

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 JANUARY 23, 2020 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED**  
5 **IN THE *RICHMOND TIMES-DISPATCH* JANUARY 6, 2020 AND JANUARY 13, 2020.**  
6

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

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

19 Mr. Bell - Good morning and welcome to the January 23, 2020 meeting  
20 of the Henrico County Board of Zoning Appeals. Would those of you who are able stand  
21 and join us in the Pledge of Allegiance.  
22

23 **[Recitation of the Pledge of Allegiance]**

24  
25 Mr. Bell - Mr. Blankinship will now read the rules.  
26

27 Mr. Blankinship - Good morning, Mr. Chair, members of the board, ladies and  
28 gentlemen. The rules for this meeting area as follows: I will call -- there's only one case  
29 on the agenda this morning, so I will call that case and then we will ask all of you to stand  
30 and be sworn in, and then a member of the staff will give a brief introduction, and then  
31 you will be invited to present your application.  
32

33 If anyone comes in later that wishes to speak, either in favor or in opposition, they will be  
34 given the opportunity. And if that happens, then you will be given the opportunity for  
35 rebuttal. We'll ask you to speak directly into the microphone on the podium and state  
36 your name, spelled, well, we've got your last name in the record, so you can dispense  
37 with spelling your last name. We have all five members, so there is no need to worry  
38 about deferral.  
39

40 And with that, Mr. Chair, I think we're ready to go.  
41

42 Mr. Bell - Yes, sir.  
43

44 **VAR2020-00003** **CLAY AND CORINNA GROGAN** request a variance from  
45 Section 24-94 of the County Code to build a one-family dwelling at 1901 Mill Road (Parcel  
46 809-685-2963) zoned Agricultural District (A-1) (Varina). The lot width requirement is not

47 met. The applicant proposes 50 feet lot width, where the Code requires 150 feet lot width.  
48 The applicant requests a variance of 100 feet lot width.

49  
50 Mr. Blankinship - Would everyone please stand and be sworn in? Do you swear  
51 the testimony you're about to give is the truth, the whole truth, and nothing but the truth,  
52 so help you God? Thank you. Mr. Gidley.

53  
54 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr. Chairman,  
55 members of the board. The subject property is located along the southern side of Mill  
56 Road. It was first recorded back in 1997 by decree from the circuit court of Henrico, which  
57 divided an estate amongst its heirs. The property in question at the time contained almost  
58 11 acres of land along with 200 feet of lot width and road frontage. It also contained an  
59 old dwelling that was located along the front of the property.

60  
61 In 1979 this old dwelling was demolished, and a new home was built on the site, and you  
62 can see that new home right here, which currently stands. In 1997 Henrico County  
63 acquired this new dwelling for use as a group home. The county only acquired 1.38 acres  
64 surrounding the home, however, which left roughly 9 1/2 acres in the owner's hands.

65  
66 And you can see here, this is the home that I just showed you, and this is the land the  
67 county acquired here for this home, and what was left were the 9 1/2 acres back here.  
68 And this land also had public street frontage at the time, however, because lot-width is  
69 measured today at the actual 50-foot setback line they lack the actual lot-width  
70 requirement, which isn't really met until they're back here, and they can't meet it back  
71 here anymore.

72  
73 The applicants acquired the property this past October. They also acquired  
74 approximately three acres shown right here that came from this parcel you see right here  
75 along Mill Road. They plan to consolidate this parcel here along with the main parcel  
76 here and build a home on the property.

77  
78 They had submitted earlier this site plan right here showing the combined parcel, and you  
79 can see the home here and a proposed garage here. Because the garage would be in  
80 the front yard, they've decided to go ahead and relocate the proposed garage behind the  
81 home, which would not require a use permit, and instead scoot the home up a little bit.  
82 You have revised plans at your desk showing what they're doing now, and we'll get it up  
83 on the screen.

84  
85 Mr. Blankinship - Turn the document camera on and the microphones off.

86  
87 Mr. Gidley - Thank you, Fred. As you can see here on the screen, they've  
88 gone ahead and relocated the proposed garage behind the home, so a use permit would  
89 not be required, and the home now has been scooted forward somewhat. This location  
90 is approximate, but regardless of where they nail down the exact location it would meet  
91 the setbacks for that A-1 District.

92

93 So, the only thing at this point really holding up the applicant is because they lack the  
94 required lot width, they do need to go ahead and get a lot-width variance, which they have  
95 applied for today.

96  
97 In evaluating this request, the applicant is on a 9 1/2-acre parcel now, and with the 3-acre  
98 parcel combined they would have 12 1/2 acres. Because they lack adequate lot width,  
99 they are unable to build a home on these 12 1/2 acres. And this is arguably an  
100 unreasonable restriction on their property. Going back to the aerial here, you can see  
101 this is one of the larger parcels in the area. You have a lot of other parcels along Mill  
102 Road that are much smaller than this one and contain homes, and yet on this parcel  
103 because the lot width isn't met until you're back here further they're unable to build a  
104 home. And by granting a variance it would give them a reasonable use of the property.

105  
106 As noted in your staff report, staff believes the five subtests are met, specifically note the  
107 second subtest dealing with substantial detrimental impact. The applicant's property is  
108 over nine times larger than the required minimum lot area of one acre in the A-1 District.  
109 The proposed dwelling would comply with setbacks. In addition, at 1,620-square-feet,  
110 the proposed dwelling would meet the minimum floor area of requirement of 900 square  
111 feet for a one-family dwelling. This is unlike the case we had a month or two ago, right  
112 down the road, which did not meet that requirement.

113  
114 As a result, staff does not anticipate any substantial detrimental impacts to nearby  
115 residents if this case is approved. So, in conclusion, the property complies with the lot  
116 area and public street frontage requirements. The lot width, however, is not met due the  
117 acquisition of land for a group home along Mill Road. Therefore, absent of variance for  
118 lot width, the applicants would lack a reasonable beneficial use of their property, meeting  
119 one of the three main tests for a variance.

120  
121 Staff also believes the five subtests are met. As a result, staff recommends approval of  
122 this request subject to the conditions in your staff report. If you have any questions, I will  
123 be happy to answer those. Thank you.

124  
125 Mr. Bell - Does the board or staff have any questions?

126  
127 Mr. Johnson - Mr. Gidley, you said the property to the left, that's part of it as  
128 well? On the opposite side of the...

129  
130 Mr. Gidley - You've got this parcel right here that was, sorry about that,  
131 that was adjacent to their property, and they have acquired these three acres off of it right  
132 here. They plan on recording this -- thank you.

133  
134 Mr. Johnson - Okay.

135  
136 Mr. Gidley - Yes, sir. You had this parcel right here, and the applicant's  
137 acquired these three acres shown right here. They plan on recording a consolidation to  
138 create one lot shown in yellow right here. In fact, they went ahead and tried to do that,

139 but there was a technicality, I believe, in how the two parcels were named, as far as the  
140 ownership, but they do plan to go ahead and correct that and record this as one parcel,  
141 shown in yellow right here.

142  
143 Mr. Blankinship - We have a condition Mr. Johnson, drafted for you, condition  
144 number four would require that prior to applying for a building permit they have to get that  
145 straightened out.

146  
147 Mr. Johnson - Okay. Yes. I'm good.

148  
149 Mr. Gidley - Okay, thank you.

150  
151 Mr. Bell - Any other questions? Thank you.

152  
153 Mr. Gidley - Thank you, Mr. Chair.

154  
155 Mr. Condlin - Good morning, Mr. Chair, Members of the board. My name is  
156 Andy Condlin, from Roth Jackson, C-o-n-d-l-i-n, here on behalf of Mr. And Mrs. Grogan  
157 regarding the property. Mr. Gidley has already described in large part what has occurred  
158 in the past and why this does qualify, we believe, as well, agree with the staff, for the  
159 variance itself.

160  
161 The one question that we've had that we talked about with staff was when the county  
162 acquired this parcel, thereby putting the resulting parcel into nonconformity and why that  
163 was, and it wasn't caught. But, again, Mr. and Mrs. Grogan weren't involved in that.  
164 They've not acquired -- and in order to make a nicer building area, have acquired the  
165 back three acres plus acres, so that they can place their home on there, as shown on that  
166 plat that you have currently. They've corrected the deed, it's already been recorded, so  
167 we're confident all the conditions and we're accepting all the conditions, it just hasn't  
168 shown up on the GIS yet. It just literally had been done just a few days ago.

169  
170 So, with respect to that, the other question that they had with respect to their property is  
171 that they can obtain a use permit for placing the existing shed. They are a little worried  
172 about the topography in exactly where the house would be located. They expect to be  
173 able to construct, as you see on the plat in front of you. We do want to clarify, and I'm  
174 not sure if -- what the right procedure is, if they do come forward with the use permit to  
175 allow the shed to remain where it is and build the house behind it, that won't vacate the  
176 variance I don't think.

177  
178 Mr. Blankinship - No.

179  
180 Mr. Condlin - Okay, if we get the use permit, so we just wanted to clarify  
181 that. All intent is to be able to build the home as you see on the -- we don't want to pull  
182 out the other plan or my microphone will go out. You've got the plan in front of you. The  
183 intent is to build it that way from the standpoint of moving the shed behind, moving the  
184 house up, and moving the shed behind. They are going to be putting in a driveway. Their

185 expectation is to put in a driveway and to clear just enough land in order to put the  
186 driveway in, leaving all the trees as they were.

187  
188 So, I'm not going to go through all the standards unless you want me to, but we do agree  
189 with staff. The one thing I would comment that we do not believe this is a reoccurring  
190 situation simply because the county actually purchased and put this into a non-conforming  
191 situation, so we don't see that a whole lot. We, once in a while, mistakes get made. No  
192 one can seem -- we couldn't figure out why the county allowed that to happen at the time,  
193 but at the same time, again, this is a good-faith purchase.

194  
195 With that, I'll be happy to answer any questions that you may have, and I appreciate your  
196 approval of this case.

197  
198 Mr. Bell - Has the board or staff have any questions?

199  
200 Mr. Condlin - Okay, thank you.

201  
202 Mr. Bell - Thank you.

203  
204 Mr. Rowan - Good morning.

205  
206 Mr. Blankinship - Good morning. Would you like to speak to this case?

207  
208 Mr. Rowan - Yes, sir.

209  
210 Mr. Blankinship - All right. Would you raise your right hand, please? Do you  
211 swear the testimony you're about to give is the truth, the whole truth, and nothing but the  
212 truth, so help you God?

213  
214 Mr. Rowan - Yes, sir.

215  
216 Mr. Blankinship - Thank you.

217  
218 Mr. Rowan - My name is Jeremy Rowan; I live at 1930 Mill Road. Basically,  
219 sort of diagonally across the road from this lot, this property that we're talking about today.  
220 I came because I'm a little bit concerned about one that -- we have these minimum  
221 standards for A-1 zoning, and I believe that they were set quite a while back in the 1980s  
222 that the county said that there should be 150 feet of frontage on a lot so that we wouldn't  
223 have regular lots getting built on and driveways being shoved in and homes being built  
224 on small lots without proper frontage and such. So, I'm a little concerned about variances  
225 being granted that allow building on a lot that otherwise probably wouldn't be prime lots  
226 to be built on because of this. And I don't believe it was created -- well, maybe it was  
227 created by mistake, but the county owned the property where the exiting house is on the  
228 upper corner of that lot, and then it was divided off, I believe, some time ago.

229

230 So, my first concern, really, is just the granting of variances that would reduce minimum  
231 standards. I've lived in Varina for 20 years. I'm a professional home inspector, I inspect  
232 a lot of houses in the county, and I've seen how the county has changed drastically in the  
233 east end in the past 30 years.

234  
235 I think many would probably remember there were a lot of farms in our area, there were  
236 a lot of dairy farms, it was a very agricultural area. That's changed dramatically, and  
237 that's not going back. But my hope is that we maintain as much of the rural character of  
238 Varina as we can, I don't think a lot of people are aware of what's going to be coming to  
239 Varina because the west end of the county has been developed. And now the east end  
240 is really the center focus of major development.

241  
242 So it sounds like this is probably kind of a done deal on this lot, getting its variance, but  
243 my other concern is that we do get a lot of erosion on Mill Road, a lot of water runs through  
244 it, and we had a development of the lots behind me, and that has caused a good bit of  
245 erosion on the soil. So much so that I couldn't even get grass to grow on the hillside in  
246 front of my own property. And I've done a lot of landscaping there and a lot of landscaping  
247 improvements trying to slow down the erosion and the swift water flow that flows along  
248 Mill Road.

249  
250 So my biggest concern is maintaining the tree canopy that's along the roadside, so if this  
251 is to be approved I would like it to be written or agreed upon that the trees will not be  
252 removed any more than necessary to build a driveway that goes into the lot. Because it  
253 looks like the home is going to be built further back into the lot. So, my biggest focus is  
254 trying to maintain the trees, because trees stop erosion. I work as a professional  
255 inspector. I know what trees do, they hold the soil in place, they prevent erosion. And  
256 that is only going to be worse with the amount of construction that goes in and trees that  
257 are removed.

258  
259 So, my biggest concern is to maintain the trees that are along that roadside, but I'm just  
260 here to speak a voice for Varina and that we hope that maintaining minimum standards  
261 is going to be a priority for the county. Because some years back I used to live on Old  
262 Oakland Road, and invested a lot of money in a Spanish mission house that was a real  
263 charming property, and I had a dairy farm across the road from me on Old Oakland Road,  
264 which became a development. And I had to fight that development at the time, because  
265 they wanted to build three houses in front of the existing farmhouse that was there.  
266 Literally building houses in the front yard of the existing house.

267  
268 And I was concerned at the time that that was going to lower standards and set a  
269 precedent that said, "Oh, now it's okay that we can put houses in the front yard of an  
270 existing house." And then how do you maintain any kind of property value when you have  
271 no idea what your neighbor is going to do with their property when it's supposed to be  
272 single-family homes and certain acreage and certain frontage. And I believe the county  
273 set that standard at 150 feet of frontage for a reason of maintaining a standard in A-1  
274 zoning, that we would have some space between homes.

275

276 Because they built quite a few lots here to the left side of -- or I was going to say to the  
277 east side of this existing property you can see there's eight lots divvied up there, and they  
278 really packed them in.

279  
280 And I also am concerned about the amount of wells that are being dug in this area.  
281 There's a finite amount of water resource there, and there's quite a lot of wells that are  
282 being dug. And with erosion and soil sediment it only makes water quality worse, not  
283 better.

284  
285 So, my primary concern is, one, lowering of standard of these variances. Because if we  
286 have a minimum standard but we grant variances for these things, then what is the point  
287 of having a minimum standard.

288  
289 And, two, I'm concerned about making the tree canopy along Mill Road, because much  
290 of it's already being -- there's quite a few homes down the road that have been built and  
291 a lot of trees have been removed already. And I know my neighbors have complained  
292 about erosion and ditches filling up with water, and that problem only gets worse when  
293 you remove the trees. So, I appreciate your time.

294  
295 Mr. Blankinship - I think we should let the applicant rebut.

296  
297 Mr. Green - Well I have a question. Sir. I have a question. It appears to  
298 me that you'd just like everything to stay the same.

299  
300 Mr. Rowan - Well, I'm not going to lie, I would like to see it maintained. But  
301 I'm also a realist. I know that there's development that's going to go on, this is a 12-acre  
302 tract. Obviously it's, further back in the lot, it's certainly buildable, but I'm concerned,  
303 again, about a minimum standard being kept, because if you say you have minimum  
304 standards, like where you have 1 1/3 acres for well and septic, and we have 150 feet of  
305 frontage. But then if I can come in and say, well, I need a variance for this, because I've  
306 got this weird pie-shaped lot that otherwise wouldn't be buildable. And this standard isn't  
307 new. I think this standard was written by the county in the 1980s.

308  
309 Mr. Blankinship - Actually it's a lot older than that but go ahead. Doesn't change  
310 it.

311  
312 Mr. Rowan - Well, that's what I was told, from what I've heard, that it was  
313 at least from that era. And so this land was purchased, I believe, last fall. So, whoever  
314 bought that land must have known if they were developer that this rule applied. So, it  
315 wasn't -- and you can correct me if I'm wrong, but ignorance of the law does not present  
316 a defense of the law. If you have a standard in the code that says you have a minimum  
317 standard and then I can say, Well I wasn't aware of that. That doesn't mean that standard  
318 doesn't apply. So that's why we're here for this variance today.

319  
320 So, I'm mostly concerned about maintaining a standard of quality in the construction that's  
321 going to go on in Varina.

322  
323 Mr. Green - I would argue that, you know, while ignorance of the law is no  
324 defense, but, you know, a lot of times people buy -- see property, they buy it, they have  
325 plans to develop it, this a three-acre lot that combines the adjoining part. I take offense  
326 to the fact that if I owned it someone who wants to dictate to me how many trees I can  
327 and cannot take out when I don't know if you did that with your other --  
328

329 I would think that whoever's buying this property and their architects are trying to keep as  
330 much of the integrity of the lot and property in place. And, you know, I also think that folks  
331 need to recognize things don't stay the same. Change does occur. And folks need to  
332 adapt to that change. Whoever bought the property, and that's a large lot and kind of set  
333 a house back, you know, but that's an improvement. And while I can appreciate you and  
334 a bunch of others wanting to keep everything, you know, pretty much rural, the fact of the  
335 reality of it is that things change, and developments and houses come in and people buy.  
336

337 And that -- and no offense to you, if you were that concerned, purchase it and then you  
338 would block it.  
339

340 Mr. Rowan - Well, and that's a tough thing to say that I'm going to buy every  
341 lot around me.  
342

343 Mr. Green - And I'm just saying that particular one, from him.  
344

345 Mr. Rowan - Or the whole of Varina to save it from development.  
346

347 Mr. Green - I don't want to get into dictating how many trees somebody  
348 can take down because it may be convenient. And I don't know, because I haven't seen  
349 any studies, may or may not be convenient to someone else.  
350

351 I would assume that folks who buy stuff try their best to keep the integrity of the area of  
352 the property in place. For all I know, those are the trees that helped beautify the particular  
353 entrance to the land, or they may just be rotten old trees that just need to come out.  
354

355 Mr. Rowan - Well, I could show you they're not rotten old trees.  
356

357 Mr. Green - I don't know. I don't know. But I would just -- I'm just, you  
358 know, I...  
359

360 Mr. Rowan - Believe me, I wouldn't bother to take time out of my own busy  
361 schedule and put work off and come over here at 9:00 a.m. if I thought they were rotten  
362 old trains that didn't deserve some one to speak for their behalf.  
363

364 Mr. Green - Right, but you also...  
365

366 Mr. Rowan - But I can understand, this is probably a done deal. I'm just  
367 here to try to speak from my point of view.

368  
369 Mr. Green - Excuse me. Nothing is done until we hear the arguments. So,  
370 we're hearing the arguments. I certainly have not made up my mind, but what I do hear  
371 is the resistance to, well, Varina is rural, should stay that way. And the reality of it is, I  
372 don't think that's going to happen. I think just like Short Pump. I live in Short Pump.  
373 Short Pump was rural. Things changed. Things come in, and you have to adapt to that,  
374 or you have to decide that that's not where I want to be.  
375

376 I'm just not in favor of putting a lot of restrictions on people that make substantial  
377 purchases, improvements, add to the tax base, probably have good intentions for what  
378 they're going to develop. And, you know, I don't want my neighbor telling me if I, you  
379 know, if I got a tree that's leaning, well, because I like that tree I don't want you to take it  
380 down. You know. I just, I don't like --  
381

382 Mr. Rowan - I'm not here to tell people they can't cut a leaning tree down,  
383 or a dying tree. That's far from it. I've had to cut my own trees down that are leaning or  
384 diseased or at the end of their lifespan, because I own several acres there as well with  
385 mature trees on the lot.  
386

387 What I'm here to point out is that you have a standard of 150 feet of frontage, this has 50  
388 feet of frontage. That's a third of what was required.  
389

390 Mr. Green - All right.  
391

392 Mr. Rowan - So I'm just reminding the county that you set a standard, and  
393 I ask you maintain it. Or maybe I'm just reminding that there is a standard and I'm  
394 concerned that when variances come in and they're granted it sets a precedent for more  
395 variances to come in because this other person got a variance and why shouldn't I?  
396

397 And the reason I'm asking about the trees to be some kind of restriction, or at least to say  
398 that we're only going to cut as many as it takes to make a driveway, is because once it's  
399 granted, I have no recourse. Just like you said, it's private property and someone can  
400 clear cut every, single tree on that lot of they wish too. And that has happened quite a  
401 bit. I mean, you can see some areas there where it's devoid of any trees.  
402

403 And once something's built it's there forever, so I'm only asking to maintain a certain  
404 standard upfront so that I can feel like my property values are also maintained and that a  
405 certain standard is maintained. And if someone has to ask for a variance permission to  
406 be granted in order to build on that lot, to have that driveway come through, all I'm asking  
407 is consideration.  
408

409 Mr. Bell - Any other questions or statements?  
410

411 Mr. Johnson - Yes, I have a question. You live across the street, what,  
412 1926?  
413

414 Mr. Rowan - 1930, actually. I'm just beside 1926.  
415  
416 Mr. Green - Can you show us on a map how they are?  
417  
418 Mr. Rowan - I don't think you can see it from this map, but I'm sort of  
419 diagonal across. Yeah.  
420  
421 Mr. Johnson - I was noticing that you mentioned about trees. I noticed most  
422 of them had cut some of the trees down in front of the house until they have one or two  
423 trees by the roadway. But also, on this lot, there is a combination, there is going to be  
424 more than what you see coming in. The lot on the side of it, to the left, would also be  
425 added to it.  
426  
427 Mr. Rowan - Yes, sir.  
428  
429 Mr. Johnson - So it wouldn't be just that.  
430  
431 Mr. Rowan - Yeah. I'll be honest with you, I wasn't aware of the separate  
432 three-acre lot. I thought it was just this straight piece of land that's pretty much a  
433 rectangular lot minus the diagonal on the corner of the lot.  
434  
435 Mr. Johnson - No. There will be a lot also adjacent to that would be part of  
436 it as well. And, also, the rest of it would also make a pretty large lot as well. And I  
437 understand what you're saying about your neighborhood but, you know, different  
438 property's going to require different things. And also, people are going to be moving in  
439 the area, especially when you got open land there. And other people owning different  
440 lands as well, to develop it to a certain standard.  
441  
442 And we have a regulation on how it should be done, and basically, we're going to try to  
443 adhere to all that from this board.  
444  
445 Mr. Rowan - In previous instances where I've come before the county in  
446 regard to development, I've been told, well, this was planned 30, 40 years ago. This was  
447 planned for this development 30 years ago, this apartment complex, 30 years ago. But  
448 standards were also set 30 years ago for the frontage requirement. And I ask myself,  
449 what is the point of having standards if you allow a variance to reduce those standards.  
450  
451 Now, I understand this is a 12-acre lot, and it's going to probably be built upon. That's  
452 just a matter of time. And you, sir, mentioned Short Pump. I think there's a lot of people  
453 in the county who would say there's an excess amount of development that went on in  
454 Short Pump, that it went overboard, that the traffic there is ridiculous. And I, for one,  
455 might go visiting shopping there, but I'm actually relieved to leave it behind in my rearview  
456 mirror because of the huge amount of development and traffic that's there. And a lot of  
457 people would call that excessive.  
458

459 I hope that doesn't happen in Varina. I can tell you that the residents of Varina are going  
460 to fight that type of development., that we hope to maintain some type of rural quality. I  
461 think a lot of people moved to that area because of its rural charm and character that they  
462 call Route 5 a scenic byway, that it's historic land, that there's many plantations on that  
463 land, that it has a lot of historic character. And I live next to Fort Harrison, Fort Gilmore,  
464 federal land that's historic in nature. So, all I'm asking is to maintain a certain minimum  
465 standard as opposed to a lot.

466  
467 Mr. Blankinship - I hate to say it, but it's too far off subject here. I think you  
468 make an excellent point, that variances should not be granted willy-nilly. There are strict  
469 legal guidelines for when the Board has the authority to grant a variance, so I think this  
470 would be a good time, Mr. Chair, to allow the applicant to address that.

471  
472 Mr. Rowan - So, again, all I'm really concerned about is asking that  
473 something be agreed upon that a minimum amount of trees will be removed from Mill  
474 Road, from the actual roadside. Obviously, people are going to clear a lot to build a home.

475  
476 Mr. Blankinship - I think that's fine.

477  
478 Mr. Green - Point of clarification. My wife and I, and my family, moved out  
479 to Short Pump 22 years ago. When we moved out there, there was nothing really there.  
480 The farm was still there, the mall was not there, I think the only thing that was there was  
481 the development of the Walmart coming in. I have not regretted, nor am I willing to move,  
482 because of the development that has occurred. And I am not bothered by a similar  
483 trending pattern, because I know how to --

484  
485 So, I don't think that, in defense of Short Pump and the defense of those that live out  
486 there, you know, I'm going to defend my decision and I have found that things are fine.  
487 As a matter of fact, there is a lot of convenience for me with that. But I was there before  
488 and I'm going to stay there now, and I had to accept development coming through,  
489 because I don't own property. I own my property, but I can't control all the other properties  
490 out there or some of the other things.

491  
492 And, actually, there's more being done out there. But if I don't like it, then what I need to  
493 tell my wife is, we're going to move. But I don't like that personal attack on Short Pump.

494  
495 Mr. Rowan - I don't mean to make an attack on Short Pump, sir. I only  
496 state that that is an example, I think, of a lot of development happening in a very short  
497 amount of time and without a lot of input for some of the local residents who really didn't  
498 know what was coming. And by the time it was all said and done, it -- the development  
499 happened regardless. And what I'm asking for is just consideration of the -- of the  
500 standards that have already been put in place by the county. I'm not making these  
501 standards up. These are standards that the county set forth. Right? And wrote in their  
502 requirements. That's not me, that's Henrico county set that standard.

503

504 Mr. Pollard - Right. I just wanted to say I think it's our job to maintain the  
505 standards, and if we make a variance, make an exception, it will be because one of the  
506 main reasons to make a variance would be because a hardship is in place on the property  
507 owner. It's hard to dictate, once they own the property, what they can do with it.  
508

509 I think the overall planning of Varina, and Varina versus Short Pump belongs elsewhere  
510 versus with us, which is a case by case basis. And so if we can't find a case -- a place  
511 where the, just very generally, over simplifying. If it's a case where someone wants to  
512 make an exception, a variance for a preference, we would deny that. It has to be a legal  
513 reason that they get a variance, so we don't do it willy-nilly. And so we definitely hear  
514 what you're saying.  
515

516 Mr. Rowan - I guess the reason I'm really here today --  
517

518 Mr. Blankinship - Mr. Chair, let's move on. We're just repeating ourselves.  
519 Would you have a seat, please.  
520

521 Mr. Rowan - All right.  
522

523 Mr. Condlin - Mr. Chair, members of the Board, thank you. I'll just take  
524 second just from the legalities, in dealing with the good faith aspect, I'm just going to  
525 hand, for the record, if I can just get to you for the Spence case decided by the Virginia  
526 Supreme Court. As you know, a client, in this case, the client can purchase a property  
527 even if they know the need is there for a variance, as long as the good faith is, they didn't  
528 cause the need for the variance. And so we certainly meet that standard.  
529

530 And I certainly understand and respect the conversation regarding the rural character.  
531 This is a one-acre minimum and we have 12.67 acres, so we certainly meet the rural  
532 character. We'd say this is in line with the rural character of the area. While the lot  
533 frontage is not met, at one time, in 1985 I believe, the lot frontage would have been  
534 measured at the location of the home, and it's -- at that time it changed to along the  
535 setback from along the road.  
536

537 And the county does set the standards, but the county also did cause this issue by  
538 purchasing the property that made it outside the standard. So, from that respect, I think  
539 we do meet all the requirements. We do meet the policy requirements that were set by  
540 the state law for approval of a variance. And there is no other relief available for this  
541 situation, which is exactly the purpose for which a variance is allowed for at this time.  
542

543 And, again, it's not a reoccurring situation, so it's not going to be a precedent-setting  
544 situation at this time. I'm happy to answer any questions.  
545

546 Mr. Blankinship - Mr. Condlin, if the variance is not granted, what else could this  
547 property be used for?  
548

549 Mr. Condlin - I'm not going to tell you. It's A-1, so I guess it could be used  
550 for some farming, they could clear the land at that point, but it couldn't be used for a  
551 residence or any sort of structure on there. That would be all we could use it for at that  
552 point.

553  
554 Still, the remaining lot, as you know, one thing I should have mentioned was, of course  
555 that has been mentioned by you all, is the applicant has taken measures to actually  
556 increase the size of his lot to make it a better situation from that standpoint. Otherwise it  
557 would just be used for farming, which any of the homes around there could use it for a  
558 farm. We can clear the land, but we could not build a structure. There's no other relief  
559 available for that purpose. Thank you.

560  
561 Mr. Bell - Is there anyone else who wants to speak to this particular  
562 case? These particular applicants? If not, then we want to go into the motions for  
563 approval -- or not approval.

564  
565 Mr. Blankinship - A motion would be in order.

566  
567 Mr. Bell - A motion would be in order.

568  
569 Mr. Blankinship - Yes.

570  
571 Mr. Johnson - Mr. Chairman, I move that we approve the variance subject to  
572 the conditions, especially condition number four, recommended by the staff. And without  
573 a variance they cannot use the lot for any permitted use. That this is an unreasonable  
574 hardship. The lot was divided by the county, and at the time, it was a buildable lot. They  
575 have plenty of land and the proposed house would meet the required setback. So, it  
576 should not be a detrimental impact and the circumstances that lead to the variance, the  
577 size of it and shape of the land, are unique to the property. And the other tests are met  
578 as stated by the staff report. I recommend approval.

579  
580 Mr. Green - Second.

581  
582 Mr. Bell - Discussion? All those in favor of Mr. Green's motion.

583  
584 Mr. Green - No. Mr. Johnson.

585  
586 Mr. Bell - Mr. Johnson.

587  
588 Mr. Blankinship - Green seconded.

589  
590 Mr. Bell - And Mr. Green's second is correct, so please correct that.  
591 Say aye. All opposed say nay. All right, the motion is passed.

592  
593 After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr.  
594 Green, the Board **approved** application **VAR2020-00003 CLAY AND CORINNA**



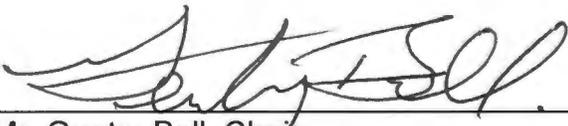
641 After a motion by Mr. Green, seconded by Mr. Johnson, the Board **approved the minutes**  
642 **of the December 19, 2019 meeting** of the Board of Zoning Appeals.

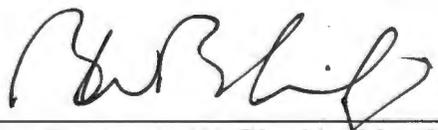
643  
644  
645 Affirmative: Bell, Green, Johnson, Pollard, Reid 5  
646 Negative: 0  
647 Absent: 0  
648

649  
650 Mr. Bell - And is there any new or old business?

651  
652 Mr. Blankinship - No sir.

653  
654 Mr. Bell - Hearing none, the Board is adjourned for this month.  
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663 Mr. Gentry Bell, Chair

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669 Mr. Benjamin W. Blankinship, Secretary  
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