains a home and a deck, which is a reasonable  
454 use of the property. It's also similar to many of the other homes in the area. As a result,  
455 the property is not unreasonably restricted by the zoning ordinance.

456

457 Test two asks whether there is a hardship caused by a physical condition of the property  
458 or its improvements that existed at the time of the effective date of the zoning ordinance.

459 This section of the ordinance took effect in 1960, whereas the home was constructed in  
460 2009, so there is no hardship that was in place at the time of the effective date of the  
461 ordinance. In their submission, the applicants did indicate there was confusion over the  
462 location of the rear property line that was caused by a builder mistakenly placing  
463 landscaping on the lot behind them. The courts, however, have been clear that physical  
464 condition of the property refers to a natural condition of the land, such as a steep slope,  
465 but not an object erroneously placed by individuals, like property markers or, in this case,  
466 landscape plantings. Regardless, like the home, the planning also occurred long after  
467 the effective date of the ordinance in 1960, so this test is not met.  
468

469 Finally, under the third test, the applicant argues they are entitled to an accommodation  
470 for a person with a disability. This is based on their fair skin and a history of skin cancer  
471 in their family, which results in their doctor advising them to wear sunscreen daily and to  
472 avoid prolonged exposure to the sun.  
473

474 Under this third test, per state law, a modification should be granted where it is appropriate  
475 under state or federal fair housing law, or the Americans with Disabilities Act. In response  
476 to this application, the Director of Planning sought advice from the County Attorney's  
477 office and was advised that sun sensitivity is not a disability under either fair housing law,  
478 or the Americans with Disabilities Act. Because of this, the County Attorney's office  
479 advised the Director of Planning that the applicant did not qualify for a variance under this  
480 section of code.  
481

482 Because neither of the three threshold tests are met by the applicant, they are not eligible  
483 for a variance. Even if one was met, they would still have to meet all five of the subtests  
484 and as noted in your staff report three of these do not appear to be met.  
485

486 In conclusion, the property contains a two-story dwelling with a deck. It is, therefore, not  
487 unreasonably restricted. There is no hardship that existed at the time of the adoption of  
488 the zoning ordinance in 1960. And, finally, the County Attorney's office has advised that  
489 sun sensitivity does not qualify as a disability under either Fair Housing Law or the ADA.  
490

491 Because neither of the threshold tests for a variance are met, staff recommends denial of  
492 this request. This concludes my presentation, and if you have any questions I will be  
493 happy to answer them. Thank you.  
494

495 Mr. Bell - Thank you, Paul. Any questions? Seeing none, thank you,  
496 Paul.  
497

498 Mr. Gidley - Yes, sir.  
499

500 Mr. Bell - Will the applicant please come up and state his case?  
501

502 Mr. Golden - Good morning. My name is Thomas Golden, that's G-o-l-d-e-  
503 n. You'll have to excuse my nerves. I speak to kids and parents all the time as a teacher,  
504 but I'm somewhat nervous talking to you guys.

505  
506 I get to speak to the importance of my request this evening, or this morning. I'm not  
507 certain how much you've been able to read into the items that I submitted to the Planning  
508 Department, so I don't want to be redundant. But this situation has been going on since  
509 about February or March of this year when my wife and I decided that we were going to  
510 stay in this home versus move.

511  
512 As he indicated, we have been under false impressions for the past nine, nine and a half  
513 years, as to what our property actually was. I don't know if there's a picture of it or not,  
514 but right behind our house there is a line of cypress trees and that was planted there by  
515 our builder at our request. We said, you know, we wanted a natural fence, and thus those  
516 cypresses were planted, and thus you can see that we put our shed there, which is  
517 obviously no longer there.

518  
519 And we've been going on for the last nine years thinking that that is our property until  
520 earlier this year when we asked to have a rear fence put in, and that company indicated  
521 that they found two property markers. And, at that point, you know, we didn't know what  
522 to do. We asked a surveying company to come in, do a survey of our property to find  
523 that, you know, that is not our property. Come to find out I could have just come up to  
524 the County and seen this cool looking picture and it would've shown me that. But that's  
525 \$900 later and a lesson learned.

526  
527 At that point, we had begun building a new deck. We had decided that we were going to  
528 stay at our home, place money into it to start building a new deck, and that type of thing.  
529 As ignorant as this may seem, I was not aware that you needed a permit to build a deck  
530 on your property. Call it ignorance, call it what not. So we had begun building a deck,  
531 and then we received the pink slip from the Planning Department, you know, to file for  
532 that. So we've done that since.

533  
534 And then we found out about the setback for the roof. And, quite honestly, if we'd known  
535 all this way ahead of time, you know, we would have probably moved, because this is  
536 how important this area is. This provides 255 more square feet to our home. The idea  
537 of moving was to get more room in our house, or more room, more living space, in our  
538 home. And as he was telling you, our deck at the moment, the way it is constructed facing  
539 north-south, it receives sun from sun-up to about 4:00 or 4:30 p.m. directly, every day.

540  
541 As you can see maybe in the packet that you had, I'm not certain, I do have two medical  
542 documents there from medical professionals stating that my wife and six-year-old  
543 daughter are sensitive to the sun. They burn extremely easily. SPF sometimes does not  
544 have any affect on my daughter, and my wife's side also has a history of skin cancer,  
545 including her father who is currently in remission. So, you know, they recommend, you  
546 know, more play time in the shade.

547  
548 If we were to be able -- if you were so graciously to grant the variance, we would be able  
549 to provide that play area for my daughter outside. So, what I did in order just to make  
550 sure that this meets the subtests, where it does not impact anywhere else, or anyone

551 around me, threshold, yes sir, thank you. Threshold test, my apologies.

552  
553 I did go to all of my neighbors in the current vicinity, so if there was a picture of the lot, I  
554 could show you. Basically every neighbor that can literally see my deck from next to me  
555 -- can I point? Does that help?

556  
557 Mr. Blankinship - Well, they won't be able to hear you speak, but you can use  
558 the mouse.

559  
560 Mr. Golden - Oh, okay. You can see the house to my right, the house to  
561 my left, the house to my southwest and my house, oh, thank you. This home here, this  
562 home here, this home here, this home here, and the gentlemen who owns this property  
563 here, it's a construction company. I do have their blessings in saying that putting a roof  
564 on my home does not bother or intrude on their properties. That was not included, or it  
565 could've been included, in your packets. It was not included in the report that I received  
566 in the mail.

567  
568 Mr. Blankinship - Those are in the file, they're not in the packet.

569  
570 Mr. Golden - Okay, but --

571  
572 Mr. Blankinship - The two letters from the physicians are in the packet.

573  
574 Mr. Golden - Okay, yeah. But those, they're not stamped with anything, but  
575 they are signed by those -- by those individuals to let you know that the roof would not  
576 impede on their property or bother them at all.

577  
578 So, in conclusion, I do ask -- I know there was a similar situation last month where a  
579 resident asked for a sunroom and you graciously approved that. I understand that she  
580 did have a current skin disease, but I guess I'm asking from the board today to be  
581 proactive versus reactive. And with that I will conclude my statement.

582  
583 Mr. Bell - Any questions?

584  
585 Mr. Green - I have a question. Have you -- have you ever thought about a  
586 retractable awning that could provide some shade?

587  
588 Mr. Golden - We have. And that is certainly something that, if I reached a  
589 "no" today we'll have to look at that -- into that. But I will be honest with you, as I've told  
590 you, I was unaware of the permit needed and all of that, so I do have all of these items  
591 already purchased. So, again, it's a personal hardship. I guess you could say it's brought  
592 upon myself, and I understand that. But I'm thousands of dollars into this now, and a  
593 retractable awning is only going to provide more thousands of dollars into it.

594  
595 And, honestly, the two pieces of metal that I plan on putting on top of the roof was not  
596 going to do much more to impede and/or -- differently than an awning would do, with the

597 exception of it can be retractable. But for the purposes of shade, we wouldn't be planning  
598 on retracting it too much. So I guess that's why I wouldn't look into that at the moment.  
599 And I'd really like to move forward with the variance. But I have thought about that, yes,  
600 sir.

601  
602 Mr. Green - Thank you.

603  
604 Mr. Bell - Mr. Golden, like Terone just mentioned, an awning can go on  
605 there, but what you want can not go on there. I'd base it on all the hard labored work you  
606 did I really see that you're trying to cooperate and do what is necessary.

607  
608 Mr. Golden - Yes, sir.

609  
610 Mr. Bell - But what we're doing is looking at the code and seeing if what  
611 you want to do can be done. And as you heard just a little while ago, our skin disease  
612 issue was given to attorneys and looked at it, and it does not fall within what can be done  
613 for the county. If someone comes up here and has another problem that falls within the  
614 disabled group, then that's a -- plus, it violates other codes that we're responsible for. So  
615 that puts a dilemma in a sense to us. But we're here to support the codes.

616  
617 So I just want to mention that, to let you know that we do feel for your situation. But it's  
618 not related to how it looks to others at this point, or some of the other issues you've  
619 brought up. It's related to the code.

620  
621 Anything else to say, sir? Thank you. Is there any --

622  
623 Mr. Johnson - And in addition to that, we have regulations that mandates  
624 how we are to do the variance. Also, so that it would not have any impact on the adjacent  
625 property as well. So if the other properties don't -- we can't do for one that we can't do  
626 for the others. We just want to make sure that we are consistent as well with the  
627 regulations.

628  
629 Mr. Golden - I mean, I understand that, and that's exactly why I obtained  
630 the written statements from my neighbors to say that you're not impeding on them  
631 whatsoever. I thank you for your time.

632  
633 Mr. Bell - Is there anybody here who would like to speak in favor of this  
634 motion or against it? Seeing none we will go ahead and vote on this. Do I hear a motion?

635  
636 Mr. Pollard - I move that we deny the variance. While we sympathize with  
637 anyone who prefers the shade to the heat of the sun, that is not a disability under the law.  
638 Applicant is able to make a reasonable use of the property without a variance because  
639 he can occupy the dwelling. And the dwelling was built after the ordinance was adopted.  
640 So it does not meet any of the three options for this threshold test. In addition, the  
641 situation is common among many properties in the county. If the Board of Supervisors  
642 wants to change regulation that allows decks to extend into the setback, but does not

643 allow porches, they can do that for everyone in the county. But this board should not  
644 grant a variance in this case, because there is nothing unique or unusual about the  
645 property.

646  
647 Mr. Johnson - I second it. Also, I would recommend a retractable awning.

648  
649 Mr. Bell - Do I hear any discussion? Hearing no discussion, we will vote  
650 on it. The motion has been to deny the variance. All those in favor say aye. All those  
651 opposed say nay. Ayes have it, and we go on to the next one.

652  
653 After an advertised public hearing and on a motion by Mr. Pollard, seconded by Mr.  
654 Johnson, the Board **denied** application **VAR2019-00021 THOMAS GOLDEN's** request  
655 for a variance from Section 24-95(c)(2) of the County Code to build a roof over the existing  
656 deck at 1751 Francis Road (GREENWOOD HEIGHTS) (Parcel 780-766-9344) zoned  
657 One-Family Residence District (R-4) (Fairfield).

658  
659  
660 Affirmative: Bell, Green, Johnson, Pollard, Reid 5  
661 Negative: 0  
662 Absent: 0

663  
664  
665 **VAR2019-00022 COLEMAN R. POTTEIGER II** requests a variance from  
666 Section 24-94 of the County Code to reconstruct an existing one-family dwelling at 4407  
667 Wistar Road (Parcel 769-751-4104) zoned One-Family Residence District (R-3)  
668 (Brookland). The rear yard setback is not met. The applicant proposes 28 feet rear yard  
669 setback, where the Code requires 40 feet rear yard setback. The applicant requests a  
670 variance of 12 feet rear yard setback.

671  
672 Mr. Blankinship - Would everyone who intends to speak to this case please  
673 stand and be sworn in? Do you swear the testimony you're about to give is the truth, the  
674 whole truth, and nothing but the truth, so help you God? Thank you. Mr. Madrigal.

675  
676 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the board.  
677 Before you is a request to reconstruct a one-family dwelling with a nonconforming rear-  
678 yard setback. The subject property has been in its current configuration since 1933, at  
679 that time it was served by a private driveway that crossed two other properties off Wistar  
680 Road.

681  
682 The house was built in 1937, originally measuring 25 feet wide by 25 foot deep. In 1951  
683 an addition was built along the southern side of the house, measuring 32 feet wide by 15  
684 foot deep. In 1960, when the current zoning ordinance took effect, the property consisted  
685 of an 1,100-square-foot home on a 1-acre lot. It was nonconforming in two respects; it  
686 had no public street frontage and the home was 28 feet from the northern property line  
687 where the new ordinance required 40 feet. Later Sprenkle Lane was constructed in 1970,  
688 which brought the property into conformance with the public street frontage requirement,

689 and it became the property's front lot line. The northern property line became the lot's  
690 rear property line, which requires a 40-foot setback.

691  
692 The applicant purchased the property in 1992. In 2003 he built an attached garage  
693 measuring 24 feet wide by 50 feet deep, which more than doubled the footprint of the  
694 house. The addition wraps around the south and east sides of the original house.

695  
696 The original portion of the dwelling is over 80 years old and is in need of reconstruction.  
697 The applicant would like to demolish the original portion of the home and reconstruct it in  
698 its original location. The code does not allow reconstruction of the home because it does  
699 not conform to the rear-yard setback. Thus the applicant is requesting a variance to allow  
700 the portion of the home to be reconstructed and maintain the existing 28-foot rear yard  
701 setback.

702  
703 With respect to the threshold question, the original dwelling was built in 1937. At that time  
704 there was no zoning ordinance applicable to the property. The oldest portion of the home  
705 now needs to be replaced. The zoning ordinance does not allow nonconforming buildings  
706 to be reconstructed, it only allows structural alterations of the new construction meets  
707 current setbacks. The intent behind this provision is to phase out nonconforming  
708 structures over time.

709  
710 Allowing reconstruction of a nonconformity, means that it will exist for another 80 years  
711 rather than it being brought into conformance. In this case, only the oldest part of the  
712 dwelling needs to be replaced. If the entire dwelling was proposed to be replaced, staff  
713 would recommend that it be rebuilt to meet current setback requirements.

714  
715 Because almost half the structure is to remain, this is not a reasonable option. Also,  
716 because of the unique circumstances, the only reasonable way to bring the oldest part of  
717 the structure to modern standards is demolish it and rebuild it, keeping the original  
718 footprint. For that reason, the requested variance will alleviate a hardship due to the  
719 physical condition of the improvements on the property at the time of the effective date of  
720 the ordinance.

721  
722 With respect to the five subtests, item number one, good faith purchase, it has been  
723 satisfied, as stated in the staff report. Item number two, substantial detriment, as late as  
724 1970 the dwelling stood almost alone, surrounded by undeveloped fields. Today it is  
725 surrounded by subdivisions and apartments. Because the subject home was there prior  
726 to the surrounding homes being built and the proposed variance wouldn't bring the home  
727 any closer to the rear lot line than it has been since 1937, it should not have any  
728 detrimental impacts on nearby property.

729  
730 Item 3, general recurring nature, the history of this property is unique. The original home  
731 was built in 1937. An addition occurred in 1951. Sprenkle Lane was constructed in 1970,  
732 and the attached garage was built in 2003. All of these attributes contribute to the need  
733 for the variance. Items four and five are satisfied, as outlined in the report.

734

735 In conclusion, the original home was built in 1937 and enlarged in '51. When the current  
736 zoning ordinance took effect in 1960, the dwelling was rendered nonconforming. The  
737 requested variance would alleviate a hardship by allowing the owner to replace the oldest  
738 portion of the home without having to demolish the nearer portions. The circumstances  
739 are unique, and no detrimental impacts are anticipated on nearby property. As such, staff  
740 recommends approval subject to conditions. That concludes my presentation.

741  
742 Mr. Bell - Miguel, on this overhead that we've got up there right now,  
743 which section, from the top here, are they going to remove?

744  
745 Mr. Madrigal - This area right here.

746  
747 Mr. Bell - Okay.

748  
749 Mr. Madrigal - All of this is newer.

750  
751 Mr. Bell - Okay. So there's no need for any change in footprints  
752 whatsoever.

753  
754 Mr. Madrigal - One more time.

755  
756 Mr. Bell - The footprints of that section they're removing will remain  
757 pretty much the same.

758  
759 Mr. Madrigal - Yes, sir.

760  
761 Mr. Blankinship - It is going to get a little bit wider to the west, the left on this  
762 photograph, but it will not come any closer to the rear property line where the setback  
763 problem is.

764  
765 Mr. Bell - All right, thank you. Any questions? Thank you, Miguel. Will  
766 the applicant please come forth?

767  
768 Mr. Potteiger - Good morning. My name's Coleman R. Potteiger, P-o-t-t-e-i-  
769 g-e-r, and this is my wife for 39 years tomorrow, Virginia G. Potteiger.

770  
771 Mr. Bell - Congratulations.

772  
773 Ms. Potteiger - Thank you.

774  
775 Mr. Blankinship - I apologize for mispronouncing your name. Mr. Potteiger?

776  
777 Mr. Potteiger - Potteiger.

778  
779 Mr. Blankinship - I apologize.

80

781 Mr. Potteiger - The property that we bought in 1992, we always thought the  
782 front of the house was towards Wistar Road, because we had a Wistar Road mailing  
783 address. So this has really surprised us too that it's been switched around. But what  
784 we're trying to do, is we've noticed over the years that the part that we're trying to take off  
785 is sinking, because there's no foundation under this part of it. It's all on piers or  
786 something. I can't even really see what's under there.

787  
788 We noticed the side was starting to -- that we had replaced the siding and put vinyl siding  
789 on it, is starting to push the siding off, so we knew something was up. So we called JES  
790 Foundation and company and got an appraisal from them for if we take the floors up and  
791 bring it back down to the joists and the frame and the beams that's under there, that they  
792 would jack it back up, straighten it out, and put a foundation on it for 40- to \$50,000. And  
793 we said, you know, we could tear it down and rebuild to the Henrico County standards  
794 and building codes that's now, you know, for that amount of money. So that's why we're  
795 deciding to take that part off and then rebuild it and get it back up to the standards of  
796 today.

797  
798 And we've already replaced the, you know, we had a septic tank, we took that out and we  
799 hooked to a county sewer on Sprenkle Lane. I've got water from Sprenkle Lane, too,  
800 county water. So all that's been done. We've done all the approval on electric. We've  
801 moved the electric line that was hanging on the corner of the house, on this corner that  
802 we got to take down, we've moved it to underground cable.

803  
804 Ms. Potteiger - It was right up here coming across.

805  
806 Mr. Potteiger - Yeah, right. It was right there attached to the gable of the  
807 house. So we've moved that already and had it put underground from VEPCO. So there's  
808 nothing -- no lines or anything like that that's, you know, have to be moved now that we've  
809 done it. But we just want to try to, like I said, just try to get the house back up to being  
810 sound and being to code so we're not leaving any burden on our children when we pass.  
811 If you would, you know, I'd appreciate the approval of this so we can take care of the  
812 situation that we're in the middle of, so thank you very much.

813  
814 Mr. Bell - Are there any questions? Hearing none, and just go ahead  
815 and have a seat if you would.

816  
817 Mr. Potteiger - Okay, thank you.

818  
819 Mr. Blankinship - Did you want to speak, ma'am?

820  
821 Ms. Potteiger - Just briefly. I just wanted to say I feel that it will also increase  
822 the value of the home to make it look more up to date compared to the neighborhood  
823 beside us, and also for resale value if anything does happen and we need to sell, or our  
824 children want to sell later. That's it.

825

826 Mr. Bell - Thank you. Is there anyone who would like to speak for it or  
827 against it? Hearing none, we'll go on to the vote. Do I hear a motion? Then I'm going to  
828 move that we approve it.

829  
830 Mr. Green - Second.

831  
832 Mr. Bell - And I move that we approve the variance subject to the  
833 conditions recommended by the staff. The original portion of the dwelling was built before  
834 the county had any zoning. They need to demolish and replace the portion of the dwelling  
835 because it is no longer habitable. So the variance will relieve a hardship due to  
836 circumstances that existed when the ordinance was adopted. The hardship was not  
837 created by the applicant. In fact, he has worked to make it better. There should be no  
838 detrimental impact on nearby property because all of these homes were built after this  
839 one had been there a long time, and the new construction will not be any closer to property  
840 lines than it is now. The other tests are met, as stated in the staff report. Therefore I  
841 move that we approve it, and I have a second that it would be approved. Any discussion?  
842

843 Mr. Johnson - I second it.

844  
845 Mr. Bell - It's already been seconded by Mr. Terone, sir. I'm sorry, I  
846 didn't say it loud enough. We'll vote. All those in favor say aye. All those opposed say  
847 nay. Ayes have it.

848  
849 After an advertised public hearing and on a motion by Mr. Bell, seconded by Mr. Green,  
850 the Board **approved** application **VAR2019-00022 COLEMAN R. POTTEIGER II's**  
851 request for a variance from Section 24-94 of the County Code to reconstruct an existing  
852 one-family dwelling at 4407 Wistar Road (Parcel 769-751-4104) zoned One-Family  
853 Residence District (R-3) (Brookland). The rear yard setback is not met. The Board  
854 approved this request subject to the following conditions:  
855

856 1. This variance applies only to the rear yard setback requirement for one dwelling only.  
857 All other applicable regulations of the County Code shall remain in force.  
858

859 2. Only the improvements shown on the plot plan and building design filed with the  
860 application may be constructed pursuant to this approval. Any additional improvements  
861 shall comply with the applicable regulations of the County Code. Any substantial changes  
862 or additions to the design or location of the improvements will require a new variance.  
863

864 3. The new construction shall match the existing dwelling as nearly as practical in  
865 materials and color.  
866

867 4. Any dwelling on the property shall be served by public water and sewer.  
868

869 5. A building permit must be approved by August 23, 2021, or this variance will expire. If  
870 the building permit is cancelled or revoked because it was not diligently pursued, this  
871 variance will expire at that time.

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917

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

Mr. Green - See, now you don't have to buy an anniversary present, you just got one!

Ms. Potteiger: Yes he does still. Thank you.

Mr. Blankinship - The next case is your last case this morning, is variance 2019 number 23, Harold Hunter Nuckols.

**VAR2019-00023** **HAROLD HUNTER NUCKOLS** requests a variance from Section 24-9 of the County Code to build a one-family dwelling at 3556 Graham Meadows Place (Parcel 729-764-2413) zoned Agricultural District (A-1) and West Broad Street Overlay (WBSO) (Three Chopt). The public street frontage requirement is not met. The applicant proposes 0 feet public street frontage, where the Code requires 50 feet public street frontage. The applicant requests a variance of 50 feet public street frontage.

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

Mr. Gidley - Thank you, Mr. Secretary and members of the board. The subject property is located next to the Graham Meadows subdivision and adjacent to the Goochland County Line. The applicant, Mr. Harold Nuckols, owns a 4.7-acre parcel that has been in his family since 1945. Previously it was actually located in Goochland County, but in 2005 became part of Henrico County following the boundary line adjustment between the two localities.

Mr. Nuckols would like to construct a one-family dwelling on this parcel, however, it lacks the required public street frontage. To remedy that he acquired the access strip that you can see right here, and he acquired it from the developer of the adjacent Graham Meadows subdivision. This provides him with access to his lot off of Graham Meadows Place. And you can see that right here, this is a cul-de-sac of Graham Meadows Place, and this is the access strip right here where he would be able to put a driveway and get to his property.

This is a plat of the property. Again, his 4 1/2-acre parcel right here and the access strip right here going over to the public street. So this provides him a legal and practical access to the property. However, because the access strip is a separate parcel of land, he still needs a variance for public street frontage for the 4 1/2-acre parcel where he wants to

918 build.

919  
920 In evaluating this request, again, there are three threshold tests for a variance at least  
921 one of which must be met. Test one deals with unreasonable restriction of the property.  
922 In this case, as you can see here, the property is just over 4 1/2 acres. Right in this area  
923 it contains 1.9 acres that are outside of the floodplain and that are generally level making  
924 a good location for a home. Although the property has legal access, because it technically  
925 lacks public street frontage, a home may not be built on the property absent of variance.  
926 And absent of variance there's no other reasonable beneficial use for this property, so as  
927 a result this first test appears to be met, in that the property is unreasonably restricted.  
928

929 Because one of the three threshold tests is met, the applicant also must meet all five of  
930 the required subtests. And, as noted, in your staff report, staff believes all five are met.  
931

932 Briefly, I would like to touch on the second subtest dealing with substantial detrimental  
933 impact to nearby property. As you can see here, much of the property is surrounded by  
934 floodplain and wetlands to the north, west, and south. The two nearest homes are at  
935 3553 and 3557 Graham Meadows Place, which is right here. While having the new home  
936 constructed behind them would diminish their privacy, the residential uses of one house  
937 backing up to another two houses is consistent.  
938

939 Under the A-1 zoning of Mr. Nuckols property, he would have a 50-foot setback off this  
940 property line here. However, because his property would view into the rear yard of these  
941 adjacent homes, and he does have the building area, staff is recommending that setback  
942 be increased to 100 feet to provide greater privacy to these existing residences. In  
943 addition, staff is recommending that any home constructed on this property also meet the  
944 proffered conditions for the rezoning case for Graham Meadows. At least so far as it  
945 portends to the construction of the home on this property. This would be things like having  
946 a brick foundation and meeting a minimum total floor area for the home to make more  
947 consistent with the homes in Graham Meadows.  
948

949 In conclusion, the applicant would like to construct a dwelling on his 4.7-acre parcel of  
950 land. Although he does have a legal access via the access strip, because it's a separate  
951 parcel, he still needs a variance for public street frontage. Absent of variance, there's not  
952 reasonable use of the property. Staff believes the proposed conditions being  
953 recommended would ensure the property as it's developed is consistent with the adjacent  
954 Graham Meadows subdivision. Staff also believes the remaining subtests are met. As a  
955 result, staff can recommend approval of this request. If you have any questions, I'll be  
956 happy to answer them. Thank you.  
957

958 Mr. Bell - Paul, you showed us the property line had been moved back  
959 100 feet, you said?  
960

961 Mr. Gidley - Yes. Let's get the area from the plat. Yes, so this is 425 feet  
962 from here to here.  
963

964 Mr. Bell - All right.  
965  
966 Mr. Gidley - So, basically, almost a quarter of that is what we're  
967 recommending.  
968  
969 Mr. Bell - How far would that be from the backyard of the house that it's  
970 visible from?  
971  
972 Mr. Gidley - It'd be a minimum of 100 feet from their rear property line.  
973  
974 Mr. Bell - From the property line, okay.  
975  
976 Mr. Gidley - Yes, sir.  
977  
978 Mr. Blankinship - Can you show the aerial for a second? Yes. You see that  
979 clump of trees right behind that house. That goes out right to about 100 feet, so that gives  
980 you a pretty good idea of what that would be. Essentially, it's a requirement that the trees  
981 remain.  
982  
983 Mr. Bell - But they're not blocking anything?  
984  
985 Mr. Blankinship - Right. They would just protect the neighbors from the view.  
986  
987 Mr. Gidley - And the house would go somewhere in this area.  
988  
989 Mr. Blankinship - Not that one house needs to be protected from another house.  
990 But, you know, people like their privacy.  
991  
992 Mr. Bell - Yes, thank you. Are there any questions?  
993  
994 Mr. Johnson - Are there any other houses impacted by the 100-Year Flood  
995 Plain?  
996  
997 Mr. Gidley - On the plat they have here, Mr. Johnson, you can see the  
998 boundary of the floodplain right here in this dotted line. The creek runs along Goochland  
999 County, so anything between the county line and the dotted line here is the floodplain. It  
1000 doesn't show the adjacent properties, but you can see, basically, it runs over here and  
1001 continues over here, and you can see the wetlands indicator over on the common area  
1002 of the subdivision. And this floodplain, I assume, runs all the way up to Broad Street  
1003 where you go over it just east of Wegmans, and then continues down south towards  
1004 Patterson.  
1005  
1006 Mr. Johnson - I'm satisfied. I was curious about it.  
1007  
1008 Mr. Gidley - Okay, sure.  
1009

010 Mr. Bell - Any other questions? Thank you, Paul.  
011  
1012 Mr. Gidley - Thank you, Mr. Chair.  
1013  
1014 Mr. Bell - Okay. Would the applicant please come up and present his  
1015 case?  
1016  
1017 Mr. Nuckols - Yes, good morning members of the board, and residents of  
1018 Graham Meadows who may have been here, may have come. My name's Hunter  
1019 Nuckols, N-u-c-k-o-l-s.  
1020  
1021 I'm here to address the request for a variance on my property bordered on the east by  
1022 Graham Meadows subdivision, as you saw in the presentation. On the west by Little  
1023 Tuckahoe Creek, Goochland County, to the south Goochland County, and Green Gate  
1024 Property to the north.  
1025  
1026 Sort of a brief history of the land, in 1849 my great, great, great-grandfather, Israel  
1027 Nuckols, purchased 200 plus acres and a historic 1700s farmhouse. The historic  
1028 farmhouse still hands between Graham Meadows and Gayton Station subdivisions and  
1029 is owned by Henrico County at this time. And as for the 200 acres, Graham Meadows,  
1030 which was named after my grandfather Graham Nuckols, Gayton Station, Green Gate,  
1031 Nuckols Farm Elementary, the Virginia Women's Center and Our Lady of Hope, as well  
1032 as portions of Fox Hall were all developed from that original 200 acres. Some of the land  
1033 in West Creek on the Goochland side of Tuckahoe Creek also was part of that.  
1034  
1035 My great grandfather, Oscar Nuckols, whose picture is located out here in the front of the  
1036 offices here of the board room, and was the original head of the Board of Supervisors for  
1037 Henrico County in 1934, was born and raised on this farm and actually died on the farm.  
1038 This 4.8 acres as the current survey shows, there is a little under 4.7 acres actually, it is  
1039 the last piece of original Nuckols property from that farm.  
1040  
1041 Why I'm asking for the variance. For me family history is important. Part of that, my  
1042 brothers and I had fished and swam in the creek as boys growing up on the farm. We  
1043 had herded cattle through the narrow pass that runs along by the creek there, there's still  
1044 some of the old fence line that runs there, along with my grandfather, and that's something  
1045 that kind of has a nostalgic aspect to it for me.  
1046  
1047 For the past 15 years -- excuse me. Actually I want to reach out to the fact that after  
1048 obtaining my father's half-interest in the property in 2004 it was another 13 years before  
1049 I was able to get my aunt on board with selling me her interest for the land. And so in  
1050 2017 I did obtain full possession of the property and started looking, with my wife, at  
1051 opportunities of how to advance a residence on the lot.  
1052  
1053 But after 15 years that involved multiple calls, meetings and discussions with many people  
1054 in Henrico County on the planning, zoning, utilities, all aspects of possible building, and  
1055 the last three years in haste, we've been working much harder to try to get something

1056 done in order to build a house there.

1057  
1058 The lot was surveyed by Foster & Miller in 2004. That survey indicated that there was  
1059 1.9 acres out of floodplain and could be buildable. The original survey was filed with  
1060 Goochland County, because at that time it was located in Goochland County prior to my  
1061 father's death in 2004. 2005 a re-alignment agreement between Goochland and Henrico  
1062 of county lines, made an adjustment around this piece of property as well as another  
1063 portion there. And the property is now in Henrico County.

1064  
1065 The access strip put in place in or around 1996 when the development of Graham  
1066 Meadows was done, as a means of servicing this adjacent property, to avoid any  
1067 encumbrance on potential future construction on the property, or use. The property is  
1068 landlocked and can only be reached via that access strip at the end of Graham Meadows.  
1069 It's bordered by Little Tuckahoe Creek, as I said, and with the floodplains and so forth  
1070 there's no bridges or anything that can be built to get to it on the other end.

1071  
1072 So I request to please be allowed to construct a home. And I will answer any questions  
1073 if you have those.

1074  
1075 Mr. Bell - Are there any questions?

1076  
1077 Mr. Reid - Mr. Nuckols, are you in agreement with the conditions of  
1078 approval in the staff report?

1079  
1080 Mr. Nuckols - Yes. As far as the conditions of approval, there were eight  
1081 that were presented. I do desire to build just the one home on the 4.7 acres of land. I do  
1082 not intend to do any land disturbance of any type until construction is approved for the lot.  
1083 I've already been in conversations with the Department of Public Utilities and also the  
1084 Department of Public Works, and discussing what limitations there may be due to wetland  
1085 delineations and so forth.

1086  
1087 Based on work done by the Timmons Group, which I just had wetlands delineation done,  
1088 RPA setback lines and so forth actually are greater than what were originally told to me  
1089 by Henrico County. They'd given me a map that indicated where the limitations would be  
1090 and what the Timmons Group did actually moved it further back, so that means that I'm  
1091 further from the neighborhood, which is what I desire, which goes to points -- the point of  
1092 the 100-foot setback. I would love to be 200 feet back, but I'll go as far as I can go. And  
1093 I, you know, other than that, wetlands may, and RPA limitations, may be the only  
1094 restriction on that.

1095  
1096 As far as the proffers of the subdivision, certainly we do intend to have a well over 1,700-  
1097 square-foot house. We have a family of six, I have four children, and we'd prefer to have  
1098 a larger home for all of us to come and bring grandchildren when those arrive and that  
1099 type of thing.

1100  
1101 Foundation, it says the brick foundation, and I'd like to have the opportunity, if it still works

1102 out in the development and building of a house, that it'd be stone, if I can get that. But,  
1103 also, you did see the plot of trees that were there, if you go to the aerial. That's not it.  
1104 Okay, where's the aerial? There it is. So, these trees, I may remove the trees, but my  
1105 desire is to plant a line of trees along here. Maybe leave some of these. But they're  
1106 mostly cedars, and I'm not partial to gutting grass around cedars. I've been cutting grass  
1107 on this lot for the last three and a half years even though I don't live on the lot, and I've  
1108 been trying to do everything possible to take care of this property and keep it in top quality,  
1109 even though it's really just an open piece of property.

1110  
1111 And so any concerns or whatever of possibly my not taking care of it should be erased.  
1112 But, these trees, I may clear some of them in order to create more yard but yet still plant  
1113 trees to protect my view. Because I don't really want to look at the back of people's yards  
1114 either.

1115  
1116 And so, the house we're talking back in about where this shed sits right now, back in  
1117 there. And, let's see, there'd be no cantilever chimneys. That's a concern, apparently.  
1118 But it would be a brick foundation for the chimneys or, you know, something substantial  
1119 as far as that goes from the proffers.

1120  
1121 Once all approvals have been finalized, it is my desire to continue further planning and  
1122 submitting paperwork with the county to get a residence constructed in advance of the  
1123 2021 deadline that was presented.

1124  
1125 Mr. Green - Mr. Nuckols, do you currently have a plan of what your house  
1126 would look like?

1127  
1128 Mr. Nuckols - We have a plan that we're working with, but I've been in  
1129 conversations with four different builders over the last four years, because it's been a  
1130 process and every time I meet with someone in the county, I find out something new I've  
1131 got to do. So here this, hopefully, is the last step of moving forward.

1132  
1133 But the builder that I'm speaking with is a custom builder who built some very nice homes  
1134 out in Goochland County. Most of the builders I've spoken with are Goochland General  
1135 Contractors. But they, this young man, was a former football player of mine. I coached  
1136 him at Godwin and know him very well. And he is now telling me that as soon as this  
1137 variance is cleared, then we can talk about what the details are going to be. The house  
1138 that we're looking at is a modern farmhouse design, it doesn't really exactly match any  
1139 house in Graham Meadows, but it's a more new version of residences today. And, you  
1140 know, the plan is to build a quality home that my family can live in till my wife and I are  
1141 gone. They can do what they want to do with it after that.

1142  
1143 Mr. Green - The other question I have is would you be receptive, since you  
1144 had the Graham Meadows, I'm sure they have an HOA would you join the HOA, or you  
1145 want to be separated from it?

1146  
1147 Mr. Nuckols - One advantage that I've been given notice of that why this

1148 property is special, is that I would not be held to an HOA requirement. I really do not  
1149 foresee that as being, I don't know, I don't think that that would be the right thing for me  
1150 to do to take part in an HOA that I'm really not a part of.

1151  
1152 Mr. Bell - Any more questions?

1153  
1154 Mr. Green - I have a question for staff. The property where you see Parcel  
1155 B.

1156  
1157 Mr. Blankinship - Yes, sir.

1158  
1159 Mr. Green - The property beyond Parcel B, who owns that, and is that  
1160 subject to the HOA, and is that buildable?

1161  
1162  
1163 Mr. Blankinship - When you say beyond, you mean to the north?

1164  
1165 Mr. Green - Yes.

1166  
1167 Mr. Blankinship - It is not buildable, because it's in the flood plain.

1168  
1169 Mr. Green - Okay. And what about coming down?

1170  
1171 Mr. Blankinship - Let me just, let me see who owns it?

1172  
1173 Mr. Green - Like where L-12 is.

1174  
1175 Mr. Blankinship - The property to the north is owned by the Graham Meadows  
1176 Homeowners Association. I thought that might be. Now where is L-12? That, yes, around  
1177 until you see the dashed line, just to the right of there, yes, that's the first lot of the  
1178 subdivision on that side. The rest of that property is owned by the homeowner's  
1179 association, and it's located in the floodplain almost entirely.

1180  
1181 Mr. Green - Okay. So all of that is --

1182  
1183 Mr. Blankinship - That's the common area owned by the homeowner's  
1184 association, the Graham Meadows homeowners.

1185  
1186 Mr. Green - So nothing's buildable on Graham Meadows next to that  
1187 house --

1188  
1189 Mr. Blankinship - That's correct. That's all floodplain, which I guess is why it  
1190 was set aside as common area. And while I have the microphone, did I understand you  
1191 to say that, Mr. Nuckols, that on condition number six you would like to add that you could  
1192 do a stone foundation alternative to a brick foundation?

1193

1194 Mr. Nuckols - Right. It said brick and I was like, well, I don't want to be  
1195 limited to brick, I would like to have stone as an option as well.

1196  
1197 Mr. Blankinship - Just want to make sure that if there is a motion, that that gets  
1198 addressed.

1199  
1200 Mr. Bell - Anything else? Any other questions? If not, thank you, Mr.  
1201 Nuckols. Is there anybody against this who would like to say something? Would you  
1202 please come forward?

1203  
1204 Ms. McCann - Good morning, gentlemen.

1205  
1206 Mr. Bell - Good morning.

1207  
1208 Ms. McCann - My name is Kathleen McCann, M-c-C-a-n-n. I'm a  
1209 homeowner in Graham Meadows. I'm not against the proposal per se, but many of the  
1210 members in Graham Meadows believe that there should be a condition that the  
1211 gentleman be a member of our homeowner's association.

1212  
1213 We believe because the only access to the home is through Graham Meadows, the home  
1214 is directly adjacent to current homes, as you already saw, and also our common area  
1215 where we hold events occasionally, and that anybody in the future could purchase this  
1216 property. While we believe he will take, you know, wonderful care of the property now,  
1217 we have no control over who could purchase it 20, 30 years from now, or even 10 years  
1218 from now. Circumstances change for people.

1219  
1220 So we feel that they should have to join our homeowners association and abide by the  
1221 reasonable rules. Our homeowners' dues are very reasonable. I think it's either \$110 or  
1222 \$120 a year, so it's not an egregious amount like some of the areas around us.

1223  
1224 Sorry, I'm a little nervous, so I'm not used to speaking to people. I deal with children all  
1225 day. Some of the rules, for example, that we require are where trash can be stored so  
1226 that it's not visible from, you know, the street of the neighbors. Where trailers can be  
1227 stored on the property. Rules about above-ground pools, fencing heights, and approvals  
1228 for additions and modifications in the future. So we just think it's a very reasonable  
1229 request that, given all of the circumstances of this property, that they'd be a member of  
1230 our homeowner's association. And that's all I have to say.

1231  
1232 Mr. Bell - Any questions?

1233  
1234 Mr. Blankinship - I'd just comment, Mr. Chair, that the access strip is in the  
1235 subdivision and is subject to the covenants, so the trash receptacles and those sorts of  
1236 things, would be out near the street. That portion of the property is bound by the  
1237 covenants. Just putting that out there.

1238  
1239 Mr. Bell - Any other questions or comments? Thank you.

1240  
1241 Ms. McCann - Yep.  
1242  
1243 Mr. Bell - Okay. We'll go ahead and vote on this. Do I hear a motion?  
1244  
1245 Mr. Green - I move that we approve the variance subject to the conditions  
1246 recommended by the staff. Without a variance, the applicant cannot make any  
1247 reasonable use of the property. The hardship was not created by the applicant, it was  
1248 created when the county boundary was changed. There should be no detrimental impact  
1249 on nearby property, as long as the house is a sufficient distance from the neighbors and  
1250 the design is consistent with the subdivision. The other tests are met, as stated in the  
1251 staff report. I would also like to amend condition number six to allow stone.  
1252  
1253 Mr. Johnson - I second.  
1254  
1255 Mr. Bell - Mr. Johnson seconded first, I believe. Discussion. Hearing  
1256 none, we'll vote. All those in favor of the application say aye. All those opposed say nay.  
1257 Ayes have it. Motion approved.  
1258  
1259 After an advertised public hearing and on a motion by Mr. Green, seconded by Mr.  
1260 Johnson, the Board **approved** application **VAR2019-00023 HAROLD HUNTER**  
1261 **NUCKOL'S** request for a variance from Section 24-9 of the County Code to build a one-  
1262 family dwelling at 3556 Graham Meadows Place (Parcel 729-764-2413) zoned  
1263 Agricultural District (A-1) and West Broad Street Overlay (WBSO) (Three Chopt). The  
1264 public street frontage requirement is not met. The Board approved this request subject  
1265 to the following conditions:  
1266  
1267 1. This variance applies only to the public street frontage requirement for one dwelling  
1268 only. All other applicable regulations of the County Code shall remain in force.  
1269  
1270 2. Clearing, grading, or other land disturbing activity shall not begin until the applicant has  
1271 submitted, and the Department of Public Works has approved, an environmental  
1272 compliance plan.  
1273 3. Any dwelling on the property shall be served by public water and sewer.  
1274  
1275 4. Any dwelling on the property shall be set back at least 100 feet from the lot lines of lots  
1276 27 and 28, Section A. Graham Meadows (3553 and 3557 Graham Meadows Place).  
1277  
1278 5. Any dwelling constructed on the property shall have a minimum of 1,700 square feet  
1279 of livable floor area as defined in the zoning ordinance.  
1280  
1281 6. The exterior portions of residence foundations above finished grade shall be  
1282 constructed of brick or stone.  
1283

1284 7. All fireplace chimneys, including gas vents, shall have a brick foundation and be  
1285 enclosed by brick or a siding similar to the home's exterior. There shall be no cantilevered  
1286 chimneys or fireplaces.  
1287

1288 8. A building permit must be approved by August 23, 2021, or this variance will expire. If  
1289 the building permit is cancelled or revoked because construction was not diligently  
1290 pursued, this variance will expire at that time.  
1291

1292  
1293 Affirmative: Bell, Green, Johnson, Pollard, Reid 5  
1294 Negative: 0  
1295 Absent: 0  
1296

1297  
1298 Mr. Bell - Now we can go on and vote on last month's minutes. Do I  
1299 hear a motion?

1300  
1301 Mr. Green - So moved.

1302  
1303 Mr. Reid - Second.

1304  
1305 Mr. Bell - We have a second, discussion?

1306  
1307 Mr. Johnson - Yes. On page 12, line 528, it says also in, it should be on, o-  
1308 n, not i-n.

1309  
1310 Mr. Bell - Okay.

1311  
1312 Mr. Johnson - And also, page 36, line 1615, it said just wondering if there is  
1313 a -- if they, t-h-e-y, were. Just those two changes.

1314  
1315 Mr. Bell - Thank you. All right. Any other discussion? If not then, all  
1316 those in favor of the minutes with the corrections made say aye. All those opposed say  
1317 nay. Ayes have it. The minutes are approved.  
1318

1319  
1320 Affirmative: Bell, Green, Johnson, Pollard, Reid 5  
1321 Negative: 0  
1322 Absent: 0  
1323

1324  
1325 Mr. Bell - And now I'm going to turn the rest of the agenda over to the  
1326 Ben, so we can talk about voting for the chair and things like that.

1327  
1328 Mr. Blankinship - Thank you, Mr. Bell. It is time for the annual election of  
1329 officers, and so the floor is open for nominations for the office of Chair.

1330  
1331 Mr. Johnson - I nominate Mr. Bell President.  
1332  
1333 Mr. Blankinship - All right.  
1334  
1335 Mr. Green - Second.  
1336  
1337 Mr. Blankinship - Mr. Johnson has nominated Mr. Bell and seconded by Mr.  
1338 Green. Are there any further nominations for the office of Chair?  
1339  
1340 Mr. Green - Move to close.  
1341  
1342 Mr. Blankinship - All right, there is a motion to close the nominations.  
1343  
1344 Mr. Pollard - So move.  
1345  
1346 Mr. Blankinship - There's a second. All in favor of closing the nominations  
1347 signify by saying aye. All opposed say no. The nominations are closed, which means,  
1348 congratulations, Mr. Bell, you are elected by affirmation.  
1349  
1350  
1351 Affirmative: Bell, Green, Johnson, Pollard, Reid 5  
1352 Negative: 0  
1353 Absent: 0  
1354  
1355  
1356 Mr. Bell - Thank you, everybody. I do appreciate it. Everybody on the  
1357 board now is new in a sense. Hasn't been here a year, you know, so we all don't have -  
1358 - I don't have the total scope of what it means. So participation is very important to me,  
1359 and that's one thing I wanted to make mention. So, if I overlook you in this or that, or  
1360 appear to, just tap me on the shoulder and say, This and this is what I wanted to say, or  
1361 You misunderstood, or something like that.  
1362  
1363 And, secondly, you know, and I don't like to say go back to the past at all. But, when I  
1364 came on here everybody -- I was junior, and I think everybody who had been on the board  
1365 had been on the board for over 10 to 15 years.  
1366  
1367 Mr. Blankinship - Two of them 40 years.  
1368  
1369 Mr. Bell - And two of them 40 years. It's a big change, see. And the  
1370 way they had set up the election of officers, it was based on your time that you were  
1371 approved over, like if it was in August and you was from Three Chopt, all right, and you  
1372 were the current chair, then the next one would be the next time that person was  
1373 appointed, he was to, you know, and you went up still through the vice chair and chair to  
1374 keep it in line. And that's the way they had been working. And it gave everybody a two-  
1375 year chance to be chair.

1376  
1377 Plus, you didn't have to worry about it again until about five, six years. I'll be honest  
1378 with you. Because everybody will be going through the -- through the line. I'll just throw  
1379 that out, and that's something that we can, you know, talk about later and if we seem to  
1380 like it we can vote to have Ben set something like that up and that's the way we can go.  
1381 And then we vote on the whole thing and that'll be done, and then you'll know when you're  
1382 going to be vice chair and when you're going to be chair.

1383  
1384 Mr. Green - I think that's called the Henrico Way.

1385  
1386 Mr. Blankinship - That's right.

1387  
1388 Mr. Green - I think they used that for School Board, Planning Commission  
1389 and Board of Supervisors.

1390  
1391 Mr. Blankinship - Yes, they all rotate.

1392  
1393 Mr. Green - Yes. Interesting.

1394  
1395 Mr. Blankinship - All right. The floor is open for nominations for the office of vice  
1396 chair.

1397  
1398 Mr. Reid - I nominate Mr. Green for vice chair for the coming year.

1399  
1400 Mr. Johnson - I second.

1401  
1402 Mr. Blankinship - All right. Mr. Reid has nominated Mr. Green, Mr. Johnson has  
1403 seconded that nomination. Are there any further nominations for the office of vice chair?  
1404

1405 Mr. Johnson - I propose we close on the nominations.

1406  
1407 Mr. Blankinship - All right. Mr. Johnson has made a motion to close  
1408 nominations. Is there a second?

1409  
1410 Mr. Bell - Second.

1411  
1412 Mr. Blankinship - Mr. Bell seconded that motion. So the motion on the floor is  
1413 to close nominations for the office of chair. All in favor say aye. All opposed no. Okay.  
1414 The motion carries 5 to 0 and, Mr. Green, you are elected.

1415  
1416  
1417 Affirmative: Bell, Green, Johnson, Pollard, Reid 5

1418 Negative: 0

1419 Absent: 0

1420

1421

1422 Mr. Green- Vice chair. You said chair.  
1423  
1424 Mr. Blankinship - Oh, I'm sorry, thank you. You are elected vice chair by  
1425 acclimation.  
1426  
1427 Mr. Green - Thank you.  
1428  
1429 Mr. Blankinship - All right. And that is the conclusion of your elections.  
1430  
1431 I do have one other matter I wanted to discuss, which is, we are, as you noted, we have  
1432 a lot of new members, and we are working on a training session. If that would be  
1433 something that would interest you.  
1434  
1435 In the past we've tried to send each member through the certification course as they've  
1436 come on board, but with people moving on and moving around, we now have so many  
1437 people that we think it'd be a good time for us to have the training come to us and do a  
1438 half-day training session specifically for our board, so that you're not, you know, those of  
1439 you who have been to the training, they spend a lot of time asking, Well who does it this  
1440 way? Well, who does it that way? Well, in communities that do this -- and you lose a lot  
1441 of time because they're teaching to everybody. And we would like to concentrate that  
1442 into a half-day session that would just be our board and learning the Henrico way. Is that  
1443 something y'all would be interested in?  
1444  
1445 Mr. Green: Without a doubt.  
1446  
1447 Mr. Bell - Yes, I would be. I'd still be interested in it.  
1448  
1449 Mr. Blankinship - Would a morning work for everybody? A half-day in the  
1450 morning?  
1451  
1452 Mr. Green - Yes. But I'd still like to participate in the training --  
1453  
1454 Mr. Blankinship - Yes. It would certainly not take the place of the certified  
1455 course.  
1456  
1457 Mr. Green - Right, and the reason I couldn't is because I started a new  
1458 position and I didn't want to take advantage of taking time off.  
1459  
1460 Mr. Blankinship - Right.  
1461  
1462 Mr. Bell - And I would suggest that too, because, like he said, you hear  
1463 so many other ways, but as you hear what they do their way you say, Maybe we ought to  
1464 grab some of that for our way, too.  
1465  
1466 Mr. Blankinship - Yes.  
1467

1468 Mr. Bell - And it's a great course, except sometimes it gets too legalistic  
1469 from the lawyers standing up there.

1470  
1471 Mr. Green - How long have you been -- I thought you've been on the board  
1472 long. How long have you been on the board?  
1473

1474 Mr. Bell - Twelve years, no 10 years. No 12 years I've been appointed  
1475 twice. Twelve years. And still I get just as nervous as y'all do when I stand here. Because  
1476 you want to do it right, and, you know, everybody I guess feels like that. But once you  
1477 get into it and start doing it, then you learn. And without Ben here, and you think you'd  
1478 never retire.

1479  
1480 Mr. Blankinship - And I still see something new every month that I've never seen  
1481 before.

1482  
1483 Mr. Bell - He's heard -- and don't be worried about offending him,  
1484 because he's doesn't know the meaning of that word. If people ask him a question, he'll  
1485 answer you the question. He's going to give you the right answer.

1486  
1487 Mr. Blankinship - All right. Mr. Chair, I believe that's the end of our scheduled  
1488 business.

1489  
1490 Mr. Bell - That's it. We are adjourned until next month at the same time.  
1491 10:17, well, we made it a little early.

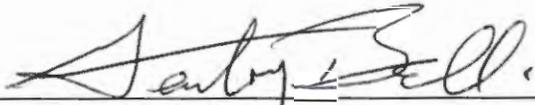
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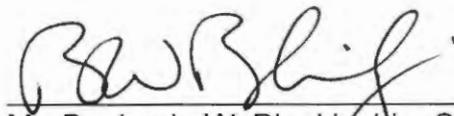
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Mr. Gentry Bell, Vice-Chair

  
Mr. Benjamin W. Blankinship, Secretary