

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 DECEMBER 15, 2022, AT 9:00 A.M., NOTICE HAVING BEEN  
5 PUBLISHED IN THE *RICHMOND TIMES-DISPATCH* NOVEMBER 28, 2022, AND  
6 DECEMBER 5, 2022.  
7

8  
9 Members Present: Walter L. Johnson, Jr., Chair  
10 Terrell A. Pollard, Vice-Chair  
11 Gentry Bell  
12 Terone B. Green  
13 James W. Reid, Jr.  
14

15  
16 Also Present: Leslie A. News, Assistant Director of Planning  
17 Benjamin Blankinship, Secretary  
18 Paul M. Gidley, County Planner  
19 R. Miguel Madrigal, County Planner  
20 Rob Peterman, Technology Support Specialist  
21

22  
23  
24 Mr. Johnson - Welcome to the December 15<sup>th</sup> meeting of the Henrico Board  
25 of Zoning Appeals. For all that are able, will you please stand and join us in the Pledge of  
26 Allegiance.  
27

28 **[Recitation of Pledge of Allegiance]**  
29

30  
31 Mr. Johnson - Thank you. Alright. Mr. Blankenship will read our rules.  
32

33 Mr. Blankenship- Good morning, Mr. Chair, members of the Board. Good  
34 morning to everyone in the room with us this morning. I'd also like to welcome everyone  
35 who's joining us remotely, via WebEx. If you wish to observe the meeting, but you do not  
36 intend to speak, welcome, thank you for joining us. For those of you on WebEx who do  
37 wish to speak, we need to know that in advance so that we can connect you at the  
38 appropriate time. So, if you are an applicant, or if you have questions or comments on  
39 one of the cases, please press the chat button now. It's located in the bottom right corner  
40 of the screen. When the chat window opens, please select Brendon McDowell from the  
41 list of participants. Let him know your name and which case you're interested in. The chat  
42 feature is only being used to identify speakers, so please do not type questions or  
43 comments into a chat, but please send a chat to Brendan McDowell now.  
44

45 So, acting as secretary, I will call each case, then we will ask everyone in the room,  
46 intends to speak to that case to stand and be sworn in. Then a member of the Planning

47 Department staff will give a presentation. Then the applicant will speak. Then anyone else  
48 who wishes to speak will be given the opportunity. We will hear from citizens in the room  
49 first, and then from those on WebEx. After everyone has had a chance to speak the  
50 applicant, and only the applicant, will have an opportunity for rebuttal.

51  
52 This meeting is being recorded, ... excuse me..., so for those in the room we will ask you  
53 to speak into the microphone at the podium in the back of the room there and to state and  
54 spell your last name, so that we get it correctly in the record. Once your case is over, you  
55 are free to leave, there is no need for you to stay for the rest of the meeting.

56  
57 We do not have any request for deferral or withdraw this morning, that I am aware of, so  
58 with that, would you like me to call the first case?

59  
60 Mr. Johnson- Yes, please call the first case. Also, Mr. Blankinship, will also  
61 read the captions and swear in all speakers as well.

62  
63 Mr. Blankinship- Yes sir, I certainly will. So, we have two conditional use  
64 permits and four variances on this morning's agenda. The first conditional use permit is  
65 CUP2022 number 54.

66  
67 **CUP2022-00054 LaSANDRA B. ROSE** requests a conditional use permit pursuant to  
68 Section 24-4402 of the County Code to operate a large family day home at 3900  
69 Rosemallow Place (Parcel 810-732-2639) zoned R-2AC, One-Family Residence District  
70 (Conditional) (Fairfield).

71  
72 Mr. Blankinship - Would everyone who intends to speak to this case please stand and  
73 be sworn in? Anyone intend to speak to 54? Raise your right hand. Do you swear the  
74 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so  
75 help you God?

76  
77 Mr. Rose – Yes.

78  
79 Mr. Blankinship- Thank you. Mr. Gidley, you can begin your report, and then  
80 we will hear from you.

81  
82 Mr. Gidley- Thank you Mr. Secretary. Good morning, Mr. Chairman,  
83 members of the Board. The subject property is located to the northeast of the intersection  
84 of Creighton Road and Laburnum Avenue, in the Harvey Point Subdivision. This is a new  
85 subdivision, and the applicant moved into her home back in March. She currently cares  
86 for five children but would like to expand this to keep up to 12 children. Caring for between  
87 six and twelve children requires a conditional use permit, thus today's request. This is the  
88 applicants home here and it contains just over 2,500 square feet of floor area. As you can  
89 see it has a large, paved driveway. It originally contained a 2-car garage, but this was  
90 converted into living space back in May, and it's this living space that would be used for  
91 the family day home. Finally, the neighbor, I mean the applicant's rear yard is also fenced,  
92 and so when it comes to play time, the children would also utilize the rear yard. In

93 evaluating this request, it is designated as Suburban Residential 2 on the Land Use Plan.  
94 This allows for single family dwellings, the zoning is R-2AC, One Family Residence  
95 District, this also allows for single family dwellings. A family day home is accessory to a  
96 single-family dwelling. The adjacent properties are also used for single-family dwellings,  
97 as you can see back here, and I can tell you this was built in as well. So, the use is  
98 consistent with what is around there. Finally, family day homes can play an important  
99 service for a community by providing care for children in nearby neighborhoods. So long  
100 as these are operated responsibly, they are appropriate for single-family neighborhoods.  
101 As for impacts on the neighbors, as you can see here, the rear yard is enclosed by a large  
102 vinyl privacy fence. This should help shield the operation from the neighbors. In addition,  
103 it would keep children in the rear yard, rather than having them wonder off. The applicant's  
104 driveway can also accommodate up to six vehicles. And to ensure the surrounding cul-  
105 de-sac, which does contain dwellings, does not get blocked by parents dropping their  
106 children off in the morning or picking them up in the afternoon, staff has proposed a  
107 condition requiring drop off and pick up to occur in the driveway. Finally, the homeowner's  
108 association was contacted, and they have not expressed any opposition to this case. So,  
109 in conclusion, with its converted garage, fenced rear yard, and large driveway, the  
110 applicant's property is certainly suitable for a proposed family day home. Any concerns  
111 about traffic from drop off and pick up can be addressed by the condition requiring these  
112 to occur in the driveway. Accordingly, staff can recommend approval of this request  
113 subject to the conditions in your staff report. If you have any questions, I will be happy to  
114 answer them. Thank you.

115  
116 Mr. Johnson- You mentioned that the kids would be going into the garage.  
117 Is that the area that they will be going into, staying at?  
118

119 Mr. Gidley- When they're inside the house. That has been converted to  
120 living space and as a result they would be within that enclosed area. Now, obviously they  
121 go and play outside too and that would be within the fenced rear yard.  
122

123 Mr. Johnson- Okay.  
124

125 Mr. Green- When you said it's been converted to living space, does that  
126 mean heating and cooling have been provided or added to that area, because you said  
127 that house is 2,500 square feet, I believe once you add heating and cooling to a particular  
128 area, it expands the square footage of the house, so I'm told. We don't have any pictures  
129 of what it would look like, do we?  
130

131 Mr. Gidley- No sir, we did not go inside the dwelling.  
132

133 Mr. Johnson- Any other questions from the Board or staff? No questions?  
134 Okay.  
135

136 Mr. Blankinship- Yes sir. Good morning.  
137

138 Mr. Rose- Good morning.

139  
140 Mr. Blankinship- Tell us your name and what you're interested in applying for.  
141  
142 Mr. Rose- I'm Jerry Rose, I'm the husband of Ms. LaSandra Rose, we've  
143 been doing daycare ever since 2010. We were in the Varina area and, off of Darbytown  
144 Road, in Darbytown Subdivision, which we did this same application a few years ago.  
145 Until we bought a new home, and so, we made sure that we did everything to the specs  
146 when we bought the house. Your field reps, we spent a little bit of money bringing that  
147 garage into living quarters, we had to insulate the ceiling, all the walls, according to the  
148 code... On the right of that picture there, we added that additional sidewalk, because we  
149 had no cut there from the beginning, so all the traffic for the daycare comes through that  
150 door. We do have on that side an independent heating and cooling unit as well. We spent  
151 over \$10,000 just for that. We spent about, almost \$30,000.00 in that one room since  
152 March. And, we have blessed a lot of parents, children since 2010. When we moved  
153 there, we had to tell some parents that we couldn't bring them with us because we were  
154 not set up for the 12. A lot of them cried, some called and said, "Ms. Rose when you going  
155 to get the license" and I said it takes time and got to go through the process to get to this  
156 point. We put the fence up as well to make it a professional, safe daycare. And also, like  
157 I say, I'm an ex-foster parent. We did that for 14-years as well. And I'm also a Pastor.  
158  
159 Mr. Johnson- 14-years?  
160  
161 Mr. Rose- Yes. So, Social Services said go hurry up and do what you  
162 got to do. We have been blessed working with the county, and the state, and we get to  
163 help families. And our, I guess our rate is actually probably one of the lowest in Virginia,  
164 because we are about helping families and kids.  
165  
166 Mr. Johnson- You have something?  
167  
168 Mr. Green- Hey, Mr. Rose, question for you. When you bought the house  
169 was it 2,500 square feet, when you bought it and was the garage unfinished?  
170  
171 Mr. Rose- Right, right. All those houses out there are unfinished, so I had  
172 to spend the money to bring it up to code.  
173  
174 Mr. Green- So, now that the garage... how many square feet are in the  
175 garage.  
176  
177 Mr. Rose- Well, that's a 20' by 20' garage, okay, and when you go up  
178 these three steps to go into the main house, if you turn to the right, there's a bathroom  
179 that we use for the daycare.  
180  
181 Mr. Green- I ask that because I'm told that once you add heating and air  
182 conditioning, and since you've closed that space off, that adds to the square footage of  
183 your home, so I would think that goes, at least, from 2,500 square feet to close to, I don't  
184 know, what 3,000square feet? Which is...

85  
186 Mr. Rose- I wouldn't know. I didn't calculate that, we converted  
187 everything, so it would be, like a bedroom, as far as the insulation. We put lights in like  
188 this all through the top of it as well. The lighting, wall to wall carpet.  
189  
190 Mr. Green- So, does the garage door go open?  
191  
192 Mr. Rose- No. The thing is sealed. We have the studs in that wall, about  
193 8 to 10-inches, we had to put the blow insulation in there all around there. We had to,  
194 windows, we had to go and buy special glass, or plexi-glass, thinking so that it would meet  
195 the standards according to what the county told me. So, it's airtight. You can set the unit  
196 at 68 degrees and it's real warm in there.  
197  
198 Mr. Green- Very nice, Mr. Rose. Very nice.  
199  
200 Mr. Rose- Thank you.  
201  
202 Mr. Green- Just don't let the county know they might come and reassess  
203 you!  
204  
205 Mr. Blankinship- We've already got his building permit.  
206  
207 Mr. Green- For larger square footage?  
208  
209 Mr. Blankinship- I'm looking at the real estate record now Mr. Green, and  
210 actually the 2,548 square feet does include the garage. So, it's 1,104 square feet on each  
211 level, plus the 400 or so for the garage makes the total 2,500.  
212  
213 Mr. Green- But that was before he finished it.  
214  
215 Mr. Blankinship- No, that's including it. It's already been captured.  
216  
217 Mr. Green- Good, so you're good to go.  
218  
219 Mr. Pollard- Good morning.  
220  
221 Mr. Rose- Good morning.  
222  
223 Mr. Pollard - I was just wondering what's the age range that you serve.  
224  
225 Mr. Rose- Age range is anywhere, I guess you'd say is a baby, that is...  
226 eight weeks old, ...what I like to, we can license up to children age 12, but we basically  
227 keep children around age three and a half, four. We try to prepare them to go to go to a  
228 daycare center. And because it's a points system, you know. A toddler under, what, 16-  
229 months is four points, and your only allowed 32 points. So, with the younger the kids, the

230 less kids you can have. And when they hit two, you can do the math, you can have up to  
231 12. Children.

232

233 Mr. Pollard - How many staff members do you have?

234

235 Mr. Rose- We have right now, on hold, she had two staff members, also  
236 me. I drive a school bus, and I come back in at 9, and I'm in and out, but I'm there. So, I  
237 guess I'm the handyman,

238

239 Mr. Blankinship- You're a busy man.

240

241 Mr. Johnson- Okay.

242

243 Mr. Pollard- Thank you.

244

245 Mr. Green- Thanks again. Very nice.

246

247 Mr. Johnson- Are there any other questions for the applicant? Does anyone  
248 else wish to speak in support of this request? None. Does anyone wish to speak in  
249 opposition? None. Thank you.

250

251 Mr. Blankinship- Do we have anyone on WebEx for this case.

252

253 Mr. Peterman- No one to speak on WebEx.

254

255 Mr. Johnson- Okay. If that's all, this hearing would be closed, a motion  
256 would be in order. What is the pleasure of the Board?

257

258 Mr. Pollard- I move that we approve the conditional use permit, subject to  
259 the conditions recommended by the staff. It is consistent with the Comprehensive Plan  
260 and Zoning Ordinance. The property is a suitable location for a daycare home and the  
261 privacy fence will mitigate any negative impacts.

262

263 Mr. Green- Second.

264

265 Mr. Johnson- Any discussion? All in favor.

266

267 Board Members- Aye.

268

269 Mr. Johnson- Any opposed? All five approved. No one opposed. Motion  
270 passed.

271

272 On a motion by Mr. Pollard, seconded by Mr. Green, the Board **approved CUP2022-**  
273 **00054 LaSANDRA B. ROSE's** request for a conditional use permit pursuant to Section  
274 24-4402 of the County Code to operate a large family day home at 3900 Rosemallow



321 7990 Upper Western Run Lane (Parcel 855-688-9603) zoned A-1, Agricultural District  
322 (Varina).

323  
324 Mr. Blankinship: Do you swear that the testimony you are about to give is the  
325 truth, the whole truth, and nothing but the truth, so help you God?

326  
327 Mr. Collins- I do, yes.

328  
329 Mr. Blankinship- Thank you. Mr. Madrigal.

330  
331 Mr. Madrigal- Thank you Mr. Secretary. Mr. Chair, members of the Board,  
332 good morning.

333  
334 Board- Good morning.

335  
336 Mr. Madrigal- Before you is a request to have an inground swimming pool in  
337 the side yard of a single-family dwelling. The subject property is accessed by a private  
338 road that extends half a mile south of Charles City Road. The parcel was originally part  
339 of a 102-acre tract of land owned by the Cochran family, which was divided among family  
340 members. The applicant inherited this 8-acre parcel of land. In April of 2019, he obtained  
341 a variance from the public street frontage requirement to build a single-family dwelling on  
342 the property. He subsequently built a one-story, 1,700-square-foot home with a 900-  
343 square-foot detached garage later that year. The home was placed 70 feet from the  
344 northern property line and 150 feet from the private road. The eastern part of the property  
345 adjacent to the road is generally level, but the western portion is constrained by steep  
346 slopes, a creek, and wetlands. The property is served by a private well and septic system.  
347 The applicant would like to construct a 576-square-foot inground swimming pool in the  
348 northern side yard adjacent the home. The area is 70 feet wide, relatively flat, and would  
349 not be encumbered by the existing septic drain field located behind the house. Because  
350 the pool will be in the side yard, it does require the approval of a conditional use permit.  
351 The property and proposed use are consistent with both the zoning and comprehensive  
352 plan designations of the property. The immediate area surrounding the site is rural in  
353 nature, comprising large tracts of land used for residential and farming purposes. The  
354 most affected neighbors are to the north at 7900 Upper Western Run Lane and are  
355 approximately 550 feet northwest of the proposed pool. You can see the structure here  
356 in the photograph. A one-family dwelling on a large tract of land is consistent with the  
357 general character of the area. The proposed pool will not be out of scale or intensity as  
358 compared to the surrounding area. It will also not be visible from the public right of way  
359 since the road is, Charles City Road, is approximately half a mile to the north. The pool  
360 will be partially visible from the private road, as there is an existing tree line along the  
361 western boarder of the road that obscures visibility. It will also be partially visible from the  
362 northern neighbor, but any impacts would be negligible as there is a four-and-a-half-acre  
363 pasture between the pool site and the neighbor's home. The long distance between the  
364 home and the existing topography and vegetation will mitigate any adverse impacts. So,  
365 in conclusion, based on the facts of the case staff, staff does recommend approval subject

366 to the attached conditions. That concludes my presentation. I'll be happy to answer any  
367 questions.

368  
369 Mr. Johnson- Any questions from the Board or staff? None. Can we hear  
370 from the applicant?  
371

372 Mr. Collins- I just want to add that we still, even though there are no direct  
373 neighbors to see the pool, we still intend to seclude it with a hedge row and some other  
374 type trees, along that fence line that was shown. On that driveway there's five homes.  
375 Everybody knows everybody and frankly everybody on the driveway is excited about the  
376 pool. Yeah, they're welcome to use it as well. That's all I have.  
377

378 Mr. Johnson- Also, Mr. Collins, with the pool, will you have a fence around  
379 it?  
380

381 Mr. Collins- Actually, I'm going to have an automatic pool cover, which the  
382 county doesn't require a fence when you have that, but I am also going to put a fence  
383 around it, yes. So, I'll have a pool cover, an automatic style pool cover and a fence.  
384

385 Mr. Johnson- Thank you.  
386

387 Mr. Collins- And there's a pool house in the works too. We'll get to that  
388 later.  
389

390 Mr. Blankinship- Is that going to be on the side or the rear?  
391

392 Mr. Collins- That's going to be towards the rear.  
393

394 Mr. Blankinship- Oh, okay. Hate to drag you back here again.  
395

396 Mr. Collins- Nah, nah, that will be towards the rear of the house, so we'll  
397 be good on that.  
398

399 Mr. Johnson- And I also noticed that it's a way from the main traffic road as  
400 well.  
401

402 Mr. Collins- Oh, absolutely.  
403

404 Mr. Johnson- And that way you have very few people having access to it  
405 anyway.  
406

407 Mr. Collins- Absolutely. Yes. Yes.  
408

409 Mr. Johnson- Okay.  
410

411 Mr. Collins- Plus the automatic pool covers, that's an electric cover that  
412 comes out, and you close the pool daily. You know, it's covered daily. And that's a locking  
413 type system, so nobody's going to wander into it.  
414  
415 Mr. Johnson- Okay, thank you.  
416  
417 Mr. Collins- It's a pretty nice pool.  
418  
419 Mr. Johnson- Okay.  
420  
421 Mr. Green- We'll see it when we come there.  
422  
423 Mr. Collins- Yes sir.  
424  
425 Mr. Johnson- Any other questions for the applicant? No. Any opposed to the  
426 applicant's request? None?  
427  
428 Mr. Blankinship- Is there anyone on WebEx?  
429  
430 Mr. Peterman- No one on WebEx.  
431  
432 Mr. Blankinship- Thank you  
433  
434 Mr. Johnson- Okay, appreciate it. This hearing is now closed, a motion  
435 would be in order. What is the pleasure of the Board? I motion, I move that we approve  
436 the use permit subject to the conditions recommended by staff. And it is consistent with  
437 the Comprehensive Plan and the Zoning Ordinance. This... this side yard is the only place  
438 that they can put a pool, and the nearest house is 500-feet away. Again, I motion that we  
439 approve.  
440  
441 Mr. Pollard- Second. Second the motion.  
442  
443 Mr. Johnson- It's been motioned and seconded. All in favor?  
444  
445 Board- Aye.  
446  
447 Mr. Johnson- All opposed? None opposed.  
448  
449 Mr. Johnson- So the motion passed. All in favor.  
450  
451 On a motion by Mr. Johnson, seconded by Mr. Pollard, the Board **approved CUP2022-**  
452 **00055 MARTIN COLLINS** request for a conditional use permit pursuant to Section 24-  
453 4404.A.1 of the County Code to allow a swimming pool in the side yard at 7990 Upper  
454 Western Run Lane (Parcel 855-688-9603) zoned A-1, Agricultural District (Varina). The  
455 Board approved the request subject to the following conditions:  
456

457 1. This conditional use permit authorizes the placement of an in-ground swimming pool  
458 in the northern side yard. All other applicable regulations of the County Code remain in  
459 force.  
460

461 2. This conditional use permit applies only to the improvements shown on the plot plan  
462 and pool design filed with the application. Any additional improvements must comply with  
463 the applicable regulations of the County Code. Any substantial changes or additions to  
464 the design or location of the improvements will require a new conditional use permit.  
465

466 3. Before beginning any clearing, grading, or other land disturbing activity, the applicant  
467 must obtain approval of an environmental compliance plan from the Department of Public  
468 Works.  
469

470 4. Any exterior lighting must be shielded to direct light away from adjacent property and  
471 streets.  
472

473 5. The swimming pool must be secured as required by the Building Code.  
474

475 6. Diving boards, pool slides, and similar equipment are prohibited between the pool and  
476 the side property line.  
477

478 7. The applicant must obtain a building permit for the proposed in-ground swimming pool  
479 by December 16, 2024, or this conditional use permit will expire. If the building permit is  
480 cancelled or revoked after that date due to failure to diligently pursue construction, this  
481 conditional use permit will expire at that time.  
482

483  
484 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5  
485 **Negative:** 0  
486 **Absent:** 0  
487

488  
489 Mr. Blankinship- Alright, Mr. Chair, members of the Board, at the request of the  
490 applicant we're going to change the order of two cases here. There are four variances,  
491 as I've mentioned. Three of them are all in the same neighborhood. So, we're going to  
492 take the one that is not in that neighborhood first.  
493

494 Mr. Johnson- Okay.  
495

496 Mr. Blankinship- That way we will be able to flow straight through the three that  
497 are in the same neighborhood. So, we're first going to hear variance 2022 number 22,  
498 Delta Land Company, LLC.  
499

500 **VAR2022-00022 DELTA LAND COMPANY, LLC** requests a variance from Section 24-  
501 6402.A.2 of the County Code to build a one-family dwelling at 2940 Chile's Road  
502 (Lakeview) (Parcel 774-775-4733) zoned A-1, Agricultural District (Brookland). The lot  
503 area requirement and lot width requirements are not met. The applicant has 23,958

504 square feet lot area and 100 feet lot width where the Code requires 30,000 square feet  
505 lot area and 150 feet lot width. The applicant requests a variance of 6,042 square feet lot  
506 area and 50 feet lot width.

507  
508 Mr. Blankinship - Would everyone who intends to speak to this case please  
509 stand and be sworn in?

510  
511 Do you swear the testimony you are about to give is the truth, the whole truth, and nothing  
512 but the truth, so help you God?

513  
514 Mr. Rempe - I do.

515  
516 Mr. Blankinship - Thank you. Alright, Mr. Madrigal.

517  
518 Mr. Madrigal- Thank you sir. Mr. Chair, members of the Board, before you  
519 is a request to build a one-family dwelling on a substandard lot in an agricultural district.  
520 The property is part of Section C of the Lakeview Subdivision which was recorded in 1924.  
521 The parcel consists of four 25-foot-wide lots, totaling 100 feet in width and 23,958 square  
522 feet in area. The lots were sold together in 1925 and remained in the family until the  
523 property was sold in 1997. In 1999, the new owner applied for a variance, but it was  
524 denied due to opposition from neighbors and their concerns that the property would not  
525 support a septic system. Since that time, the technology surrounding individual on-site  
526 septic systems has evolved, and the Department of Health has allowed alternative septic  
527 systems on land that does not perc. The current owner, Mr. Dovell, bought the property  
528 in 2004, five years after the original variance was denied. He paid \$9,000.00 for the  
529 property, which was the assessed value at the time, and was significantly lower than  
530 developable lots. The applicant, Delta Land Company, would like to build a dwelling on  
531 the property. The sketch submitted with the application shows a 40-foot front yard  
532 setback, a side setback of 38 feet from Hackett Street, 26 feet from the opposite side,  
533 and a rear yard setback of approximately 174-feet. The example house plan shows a two-  
534 story, 1900sqft home with three bedrooms, two full baths, and half bath. Section 24-  
535 6402.A.4 of the Zoning Ordinance requires that any new dwelling that is to be served by  
536 a septic system must meet current Health Department requirements. If it can't meet those  
537 requirements, a building permit cannot be approved. With respect to the Threshold  
538 question, items 1 and 2 have been satisfied and as a result the Board has the authority  
539 to grant a variance if all five subtests are met. After staff's analysis, it appears that the  
540 case meets the legal requirements to grant a variance. Briefly, the property is otherwise  
541 suitable for a dwelling, but can't be used for that purpose. The hardship is due to code  
542 changes after the property was defined. Neither the owner, nor the applicant, caused the  
543 hardship. Any detrimental impacts created by the proposed dwelling will be addressed by  
544 the Health Department and the Department of Public Works, and the conditions are  
545 specific to this lot. The use is allowed, and no other relief is available. As a result, staff  
546 recommends approval subject to conditions. Please note that we have received three  
547 letters of opposition from neighbors on this request. You all have copies of those. That  
548 concludes my presentation. I'll be happy to answer any questions.

549

550 Mr. Johnson- Any questions from the Board?  
551

552 Mr. Reid- I have a question. One of the neighbors noted something  
553 about the existing natural drainage of the area. Where, what are they referring to on the  
554

555 Mr. Blankinship- The drainage area.  
556

557 Mr. Madrigal- The drainage area. Let's see here. Where's that on the  
558 property. It's hard to tell here, but there is a culvert on the property, that drains or picks  
559 up here. Let's see if we have a picture of it. There we go.  
560

561 Mr. Reid- Okay.  
562

563 Mr. Madrigal- So, there you can see the culvert. The property slopes down  
564 to this area, and also from the back to front. So, natural drainage line is kind of right along  
565 this area here, and then it continues under the street, and goes across the street to the  
566 lot across the street.  
567

568 Mr. Reid- Okay.  
569

570 Mr. Madrigal- There's a home across the street, and the drainage area  
571 continues kind of this way here. So, if you're looking at the aerial, it kind of does this and  
572 then goes across the street this way.  
573

574 Mr. Reid- Okay.  
575

576 Mr. Green- And what's the square footage of the house that they want to  
577 build?  
578

579 Mr. Madrigal- Let's see here. So, approximately 2,000 square feet, the first  
580 floor is 956 square feet and the second floor is exactly the same.  
581

582 Mr. Johnson- Okay. Any other questions for the applicant?  
583

584 Mr. Green- Two levels?  
585

586 Mr. Madrigal- Yes, sir. Two stories.  
587

588 Mr. Green- You got three letters, yes.  
589

590 Mr. Johnson- And that water line is what's conflicting with the sewage lines  
591 as well?  
592

593 Mr. Madrigal- No sir, those are, those are different. The culvert is more so  
594 for rainwater, and there is no sewage line, so it's going to be an on-site septic system.

595 But because there's concerns that the property wont perc, it will probably have to be an  
596 alternative septic system.

597  
598 Mr. Pollard- You mentioned three letters, I only see one. Got it. Okay.

599  
600 Mr. Johnson- Any other, any other questions.

601  
602 Mr. Green- Not for staff, some for the builder.

603  
604 Mr. Johnson- Okay. No other questions. We're ready for the applicant.

605  
606 Mr. Rempe- Good morning, Mr. Chairman, Board members, and staff. My  
607 name is Mark Rempe, I'm here to speak on behalf of the applicant. Happy Holidays to  
608 everybody, I appreciate the staff's time working on this case.

609  
610 Mr. Madrigal- Mark, you've got to adjust that microphone a little bit higher.

611  
612 Mr. Rempe- Yeah, I know, my back's hurting here guys. The applicant  
613 concurs with the findings of the staff, that the variance tests have been met, and we would  
614 like the Board to approve the variance and get the zoning approved.

615  
616 Mr. Green- Mr. Rempe, I noticed that you come before us a lot because  
617 you do a lot of building. Can you address the concerns that the neighbors have about the  
618 drainage, because I feel comfortable that you build so much, that you've taken that into  
619 consideration. Can you explain to us how you're going to handle that.

620  
621 Mr. Rempe- We will work with Public Works to make sure the drainage  
622 satisfies the code. Right now, we want to, before we spend any more money, we want to  
623 make sure the zoning is okay. The next big threshold issue will be the septic. We had a  
624 septic consultant go out to the site. He believes he can get an alternative septic system  
625 to work. He's got to meet the Health Department out there. We'll hire an engineer to work  
626 to do a grading plan to make sure everything meets code for drainage. So, that will be  
627 taken care of by a licensed engineer.

628  
629 Mr. Green- And just for my educational purposes, when you say  
630 alternative septic site, what does that mean?

631  
632 Mr. Rempe- Well, a conventional septic system is one that the ground will  
633 naturally take care of the sewage. The alternative septic system, it may be raised a little  
634 bit higher, you might have more systems in there, more technology to take care of the  
635 sewage issues. This one here is going to probably be a level 3 septic system, it's probably  
636 going to cost like \$30,00.00 to put in.

637  
638 Mr. Green- Thank you.

639  
640 Mr. Rempe- Thank you.

641 Mr. Johnson- Also, with that sewage system that you were talking about,  
642 would that be, it will be higher to, up on the ground than, right, than the regular one would  
643 be, wouldn't it?  
644  
645  
646 Mr. Rempe- A conventional system is typically underground, the soil is  
647 really good, gravel, gravel trenches, very inexpensive to put in, but this case, it's going to  
648 be an alternative septic system.  
649  
650 Mr. Blankinship- So, you'll be building up layers above the ground?  
651  
652 Mr. Rempe- Yes, and it will be right on the lot so. We'll work with the Health  
653 Department; we'll work with County staff to make sure everything is done per code.  
654  
655 Mr. Johnson- Okay. Any other questions for the staff, for the applicant?  
656  
657 Mr. Green- Other than, Mr. Chairman, I'm going to learn what the  
658 alternative septic systems are that folks are beginning to utilize. That seems to work. This  
659 seems to be warranted to be educational for us. Someone else tried to put in somewhere  
660 else a septic system, and they were explaining to me how it worked. That process made  
661 sense.  
662  
663 Mr. Johnson- And has that been put in, have you done that before.  
664  
665 Mr. Rempe- Alternative Septic Systems?  
666  
667 Mr. Johnson- Yes.  
668  
669 Mr. Rempe- Yes. Yes, we've done a bunch. There's a lot of, a lot of lots  
670 out there that have not been put into use, that can be put into use, that can add to the tax  
671 revenue, first time homebuyers can be out there buying these lots, so the technology of  
672 putting in an alternative system has really helped out with all these needs.  
673  
674 Mr. Johnson- Okay, thank you. Any other questions? None? If not, this  
675 hearing is closed and the motion.  
676  
677 Ms. Dauberman- Sir...  
678  
679 Mr. Blankinship- I'm sorry, you didn't raise your hand before.  
680  
681 Ms. Dauberman- I'm so sorry, I just waited for you to say opposition.  
682  
683 Mr. Blankinship- Quite alright. So, you wish to speak to this case, would you  
684 please stand and be sworn in please?  
685  
686 Mr. Johnson- Yes.

687  
688 Mr. Blankinship- Do you swear the testimony you are about to give is the truth,  
689 the whole truth and nothing but the truth, so help you God?  
690  
691 Mr. Dauberman- Yes.  
692  
693 Mr. Blankinship- Thank you.  
694  
695 Mr. Johnson- Go on over to the mic.  
696  
697 Mr. Blankinship- It's your turn so go ahead.  
698  
699 Mr. Dauberman- We are new to this process, Mr. Chair, members of the Board,  
700 now we...  
701  
702 Mr. Blankinship- Tell us your name.  
703  
704 Mr. Dauberman- Lavan Dauberman. Last name D A U B E R M A N. Speaking  
705 on behalf of Kay Atwell, or Ella Atwell, the landowner, and we feel like the zoning  
706 ordinances are in place for a reason. The lot is pretty small in that area. We just ask that  
707 they would be upheld.  
708  
709 Mr. Johnson- Okay... He's been sworn in, and if you're going up you have  
710 to be sworn in as well.  
711  
712 Ms. Dauberman- May I do so.  
713  
714 Mr. Johnson- Yes.  
715  
716 Mr. Blankinship- Do you swear the testimony you are about to give is the truth,  
717 the whole truth, and nothing but the truth, so help you God?  
718  
719 Ms. Dauberman- I do.  
720  
721 Mr. Blankinship- Thank you. Miguel, would you put the expanded aerial up?  
722  
723 Mr. Madrigal- Yes sir.  
724  
725 Ms. Dauberman- My name is Barbara Dauberman, I have lived at that property  
726 for 40 years. This property is very small, it is very wet. It has been wet for my entire life.  
727 It is not to the standard, and no one has tried to bring it to the standard, as far as the  
728 existing footprint to make it within the agricultural zoning. So, I was very disappointed  
729 when the variance was brought forward without any efforts to do so. Not to mention the  
730 concern for the wetlands becoming part of the adjacent property. That would impact all of  
731 the neighbors. So, my concern is, and they were out there at one point trying to move  
732 land and make improvements as they called them. Which pushed water onto other

733 properties. So, I'm very concerned, and I think if you look at the property the staff may be  
734 able to address that what grows in there appears to be wetlands.

735  
736 Mr. Johnson- Also, can you tell me where you are?

737  
738 Ms. Dauberman- We are at 2900, so our house is across the field, yes, right  
739 there.

740  
741 Mr. Johnson- Right there, okay.

742  
743 Ms. Dauberman- And then my mother's house is the one that is adjacent to it,  
744 behind it, and she's lived there since 1974. And we came when the variance was  
745 requested previously. So, I also believe they were aware that there was a variance  
746 request and denied before and knew the opposition. So, I don't think this is new news to  
747 the homeowner, well the property owner. And they did purchase at a very discounted  
748 price.

749  
750 Mr. Johnson- And is that area lower, as far as land area, is that lower than  
751 where you're living at?

752  
753 Ms. Dauberman- Yes sir. There is a somewhat, what I would call a small creek  
754 that runs through it. And the deer do love it, but that is not relevant.

755  
756 Mr. Blankinship- It is to the deer.

757  
758 Ms. Dauberman- It is to the deer.

759  
760 Mr. Green- Excuse me, your name again is Ms.?

761  
762 Ms. Dauberman- Dauberman.

763  
764 Mr. Green- Dauberman. Mrs. Dauberman, I've been on this board five,  
765 going on almost six years, and Mr., I forgot...

766  
767 Mr. Blankinship- Rempe.

768  
769 Mr. Green- Mr. Rempe seems to specialize in these kinds of properties.  
770 Have you had any real discussion with Mr. Rempe as to how they're going to work,  
771 because since I've been on here, we've approved a lot of the properties that are on small  
772 lots. And he, and the company he represents, works for I guess, and I've just never seen  
773 anyone come back and complain about it. So, I guess, Mr. Rempe... can you really explain  
774 to them, once you rebut, with some of their concerns?

775  
776 Ms. Dauberman- So, my concern is that the property is not actually the size  
777 required to build on it, and so I do not understand how they would be able to build on a  
778 smaller lot that I would not have been, and he is not the property owner, he is just the

779 developer. So, he really has no, no offense, but no interest in the surrounding, or adjacent  
780 areas. Nor has he addressed or come to see any of the adjacent property owners.

781  
782 Mr. Green- And to be quite honest with you, since I've been on the Board,  
783 that has been some of my concern, but it seems there is a specialty market that his team,  
784 or whoever he represents, is... they do that, and we have approved smaller lots. Smaller  
785 lot sizes in other areas. So, I think, you know, maybe a conversation with Mr. Rempé  
786 could satisfy that. Because I too was always concerned about, you know, building on  
787 smaller lots, and so far, like I said, I haven't seen anybody come back with any real  
788 concerns or complaints after the fact.

789  
790 Ms. Dauberman- I have multiple concerns about the appearance of what that  
791 septic system is going to look like above ground next to our property. I have concerns  
792 about what the mitigations going to take to make those wetlands work, and how that will  
793 impact our neighboring property. If we want to build on the lot behind that, which is big  
794 enough to build on, we are going to be looking at that, so I think the impact to the adjacent  
795 neighbors is pretty substantial as far as the property value. I feel like if I built there in  
796 2004, needed to hold up to the standards, why would he not need to be held to the same  
797 standard?

798  
799 Mr. Dauberman- I guess we're also concerned about the precedence that sets  
800 too. Does that mean everybody else in that subdivision, because there are so many lots,  
801 that they would get variances too. So, I guess we are concerned about that as well.

802  
803 Mr. Pollard- I guess, if Mr. Blankinship, or someone from staff could restate  
804 the conditions that must be met for a variance to be approved.

805  
806 Mr. Blankinship- Yes sir, I'd be happy to. Just to give you a very brief  
807 explanation of the variance. The philosophy behind the variance. This is a piece of  
808 property that was subdivided many years ago, as you're aware, and it was bought by a  
809 property owner with the intention, at some point, of building a house on it, and the Zoning  
810 Ordinance, after that was done, after the lot was created, after it was bought by a property  
811 owner, the County changed the Zoning Ordinance to render that lot unbuildable. So, your  
812 familiar, of course, with the constitutional prohibition on the government taking property  
813 without just compensation. Well, the Supreme Court has ruled that if a regulation such as  
814 the Zoning Ordinance leaves a property with no beneficial use whatsoever, that that's the  
815 same as the County taking the property. There's no difference in the courts eyes between  
816 us saying "we now own your land" and us saying "you still own the land, but you can't use  
817 it for anything". And in this case, you know, after our review of it, we have concluded as  
818 staff, that in this case, this property, if they can't build a house on it, it can't be used for  
819 anything. So, if that is the case, then the variance is the mechanism for allowing a property  
820 owner to get some reasonable beneficial use out of his property. But in addition to making  
821 that finding; that's usually the difficult case. Most people who want a variance don't realize  
822 that they have to make that argument first. That there is no reasonable use for the  
823 property without the variance. But even if you do make that argument successfully, there  
824 are five other tests that have to be met, and these are all in the staff report, which we

825 would be happy to provide you a copy. But the tests basically are that it's not the  
826 applicant's fault, he didn't create the situation. And that's true here, again because the lot  
827 was subdivided before the ordinance change. The second one is that there's no  
828 detrimental impact on the neighbors, and that is the one that is the most, the most of a  
829 judgement call for this Board to make. That they have to determine whether the  
830 detrimental impacts that you're describing, you might have to look at a house where you're  
831 not used to seeing a house, whether or not that rises to the sort of detrimental impact that  
832 would leave us in a position of saying "you can't build on that lot, you can't use your land  
833 for anything". The third one is that there has to be some sort of unique circumstance to  
834 this property. If it's something that applies all up and down the street, that in and of itself  
835 is a reason to deny a variance, because if there is a problem that affects everybody in the  
836 area, then the Board of Supervisors, who sets the Zoning Ordinance, needs to change  
837 the ordinance to address that issue. But if it's something that is unique, because you can't  
838 write an ordinance for every piece of property in the county. If it's something unique to  
839 this property then it does pass that test, and we feel that the history of this property does  
840 meet that requirement. The fourth is that they, what's the fourth test. The fifth one is that  
841 you can't be eligible for other forms of relief, such as a special exception or modification,  
842 which this property is not. Oh, the fourth one is that you are not changing the use of the  
843 property. So, the property is zoned for single-family homes, and he wants to build a single-  
844 family home. We couldn't give him a variance to build a gas station there, for example.  
845 We can't use a variance to change the use of a property. The use has to have been  
846 allowed by the Zoning Ordinance. So, there are a very strict set of criteria that are in place,  
847 and Mr. Rempe will confirm that our staff takes a very strict view of all of those legal tests,  
848 and we don't recommend approval of a case unless we really think there is very little  
849 option. But, in this case, it's our opinion that to not grant a variance would result in the  
850 taking of the property, could, could be seen by a court as resulting in the taking of a  
851 property.

852  
853 Ms. Dauberman- Sir, I appreciate that education. I have one other question.  
854 When he purchased the property in 2004, was it not a requirement that he have an acre  
855 lot.

856  
857 Mr. Blankinship- It was at that time, and that case has been made to the  
858 Virginia Supreme Court before, and the Supreme Court has ruled that an applicant has a  
859 right to buy a piece of property that he knows needs a variance. That that does not actively  
860 render the variance, you know, something that the Board cannot approve. It's about the  
861 land having, you know somebody at some point owned a piece of land that was buildable  
862 and then the County changed the law. Now, that has changed hands a bunch of times  
863 since then, but it is still a piece of property that there is no other use for.

864  
865 Mr. Pollard- And I wanted to speak to back in 1999, the variance was  
866 denied, and for some of the same concerns that you have raised, and so, while one of  
867 the main oppositions was the septic system, and so now it's 2023, technology has  
868 changed and now it can accommodate a septic system. And so that, is what kind of  
869 brought us back here. And so, it's not a case where, you know, that was a concern of  
870 mine too, you bought this property, you know it was denied for a variance in the past, but

871 the primary reason it was denied was the septic system, and those septic system details  
872 have changed.

873  
874 Ms. Dauberman- And he's also not required to have the same setbacks that's  
875 required for...

876  
877 Mr. Blankinship- He is required to meet the setbacks in the code. I mean, you  
878 can also apply for a variance to setbacks. He is not requesting a variance from the  
879 setbacks. Would you put the site plan back up? The plan that he has showed meets the  
880 setback requirements of the County Code.

881  
882 Ms. Dauberman- So, can you refresh my memory, is it not 50-foot from the  
883 front?

884  
885 Mr. Blankinship- It is for newly created lots. For lots created prior to 1960, there  
886 is a different set of setbacks, and the front setback there is 35 feet.

887  
888 Ms. Dauberman- Thank you. I appreciate that clarification. I appreciate your  
889 time. I am still opposed to this purchase, I mean we have offered to buy the property in  
890 the past, so I do not feel that it's a hardship, that he could not have done something  
891 different. He has chosen not to, and he's owned it since 2004, so I would just appreciate  
892 your consideration and the neighbors, and the appearance of the neighborhood, and that  
893 we all appreciate our rural agricultural area, and don't want this to be a precedent that is  
894 set on our current existing site.

895  
896 Mr. Green- Mr. Blankinship, could I ask that at some point staff, or  
897 someone, show us the different septic systems that are, you know, now being utilized,  
898 because she did say that she is concerned about the potential of being able to see the  
899 septic system. While we know most of them are underground, and with technology  
900 changing, you know, what do they look like? The different types. So, I think if we had had  
901 that, I don't know if that would have alleviated any of your concerns, but I'm curious about,  
902 about, you know, what they look like now.

903  
904 Ms. Dauberman- If you saw that lot, you would be surprised if it passed to perc  
905 at all, it is very wet. So, I'm not sure if this is even relevant, because it may not come to  
906 fruition...

907  
908 Mr. Blankinship- That's entirely possible.

909  
910 Ms. Dauberman- Yes sir, and I understand that, and appreciate it, but I felt that  
911 if I didn't at least speak today, that you would have no idea that neighbors were concerned  
912 with the change.

913  
914 Mr. Blankinship- Yeah, we appreciate you being here...taking time out of your  
915 day to come.

916

917 Mr. Pollard- Thank you.  
918  
919 Mr. Green- Thank you.  
920  
921 Mr. Johnson- Thank you.  
922  
923 Mr. Blankinship- And yes, Mr. Green, I think that is an excellent idea, I know  
924 just enough, you know, I've told you everything I know about alternative septic systems  
925 this morning, so I would also benefit from some additional education.  
926  
927 Mr. Green- Yeah, just curious as to what they look like now, and houses  
928 that have them, and...  
929  
930 Mr. Pollard- It gives me pause that in 99, it was opposed and in 99 sounds  
931 like it was four or five neighbors that showed up, and then we have three letters of  
932 opposition now, so I would like to be a little better educated on the differences between  
933 now and then.  
934  
935 Mr. Blankinship- That's the reason your job as Board members is harder than  
936 ours as staff, because we write our report for the public hearing and you have to make  
937 your decision after the public hearing, and that detrimental impact is a call that is very  
938 difficult for you to make.  
939  
940 Mr. Pollard- I'm not scared to delay my decision!  
941  
942 Mr. Johnson- Alright, any other questions?  
943  
944 Mr. Rempe- Yes, I would just like to point out that we appreciate the  
945 opposition coming out here and we're sensitive to your concerns. We've got a long ways  
946 to go with staff to connect the property with the Health Department for looking at the  
947 project, so this is just about the zoning right now. I will point out that Henrico staff did walk  
948 the property and they didn't find any wetlands, so that's been taken care of. This is just a  
949 first step of a long process to go through before getting a building permit, honestly.  
950  
951 Mr. Johnson- So they've been out and observed it as well. That's one of the  
952 good things, we want to see what is going on. Also, if you can't use a property, it's no  
953 good to anyone, the County nor the individual that owned it. And this Zoning Ordinance  
954 also, there's things that change as time goes on. You have other things coming up that  
955 can curtail some of those things that were happening in the past. Thank you.  
956  
957 Mr. Green- Well...  
958  
959 Mr. Johnson- Go ahead.  
960  
961 Mr. Green- While appreciate that what you said, if in fact someone, like  
962 the family said they were going to buy, that they wanted to buy the land, it would be some

963 use then be put on the tax rolls and added to the landscape footprint of their land. So, I  
964 just wanted to throw that in.

965  
966 Mr. Pollard- Before we have a motion, I wanted to say that I kind of  
967 want...more time, more time for the property owner to get with the neighbors and see  
968 how things, kind of explain to them how some of their concerns can be addressed given  
969 that there's three people in opposition, maybe more. And then, if just to go forward for  
970 approval, just to have the confidence that those aren't real concerns. That the new septic  
971 system is addressing a lot of those concerns, or that what the property owner plans to do  
972 will address the other concerns.

973  
974 Mr. Green- I guess the next question is what kind of delay, if we delay  
975 then, delay or defer, what kind of impact would that have on the individual that wants to  
976 build. Does it matter a 30-day delay or what?

977  
978 Mr. Johnson- Mister...?

979  
980 Mr. Green- Rempe.

981  
982 Mr. Johnson- Can you...

983  
984 Mr. Rempe- We can certainly delay the request for 30 days if you want to.  
985 We, you know, the first step is to get the zoning done, and we can spend a lot of money  
986 to figure out the rest, but you know I'm here in front of the board all the time, so if you  
987 guys want me to delay, I'll delay.

988  
989 Mr. Bell- I take it you haven't talked to the people... that is making the  
990 complaint.

991  
992 Mr. Rempe- Correct. We have not spoken.

993  
994 Mr. Bell- Would it be a benefit if you all got together and run through  
995 what could be done with each other face to face, instead of sitting here trying to make do  
996 with what we can about everybody's thinking.

997  
998 Mr. Johnson- And it's...

999  
1000 Mr. Bell- How long would that require if...

1001  
1002 Ms. Dauberman- We'd be happy to take your card...

1003  
1004 Mr. Rempe- Yeah, we can figure something out as far as the septic  
1005 screening with planting and such.

1006  
1007 Mr. Blankinship- The Boards next meeting is January 26<sup>th</sup> so that would give  
1008 everybody six weeks.

1009  
1010 Mr. Green- And also, just for your satisfaction, we do go out, as board  
1011 members, and survey and look at land and property and this one has piqued my curiosity,  
1012 so I'll make a point to go out there and hopefully I don't get...  
1013  
1014 Mr. Dauberman- We'll be happy to meet you out there...  
1015  
1016 Mr. Green- You can't, we can't. In this process, we can't have discussions  
1017 with either side. We can only hope that nobody shoots us while we're out there.  
1018  
1019 Mr. Johnson- Okay.  
1020  
1021 Mr. Green- So trust that we'll go out and see it, or I will.  
1022  
1023 Mr. Johnson- Okay. Any others want to speak in opposition of this request?  
1024 Any on WebEx?  
1025  
1026 Mr. Blankinship- Is there anyone on WebEx?  
1027  
1028 Mr. Peterman- No one on WebEx.  
1029  
1030 Mr. Blankinship- Thank you.  
1031  
1032 Mr. Johnson- Okay. In this case... the hearing is... do you have a question?  
1033  
1034 Mr. Blankinship- ...ready for a motion.  
1035  
1036 Mr. Bell- ... a motion.  
1037  
1038 Mr. Johnson- Yes, that's what I was getting ready to do.  
1039  
1040 Mr. Bell- I move that we defer this request to January 26<sup>th</sup> to provide a  
1041 drainage study, to prove that the system... I must excuse myself, I read very well, but my  
1042 glasses that do most of the reading aren't with me right now.  
1043  
1044 Mr. Blankinship- I think you did okay. Motion to defer.  
1045  
1046 Mr. Pollard- I second the motion.  
1047  
1048 Mr. Green- Well, can I add an addition to that?  
1049  
1050 Mr. Blankinship- Sure.  
1051  
1052 Mr. Green- Could I ask that we... also have a presentation on what these  
1053 septic systems look like prior, before we do that, because that would give us some time  
1054 to understand what they all look like.

1055  
1056 Mr. Blankinship- I will certainly try to pull that together. I will have to rely on  
1057 other people to do that, so I can't speak for their schedule, but...  
1058  
1059 Mr. Green- I appreciate it.  
1060  
1061 Mr. Blankinship- We'll do what we can.  
1062  
1063 Mr. Green- Thank you sir.  
1064  
1065 Mr. Johnson- Again, all in favor...  
1066  
1067 Mr. Green- Is there a second?  
1068  
1069 Mr. Pollard- There's a second.  
1070  
1071 Mr. Blankinship- Mr. Pollard...  
1072  
1073 Mr. Green- Oh, you said second... discussing...  
1074  
1075 Mr. Johnson- Didn't we just have the discussion? Any Discussion. None. All  
1076 in favor?  
1077  
1078 Board members- Aye.  
1079  
1080 Mr. Johnson- All opposed? All five approve and none oppose.  
1081  
1082 On a motion by Mr. Bell, seconded by Mr. Pollard, the Board **deferred** case **VAR2022-**  
1083 **00022 DELTA LAND COMPANY, LLC's** request for a variance from Section 24-6402.A.2  
1084 of the County Code to build a one-family dwelling at 2940 Chiles Road (Lakeview) (Parcel  
1085 774-775-4733) zoned A-1, Agricultural District (Brookland). The case was deferred until  
1086 the January 26, 2023, meeting.  
1087  
1088  
1089 **Affirmative: Bell, Green, Johnson, Pollard, Reid 5**  
1090 **Negative: 0**  
1091 **Absent: 0**  
1092  
1093  
1094 Mr. Blankinship- Thank y'all very much. Alright. Variance number 2022 number  
1095 21, Delta Land Company. A variance in the front yard setback, lot area requirement, and  
1096 lot width requirement to build a one-family dwelling in 3313 Waverly Boulevard, in East  
1097 Highland Park, in the Fairfield Magisterial District. Would everyone who intends to speak  
1098 to this case please stand and be sworn in.  
1099

1100 **VAR2022-00021 DELTA LAND COMPANY** requests a variance from Sections 24-  
1101 3105.G.1 and 24-6402.A.2 of the County Code to build a one-family dwelling at 3313  
1102 Waverly Boulevard (East Highland Park) (Parcel 798-734-5927) zoned R-4, One-Family  
1103 Residence District (Fairfield). The front yard setback, lot area requirement, and lot width  
1104 requirement are not met. The applicant has 20 feet front yard setback, 4,336 square feet  
1105 lot area, and 41 feet lot width. The Code requires 35 feet front yard setback, 6,000 square  
1106 feet lot area, and 50 feet lot width. The applicant requests a variance of 15 feet front yard  
1107 setback, 1,664 feet lot area, and 9 feet lot width.

1108  
1109  
1110 Mr. Blankinship - That's it. Everyone's already been sworn in. Alright, Mr.  
1111 Gidley.

1112  
1113 Mr. Gidley- Yes sir. Thank you, Mr. Secretary. The subject property is  
1114 located west of Mechanicsville Pike, near where Dill Road crosses into the City of  
1115 Richmond. It is part of the Highland Park Subdivision that was platted back in 1917. Due  
1116 to the small size of the lots in the neighborhood, people have typically acquired two or  
1117 more lots and put them together to meet lot area and lot width requirements and to provide  
1118 enough room for a new home to be constructed. Both of the adjacent dwellings, for  
1119 instance, were constructed on two lots. This is the home on the left, and then the home  
1120 to the right is right here. As you are aware, for a variance to be granted, as Mr. Blankinship  
1121 just went through, you must meet at least one of the threshold tests, along with all five  
1122 subtests. First, a home may not be built on the property, however, as noted in your staff  
1123 report, homes in this neighborhood have typically been built on two or more lots. Given  
1124 the small size of this lot, along with its narrowness, it is doubtful whether it was ever  
1125 intended to be buildable by itself. Staff does believe Threshold Test Number 2 is met,  
1126 similar to the last case, because the subdivision was recorded in 1917, prior to the first  
1127 Zoning Ordinance, the hardship faced by the applicant predates the Zoning Ordinance.  
1128 Since one of the Threshold Tests is met, all five subtests must also be met. However,  
1129 staff does not believe all of these are met. Our main concern is detrimental impact on  
1130 nearby property. As I noted, both of the adjacent homes are built on two lots, the subject  
1131 property by contrast is a single undersized lot that narrows to only 20-feet in the rear yard.  
1132 In order to shoehorn a dwelling onto this lot that will meet side yard setbacks, the applicant  
1133 is proposing a home that is only 19-feet 8-inches wide. You can see here, and this is less  
1134 than half the width of the adjacent homes, which are 39 and 40-feet wide, respectively.  
1135 Staff has also received letters in opposition from both of the adjacent homeowners  
1136 expressing concerns about building on such a small lot, along with potential impacts on  
1137 their property values. Those are in your staff report. Finally, there is also a concern about  
1138 adding a driveway to this intersection. A right-angle intersection and stop sign are  
1139 obviously safer. Here you have two roads that carry quite a bit of traffic as people leave  
1140 the neighborhood via Dill Road, and they merge here, and to put a driveway into that  
1141 would only add to the potential for an accident there. Although, the main concern, again,  
1142 is the detrimental impact to the neighbors. So, in conclusion, staff believes this case  
1143 meets some of the requirement for a variance, but it does not meet all of the requirements.  
1144 The lot is over 27% smaller than the already reduced requirements for older lots. Building  
1145 a 19-foot home on such a narrow lot would in fact have a detrimental effect on the

1146 adjacent properties. Both neighbors have expressed a similar concern. As a result, staff  
1147 recommends denial of this request. This concludes my presentation. If you have any  
1148 questions, I will be happy to answer them. Thank you.

1149  
1150 Mr. Johnson- Any questions from this Board or staff? Any questions? Yes.  
1151 Okay.

1152  
1153 Mr. Gidley- Thank you.

1154  
1155 Mr. Pollard- While we're passing that out (handout from applicant). And  
1156 how wide are the other homes Mr. Gidley?

1157  
1158 Mr. Gidley- They are 39 and 40-feet respectively. So, just over twice as  
1159 wide as the proposed.

1160  
1161 Mr. Johnson- Is there a limit to how small a house can be?

1162  
1163 Mr. Gidley- Not in the current Zoning Ordinance, no sir.

1164  
1165 Mr. Johnson- Okay.

1166  
1167 Mr. Gidley- We try to make sure, you know, it fits in with what's in the  
1168 surrounding area. And of course, the closest homes are the two adjacent.

1169  
1170 Mr. Johnson- Okay. Thank you. And also, in this, this lot would already have  
1171 a septic system already, wouldn't it?

1172  
1173 Mr. Gidley- No sir, this would be hooked up to public utilities.

1174  
1175 Mr. Pollard- And you said the neighbors are opposed.

1176  
1177 Mr. Gidley- Yes sir. We received letters from each of the two adjacent  
1178 property owners, and those are in your staff report.

1179  
1180 Mr. Green- Can you talk about the variance that we approved in October  
1181 that they're referencing?

1182  
1183 Mr. Gidley- Yes sir, I saw that. Just speaking from memory, that's a pretty  
1184 good distance from this property, and as I recall, a lot of the homes over in that section  
1185 were built on single lots. Mr. Blankinship, you may have that up...

1186  
1187 Mr. Blankinship- Because that was also a case where there was a house on  
1188 the lot. It had fallen into disrepair, and they were demolishing that and replacing it. And  
1189 they actually made it, brought it more nearly into compliance with the side yards after we  
1190 reviewed it. So, it's in the same neighborhood, but it's a very different circumstance.

1191

1192 Mr. Green- Okay.  
1193  
1194 Mr. Gidley- And as I said, I believe the surrounding properties in that case  
1195 were built on single lots, so that was kind of the pattern there.  
1196  
1197 Mr. Blankinship- But in any case, as we say all the time, every variance case  
1198 is, by its nature, a unique circumstance. So, we really don't get too concerned about  
1199 precedence as each piece of property is unique.  
1200  
1201 Mr. Green- Yes.  
1202  
1203 Mr. Johnson- Any questions? No. Okay...  
1204  
1205 Mr. Rempe- Again, Mark Rempe here on speaking for the applicant, and  
1206 we appreciate the staffs time and we understand that there's a difference here, but... well  
1207 that's okay... anyway. There's two issues here that there's a difference of opinion here.  
1208 One is the substantial detriment to the neighbors and the neighborhood. The other is the  
1209 reoccurring theme. And we believe that there is not a substantial detriment to the  
1210 neighbors. One thing about this neighborhood, it's kind of an urban type of neighborhood.  
1211 There's lots of all lots. There's diversity of housing stock. Diverse... lot of diversities. It's  
1212 very similar to... not your typical suburban, where everything's kind of cookie cutter,  
1213 everything's kind of the same. It's kind of got this urban feel to it. The owner passed away  
1214 a year ago and his nephew got the property and he put it up on the market. So, what  
1215 you're going to see here, there's a lot of ownership here, and what's going to happen, is  
1216 that when people pass away, they're going to come up on the market, and that's why this  
1217 variance is in front of you guys right now. The nephew, the nephew has it, and he wants  
1218 to see if he can sell it. But anyway, next door to the... to the left, you have an attached  
1219 townhouse type dwelling. It's a, it's a two-dwelling unit. It's a two-story type structure.  
1220 Front set back is similar to what we are trying to propose to the subject property. To the  
1221 right side there's a house. There's a decent tree line to the property. Also, there's the  
1222 bend in the road that kind of gives you a natural separation. See how the road bends and  
1223 then you get on the straight-a-way? That gives you, from a visual standpoint, a feel that's  
1224 a little bit different from the property on the right. So, when you drive, the house that was  
1225 constructed later on, that's approved, you see a two, kind of a small, new house, two-  
1226 story structure that will fit within what is going on to the left, that structure over there. The  
1227 house would sell for \$250,000, so it would bring, the improvements will be, help out with  
1228 the neighborhood there. Moving on to the next page. As far as the general reoccurring,  
1229 handled by the Board of Supervisors using a variance test, a variance tool for each of the  
1230 properties, our thought is a variance is a best way to handle these situations. The  
1231 neighborhood is kind of built out already. There's a lot of houses out there, as I've said  
1232 before, for a house to be on the market it's going to be some event, someone is going to  
1233 have to pass away then the house will get on the market. So, we don't think there's going  
1234 to be a lot of cases reoccurring. There's a lot, there's a lot of properties that, from an  
1235 environmental standpoint are not buildable. But behind it you see like seven lots, on --  
1236 Road. All of those lots cannot be buildable because of environmental issues. Going to  
1237 the left, if you're looking, there's a triangle piece, and there's a warehouse back there.

1238 That's going to be tough to get rezoned because the shape of the property is so narrow,  
1239 the warehouse structure, demolition cost exceeds the property value of land. So, that's  
1240 going to be tough getting rezoned over there. So, we think the BZA is the best way to  
1241 handle these cases. Just like the one, even though it's a separate case, the board did  
1242 approve that in this neighborhood. It's not a reoccurring condition for, for the Board of  
1243 Supervisors to handle. Next page. There's a lot of trash being dumped on vacant  
1244 properties, sometimes it's an eyesore. The better, higher use is to build a house. A family  
1245 could have the beneficial use of that property. Though it's a smaller lot the side yard  
1246 setbacks are still good. Our, my wife's and I's, first family was north Richmond, very small  
1247 house, hardly any lot size, small setbacks, but we loved that house, so. Next page.  
1248 Affordable housing is a significant, huge problem. This could be put to use. First time  
1249 homebuyer. Nice house. They'll love it. It's a huge, huge problem right now, you know,  
1250 affordable housing. And then, and we think the house would be... the new house would  
1251 improve the neighborhood. I think the way to handle these variance cases, it's not a  
1252 rezoning, but a variance case, and a new house would be a much better, better use that  
1253 someone could use, like a family, that can't get anything right now, and more tax revenue  
1254 for the County.

1255  
1256 Mr. Johnson- Okay. Go ahead.

1257  
1258 Mr. Pollard- You said the house would sell for how much?

1259  
1260 Mr. Rempe- 250 to 260. Right now, most of the inventory in Henrico  
1261 County, and other jurisdictions, for affordable housing is at 300 and above. This would be  
1262 at 250, 260 range.

1263  
1264 Mr. Johnson- I noticed that that lot is kind of narrow there, but also, on the  
1265 opposite side, that larger house ... the land seems to be dropping off as well, and there  
1266 is a drain... like a gutter situation.

1267  
1268 Mr. Rempe- Where the public right of way is, is the drainage area and  
1269 everything slopes back that way. So, all that's dumped upon. But as far as the parking  
1270 issue goes, we could put kind of a, hammerhead parking area where you pull in, you have  
1271 another parking area, kind of "L" shaped. Where they can pull in, they can go to the right,  
1272 and they can always, you know, pull out front-ways when they, when they turn, pull out  
1273 on the street. We can do that for parking. The new house would fit real nicely to what is  
1274 going on to the left of it. That two-story townhouse property. The side yard setbacks are  
1275 decent side yard setbacks.

1276  
1277 Mr. Johnson- Okay.

1278  
1279 Mr. Rempe- Eight, nine feet, I think.

1280  
1281 Mr. Green- It looks like...

1282  
1283 Mr. Rempe- The front yard setback kind of lines up to the house on the left.

1284  
1285 Mr. Green- It looks like part of the yard is going into the other person's  
1286 yard. Whose lot is that? That little patch that looks like it's been cut. Whose is that?  
1287  
1288 Mr. Rempe- Which one? To the left or to the right?  
1289  
1290 Mr. Blankinship- I think in the rear, in the rear in the subject lot.  
1291  
1292 Mr. Green- Right there.  
1293  
1294 Mr. Johnson- Right there.  
1295  
1296 Mr. Green- Whose is that?  
1297  
1298 Mr. Rempe- There is a fence that goes along the end of the property, but  
1299 I'm sorry... where's it at again?  
1300  
1301 Mr. Johnson- See right where the cursor is at now.  
1302  
1303 Mr. Rempe- Right there?  
1304  
1305 Mr. Johnson- Yes.  
1306  
1307 Mr. Pollard- I don't see no lines.  
1308  
1309 Mr. Johnson- It seems like part of the back yard is sticking into that...  
1310 opposed lot.  
1311  
1312 Mr. Green- Whose lot is that because it looks like somebody is cutting it.  
1313  
1314 Mr. Gidley- Yeah, it looks like the neighbor just went over in it. Crossed  
1315 over into the adjacent property.  
1316  
1317 Mr. Green- But I thought there was a fence up?  
1318  
1319 Mr. Blankinship- I know we found, as we were preparing the materials for this  
1320 case, that the GIS and the subdivision plat do not line up exactly, so...  
1321  
1322 Mr. Rempe- We had a survey done, and that is the plat that we show.  
1323 Shows what's out there. We would, you know, every time there is an encroachment, we  
1324 talk to the neighbors and try to work it out. This would be on public water...  
1325  
1326 Mr. Pollard- I can't find it online...  
1327  
1328 Mr. Johnson- Any opposition?  
1329

1330 Mr. Gidley- Yes sir. Both of the adjacent property owners wrote in  
1331 opposition.  
1332  
1333 Mr. Pollard- We're talking about 21?  
1334  
1335 Mr. Blankinship- It is not on the preliminary because this case was deferred  
1336 from a previous month, but it is on the final agenda.  
1337  
1338 Mr. Rempe- There is a large area between the edge of the pavement on  
1339 the road going back to the front lot line that is consistent going down this street.  
1340  
1341 Mr. Johnson- Okay. Is this yours.  
1342  
1343 Mr. Green- Its Fairfield. You've been out there, what are your thoughts,  
1344 opinions?  
1345  
1346 Mr. Johnson- I went out there, what I was noticing was that the narrow lot,  
1347 as well, and also how on the opposite side of the large house how it drops off to a rugged  
1348 area, which is down drainage. And I was concerned with the area at the house there, it  
1349 seemed like it was, when I was looking back at it, you know, the back end of it seemed  
1350 like it was kind of like what I'm seeing here.  
1351  
1352 Mr. Gidley- It's only 20-feet.  
1353  
1354 Mr. Johnson- ... someone else... yeah, real narrow. But they're building  
1355 around there, because right across from the triangle there, on the other side they got  
1356 another house that they've start building as well.  
1357  
1358 Mr. Rempe- Yep, Liberty Homes is building across the street down there.  
1359  
1360 Mr. Johnson- Yeah.  
1361  
1362 Mr. Rempe- There's no doubt that this is a small lot, you know, I'm a fan of  
1363 putting lots into commerce. I'd rather see a new house down there that someone could  
1364 use and enjoy than just a vacant lot. You know, we have the front yard setback that is  
1365 going to be similar to what's going on to the left with the duplex. We've got side yard  
1366 setbacks of 13 and 10 and eight. Which is larger than some other zoning ordinances out  
1367 there that I've seen. There's no doubt that the back yard's narrow, but like I said, my wife  
1368 and I had a very small house when we first got married, and there wasn't much yard to  
1369 mow, which is nice. Especially on Saturday. Watch more football. My son was born in that  
1370 house, and he's at William and Mary right now, and he turned out alright. There's a big  
1371 shortage of affordable housing...  
1372  
1373 Mr. Johnson- The house would be...  
1374  
1375 Mr. Rempe- this would be good for affordable housing.

1376  
1377 Mr. Johnson- Also, when... if, if it was a person put a house there, would it  
1378 have the house narrowing to the back as well.  
1379  
1380 Mr. Rempe- No.  
1381  
1382 Mr. Johnson- No, because depending on how wide, how deep it is... you  
1383 know, you've got the same frontage, then how much more space would you have for the  
1384 house?  
1385  
1386 Mr. Rempe- From the front of the house, on the left side you have 13-foot  
1387 setback. On the right side of the house, you'd have almost 11-feet there. If you go to the  
1388 very back of the house on the left side, you have close to nine-feet, and then on the right  
1389 side at the very back of the house you have close to nine-feet as well. So those are decent  
1390 setbacks.  
1391  
1392 Mr. Johnson- Okay.  
1393  
1394 Mr. Rempe- Compared to other projects that I've built on. The lot is kind of  
1395 a pie shape. It's an odd lot, but I'm a fan of putting things in commerce.  
1396  
1397 Mr. Johnson- Okay.  
1398  
1399 Mr. Rempe- And after it's complete if you were to drive by it, you'd look at  
1400 it, you probably wouldn't...  
1401  
1402 Mr. Johnson- wouldn't notice.  
1403  
1404 Mr. Rempe- ...see the difference in the small lot. You'd see the house and  
1405 the duplex, the two-story duplex there. You're on Waverly, so I think it would match up  
1406 nicely.  
1407  
1408 Mr. Johnson- Okay.  
1409  
1410 Mr. Gidley- You forgot to ask if there's anyone else to speak.  
1411  
1412 Mr. Blankenship- Before you close the public hearing.  
1413  
1414 Mr. Johnson- Yes, is there anyone else on WebEx?  
1415  
1416 Mr. Blankinship- Is there anyone on WebEx?  
1417  
1418 Mr. Peterman- No one on WebEx Ben.  
1419  
1420 Mr. Blankinship- Thank you.  
1421

1422 Mr. Johnson- Okay. Alright.

1423  
1424 Mr. Pollard- So. I can appreciate a lot of what was said, and from a big  
1425 picture standpoint, I agree with a lot of it. I am very familiar with the street, that area, that,  
1426 if you have to, in my personal opinion, if you have to cut a house in half to get it in there,  
1427 and then you don't have the neighbors supporting it, it's hard to be in support of something  
1428 like that. I think you might be ahead of your time. I think we're going to see tiny houses  
1429 take off, in the near future, and so this will probably be one of the cases that come back  
1430 before us, but at this time, I am going to move that we deny the variance. More specifically  
1431 because almost every house in the neighborhood is on two or more lots. There are no  
1432 other houses in the neighborhood that are on a lot this small. And you therefore... I  
1433 remember you when you come before us, you've been before us a lot, and this is, in my  
1434 memory, the smallest. The proposed house does not meet the front setbacks so it would  
1435 not be to close to the street. The driveway will lead straight into a dangerous intersection.  
1436 So, I move that we deny.

1437  
1438 Mr. Green- Second.

1439  
1440 Mr. Johnson- Motioned and second. Is there any discussion? No  
1441 discussion. All in favor?

1442  
1443 Board- Aye.

1444  
1445 Mr. Johnson- All opposed. All in favor and none opposed.

1446  
1447 On a motion by Mr. Pollard, seconded by Mr. Green, the Board **denied** case **VAR2022-**  
1448 **00021 DELTA LAND COMPANY's** request for a variance from Sections 24-3105.G.1  
1449 and 24-6402.A.2 of the County Code to build a one-family dwelling at 3313 Waverly  
1450 Boulevard (East Highland Park) (Parcel 798-734-5927) zoned R-4, One-Family  
1451 Residence District (Fairfield).

1452  
1453  
1454 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5  
1455 **Negative:** 0  
1456 **Absent:** 0

1457  
1458  
1459 Mr. Blankinship- Alright, our next case is variance case 2022 number 23.

1460  
1461 **VAR2022-00023 DELTA LAND COMPANY, LLC** requests a variance from Section 24-  
1462 6402.A.2 of the County Code to build a one-family dwelling at 1517 Highland Street (East  
1463 Highland Park) (Parcel 798-734-6355) zoned R-4, One-Family Residence District  
1464 (Fairfield). The lot area requirement and lot width requirement are not met. The applicant  
1465 has 4,900 square feet lot area and 35 feet lot width where the Code requires 6,000 square  
1466 feet lot area and 50 feet lot width. The applicant requests a variance of 1,100 square feet  
1467 lot area and 50 feet lot width.

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1513

Mr. Blankinship - I can see that we don't have anyone new to speak, so no need to swear anybody in. Mr. Madrigal you can make your presentation.

Mr. Madrigal- Thank you Mr. Secretary. Mr. Chair, members of the Board. Before you is a variance request to build a one-family dwelling on a substandard lot. This is in the same neighborhood as the previous case. This property happens to be just a little bit further north. The subject parcel was recorded at lot 13, block 23 of the East Highland Park Subdivision in 1917. The majority of the lots in the subdivision are 35 feet wide. Because of the narrow width of the lots, most homes of the neighborhood were typically built on two or more combined parcels. This is the case for the homes on either side of the subject property. The home to the west sits on a 75-foot-wide parcel, while the home to the east sits on a 108-foot-wide parcel. Additionally, the homes at either side are 38 to 39 feet wide. The proposed home, by contrast, would only be 25 feet wide and would sit on a smaller and much narrower plot if approved. When the property was purchased in 1956, it was one of 41 lots conveyed by a single deed to the West Engineering Company. Today it is one of four residual lots in block 23, sharing a single I.D. number, owned by the same company. The applicant wishes to obtain entitlement to construct a dwelling on the single parcel to facilitate its sale. However, because of its narrow width and small size, variances are needed for both lot width and area. The southern section of the subdivision contains 57 dwellings. Five are on three or more lots, 46 are on double lots, and only six are on single lots. Of the existing homes on the single lots, two are on parcels exceeding 8,000 square feet, two are on 5,400-square-foot lots, and the remaining two are on 4,900-square-foot lots. The subject property is consistent with these smaller examples. Because many of the homes in the neighborhood were built in the 1930s, they also have substandard setbacks. This is the situation with the adjacent home to the east. Having a six-foot side yard setback to the shared property line. Although the applicant will comply with the minimum side setback requirements of seven feet, the proposed home will only be 20 feet wide and will appear exceptionally narrow and too close to the adjacent home to the east if approved. Although the property does not appear to have been designed to be a buildable lot unless combined with adjacent property, it does satisfy Items 1 and 2 of the Threshold Question, and as a result a variance can be approved if it meets all five required subtests. With respect to the five subtests, Items 2 and 3 are not met. When the property was purchased in 1956, it was bought as part of 41 properties within the subdivision. The owner could reasonably expect to build where two or more adjoining lots could be combined. However, individual lots did not meet minimum size and lot width requirements that had been adopted 11 years earlier at that time. Now that those standards have been in place for 77 years, a contract purchaser has no reasonable expectation that the property would be treated as a buildable lot. Staff believes that the proposed variances would have a substantial detrimental impact on the adjacent homes and the southern section of this neighborhood. The homes at either side of the subject lot are built on double lots and dwellings are much wider than the proposed lot and home. Allowing a new, narrower dwelling in-between these two larger parcels would detract from the existing development pattern on this block. It would be visually intrusive, increase density, and potentially lead to parking issues. The Zoning Ordinance

1514 addresses substandard lots by way of the non-conforming lot standards found in Section  
1515 24-6402, where the lot does not meet the reduced lot area and width requirements, it is  
1516 up to the BZA, on a case-by-case basis, to determine whether such properties can be  
1517 developed without causing a substantial detrimental impact. In this case, however, the  
1518 property is too narrow and small as compared to the other homes on Highland Street.  
1519 Allowing a dwelling to be crammed onto a 35-foot-wide lot would detrimentally impact the  
1520 adjacent properties and the other homes on this block and would detract from the  
1521 established pattern along this block face. In conclusion, although the request meets  
1522 some, but not all of the legal requirements for a variance, this specifically fails two of the  
1523 subtests. Because the proposed variance would be detrimental to nearby property and  
1524 its general and recurring nature, staff recommends denial of this request. This concludes  
1525 my presentation. I'll be happy to answer any questions.  
1526

1527 Mr. Green- Can you go back to the picture showing the lot between the  
1528 two houses? {in audible} So it would be those. That is where the house would be built?  
1529

1530 Mr. Blankinship- Yes sir.  
1531

1532 Mr. Madrigal- Right here.  
1533

1534 Mr. Green- That is very tight. What happens to those power lines?  
1535

1536 Mr. Madrigal- I'm sorry?  
1537

1538 Mr. Green- What would happen to those power lines?  
1539

1540 Mr. Madrigal- Power lines...  
1541

1542 Mr. Green- Would they be moved?  
1543

1544 Mr. Madrigal- They would have to be moved and that could potentially be a  
1545 pretty significant undertaking. As you can see, it crosses right in front of the property there  
1546 in the front yard. And that would not only be power, but also the telephone-cables lines.  
1547

1548 Mr. Johnson- Any other questions from the Board?  
1549

1550 Mr. Rempe- I think our arguments are the same as the last case. They're,  
1551 you know, lots should be put into commerce, this being an older lot before the zoning, the  
1552 side yard setbacks would be seven-point, seven and a half feet, but the arguments are  
1553 the same so...  
1554

1555 Mr. Johnson- Alright the hearing is now closed...  
1556

1557 Mr. Blankinship- Is there anyone else? Is there anyone on WebEx?  
1558

1559 Mr. Peterman- No one on WebEx.

1560  
1561 Mr. Johnson- ...Okay. Is there any other opposition? Nope. Okay. The  
1562 public hearing is now closed. A motion would be in order.

1563  
1564 Mr. Pollard- ...My response is very similar. I do think, earlier you said you  
1565 thought the way to address these would be a variance and not going through the Board  
1566 of Supervisors, I think going through the Board of Supervisors may be, especially with ...  
1567 if this is going to be the direction you all go in it might be better. But basically, for this  
1568 individual situation, it's just too small. So, I move that we deny the variance. Almost every  
1569 house in the neighborhood is on two or more lots, and then, just looking at the pictures,  
1570 and I actually went by this one, you've got trees and power lines.

1571  
1572 Mr. Green- Second.

1573  
1574 Mr. Johnson- Motioned and second. All in favor say Aye.

1575  
1576 Board- Aye

1577  
1578 Mr. Johnson- All opposed say Nay. Motion passed, all in favor. No opposed.

1579  
1580 On a motion by Mr. Pollard, seconded by Mr. Green, the Board **denied** case **VAR2022-**  
1581 **00023 DELTA LAND COMPANY, LLC's** request for a variance from Section 24-6402.A.2  
1582 of the County Code to build a one-family dwelling at 1517 Highland Street (East Highland  
1583 Park) (Parcel 798-734-6355) zoned R-4, One-Family Residence District (Fairfield).

1584  
1585  
1586 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5  
1587 **Negative:** 0  
1588 **Absent:** 0

1589  
1590  
1591 Mr. Blankinship- Alright. The last case for this morning is variance 2022  
1592 number 24.

1593  
1594 **VAR2022-00024 DELTA LAND COMPANY, LLC** requests a variance from Section 24-  
1595 6402.A.2 of the County Code to build a one-family dwelling at 3321 Waverly Boulevard  
1596 (East Highland Park) (Parcel 798-734-6140) zoned R-4, One-Family Residence District  
1597 (Fairfield). The lot area requirement and lot width requirement are not met. The applicant  
1598 has 5,040 square feet lot area and 40 feet lot width, where the Code requires 6,000  
1599 square feet lot area and 50 feet lot width. The applicant requests a variance of 960 square  
1600 feet lot area and 10 feet lot width.

1601  
1602 Mr. Blankinship - Anyone in favor or opposed, anyone who wishes to speak to  
1603 this case? There are none. Mr. Gidley.

1604

1605 Mr. Gidley- Thank you Mr. Secretary, members of the Board. This is the  
1606 second case on Waverly. We just had one down here and this is on the opposite side of  
1607 3317. You should have the letter of opposition that was handed out, that came in after  
1608 the staff reports went out, so it should be at your desk, and that is from the neighbor at  
1609 3317, right here. The subject property is in the East Highland Park Subdivision. It was  
1610 platted in 1917. As it's been mentioned, typically two or more lots have been put together  
1611 to enable homes to be built on these lots. Here is a street view of the subject property  
1612 right here. As you can see here, there are two vacant lots located between the adjacent  
1613 home here, and the unfinished right of way up here. As Mr. Johnson alluded to earlier,  
1614 this is like a drainage basin that goes through the right-of-way here. And so it's steep  
1615 sloped and part of that goes over onto the adjacent lot here at 3323. Both lots face the  
1616 same constraints of lot area and lot width. As noted in your staff report... I'm going to be  
1617 a little bit less formal...

1618  
1619 Mr. Blankinship- That's fine.

1620  
1621 Mr. Gidley- Here, in this case, we would agree that one of the Threshold  
1622 Tests were met in that the lot was platted prior to the first Zoning Ordinance. Our concern  
1623 is detrimental impact, in part to the adjacent property owner who has a home on two lots.  
1624 The other concern goes back to what Mr. Blankinship was getting at earlier. For a  
1625 variance, the idea is to provide some sort of value to a property owner, and while this  
1626 would provide some value to the property before you, there is the adjacent property and  
1627 staff is concerned that if the variance is granted it would strip that property of any potential  
1628 value. At a minimum they would need to come in and get a variance, but even with a  
1629 variance, due to the topography over here, we're concerned that there wouldn't be room  
1630 on that property to build a home. So, it's almost like one property owner's benefitting, but  
1631 the other one's being eliminated of any value that they could have. So, staff would prefer  
1632 to see the two property owners work together. Combine the lots. The advantage to that  
1633 is; one, there's no variance, lot area and lot width are met. Number two, you could build  
1634 a home, you know, a larger home and center it a little bit more on the lot. That would be  
1635 more in tune with the surrounding properties. So, at least that way both lot owners get  
1636 some value from their lot and the ultimate project would fit in better with what's on the  
1637 block, as far as existing homes now. So, that would be staff's recommendation. Because  
1638 of that, we recommend denial of this request. And, if you have any questions, I will  
1639 certainly be happy to answer those.

1640  
1641 Mr. Johnson- Okay.

1642  
1643 Mr. Gidley- I thank you for baring with me on that.

1644  
1645 Mr. Johnson- Any questions?

1646  
1647 Mr. Reid- Yes, who owns the adjoining property at 3323? Is that West  
1648 Engineering as well or is that someone...

1649

1650 Mr. Gidley- No sir. The mailing address is an address in Westham  
1651 actually, in your district. It appears that home was recently split up in shares to family  
1652 members. At this point, I'm just guessing, we didn't contact them directly, but it looks like  
1653 it was an elderly couple who probably owned this lot and owned the home in Westham.  
1654 Recently, I would assume that is their children, who divided up their property in Westham  
1655 up into shares. And that just happened this year. So, whether they're even aware of this...  
1656 I mean, I'm going through issues with my elderly parents so I can see how people see  
1657 this variance notice and like, maybe don't realize the potential this would have on the  
1658 value of their property.

1659  
1660 Mr. Rempe- Is the last name Hastings?

1661  
1662 Mr. Gidley- Yes sir.

1663  
1664 Mr. Rempe- Yeah, they called me recently.

1665  
1666 Blankinship- Oh?

1667  
1668 Mr. Johnson- Okay.

1669  
1670 Mr. Rempe- So that might be able to work out.

1671  
1672 Mr. Blankinship- That would be good.

1673  
1674 Mr. Green- So, do you want a deferral, or do you want us to vote on it?

1675  
1676 Mr. Rempe- Let's go 0 for 3 guys!

1677  
1678 Mr. Blankinship- Is there anyone on WebEx?

1679  
1680 Mr. Peterman- No one on WebEx.

1681  
1682 Mr. Blankinship- Thank you.

1683  
1684 Mr. Rempe- I will say the lot is much bigger than the other ones. About 40  
1685 feet in width, got some good depth, nice shape.

1686  
1687 Mr. Blankinship- But it does have the additional impact on the neighboring lot.

1688  
1689 Mr. Rempe- Yes.

1690  
1691 Mr. Johnson- Right.

1692  
1693 Mr. Blankinship- I'm glad to hear they've contacted you though. That's good  
1694 news.

1695

1696 Mr. Rempe- Yes.  
1697  
1698 Mr. Gidley- That's a plus.  
1699  
1700 Mr. Blankinship- Your mic is muted Mr. Pollard; I don't know how long it's been  
1701 like that.  
1702  
1703 Mr. Pollard- I move that we deny the variance.  
1704  
1705 Mr. Green- Are we calling for a motion?  
1706  
1707 Mr. Johnson- Yes.  
1708  
1709 Mr. Blankinship- Yes.  
1710  
1711 Mr. Pollard- Okay. Building on this lot would leave the lot next to it without  
1712 options for future development, so I'm happy to hear that you sound receptive to working  
1713 with them.  
1714  
1715 Mr. Johnson- Okay, it's been moved.  
1716  
1717 Mr. Green- Second.  
1718  
1719 Mr. Johnson- Motioned and second. Any discussion? More discussion? All  
1720 in favor say Aye.  
1721  
1722 Board- Aye.  
1723  
1724 Mr. Johnson- All opposed? All in favor and none opposed.  
1725  
1726 On a motion by Mr. Pollard, seconded by Mr. Green, the Board **denied** case **VAR2022-**  
1727 **00024 DELTA LAND COMPANY, LLC's** request for a variance from Section 24-6402.A.2  
1728 of the County Code to build a one-family dwelling at 3321 Waverly Boulevard (East  
1729 Highland Park) (Parcel 798-734-6140) zoned R-4, One-Family Residence District  
1730 (Fairfield).  
1731  
1732  
1733 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5  
1734 **Negative:** 0  
1735 **Absent:** 0  
1736  
1737  
1738 Mr. Green- I have a question.  
1739  
1740 Mr. Blankinship- Yes sir.  
1741

1742 Mr. Green- When you look at TV and you see where people are building  
1743 these tiny houses. Does that come into the area, or is that possible?  
1744

1745 Mr. Blankinship- It is possible, but you would have to build it on an individual  
1746 lot, like a regular house. It would have to be permanently attached to the ground. We  
1747 would not allow a trailer. A lot of times what I see on TV is a trailer being pulled on the  
1748 property...  
1749

1750 Mr. Green- I'm talking about those tiny, real tiny houses.  
1751

1752 Mr. Blankinship- Right, but a lot of times they're built on a chassis and moved  
1753 from place to place. We would not allow it to be mobile. It would have to be fixed to the  
1754 ground and then you would have to do something for water and sewer, well and septic,  
1755 or something like that. So, you could build a small, a very small house, but you'd have to  
1756 meet all the other requirements. There are building code requirements also that will, in  
1757 some ways, constrain the size of the house.  
1758

1759 Mr. Rempe- I appreciate everyone's time. It's good to see everyone again.  
1760

1761 Mr. Blankinship- Thank you.  
1762

1763 Mr. Green- Thank you.  
1764

1765 Mr. Rempe- Happy Holidays.  
1766

1767 Mr. Pollard- Happy Holidays.  
1768

1769 Mr. Johnson- Thank you. Appreciate it.  
1770

1771 Mr. Blankinship- We'll see you next month.  
1772

1773 Mr. Rempe- Yes.  
1774

1775 Mr. Blankinship- Alright, that brings us to the minutes.  
1776

1777 Mr. Pollard- I was the only one ...  
1778

1779 Mr. Johnson- Next item.  
1780

1781 Mr. Johnson- Next item on the agenda is approval of the minutes.  
1782

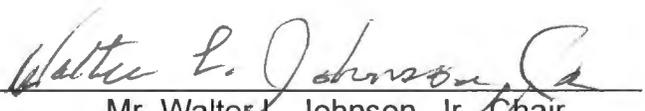
1783 Mr. Green- So moved.  
1784

1785 Mr. Reid- Second.  
1786

1787 Mr. Johnson- It's motioned and second. All in favor?

1788  
1789 Board- Aye.  
1790  
1791 Mr. Johnson- All opposed? Motion passed.  
1792  
1793 On a motion by Mr. Green, seconded by Mr. Reid, the Board **approved the minutes** of  
1794 the November 17, 2022, Board of Zoning Appeals meeting.  
1795  
1796  
1797 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5  
1798 **Negative:** 0  
1799 **Absent:** 0  
1800  
1801  
1802 Mr. Blankinship- Mr. Bell, do you have anything you would like to say?  
1803  
1804 Mr. Bell- ... January...  
1805  
1806 Mr. Blankinship- Not for you!  
1807  
1808 Mr. Bell- Yes, a word or two. After a nice day, I want to say it's so good  
1809 to see when it changes over, well there's been some change overs in the past, .... The  
1810 quality, the respect that I see, this is a group of people that always showed it to our  
1811 customers. It makes you feel good when you walk out. And I look in the audience section  
1812 and I see Helen. She's only been here what, some 30 something years. ...do, because I  
1813 was going to say if you want to learn, you follow someone that knows where every page  
1814 is in that book and then want to come up with an answer for your property ... at times very  
1815 educated, at other times... do anything but trying to turn those places to finance, but  
1816 anyway, thank you everybody for just giving me good feelings. Whereas this group, this  
1817 is a new group. Who knows, I might come over in ten years and sit and say I remember  
1818 the guy with the glasses over there, I ... So, thank you. My wife too and us ... never had  
1819 to stay when it turned dark. I came in some mornings when it was dark, but...  
1820  
1821 Mr. Green- How long have you been on the Board?  
1822  
1823 Mr. Bell- Nine and a half years.  
1824  
1825 Mr. Blankinship- Almost 10 years.  
1826  
1827 Mr. Bell- It certainly didn't feel that way with the qualified people we  
1828 have. I just do hope that someone is quality wise and all respects and follow the lead of  
1829 what's already here. ... the guy's name...what's his, what's his name... without him, it  
1830 would be awful hard to push the paper around, some would say.  
1831  
1832 Mr. Blankinship- Thank you sir.  
1833

1834 Mr. Johnson- Thank you.  
1835  
1836 Mr. Blankinship- Pleasure working with you.  
1837  
1838 Mr. Bell- Merry Christmas.  
1839  
1840 Mr. Green- And I can say that with Ms. Harris being a former  
1841 schoolteacher, was always doing schoolteacher stuff.  
1842  
1843 Mr. Green- So when she was here, and she gave you that look, you know,  
1844 that schoolteacher look, and you were in trouble so...  
1845  
1846 Mr. Bell- That's right, she was at the college downtown for a number of  
1847 years...  
1848  
1849 Ms. Harris- I taught high school.  
1850  
1851 Mr. Green- But like I said, she was a schoolteacher so, and, and  
1852 imperative of schoolteachers when they gave you that look you shut up.  
1853  
1854 Mr. Blankinship- Barry had to take a phone call, that's good timing. So, that  
1855 answers my other question.  
1856  
1857 Mr. Green- Thanks.  
1858  
1859 Mr. Blankinship- Alright. Bang that gavel, let's get out of here.  
1860  
1861 Mr. Johnson- Motion to adjourn...  
1862  
1863 Mr. Pollard- Second.  
1864  
1865 \*Gavel bangs  
1866  
1867  
1868  
1869  
1870  
1871  
1872  
1873  
1874  
1875  
1876  
1877  
1878

  
Mr. Walter L. Johnson, Jr., Chair

  
Mr. Benjamin W. Blankinship, Secretary