

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 JULY 25, 2019 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN
5 THE RICHMOND TIMES-DISPATCH JULY 8, 2019 AND JULY 15, 2019.

6
7 Members Present: Helen E. Harris, Chair
8 Gentry Bell, Vice Chair
9 Walter L. Johnson, Jr.
10 James W. Reid

11
12 Member Absent: Terone B. Green

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

19
20
21 Ms. Harris - Good morning and welcome to the July meeting of the Board
22 of Zoning Appeals. Would everyone please stand and pledge the allegiance to the flag.

23
24 [Recitation of the Pledge of Allegiance]

25
26 Ms. Harris - Mr. Blankinship who acts as our secretary will read the rules
27 that govern this meeting.

28
29 Mr. Blankinship - Good morning, Madam Chair, members of the board. Ladies
30 and gentlemen. The rules for this meeting are as follows. Acting as secretary I will
31 announce each case, and then I will ask everyone who intends to speak to that case to
32 stand and be sworn in. This meeting is being recorded, so we will ask everyone who
33 speaks to speak directly into the microphone on the podium and please state your name,
34 and please spell your last name so we get it correctly in the record.

35
36 For conditional use permits and variances, which is all we have this morning, right? Yes.
37 A member of the planning staff will give a brief presentation on each case, and then the
38 applicant will present their case. After the applicant has spoken anyone else who wishes
39 to speak will be given the opportunity. After everyone has had a chance to speak the
40 applicant and only the applicant will have an opportunity for rebuttal.

41
42 I will mention the Code of Virginia provides that in order to rule in favor of an applicant
43 there must be three affirmative votes. We have one member absent today, Mr. Green
44 unfortunately, was called out of town, so if anyone would like to defer your case until next
45 month that may increase your chances of getting the three affirmative votes. So is there
46 anybody who would prefer to wait until next month with the hope of being heard before

47 all five members of the board? All right, Madam Chair, hearing none, we are ready to
48 proceed.

49
50 Ms. Harris - Okay. Mr. Blankenship, will you call the first case?

51
52 **CUP2019-00026 SHRI RAM CHANDRA MISSION** requests a conditional use
53 permit pursuant to Section 24-116(d)(1) of the County Code to hold a festival at 2230 E
54 Parham Road (Parcels 775-758-3658 and 775-758-5763) zoned General Residence
55 District (R-6C) (Fairfield).

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

61
62 Mr. Madrigal - Mr. Secretary. Thank you. Madam Chair, members of the
63 board. Before you is a request to allow a festival at a place of worship. The subject site
64 is improved with an 8,200-square-foot building with 56 on-site parking stalls. Access to
65 the site is by way of a shared driveway used by the applicant, an adjacent daycare center,
66 and an accounting office.

67
68 The applicant is proposing to host a one-day festival at the Natural Path Meditation Center
69 entitled Heart Fest 2019. This is a one-day event scheduled for Saturday, August 24,
70 2019 from 9:00 a.m. to 7:00 p.m. with an alternate rain date of Saturday, August 31, 2019.

71
72 The event is a community gathering to celebrate peace and harmony, explain the various
73 mental and health benefits associated with meditation, and provides a venue for local
74 health and related businesses and organizations to promote their good and services.

75
76 This will be a free event for the general public, which is expected to draw approximately
77 1,000 to 1,500 visitors throughout the day. The festival will take place on a 3.89-acre
78 property with meditation sessions and expert discussions occurring within the main
79 building. Food and vendor displays will occur on the 1.22-acre wooded lot east of the
80 main building. Limited parking will be provided on site, with much of the parking being
81 provided on neighboring lots to the west and across Parham Road.

82
83 There will be 40 vendors and display booths surrounding a 400-square-foot elevated
84 stage, which will be used for product and service demonstrations. There will also be a
85 designated arts and crafts area for children attending the event toward the rear of the lot.

86
87 Setup for the festival will occur the day before the event and break down will occur
88 immediately after the event. This will be the fourth annual festival at this location, and
89 staff is not aware of any issues or complaints resulting from past events.

90
91 The property is zoned R-6C and is designated Office and Suburban Residential on the
92 2026 Future Land Use Map. A place of worship is a permitted use in an R-6 district and

93 is consistent with the comprehensive plan designations. With the exception of parking
94 the property is sufficiently sized to host the proposed event.

95
96 Because outreach is customary and is incidental to a place of worship, the festival is
97 considered an accessory use. Consequently, the proposed use is consistent with the
98 zoning and comprehensive plan designations of the property.

99
100 Staff does not anticipate any lasting or negative impacts to adjoining properties or the
101 community at large. The closest homes are approximately 300 feet to the north of the
102 site, and adjacent commercial uses are either closed or have limited operating hours on
103 the day of the event. Although there is not enough onsite parking for this event, the
104 applicant has procured parking on adjacent and nearby property by way of shared parking
105 agreements, and those agreements are in your packet.

106
107 To mitigate any potential safety issues with guests parking across the street, volunteers
108 will be shuttling visitors across Parham Road during the event. Additionally, pedestrian
109 traffic across Parham Road will be prohibited during the event as a condition of approval
110 to ensure safety.

111
112 In conclusion, the applicant's request is consistent with both the zoning and the
113 comprehensive plan designations of the property. There appear to be no lasting or
114 substantial detrimental impacts associated with the proposed one-day festival. Similar
115 events have been held the last three years, resulting in no complaints that staff is aware
116 of. Specific conditions of approval have been prepared to mitigate any adverse impacts
117 on the adjacent homes and business, and to ensure public safety. For these reasons
118 staff recommends approval subject to the prepared conditions. That concludes my
119 presentation. I'll be happy to answer any questions.

120
121 Ms. Harris - Mr. Madrigal, did you notice that the dates on the parking
122 agreements were not the same dates that we have on the conditional use permit? There
123 are several parking agreements, and you notice that they are not using the August --

124
125 Mr. Madrigal - You mean the signature date?

126
127 Mr. Blankinship - The rain date is different.

128
129 Mr. Madrigal - Oh, the rain date is different.

130
131 Mr. Blankinship - They each say August 24th or September 7th rain date.

132
133 Mr. Madrigal - Oh, I see. That's right. So that was just an omission on their
134 letter, I guess. It's probably a form letter that they prepared, but the staff report is correct,
135 it's based on the application.

136
137 Ms. Harris - Right. Okay. Are there any questions from board members?
138 Thank you.

139
140 Mr. Madrigal - Thank you.
141
142 Ms. Harris - Okay. Would the applicant please come forth now and tell us
143 exactly what you wish. Give us your name and spell your last name.
144
145 Ms. Tuburani - Hi. My name is Siri (ph) Tuburani. My last name is spelled T-
146 u-b-u-r-a-n-i.. So, yes, we've been holding this Heart Fest for the past three years, and
147 it's gone really well. And we've had local businesses and yoga teachers and
148 aromatherapy people come and, you know, demonstrate their knowledge and share with
149 the general public. And it's gone really well. And then we also talk about meditation itself
150 at our center. And, yeah, so we would like to do that again this year. So if you have any
151 questions about that, I would be happy to answer them. And I would also like to invite
152 you guys to come if you have time.
153
154 Ms. Harris - All right, thank you. Look at the plat that we have before us
155 where you outlined all of the activities. Where will the shuttle be? We know that you will
156 shuttle guests from this area to the parking lots, but where will the shuttle be on your
157 property? Where would they load?
158
159 Ms. Tuburani - So they would load at the parking lots. We have like a couple
160 vans going and then they will just bring them and bring them out to like the front of our --
161
162 Ms. Harris - Where specifically on the plat will they load?
163
164 Mr. Blankinship - Probably have to go back to the aerial to see where they load,
165 right Miguel?
166
167 Ms. Tuburani - Yes, so I believe we have parking here, so I think we have like
168 a meeting spot right like around there so that you have the vans going back and forth.
169 And then it'll come back and drop off in front of our building right there.
170
171 Ms. Harris - Okay.
172
173 Mr. Blankinship - Miguel, don't we have to go to the aerial to see where they're
174 going to load?
175
176 Mr. Madrigal - Yes.
177
178 Ms. Tuburani - So we have parking areas here set up and, I believe, across
179 the street.
180
181 Mr. Blankinship - I think that's the one we're concerned about.
182

183 Ms. Tuburani - Yeah. So I think it's probably around here, since that's like
184 the empty area. And then we'll come around and go here and bring them and drop them
185 roughly there.

186
187 Ms. Harris - So you would actually load from that center?

188
189 Ms. Tuburani - We load from the parking lots across from the street.

190
191 Ms. Harris - Yes, on your property.

192
193 Ms. Tuburani - Yes.

194
195 Mr. Blankinship - No. That property is the other property. That's the property
196 of the daycare center and --

197
198 Ms. Harris - Yeah. So look at your property. I want to see the spot on your
199 property.

200
201 Ms. Tuburani - Oh.

202
203 Mr. Blankinship - They're going to unload on their property.

204
205 Ms. Harris - Yeah.

206
207 Mr. Blankinship - They're going to load on the property on the south side.

208
209 Ms. Harris - Where will the shuttle pick up and discharge?

210
211 Ms. Tuburani - Oh, yeah. At the same spot over here.

212
213 Ms. Harris - Okay. Right there, okay. All right. Okay. Did you notice on
214 your application that you used 2018 data?

215
216 Ms. Tuburani - Oh.

217
218 Ms. Harris - Did you notice?

219
220 Ms. Tuburani - I was not the person who filled out the application. Sorry.

221
222 Ms. Harris - I was wondering why the dates were conflicting. So then I
223 looked and it said 2018. So another you might try 2020.

224
225 Ms. Tuburani - Yeah, we can fix that.

226
227 Ms. Harris - Okay.

229 Ms. Tuburani - I'm so sorry.

230

231 Mr. Blankinship - Let's make sure we're clear, though. Where is the rain date?

232 If it's not able to be held on the 24th, would --

233

234 Ms. Tuburani - The rain date is August 31st. We didn't realize it was in error

235 on the form.

236

237 Mr. Blankinship - It is the 31st, not --

238

239 Ms. Tuburani - So we are going to get that fixed.

240

241 Mr. Blankinship - Thank you.

242

243 Ms. Harris - Okay. Are there questions of our other board members? We

244 thank you. Oh, yes, Mr. Johnson?

245

246 Mr. Johnson - On your vendors, all of them would be in the parking lot next

247 to the building on the right side?

248

249 Ms. Tuburani - Yes. There's an open like grass area next to here, and we

250 have little like tents set up and with tables for all the vendors to --

251

252 Mr. Johnson - And that would be where all your vendors would be?

253

254 Ms. Tuburani - Yes.

255

256 Mr. Johnson - Would any be inside the building?

257

258 Ms. Tuburani - We have like a couple of talks. Like we have an open like

259 meditation room in the first floor of the building.

260

261 Mr. Johnson - Okay.

262

263 Ms. Tuburani - So if we're hold like a specific meditation center session or

264 sometimes we have -- last year we had like a sound therapy lady who did like this stuff

265 with like music and things, and so we'd have that inside of the room.

266

267 Mr. Johnson - Okay.

268

269 Ms. Tuburani - So that's within the first floor of that building.

270

271 Mr. Johnson - Okay.

272

273 Ms. Harris - We congratulate you on your success. And I did drive through

274 last year and I noticed no congestion.

- 275
276 Ms. Tuburani - Yes.
277
278 Ms. Harris - I only live about four minutes from the event. So we
279 congratulate you on the success, and we hope that you have many more successes, and
280 thank you for coming in.
281
282 Ms. Tuburani - Thank you.
283
284 Ms. Harris - Okay. Mr. Blankinship, Would you call the next case, please.
285
286 Mr. Blankinship - Is there anyone else who'd like to speak to this application?
287
288 Ms. Harris - We forgot to vote.
289
290 Mr. Blankinship - Hearing none, Madam Chair.
291
292 Ms. Harris - Okay. We need to vote now. Okay, what is the pleasure of
293 the board regarding this festival?
294
295 Mr. Bell - I move that we approve it based on the fact that it's been done
296 now for four years and there haven't been any problems with it. It seems to be attended
297 regularly and it's just growth in it. They've thought about safety, they thought about the
298 concerns of the neighborhood. Therefore, I move that we vote for this particular event,
299 yes.
300
301 Mr. Johnson - I vote yes to second.
302
303 Ms. Harris - Okay. It's been moved and properly seconded that we
304 approve this conditional use permit. Are there any questions on the motion? All in favor
305 of approval say aye. Nos, any no's? They ayes have it and so ordered.
306
307 After an advertised public hearing and on a motion by Mr. Bell, seconded by Mr. Johnson,
308 the Board **approved** application CUP2019-00026 SHRI RAM CHANDRA MISSION's
309 request for a conditional use permit pursuant to Section 24-116(d)(1) of the County Code
310 to hold a festival at 2230 E Parham Road (Parcels 775-758-3658 and 775-758-5763)
311 zoned General Residence District (R-6C) (Fairfield). The Board approved this request
312 subject to the following conditions:
313
314 1. This conditional use permit authorizes a festival on Saturday, August 24, 2019, or, in
315 case of event cancelation due to inclement weather, Saturday, August 31, 2019. All other
316 applicable regulations of the County Code shall remain in force.
317
318 2. Only the temporary improvements shown on the plot plan filed with the application may
319 be erected pursuant to this approval. Any additional improvements shall comply with the
20 applicable regulations of the County Code.

- 321
- 322 3. Structures and uses associated with the festival shall not be erected on the site prior
323 to the Friday before the event, and all structures and uses associated with the event shall
324 be removed from the site before Monday following the event.
- 325
- 326 4. Emergency preparedness protocols shall be developed in accordance with the
327 requirements of the Division of Fire.
- 328
- 329 5. Security and safety requirements shall be provided in accordance with the
330 requirements of the Division of Police.
- 331
- 332 6. Parking for the event shall be provided on-site and at the following properties: 2240 E.
333 Parham Road (day care center), 2250 E. Parham Road (accounting office), 9023
334 Woodman Road (veterinary clinic), and 2201 E. Parham Road, (adult day care). Event
335 parking on the shared internal access road shall be prohibited. All on-site fire lanes shall
336 remain open and accessible during the event.
- 337
- 338 7. The applicant shall provide a shuttle for guests parking at 2231 E. Parham Road.
339 Pedestrian traffic across E. Parham Road shall be prohibited during the event. The
340 applicant shall establish loading and unloading zones on parcel B and at 2201 E. Parham
341 Road. The loading and unloading zones shall be located within the property boundaries
342 and shall not impede traffic circulation on the shared access road or public right-of-way.
- 343
- 344 8. The applicant shall obtain necessary building permits for items including large tents
345 (over 900 square feet), temporary stairs, platforms, elevated stages, and electrical
346 generators to be used during the event. The applicant shall request building permits no
347 later than two weeks prior to the event and shall schedule required inspections no later
348 than 7:00 am on the Friday before the event.
- 349
- 350 9. The applicant shall provide adequate restroom facilities and handwashing stations as
351 required by the Department of Building Construction and Inspections.
- 352
- 353 10. This approval is subject to the conditions of plan of development POD2014-00088.
- 354
- 355 11. Vehicles, trailers, equipment, and displays shall not interfere with approved
356 landscaping. Any landscaping damaged by the festival shall be removed within a
357 reasonable time and replaced during the normal planting season.
- 358
- 359 12. Speakers for amplified sound and music shall be directed toward the center of the
360 property to limit impacts on adjoining businesses and residential neighborhoods. Sound
361 resulting from the festival shall not exceed 65 dB at the property line.
- 362
- 363 13. The sale of alcoholic beverages shall be prohibited at the event.
- 364
- 365 14. The applicant shall prohibit loitering on the property.
- 366

367
368 Affirmative: Bell, Harris, Johnson, Reid 4
369 Negative: 0
370 Absent: Green 1

371
372
373 Ms. Harris - Now we're ready for the next case.

374
375 **CUP2019-00027 EUSTACE L. HALEY, JR.** requests a conditional use permit
376 pursuant to Section 24-95(i)(4) of the County Code to allow accessory structures in the
377 front and side yards at 1371 Harmony Avenue (Parcel 803-696-6589) zoned Agricultural
378 District (A-1) (Varina).

379
380 Mr. Blankinship - Would everyone who intends to speak to this case please
381 stand and be sworn in. Raise your right hand, please. Do you swear the testimony you're
382 about to give is the truth, the whole truth, and nothing but the truth, so help you God?
383 Thanks. Mr. Gidley.

384
385 Mr. Gidley - Thank you Mr. Secretary. Good morning Madam Chair,
386 members of the board. As you can see here, the subject property is located at the
387 terminus of Harmony Avenue and it contains one acre of area. This is a view of the
388 existing home on the property, and you will note also in the front yard is the existing three-
389 car, detached garage. In addition, there are two accessory structures located in the rear
390 yard. The three-car garage shown here was constructed in 2005 with an approved
391 building permit.

392
393 Given the terminus ends here, it appears the technician at the time viewed the location
394 as being in the rear yard, which would have permitted the garage. However, in reality, it
395 is in the front yard. The applicant would like to construct an additional accessory structure
396 in the rear yard, which you can see right here. However, before moving forward with this,
397 a conditional use permit needs to be obtained in order to legalize the existing structure
398 that is in the front yard right now. Namely this one right here.

399
400 In evaluating this request: Is it consistent with the zoning ordinance and the
401 comprehensive plan? The property is zoned A-1, Agricultural District, and is designated
402 SR-2, Suburban Residential, on the land use plan. The residential use of the property is
403 consistent with these designations, as are the accessory structures, assuming the
404 conditional use permit is approved for the three-car garage to be located in the front yard.

405
406 Would the request result in a substantial detrimental impact on nearby property? When
407 the garage was constructed in 2005 the surrounding area was mostly wooded and
408 undeveloped. In 2011, however, the land to the east, which you will note is right here,
409 was subdivided to be part of the Village at Olde Colony Subdivision. This is the subject
410 property here, and as you can see, there is a lot that runs right in front of the subject
411 property.

413 The location of the garage would place it next to the rear yard of this new lot, which is
414 more typical and would help to reduce its impact. Given its size, however, it would
415 nonetheless be visible from the adjacent property even though it does meet the required
416 setbacks. Staff does not believe size alone would constitute a substantial detrimental
417 impact, especially since any future purchaser of this property would already be aware of
418 its existence.

419
420 In conclusion, the garage was built with an approved building permit and complies with
421 the required setback and floor area requirements. Furthermore, its construction predates
422 the approval of the subdivision currently being developed next door. Therefore, staff does
423 not anticipate a substantial detrimental impact, and as a result we recommend approval
424 of this request subject to the conditions in your staff report. If you have any questions, I
425 will be happy to answer them. Thank you.

426
427 Ms. Harris - Mr. Gidley, on this aerial photo that we have, I like to keep it
428 where it is, yes. Okay. Where is the house?

429
430 Mr. Gidley - The house is right here.

431
432 Ms. Harris - Okay.

433
434 Mr. Gidley - And this is the three-car garage.

435
436 Ms. Harris - And where did --

437
438 Mr. Blankinship - And where's the building they're proposing? I'm sorry, I didn't
439 mean to interrupt.

440
441 Ms. Harris - That was my question.

442
443 Mr. Gidley - Oh, I'm sorry. It will be located in this back corner here. And,
444 lets see here. You can see the proposed building back here.

445
446 Mr. Johnson - Okay.

447
448 Ms. Harris - Are these paper streets, or are they in fact...

449
450 Mr. Gidley - The property has been dedicated along Harmony Avenue
451 here and Woodside drive, which leads into it. So this is designated county right-of-way,
452 or dedicated.

453
454 Mr. Blankinship - Now as part of that subdivision they will be constructing a
455 public street there. So they're paper streets today, but they won't be for long. Is that
456 correct?

457
458 Mr. Gidley - In fact I believe --

C459
460 Mr. Johnson - Also I notice there is another street that coming from Wilson
461 that would be going all the way through, as well.
462
463 Mr. Gidley - Well to the one question. I believe this has been paved
464 already.
465
466 Mr. Johnson - It is.
467
468 Mr. Gidley - Street view, let's see here.
469
470 Mr. Blankinship - Ah, okay. There we are.
471
472 Mr. Gidley - It's -- and what was your question regarding Wilson, Mr.
473 Johnson?
474
475 Mr. Johnson - They will be coming from the other subdivision to the rear of
476 it. It's a road that will be coming all the way through connecting with, what, Wilson Street,
477 Wilson Road. And also, I want to note that, too, that there is a circle on the plat that
478 shows the county-right-of way, or the road. But, here you can see the circle and also the
479 other three lots that's around that circle.
480
C481 Mr. Gidley - Yes, sir. That's a good point. To be honest with you, I don't
482 know whether the developer did that. Maybe the applicant can answer it. To me that
483 paving looks like a professional job and not something a single homeowner would do.
484 But that does not reflect on this map as of yet when it comes to being county right-of-way.
485 That turnaround.
486
487 Mr. Johnson - Correct.
488
489 Ms. Harris - Are there other questions of Mr. Gidley? Thank you so very
490 much.
491
492 Mr. Gidley - Thank you, ma'am.
493
494 Ms. Harris - Okay. We need the applicant to come forth now and give us
495 your name, spelling your last name, and state your case.
496
497 Mr. Haley - Yes. My name's Eustace L. Haley, H-a-l-e-y. And I requested
498 this permit. I received all y'all's paperwork. I reckon I'm here to see if it's going to get
499 approved or not.
500
501 Mr. Blankinship - Can you tell us about the construction of the road there?
502
503 Mr. Haley - The construction of what?
C04

505 Mr. Blankinship - Of the road right in front of you, the new road that was just put
506 in.
507
508 Mr. Haley - The construction of it? Yes. Originally it was a gravel road.
509 When Shurm properties came in they built the road. Six months later they had to tear a
510 part of it up because it came apart. It was originally just a straight road. Now it's a cul-
511 de-sac.
512
513 Mr. Blankinship - Okay.
514
515 Mr. Haley - They put in the curb and gutter. They put in the asphalt.
516 They've had some problems with it, but hopefully the county will get it straight.
517
518 Mr. Blankinship - And your driveway opens onto that cul-de-sac.
519
520 Mr. Haley - My driveway drives right over that curb.
521
522 Ms. Harris - So the developers installed this road.
523
524 Mr. Haley - The developer installed the curb, the asphalt, everything.
525
526 Ms. Harris - Okay, thank you. Are there questions of board members?
527
528 Mr. Johnson - Also on the other slide, there's a building. Is there a building
529 behind the three-car garage?
530
531 Mr. Haley - Yes, there is. It's a metal storage building.
532
533 Mr. Johnson - Okay.
534
535 Mr. Haley - That one's gone. That one's there. That building right there
536 is still there. The other one is gone. I took the other one down because I had a problem
537 with when we had the big snow it kind of made the roof sink in a little bit. So I went ahead
538 and took the building down.
539
540 Mr. Johnson - Okay. So that's your property as well, then.
541
542 Mr. Haley - Yes, sir.
543
544 Mr. Johnson - Okay.
545
546 Mr. Haley - Y'all sent me some pictures that you didn't like of some stuff
547 that I had along the garage area. I'm in the process of cleaning all of that up. Also, I'm
548 in the process of cleaning up a lot of stuff. So I may not even need this building once I'm
549 done and -- because I don't like being built right on top of. So I may consider selling.
550

551 Ms. Harris - You were living there when the building permit was approved?

552
553 Mr. Haley - Ma'am?

554
555 Ms. Harris - Was this your property when the building permit was
556 approved?

557
558 Mr. Haley - For the garage?

559
560 Ms. Harris - Yes.

561
562 Mr. Haley - Yes, ma'am.

563
564 Ms. Harris - Yes, okay.

565
566 Mr. Haley - Yes. I applied for that permit over in the East End and if I'd
567 have known about a conditional permit or anyone ever said anything about a conditional
568 permit, we wouldn't be having this conversation today, because that building would have
569 been in the back where I'm asking for this building. I call it the back, but they tell me my
570 front door is where my kitchen window is. So how can that garage be in the front yard if
571 my front yard is over here? I want someone to tell me that. I understand how the plot
572 plan looks.

573
574 Mr. Blankinship - Yes.

575
576 Mr. Haley - But you will not get in my front door by my kitchen window.

577
578 Mr. Johnson - Yes, sir.

579
580 Ms. Harris - Okay. Any other questions of board members? Mr. Haley,
581 thank you so very much for coming in.

582
583 Mr. Haley - Okay, thank you.

584
585 Ms. Harris - Is there anyone who supports this petition? Is there anyone
586 who opposes this request? If not, that concludes this case and we are prepared to vote.
587 Is there a motion on this case? Yes, Mr. Johnson.

588
589 Mr. Johnson - Yes. Because the conditional permit was approved some
590 years back for the garage and it complied with the zoning ordinance, I move that we
591 approve the conditional use permit subject to the conditions recommended by the staff.
592 And also, that building for several years has had no complaints, and is located on the
593 front side yard. And because the way the area surrounding the property was developed,
594 it will appear to be in the rear of the two dwellings, so there will be no detrimental impacts
595 to the property. I motion that we approve.

597 Ms. Harris - Okay. Is there a second to this motion?

598

599 Mr. Reid - Second.

600

601 Ms. Harris - It's been moved and properly seconded that we approve this
602 conditional use permit. Mr. Johnson, you said that the conditional use permit was
603 approved, but I think this is the first conditional use permit. The building permit was
604 approved.

605

606 Mr. Johnson - The conditional use permit approved for that three-car garage.
607 this road.

608

609 Ms. Harris - Yes. That's what we're proposing.

610

611 Mr. Johnson - Yes.

612

613 Ms. Harris - Right. But in the past, it was just the building permit that was
614 approved I believe.

615

616 Mr. Johnson - Right.

617

618 Ms. Harris - Okay. Any more discussion on this motion? All in favor of
619 approval say aye. Opposed say no. The ayes have it and this conditional use permit has
620 been approved.

621

622 After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr.
623 Reid, the Board **approved** application CUP2019-00027 EUSTACE L. HALEY, JR.
624 requests a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to
625 allow accessory structures in the front/side yards at 1371 Harmony Ave (Parcel 803-696-
626 6589) zoned Agricultural District (A-1) (Varina). The Board approved this request subject
627 to the following conditions:

628

629 1. This conditional use permit applies only to the existing three-car garage located in the
630 applicant's front yard. All other applicable regulations of the County Code shall remain in
631 force.

632

633 2. The applicant shall keep the property free and clear of tires and other debris.

634

635

636 Affirmative: Bell, Harris, Johnson, Reid 4

637 Negative: 0

638 Absent: Green 1

639

640

641 Ms. Harris - We move now to the variances.

642

643 **VAR2019-00012** **MARK COSTON** requests a variance from Section 24-94 of
644 the County Code to build a one-family dwelling at 2659 Darbytown Road (Parcel 816-
645 699-0818) zoned Agricultural District (A-1) (Varina). The lot width requirement is not met.
646 The applicant proposes 54 feet lot width, where the Code requires 150 feet lot width. The
647 applicant requests a variance of 96 feet lot width.

648
649 Mr. Blankinship - And this variance was actually approved two months ago, and
650 the applicant is asked for reconsideration of condition number two. So the only question
651 on the table this morning is whether to reconsider condition number two of this variance.
652

653 Would everyone who intends to speak to this case please stand and be sworn in? Raise
654 your right hands, please. Do you swear the testimony you're about to give is the truth,
655 the whole truth, and nothing but the truth, so help you God? Okay. Mr. Madrigal.
656

657 Mr. Madrigal - Mr. Secretary, thank you. Madam Chair, members of the
658 board. Before you is a request for the reconsideration of condition of approval. On May
659 23, 2019 the board approved a variance request to allow a one-family dwelling on a 2.224-
660 acre lot with sub-standard lot width. On June 13th the applicant submitted a request for
661 reconsideration of the court's decision, specifically regarding condition number two, which
662 limits the approval to the plans originally submitted by the applicant. Those plans showed
663 a one-story 1,300-square-foot dwelling.
664

665 After the case was approved the applicant tentatively accepted a purchase offer on the
666 property by Mr. Jamal Simms. Mr. Simms would like to construct a two-story, 3,800-
667 square-foot building with a three-car garage, attached three-car garage. And this is the
668 revised plot plan on the screen.
669

670 The proposed location of the home was also adjusted to accommodate the septic drain
671 field. The sale of the property is contingent on the approval for reconsideration. All of the
672 facts of the case remain the same. The design and location of the proposed dwelling
673 were provided by the applicant, and staff does not anticipate any detrimental impact from
674 a larger home or its modified location.
675

676 In conclusion, the property was created in the late 1930s, prior to the adoption of county
677 standards for lot width. Absent of variance there are no reasonable uses for the property.
678 Staff is not aware of any detrimental impacts from the applicant's proposal, and the other
679 subtests are also met as set forth in the May staff report. The board approved the
680 variance based on the information provided by the applicant at that time. The larger
681 dwelling and modified plan does not affect staff's analysis or recommendation. For these
682 reasons, staff recommends approval be given to modify condition number two as outlined
683 in the staff report, to allow for the larger dwelling. This concludes my presentation. I'll be
684 happy to answer any questions.
685

686 Ms. Harris - Are there any questions of Mr. Madrigal? Thank you so very
687 much.
688

689 Mr. Madrigal - Thank you.
690
691 Ms. Harris - We need the applicant to come forth now and state your case.
692
693 Mr. Coston - Mark Coston, C-o-s-t-o-n. Good morning, board.
694
695 Ms. Harris - Good morning.
696
697 Mr. Reid - Good morning.
698
699 Mr. Coston - I'm becoming a regular here now. I think everything's self-explanatory. Before I could even start the building process, I had started putting the driveway in after you guys gave me approval, Mr. Simms came along, him and his wife, and was interested in the lot and we struck a deal. So we have a binding contract that if he can build a 3,800-square-foot house, 4 bedroom, that I would sell him the lot. So I would like to ask the board to approve that.
700
701
702
703
704
705
706 Ms. Harris - Okay. Are there any questions? I think we'd like to talk to Mr.
707 Simms. Thank you.
708
709 Mr. Simms - Good morning, board.
710
711 The Board - Good morning.
712
713 Mr. Simms - My name is Jamal Simms, S-i-m-m-s.
714
715 Ms. Harris - Okay. Tell us what you'd like to do, Mr. Simms.
716
717 Mr. Simms - I want to build my house. I live in a subdivision. I don't get along with my neighbor. Lot came up. I want to build a house. I just want privacy. The driveway was long. It's just, it's wooded lot. It's just beautiful to me. I just want to build my house.
718
719
720
721
722 Ms. Harris - Were you aware of the change in the square footage of the
723 house?
724
725 Mr. Simms - Yes, ma'am. I couldn't live in a 1,500-square-foot house. My
726 house is about 4,000 square feet now. For my kids that's what we needed. We'd like to
727 pick our house up and just move it, but we can't. So --
728
729 Ms. Harris - These are nice plans that we have before us.
730
731 Mr. Simms - Yes, ma'am.
732
733 Ms. Harris - Very impressive, very impressive. Any questions from board
734 members?

C735
736 Mr. Johnson - Notice you're working on the driveway. There would be a long
737 driveway back to your facility there.

738
739 Mr. Simms - Yes, yes sir.

740
741 Mr. Johnson - And the regulations of the county you will be abiding by?

742
743 Mr. Simms - Yes, sir. We had two culverts put in. We can get a 40-foot
744 truck back there now. The driveway, I'm pretty sure, is eight-foot wide. It meets all the
745 standards. I think we put in number threes? I'm not sure about the stone size.

746
747 Mr. Coston - We have a bed of number threes in now. And that's all – we're
748 going to let all the trucks go back and forth and pack that down, then we going to come
749 on top of that with a real nice-looking granite crushed, like a 53 or something like that.
750 And we're going to meet the county's width, which I think is 12 foot on that driveway.

751
752 Ms. Harris - Yes, it is.

753
754 Mr. Coston - And I've already employed the county to put in a third culvert
755 so that we have a wider apron in order to get the cement trucks and the dump trucks in,
756 and I've already paid that fee. And they're supposed to come out this week, actually, and
757 put that in. Dealing with Mr. Terry with the county.

C758
759 Ms. Harris - Are there other questions? We thank you both for coming in.

760
761 Mr. Simms - Thank you for having us.

762
763 Ms. Harris - Okay. What is the pleasure of the board concerning variance
764 12?

765
766 Mr. Johnson - I move that we amend the condition number two of the
767 variance allowing a larger home. The board approved this variance in May, so we do not
768 need to go over the tests again. The changes from a smaller house to a larger house do
769 not change the outcome of the decision, and the only difference is that the contract
770 purchaser wants to build a larger house than the one shown on the plans in May.

771
772 Ms. Harris - Okay. Is there a second to the motion?

773
774 Mr. Bell - Second.

775
776 Ms. Harris - It's been moved and properly seconded that we will approve
777 this variance. Notice on the county's report that we have before us that they show us the
778 exact language that will be used. And I think there were only a couple of changes
779 because we're talking about the building design by Mark Coston and Jamal Simms on
780 June 13, 2019. I think everyone sees that on the county's report.

781
782 Okay. Any further discussion on the motion? All in favor say aye. Those opposed say
783 no. The ayes have it and this variance has been approved.

784
785 After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr. Bell,
786 the Board **approved** application VAR2019-00012 MARK COSTON's request for a
787 variance from Section 24-94 of the County Code to build a one-family dwelling at 2659
788 Darbytown Road (Parcel 816-699-0818) zoned Agricultural District (A-1) (Varina). The
789 Board approved this request subject to the following conditions:

- 790
791
792
793 1. This variance applies only to the lot width requirement for one dwelling only. All other
794 applicable regulations of the County Code shall remain in force.
795
796 2. Only the improvements shown on the plot plan and building design filed by Mark Coston
797 and Jamal Simms on June 13, 2019 may be constructed pursuant to this approval. Any
798 additional improvements shall comply with the applicable regulations of the County Code.
799 Any substantial changes or additions to the design or location of the improvements will
800 require a new variance.
801
802 3. Approval of this request does not imply that a building permit will be issued. Building
803 permit approval is contingent on Health Department requirements, including, but not
804 limited to, soil evaluation for a septic drainfield and reserve area.
805
806 4. Any dwelling on the property shall be served by public water.
807
808 5. Clearing, grading, or other land disturbing activity shall not begin until the applicant has
809 submitted, and the Department of Public Works has approved, an environmental
810 compliance plan.
811
812 6. The driveway from Darbytown Road to the dwelling shall be improved with a durable
813 asphalt or compacted gravel surface at least 10 feet wide with 12 feet of horizontal
814 clearance and 14 feet of overhead clearance to provide access for police, fire, emergency
815 medical services, and other vehicles.
816
817 7. A building permit must be approved by May 23, 2021, or this variance will expire. If the
818 building permit is cancelled or revoked because it was not diligently pursued, this variance
819 will expire at that time.

820		
821		
822	Affirmative:	Bell, Harris, Johnson, Reid
823	Negative:	0
824	Absent:	1
825		
826		

C 827 Ms. Harris -

Mr. Blankinship, the next case.

828

829

830 **VAR2019-00015** PAULA YOUNG requests a variance from Section 24-94 of
831 the County Code to build a sunroom on an existing deck at 9741 Pemberton Crossing
832 Drive (PEMBERTON CROSSING) (Parcel 753-756-7574) zoned General Residence
833 District (R-5AC) (Three Chopt). The rear yard setback is not met. The applicant proposes
834 22 feet rear yard setback, where the Code requires 35 feet rear yard setback. The
835 applicant requests a variance of 13 feet rear yard setback

836

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

841

842 Mr. Gidley - Thank you Mr. Secretary, members of the board. As you can
843 see here, the subject property is located off of Pemberton Road just south of its
844 intersection with Mayland Drive. It contains a Cape Cod home that has been owned by
845 the applicant since its construction in 2005. The rear yard setback in this neighborhood
846 is 35 feet, which applies to any space covered by a roof, such as a sunroom, a screened
847 in porch, or the main part of the house. Decks, however, may extend up to 10 feet into
848 the rear yard setback, or in this case, 25 feet from the property line.

849

850 If you look at the original survey here you can see the deck was right here, and it included
851 some steps at the back side of the deck. At the time, these totaled approximately 10 feet
852 and thus extended within 26 feet of the rear property line, which met the 25-foot setback
853 requirement for decks.

854

855 This is a current view of the deck, and you will notice the steps are no longer here.
856 Sometime after the applicant purchased the home, the steps were removed from the back
857 of the deck and were rebuilt on the opposite side over here. The deck itself was then
858 extended out an additional five and a half feet resulting in the deck now being only 24 feet
859 off the rear lot line or 1 foot into the required setback even for decks. This work was done
860 without the required building permit being obtained. This is what we have out here
861 currently today.

862

863 The purpose of the variance is the applicant wants to convert the open deck to an
864 enclosed porch, which would come to within 24 feet of the rear lot line. Because a roofed
865 structure must meet standard setbacks of 35 feet and the deck is already 11 feet into the
866 setbacks, that would create an 11-foot setback violation. Thus the request for the
867 variance.

868

869 According to the application, the variance is necessary to allow the applicant, who has a
870 recognized disability, the same enjoyment of her home as a person who does not have a
871 disability. She has provided documentation from a doctor that she would benefit greatly
872 from a climate-controlled outdoor setting, because summer heat commonly causes

873 temporary exacerbation of the effects of her disability.

874

875 In evaluating this request, as you are aware, the code of Virginia was recently amended
876 to allow for a variance especially if it's necessary for a reasonable modification to afford
877 a disabled person the same opportunity to use and enjoy housing. This ties into existing
878 federal housing law.

879

880 In this case the applicant would continue to have access to her existing home. Due to
881 her disability, however, she cannot enjoy the outdoor setting of the deck in the same way
882 as her neighbors because, again, the summer heat exacerbates her symptoms. A
883 climate-controlled porch would allow her to enjoy the rear of her dwelling in the same way
884 the neighbors enjoy their decks, so this standard would appear to be met.

885

886 It should be noted, however, that fair housing law does not require more or better
887 opportunities than other residents in the neighborhood enjoy. In this case because other
888 residents may not have a deck any closer than 25 feet from the rear lot line, the applicant
889 is only entitled to a variance for that portion of the deck, built no closer than 25 feet from
890 the rear lot line.

891

892 In reviewing the five subtests, the first one deals with acquisition of the property in good
893 faith and was any hardship created by the applicant. The applicant purchased the
894 property in good faith, she's obviously not responsible for a disability, however as property
895 owner, she is responsible for subsequently violating the setbacks by extending the deck
896 out and failing to get the approved building permit to enlarge the deck.

897

898 Therefore, if the variance is granted to allow a conversion of the structure to a climate-
899 controlled porch, it should be subject to the same 25-foot setback subject that the
900 neighboring property owners also have to meet. As noted in your staff report, the
901 remaining four subtests appear to be met.

902

903 So, in conclusion, the property contains an existing dwelling and a deck which violates
904 the zoning ordinance. The applicant would like to convert this deck to a climate-controlled
905 space in order to allow her to have the same opportunity to enjoy this space that her
906 neighbors are able to enjoy. She would appear to be entitled to the variance under the
907 change in state law.

908

909 If the board decides that enclosing the deck is necessary for the applicant to have the
910 same opportunity to enjoy her dwelling as the other neighbors, then staff recommends
911 approval of this request subject to the attached conditions, which include having the
912 climate controlled space comply with the 25-foot setback from the rear lot line that the
913 neighbors are also subject to. This concludes my presentation, and if you have any
914 questions, I will be happy to answer those, thank you.

915

916 Ms. Harris - Are there any questions of Mr. Gidley?

917

918 Ms. Harris - Okay, we're ready.

919
920 Ms. Young - Good morning, board. My name is Paula Young, Y-o-u-n-g, and I'm here
921 this morning to discuss being able to close in my deck. I was diagnosed with multiple
922 sclerosis and as the letter from my physician states the heat can cause exacerbation of
923 physical symptoms. When initially I purchased this house, I did not have that diagnoses,
924 and I do enjoy the outdoors. I had herb gardens and mint and basil and tomatoes and all
925 those kind of things, which led to me wanting to have the bigger deck.

926
927 It was through this process that I realized that was a violation of a foot. I just didn't know,
928 new to home ownership. That is my error for that, I apologize. And willing to concede to
929 any regulations that need to be followed to move forward. With that said, living with this
930 challenge and the gradual physical decline as it occurs, I'm now using a cane sometimes
931 with walking. I could get to the point, God forbid, where a wheelchair is necessary.

932
933 And the only thing I would ask you to consider is that maybe that extra foot might become
934 necessary for me in the future with access to the deck. Although I am willing to concede
935 to whatever regulations are needed. I also have the contractor here if there's any
936 comments we need to make about the actual building structure. And I have a member
937 here from my homeowner's association that they're --

938
939 Ms. Harris - Ms. Young, before you leave the mic, are there questions from
940 board members for Ms. Young? Did you get a building permit to add on your deck?

941
942 Ms. Young - I did not. Honestly, I didn't know. I spoke with a contractor who said they
943 were doing the deck. I know that he met with the county. I know that there was paperwork
944 about checking on if there's electrical wires and lights and things. I thought that was what
945 was needed. It was my lack of knowledge that led to that error. I apologize.

946
947 Ms. Harris - Okay. Other questions from board members?

948
949 Mr. Johnson - Yes, Mrs. Young, are you planning on extending it another
950 foot?

951
952 Ms. Young - No, sir.

953
954 Mr. Johnson - Okay.

955
956 Ms. Harris - Just want to enclose what you have.

957
958 Ms. Young - I just want to enclose the current structure.

959
960 Ms. Harris - If you took off a foot, what would you take off? What would
961 you remove? Is that a question for your contractor?

962
963 Ms. Young - Yes.

965 Mr. Blankinship - It looks like there is a little bit of cantilever there where the
966 posts, one would hope, that the posts actually meet the setback and then the deck
967 cantilevers over. So they'll have to remove the deck to build the enclosed space. And,
968 at that point, they'll just have to come up from the posts rather than the existing overhang.
969

970 Mr. Johnson - Okay.

971

972 Mr. Blankinship - Is that -- you're looking at me like that's incorrect.

973

974 Ms. Gidley - No. That is correct. All the building codes would have to be
975 met, inspected.

976

977 Mr. Blankinship - Okay. Right, right.

978

979 Mr. Johnson - Thank you, Mr. Blankinship. That's what I was wondering.

980

981 Mr. Bell - And in this picture, in the rear yard it looks like there is a
982 drainage ditch. Is that the drainage ditch, or is that a part of your septic system? See
983 that dark green grass? It's just to the rear.

984

985 Mr. Johnson - Near the fence.

986

987 Mr. Bell - Near the fence in the rear.

988

989 Ms. Young - So that whole neighborhood is built, I believe that's called a
990 swain.

991

992 Mr. Blankinship - Swale.

993

994 Ms. Young - And so when it rains it's the way for drainage and water goes
995 -- it starts looking like a river sometimes.

996

997 Mr. Blankinship - These are all on public water and sewer, so there will be no
998 septic system.

999

1000 Mr. Bell - Thank you.

1001

1002 Ms. Harris - What are those two posts there that we see?

1003

1004 Ms. Young - Those have some lights on them. Just the hanging lights for
1005 the patio at night.

1006

1007 Ms. Harris - You know how many feet from the deck they are?

1008

1009 Ms. Young - I don't know.

1010

911 Ms. Harris - Let's bring the contractor up please. Please give us your
912 name and spell your last name.

1013
1014 Ms. Sperotto - Good morning. My name is Megan Sperotto, S-p-e-r-o-t-t-o.
1015 The question you asked were how far are the posts on the patio from the deck.

1016
1017 Ms. Harris - Well that's one question, yes.

1018
1019 Ms. Sperotto - There's one over in the corner of the house where the patio
1020 deck and house all meet. That might be three or four feet. And these posts are in
1021 planters, they're not in the ground. They're in flowerpots, so they're mobile. None of
1022 them are secured in the ground. If you can see, they go down into decorative flowerpots.

1023
1024 Ms. Harris - So did you install those, too?

1025
1026 Ms. Sperotto - Yes, ma'am.

1027
1028 Ms. Harris - Okay. Okay.

1029
1030 Mr. Blankinship - But that's not set in the ground?

1031
1032 Ms. Sperotto - What's that?

1033
1034 Mr. Blankinship - The posts are not set in the ground?

1035
1036 Ms. Sperotto - Correct.

1037
1038 Mr. Blankinship - Okay.

1039
1040 Ms. Sperotto - The post goes into a flowerpot and it's stabilized with concrete
1041 and rocks and it's all decorative. But we could pick it up and move it if we needed to.

1042
1043 Ms. Harris - If she had to remove one foot from the deck, do you see where
1044 it would come?

1045
1046 Ms. Sperotto - That is something that I didn't look at, what you're talking
1047 about, whether the posts under the deck --

1048
1049 Ms. Harris - I'm not talking about the posts now. The deck is the --

1050
1051 Mr. Blankinship - Well, no. But that might be the answer to the question.

1052
1053 Mr. Johnson - Yes.

1054
1055 Ms. Harris - Oh, okay.

1057 Ms. Sperotto - No. The posts that the deck are sitting on, not the ones on
1058 the patio.

1059

1060 Mr. Blankinship - Right. Oh, I'm sorry.

1061

1062 Ms. Sperotto - I mean, that's what y'all were just talking about, right?

1063

1064 Mr. Johnson - Right, the structure under the deck.

1065

1066 Ms. Sperotto - Correct. It looks, from this picture, and I've been to Paula's
1067 house numerous times, and I don't know why it's not something that I paid more attention
1068 to. But it does look like it's set back in a little further than the handrail posts that are up
1069 on the deck. But it would be significant work to break down that deck, because it's not --
1070 it's not just decking boards built on top of the structure, it's a slate bottom, so it's like a
1071 floor that's built on the top that you walk on. So it would -- it would be quite a bit of work
1072 to bring it back in. But, like she said, if that's what we need to do to comply we can, it's a
1073 house, you can always change something. Can always fix it.

1074

1075 Ms. Harris - Did you build a deck for her?

1076

1077 Ms. Sperotto - No.

1078

1079 Ms. Harris - You did not.

1080

1081 Ms. Sperotto - No.

1082

1083 Ms. Harris - Okay. Questions from board members? You have someone
1084 else who you brought to make a statement?

1085

1086 Mr. Perez - Good morning. My name is Martin Perez. I'm Paula Young's
1087 husband.

1088

1089 Ms. Harris - Okay. How do you spell your last name?

1090

1091 Mr. Perez - P-e-r-e-z. Those posts in reference that's supporting the deck
1092 itself, I have to go outside to do gardening. So I'm involved in that part. There're concrete
1093 posts sitting, and they are exactly to the ending of the deck itself. There's not maybe two
1094 inches that the porch itself goes out. The corner pieces are about maybe eight, nine
1095 inches across one side, and it's almost like a piece of block. It's heavyset.

1096

1097 Ms. Harris - So your point is?

1098

1099 Mr. Perez - If you need to reduce it, it has to be reconstructed.

1100

1101 Ms. Harris - Okay.

1102

103 Mr. Perez - It's not like there's a piece of the porch that you could simply
104 cut off. The structure, the support, you know, it's just some -- it's got to be moved out
1105 also.

1106
1107 Ms. Harris - You understand now the limit, right?

1108
1109 Mr. Perez - Yes ma'am. Completely. I just want you to have all the
1110 information.

1111
1112 Ms. Harris - Okay. Question from board members. I say even if we decide
1113 that it could be enclosed, we'll be giving a right to Ms. Young that her other neighbors
1114 don't have by that one foot. You know, because they don't have that. Even if we decide
1115 to enclose it. So if there are no more questions of board members. Mr. Johnson.

1116
1117 Mr. Johnson - Looking at the deck, it seems that there is about six or some
1118 inches on the back part of it that's hanging over, not -- and the poles are in the ground.
1119 Just looking at it from here. And I notice that most of the decks that have poles on the
1120 end like that are bolted in, and then you have --

1121
1122 Mr. Perez - What holes are you referring to?

1123
1124 Mr. Johnson - And then you have about four to six inches additional. See
1125 this hanging over?

1126
1127 Mr. Perez - I see. Sorry about that.

1128
1129 Mr. Johnson - If you go up to the deck, then you notice that there is some
1130 hangover there. But if you went directly on top of it --

1131
1132 Mr. Perez - Sorry about that. Let's see.

1133
1134 Mr. Perez - Right there.

1135
1136 Mr. Johnson - Yes.

1137
1138 Mr. Perez - You have this piece, external piece, that seems to be
1139 supporting the whole structure on the outside.

1140
1141 Mr. Johnson - The outside, yes.

1142
1143 Mr. Perez - That's the piece of -- this is not directly connected to this post
1144 over here.

1145
1146 Mr. Blankinship - Yes, and that's what we're concerned about.

1147
1148 Mr. Johnson - Right. That's what we're talking about.

1149
1150 Mr. Perez - Got it.
1151
1152 Mr. Johnson - That's an additional hangover that if you can build it on top of
1153 that post in the ground, straight up, then you're -- that's 6 or 8 inches, or maybe 10 inches
1154 that allow you to --
1155
1156 Mr. Perez - The mechanics will have to go be deferred to the contractor.
1157
1158 Mr. Blankinship - Yes. Somebody will have to go pull a tape and just see
1159 exactly where that 25-foot line is.
1160
1161 Mr. Perez - Right.
1162
1163 Mr. Blankinship - That'll be your starting point.
1164
1165 Mr. Perez - Any questions?
1166
1167 Ms. Harris - Are there more questions from board members?
1168
1169 Mr. Johnson - That's it.
1170
1171 Ms. Harris - Okay. Do you have someone else who you wish to speak?
1172
1173 Ms. Spuler - Good morning, board.
1174
1175 The Board - Good morning.
1176
1177 Ms. Spuler - My name is Dr. Francis Spuler. I have been a neighbor and
1178 friend of Dr. Youngs for 14 years.
1179
1180 Ms. Harris - Please spell your last --
1181
1182 Ms. Spuler - Oh, excuse me. S-p-u-l-e-r. For the last 15 years before I
1183 retired, I worked closely with a special needs population. And during that time our school
1184 building was completely renovated. And because of that, we had 22 rooms of disabled
1185 people, children, and I guess 70 or 80 teachers and aids and healthcare professionals.
1186 We asked them, I have a PhD in urban planning, and we talk together, and I said, "Okay,
1187 of all of the things that you would like to have fixed about this building, what would you
1188 like?" One-hundred percent of the persons I worked with said space is one, light is two,
1189 air is three. They wanted space, because if you are wheelchair bound, children or
1190 wheelchair bound adults, they need space to turn around. If they're motorized or if they're
1191 hand pushed or whatever, they need space to turn around. I do not wish that for my dear
1192 friend, but if that were to happen, she needs space.
1193
1194 There will have to be a ramp, obviously, coming from her kitchen to her -- I live in the

195 neighborhood and there'd have to be a ramp coming from the kitchen on to the deck,
196 which is going to take off some move-around space. So my only concern for her is that
197 she has enough space to get out to her porch and enjoy it and whatever. And I'm
198 speaking here to that point. And I'll answer any questions you need.

199
200 Ms. Harris - Why did you say she would need a ramp?

201
202 Ms. Spuler - I beg your pardon.

203
204 Ms. Harris - Why did you say that she would need a ramp from her kitchen
205 to her space?

206
207 Ms. Spuler - She'll need a ramp, because apparently the porch will be, if
208 it's like mine, it'll be just a tiny bit lower then, and she won't be able to get out with the
209 wheelchair without having some sort of a ramp thing.

210
211 Mr. Blankinship - If she later finds herself in a wheelchair.

212
213 Ms. Spuler - Exactly. If.

214
215 Ms. Young - If.

216
217 Ms. Harris - But as it stands now, she would not need a ramp?

218
219 Ms. Spuler - No, she would not need a ramp.

220
221 Ms. Harris - Questions from board members?

222
223 Mr. Johnson - And also, that ramp you're referring to, would be coming out
224 of that house onto the deck, not from the outside.

225
226 Ms. Spuler - No. All I was saying, is that that ramp would eat up a little
227 space for her turn around and whatever. That's all my point is.

228
229 Ms. Harris - Okay. Other questions? Thank you so very much for coming
230 in. Ms. Young, Mr. Perez, thank you for coming in. Is there anyone who supports this
231 petition? Anyone else, I should say. Anyone else who opposes this application? If not,
232 that concludes the case and we're ready to vote. What is the pleasure of the board?

233
234 Mr. Johnson - Go ahead.

235
236 Mr. Reid - I move that we approve this variance for Dr. Young.
237 Considering her condition. I don't think an inch here or an inch there makes any
238 difference. She's got a problem, and I think we should approve the variance.

239
240 Mr. Johnson - I second.

1241
1242 Ms. Harris - Okay. It's been moved and properly seconded that we
1243 approve this variance. Is there any discussion on the motion? We know, we're dealing
1244 with a foot here, so to -- even if we recognize the fact that, and we acknowledge Dr.
1245 Young's condition, but in looking at the guidelines, you know, they talk about having the
1246 same access that the other neighbors have. I really believe that one foot is not enough
1247 to tear down a deck. Although we've had cases nationwide where they would make you
1248 tear down something for just one foot. But it is my opinion, too, that one foot is not enough
1249 to tear down this deck and build something else. Any question?

1250
1251 Mr. Bell - Ben would answer this, would the fact that the new change
1252 that we also hear a lot today that handicapped people would be allowed to have this deck
1253 because of their condition. That being the case, that means any of the decks or back
1254 porch along that rear section, or just any deck, as long as they had the same condition,
1255 or a like condition, could correct it. And it didn't correct it, and it meant a foot, an inch or
1256 two of that. That would be the substitute for that particular deck. This particular deck is
1257 one foot, another one might be a foot and a half, because they're all not built that close.
1258 Would that be the case, Ben?

1259
1260 Mr. Blankinship - Well, there are two different questions here I want to make
1261 sure that we're separating.

1262
1263 Mr. Bell - Right.

1264
1265 Mr. Blankinship - First of all, the deck is allowed to extend into a setback more
1266 than an enclosed, climate-controlled space is. Every home along that street has a deck
1267 that extends into the setback, and that's fine. That's perfectly lawful. Everybody on the
1268 street has the ability to walk out on their deck and enjoy that space.

1269
1270 Ms. Young is losing, gradually, the ability to enjoy that space. So because of the disability
1271 the county doesn't want to be in the position of discriminating against her and saying,
1272 everybody else in the neighborhood can walk out on their deck. You can't, and that's too
1273 bad.

1274
1275 So the purpose of the variance is to allow her to make a modification to her home so that
1276 she can walk out in that space and enjoy it like the neighbors can walk out and enjoy the
1277 deck. She won't be on a deck, because she needs it to be climate controlled. So she'll
1278 be able to walk out into a climate-controlled space the same size and shape as the
1279 neighbor's decks.

1280
1281 In addition to that, her previous contractor, not, Ms. Sperotto, some contractor in the past
1282 violated the ordinance by extending that deck into the setback. Nobody else in the
1283 neighborhood has a deck going 11 feet into the setback, they all go 10 feet as the code
1284 allows and stop there. So because of a previous contractor's error, she now has to correct
1285 that one-foot violation and then, assuming that the board votes in favor of the motion,
1286 there is a motion on the table, assuming the board votes in favor of the motion, then she

287 will be allowed to enclose the deck space so that she'll have the same rights as the
288 neighbors in spite of her disability.

1289
1290 Mr. Bell - Yes.

1291
1292 Mr. Gidley - Mr. Secretary.

1293
1294 Mr. Blankinship - Yes, sir.

1295
1296 Mr. Gidley - I think you stated that wrong with the respect. That was staff's
1297 recommendation based upon the county attorney's recommendation that she be allowed
1298 to enclose the deck, but only 10 feet out.

1299
1300 Mr. Blankinship - Right.

1301
1302 Mr. Gidley - That was Mr. Tokarz's recommendation as well. The motion
1303 on the floor would be allow her to enclose the entire deck, including the foot into the
1304 setback.

1305
1306 Mr. Johnson - Yes.

1307
1308 Mr. Blankinship - Yes. That's the issue that needs to be clarified. Does the
1309 motion include that last foot, or is the motion as recommended by staff and by the county
1310 attorney's office?

1311
1312 Mr. Gidley - Yes, sir.

1313
1314 Ms. Harris - Okay. On clarification.

1315
1316 Mr. Johnson - And that motion, Madam Chair, I would like to see that it is the
1317 same as the deck. You know, if you're going to build it, not add more to it, but you can
1318 use whatever is on the deck.

1319
1320 Ms. Harris - Okay. It was the person who seconded?

1321
1322 Mr. Bell - I'll second it.

1323
1324 Ms. Harris - What -- is that what you understood the motion to be, enclose
1325 the --

1326
1327 Mr. Blankinship - Yes. Is that the intent of your motion, Mr. Reid?

1328
1329 Mr. Reid - Yes.

1330
1331 Mr. Blankinship - Okay.

1333 Ms. Harris - Okay, that was the intent of -- who made the motion, I'm sorry.
1334
1335 Mr. Blankinship - Mr. Reid.
1336
1337 Mr. Reid - I did.
1338
1339 Ms. Harris - Mr. Reid, okay. Mr. Reid --
1340
1341 Mr. Blankinship - Mr. Johnson seconded.
1342
1343 Ms. Harris - Was that your interpretation, Mr. Reid?
1344
1345 Mr. Reid - Yes.
1346
1347 Ms. Harris - Okay. Then we're talking about the entire deck being
1348 enclosed.
1349
1350 Mr. Blankinship - So we need to amend conditions. We need to amend
1351 condition number two.
1352
1353 Mr. Johnson - Condition number two.
1354
1355 Mr. Blankinship - Condition number two currently reads the climate-controlled
1356 porch shall be located at least 25 feet from the rear lot line as required by the setback for
1357 a landing and --.
1358
1359 If I'm understanding you correctly, you want that to say the climate-controlled porch shall
1360 be no closer to the rear yard setback than the existing deck. Is that accurate?
1361
1362 Mr. Reid - Yes.
1363
1364 Ms. Harris - Yes.
1365
1366 Mr. Blankinship - Okay.
1367
1368 Mr. Johnson - And I second that.
1369
1370 Ms. Harris - Okay. We're going to add that to your motion.
1371
1372 Mr. Reid - Yes.
1373
1374 Mr. Johnson - Okay.
1375
1376 Ms. Harris - Okay. It's been moved and properly seconded that we will
1377 approve this variance with the change in condition number two. So that we'll be talking
1378 about the entire deck and not just the portion that is in compliance. Okay. All in favor of

1379 the motion say aye. Those opposed say no. The ayes have it, and that concludes this
1380 case.

1381
1382 After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Johnson,
1383 the Board **approved** application **VAR2019-00015 PAULA YOUNG's** request for a
1384 variance from Section 24-94 of the County Code to build a sunroom on an existing deck
1385 at 9741 Pemberton Crossing Drive (PEMBERTON CROSSING) (Parcel 753-756-7574)
1386 zoned General Residence District (R-5AC) (Three Chopt). The Board approved this
1387 request subject to the following conditions:

1388
1389 1. This variance applies only to the rear yard setback requirement for a climate-controlled
1390 porch in the location of the existing deck. All other applicable regulations of the County
1391 Code shall remain in force.

1392
1393 2. The climate-controlled porch shall be located no closer to the rear lot line than the
1394 existing deck.

1395
1396 3. The new construction shall match the existing dwelling as nearly as practical in
1397 materials and color.

1398
1399 4. The owner shall obtain a building permit for the climate-controlled porch by July 23,
1400 2021, or this variance will expire. If the building permit is cancelled or revoked because
1401 construction was not diligently pursued, this variance will expire at that time.

1402
1403
1404 Affirmative: Bell, Harris, Johnson, Reid 4
1405 Negative: 0
1406 Absent: Green 1

1407
1408 Ms. Harris - Next case.

1409
1410
1411
1412
1413 **VAR2019-00019 LIBERTY HOMES VA, INC.** requests a variance from Section
1414 24-95(b)(5) of the County Code to build a one-family dwelling at 8990 Midway Road
1415 (WESTHAMPTON SETTLEMENT) (Parcel 750-740-3607) zoned One-Family Residence
1416 District (R-3) (Tuckahoe). The lot width requirement is not met. The applicant proposes
1417 61 feet lot width, where the Code requires 65 feet lot width. The applicant requests a
1418 variance of 4 feet lot width.

1419
1420 Mr. Blankinship - Would everyone who intends to speak to this case please
1421 stand and be sworn in? Raise your right hand, please. Do you swear the testimony
1422 you're about to give is the truth, the whole truth, and nothing but the truth, so help you
1423 God? Thank you. Mr. Gidley.

1425 Mr. Gidley - Thank you, Mr. Secretary, members of the board. The subject
1426 property is located in the Westhampton Settlement subdivision, which was recorded in
1427 1912, prior to the first zoning ordinance. It consists of lot 24 and part of lot 26, which
1428 together has 61.64 feet of lot width. The current zoning ordinance requires a total lot
1429 width of 65 feet. Here's the subject property here.

1430
1431 How did we get here? In the early 1980s Robert P. Bain Construction Company acquired
1432 a row of 10 unimproved lots including the subject property. At the time, the 65-foot lot-
1433 width requirement was in effect, so they could have arranged these 10 lots to create 7
1434 buildable lots. They subsequently built a total of six homes. Bain also owned two 50-
1435 foot-wide lots. Lots 24 and 26, which together totaled 100 feet. In 1984 the western
1436 38.36 feet of lot 26 was sold to the adjacent property owner leaving the subject property
1437 with only 61.65 feet of lot width, and this no longer met the required 65-foot lot-width
1438 requirement.

1439
1440 Bain Construction subsequently applied for a variance in 1984, but this was denied by the
1441 board because the applicant created their own hardship by selling off part of their
1442 property. Today Liberty Homes is interested in building a home on the property, so they
1443 have also applied for a lot-width variance.

1444
1445 In evaluating this request, the 65-foot lot-width requirement would appear to be
1446 reasonable. Most property owners in the neighborhood combine two lots, or parts of other
1447 lots, to create a buildable lot. In this case, at the time of the effective date of the ordinance,
1448 the property contained a 100-foot-wide lot, which was a buildable lot. The hardship was
1449 created by the owner's decision, however, in 1984 to sell of part of this property, thus
1450 creating the violation.

1451
1452 I would point out, since last month we had a variance just down the street from this one.
1453 In that case the home was built in 1937, and at the time there was no lot-width
1454 requirement. Basically, the home had to meet the setbacks, and that's pretty much it as
1455 far as the width of the lot. The home at that time was, in effect, grandfathered with regard
1456 to the lot-width requirement, and the owner did not create their hardship. In today's case,
1457 however, the current lot configuration resulted from the decision by the owner to sell part
1458 of the land in 1984 when the current lot-width requirement was already in effect. So that's
1459 the difference between these two properties that ultimately impacts where staff came
1460 down.

1461
1462 As a result, staff was left to conclude that of the five required subtests for variance, the
1463 first was very important, which asks whether the hardship itself created. And, in this case,
1464 the current owners owned the property since 1982. It was the owner's decision in 1984
1465 to sell off part of the property that created the hardship. As a result, the hardship does
1466 appear to be self-created, and this subtest is not met. And since all five subtests need to
1467 be met for a variance to be granted, that was an obstacle to approval.

1468
1469 So, in conclusion, at the time of the effective date of the ordinance the property was a
1470 buildable lot, 100 feet in width. When the current owner sold part of the property to the

1471 parcel to the west, the remaining lot was not wide enough to meet the minimum lot-width
1472 requirement. At that time the tax assessment was changed to reflect that it was not a
1473 buildable lot. Staff recommends denial of this application, because it does not meet the
1474 threshold requirement for a variance and any hardship, if any, was created by the current
1475 owner of the property.

1476
1477 This concludes my presentation and I'll be happy to answer any questions you may have.
1478 Thank you.

1479
1480 Ms. Harris - Okay. Are there any questions of Mr. Gidley? Mr. Gidley, the
1481 properties to the right and to the left of this particular parcel have homes on it, do they
1482 not?

1483
1484 Mr. Gidley - Yes, ma'am.

1485
1486 Ms. Harris - Okay. And the one to the left, as we see it, it's about a 50-
1487 foot lot, I think.

1488
1489 Mr. Blankinship - Sixty-five.

1490
1491 Ms. Harris - It is sixty-five, okay.

1492
1493 Mr. Blankinship - Yes, ma'am.

1494
1495 Ms. Harris - This is what we need for this one.

1496
1497 Mr. Gidley - Yes, ma'am.

1498
1499 Ms. Harris - Okay. Any more questions of Mr. Gidley? Thank you so very
1500 much.

1501
1502 Mr. Gidley - Thank you, ma'am.

1503
1504 Ms. Harris - We need the applicant to come forth and give us your name
1505 and spell your last name.

1506
1507 Mr. Rempe - Good morning madam chair. Good morning board members
1508 and staff. My name is Mark Rempe, R-e-m-p-e. And I'd like to hand out some papers. I
1509 appreciate staff's time working on this case. I'd like to point out that I concur with staff's
1510 points on their staff report from 2i to little v. I think the question here is the good faith
1511 issue and what the owner did in the past. I represent Liberty Homes. Liberty Homes is
1512 the applicant on this variance, not the owner. The owner did give me a letter, and I'd like
1513 the board members take a little time just to read the letter, it's on the second page of the
1514 handout.

1515
1516 Ms. Harris - Okay.

1517
1518 Mr. Rempe - Are we ready?
1519
1520 Ms. Harris - Yes.
1521
1522 Mr. Rempe - I'd just like to, you know, summarize the owner had a reasonable expectation to build seven houses out there. He was denied a variance, like staff said, a long time ago. The vacant lot has been sitting idle for about 35 years that the owner's been paying taxes on it, maintaining that lot. But I represent Liberty Homes. Liberty Homes is the applicant on this -- the variance request.
1523
1524
1525
1526
1527 So the issue here deals with the rule, and the rule is the property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the applicant. The applicant is Liberty Homes. They have a contract with the property owner to buy it subject to a receiving a building permit and, of course, the variance. So Liberty is the applicant, not the owner.
1528
1529
1530
1531
1532
1533 There's a case law called Spencer v. Board of Zoning Appeals. In that case the property was denied several times by the owner. Then a buyer came up and purchased the property and the board -- the court concluded that this buyer was allowed to go through the process to conclude that he had good faith. Even though the property was, you know, the variance was denied before. It was approved that time, and the whole thing was that that owner was going through the process in good faith. Just like Liberty Homes, the applicant is going through the process in good faith trying to get a variance asking for approval for that variance. The rule uses the word applicant. It doesn't use the word owner.
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544 Mr. Blankinship - Correct.
1545
1546 Mr. Rempe - I'd like to also point out that the variance is minimal, and insignificant, and there are other lots in the neighborhood on 50-foot-wide lots and the board approved a variance for a 50-foot lot in June. This lot is 61 feet, and it consists of a lot by itself that, you know, that the owner did not move any lot lines, that that's 50 foot. So the variance could -- we could have made an application just for a lot, I think it's 24, just for that lot without any movement from the previous owner, but we didn't. And that, I think, from a depth standpoint if we did make that move that would've been compliant from a technical standpoint. But with the variance.
1547
1548
1549
1550
1551
1552
1553
1554
1555 Let's go to page three. On page three there's kind of a scales of justice. BZA is a quasi-judicial court and in courts there's a lot of technical issues and there's a lot of equity issues. On the left side the balancing scale, is statutory laws, rules, regs, very technical. On the right side there's equity, there's reasonableness, there's public policy and there's common sense. An example of this is when you travel the speed limit. You know, you go the court, you drive over the speed limit, the judge is going to give you a ticket. But if you're driving over the speed limit because your wife is giving birth, you know, the officer is going to use some common sense there and he's not going to give you a ticket.
1556
1557
1558
1559
1560
1561
1562

1563
1564 The variance, the variance process is very technical in nature. So last June you guys
1565 approved a variance for a house and from a technical standpoint you could have denied
1566 that variance, but from a public policy standpoint, you know, the house is deteriorated,
1567 the applicant was going through the process in good faith, and that was a good decision
1568 made by the Board and staff by approving that variance from a public-policy standpoint.
1569 From a fairness standpoint, from a reasonableness standpoint. And I think from a
1570 reasonable and a fairness standpoint, you know, Liberty, the applicant, should be able to
1571 build a house here.

1572
1573 I mean, it was recorded for that purpose a long time ago. They wanted the subdivision
1574 was recorded for houses. And if we go to the next page, you know, vacant lots lead to a
1575 lot of problems. The trash on them, sometimes there's activities that shouldn't, you
1576 shouldn't do on a vacant lot. The owner needs to maintain that lot. The owner needs to
1577 pay taxes on that lot. If someone gets hurt on that lot, it's going to be -- the owner's going
1578 to be blamed for that. So vacant lots are a problem.

1579
1580 Go the next page. Why couldn't we see a nice, new house on this lot? You know, for
1581 family fun. You know, people throwing catch out in the front yard, you drive by this lot
1582 maybe a year from now. Lemonade stand's out front, people throwing football, but this is
1583 a very nice lot in a very nice neighborhood. And it should be utilized for that purpose. It
1584 was recorded for that purpose.

1585
1586 All right. Let's go to the next page. The county would generate more taxes with a house
1587 and from a public policy standpoint, it's to utilize the vacant lot with a new house and to
1588 utilize a lot that's just been sitting idle from -- it's good for commerce to use property to its
1589 highest and best use and not let it sit idle. You know, we see governments doing tax
1590 sales, we see the escheat sale process, and that, all that process, is used to put things,
1591 put assets, put property, personal property, real property into use and the government's
1592 been doing that for a long time.

1593
1594 So, in conclusion, the owner expected to build seven houses. The applicant is Liberty
1595 Homes. Liberty Homes, the applicant, working in good faith. The variance is very
1596 minimal. Lot 24 by itself could have been used for a variance, 50-foot-wide lot. No lot
1597 movements used on lot 24 and this lot should not be idle. It should be put to good use,
1598 like as recorded.

1599
1600 So I appreciate the approval if you can.

1601
1602 Ms. Harris - Thank you. Are there questions of Mr. Rempe from board
1603 members?

1604
1605 Mr. Johnson - Yes. Mr. Rempe, how long has your company been
1606 overseeing the properties for the applicant?

1607
1608 Mr. Rempe - I've been helping Liberty Homes for a long time going through

1609 the process and helping them through permitting and through the variances similar to this.
1610 But I haven't done any business with Mr. Bain.

1611
1612 Mr. Johnson - Okay. I was just how long the company had been dealing with
1613 them, and especially with lots. And I was noticing the lots to the left, how some of the
1614 property line splits the house (on GIS). And for four or five of those properties. And I was
1615 just wondering if they were looking at that when they were having those lots created for
1616 the county?

1617
1618 Mr. Rempe - Nope. I think back in those days the process was a little bit
1619 different than it is now. So I think what Mr. Bain was describing sometimes things were -
1620 - mistakes were made when they set up the lots and stuff. So nowadays it's a lot different.
1621 And so -- but I can't really -- I don't know. I can't really testify to what happened back in
1622 those days.

1623
1624 Ms. Harris - Any other questions?

1625
1626 Mr. Rempe - Is there anyone here that's objecting?

1627
1628 Ms. Harris - We haven't voted yet.

1629
1630 Mr. Bell - We haven't voted.

1631
1632 Ms. Harris - Just hold tight --

1633
1634 Mr. Rempe - No. I just wanted to see if there's neighbors objecting.

1635
1636 Ms. Harris - But we'll find out.

1637
1638 Mr. Reid - Your whole presentation was based on your conclusion that
1639 we might not know what we were doing. We know what we're doing.

1640
1641 Mr. Rempe - I know what you guys are doing.

1642
1643 Mr. Reid - You went ahead and went through as if you're trying to sell us
1644 your home, or this home, instead of answering the problem that we have with this, that
1645 the property was sold and divided. All this other stuff is something that can be considered,
1646 but we got to go yea or nay on the code and what it tells us we can or cannot do.

1647
1648 Mr. Rempe - Sure.

1649
1650 Mr. Reid - And that's what we're doing.

1651
1652 Mr. Rempe - Sure. I respect that. You know, the lot, the lot 24, with that,
1653 by itself, a variance could have been granted if an application was made just for lot 24,
1654 50-foot lot, not including the other piece that there's been movement on. I think that could

1655 have been approved from a technical standpoint.

1656
1657 Ms. Harris - And I notice in the report you say that the owner, or owners,
1658 of the adjacent lots did not want to sell any part of their land.

1659
1660 Mr. Blankinship - Yes ma'am. That's correct. She called me and spoke to me
1661 for several minutes to find out what was going on and how it was going to affect her. And
1662 she was pretty clear that she did not oppose the granting of the variance, but she was not
1663 going to sell any of her property.

1664
1665 Ms. Harris - Can you tell which neighbor that it was?

1666
1667 Mr. Blankinship - It's the one to the right in this aerial photograph.

1668
1669 Ms. Harris - That seems to have the most land.

1670
1671 Mr. Blankinship - Yes. The one that has the -- that could solve the problem by
1672 selling some additional land. But she does not choose to do that and, of course, that's
1673 her right.

1674
1675 Ms. Harris - Okay. Any other questions of Mr. Rempe? Okay, we thank
1676 you for coming in.

1677
1678 Mr. Rempe - Thank you.

1679
1680 Ms. Harris - Is there anyone who supports this application? Is there
1681 anyone who opposes this request? Okay. Then I think we're ready to vote. One
1682 question, Mr. Gidley, did we have conditions for this case?

1683
1684 Mr. Blankinship - Madam Chair, I'll answer that for Mr. Gidley. We have drafted
1685 some conditions in case the board does make a motion to approve it. Because our
1686 recommendation is denial, we did not distribute that in advance. Because that would kind
1687 of send a mixed message.

1688
1689 Ms. Harris - Okay.

1690
1691 Mr. Blankinship - But I got them out of the file as we were speaking, and if there
1692 is a motion to approve, I would be glad to.

1693
1694 Ms. Harris - Let's look at them.

1695
1696 Mr. Blankinship - Would you like to see them?

1697
1698 Mr. Johnson - Yes.

1699
1700 Ms. Harris - Yes.

1701
1702 Mr. Blankinship - Okay.
1703
1704 Ms. Harris - Okay. Are we prepared to vote? What is the pleasure of the
1705 board?
1706
1707 Mr. Reid - As the Tuckahoe representative, I've driven up and down
1708 Midway Road there, lot of nice houses on that street, well maintained, and there're two
1709 real eyesores. One was the case that was before us last week, and one is this lot that is
1710 totally overgrown. And I think it would be better to have a house there than have it sit
1711 there as an eyesore to the neighborhood. So I move that we approve the variance subject
1712 to the conditions recommended by the staff.
1713
1714 It's been in the current configuration since 1984, does not meet the minimum lot width for
1715 any permitted use in the district. So without a variance there would be no reasonable use
1716 of the property. The hardship was created by the current owner, not the applicant for the
1717 variance, which is the contract purchaser. If the neighbor was willing to sell part of the lot
1718 that could solve the problem. However, she's not willing to sell. So I vote that we approve
1719 the variance.
1720
1721 Ms. Harris - Is there a second to the motion? I'm going to second the
1722 motion.
1723
1724 Mr. Reid - Thank you.
1725
1726 Ms. Harris - Now a discussion period. You know, one point that Mr.
1727 Rempe brought out is a technicality. You know, when we look at the threshold question
1728 number one, we'll say the hardship was not created by the applicant. And we know that
1729 Liberty Homes did not create the hardship. As his point was made, the hardship was
1730 created by the owner, and I'm sure that Liberty Homes has not purchased this property
1731 yet until they get this variance. So we do have a decision to make here.
1732
1733 But, like Mr. Reid, I do drive by that community quite often, and you see a vacant lot that
1734 needs four feet, and it's an eyesore, it's a problem for the neighborhood, trash and, as
1735 Mr. Rempe's report shows, an attractive home would be better. And the homes on that
1736 neighborhood are different in styles, if you notice. They are very, very different, so I do
1737 second that motion. Okay, any other discussion on this particular motion?
1738
1739 Mr. Johnson - Yes.
1740
1741 Ms. Harris - Mr. Johnson.
1742
1743 Mr. Johnson - I agree with my board members here. But also, the house
1744 next to it, how close is the property line there? I have some issues with that. But other
1745 than that, it would be nice if we could get rid of an eyesore. But then that close to another
1746 property also kind of -- it wouldn't sit to well with the person who owned that adjacent

1747 property as well. But I agree with the board.
1748

1749 Ms. Harris - Any more discussion on the motion? Mr. Johnson, I hear what
1750 you're saying, but if the house would be like that one that is being proposed, if would be
1751 next to me, I might prefer that over having junk in the yard. Or neighbors of that who have
1752 to call the county to come and clear the land and cut the grass and all of that. So I see
1753 your point, also.

1754
1755 Mr. Johnson - Yes. I just thought that maybe that property owner would have
1756 been in or would have mentioned something about it and, like you said, it would be better
1757 to have something, another house there. And that way you wouldn't have that blight there
1758 as well.

1759
1760 Ms. Harris - Exactly.

1761
1762 Mr. Reid - But it was 34 years, and nothing's been done, so what's to be
1763 done unless it's done by some function like we're doing through him.

1764
1765 Mr. Johnson - Right.

1766
1767 Ms. Harris - Exactly. Okay. I think we're ready to vote. All in favor of
1768 approving this variance say aye. Those opposed say no. The ayes have it. This variance
1769 is approved.

1770
1771 After an advertised public hearing and on a motion by Mr. Reid, seconded by Ms. Harris,
1772 the Board **approved** application VAR2019-00019 LIBERTY HOMES VA, INC.'s request
1773 for a variance from Section 24-95(b)(5) of the County Code to build a one-family dwelling
1774 at 8990 Midway Road (WESTHAMPTON SETTLEMENT) (Parcel 750-740-3607) zoned
1775 One-Family Residence District (R-3) (Tuckahoe). The Board approved this request
1776 subject to the following conditions:

1777
1778 1. This variance applies only to the lot width requirement for one dwelling only. All other
1779 applicable regulations of the County Code shall remain in force.

1780
1781 2. Any dwelling on the property shall be served by public water and sewer.

1782
1783 3. A building permit must be approved by July 23, 2021, or this variance will expire. If the
1784 building permit is cancelled or revoked because it was not diligently pursued, this variance
1785 will expire at that time.

1786
1787 Affirmative: Bell, Harris, Johnson, Reid
1788

4

1789 Negative:
1790

0

1791 Absent: Green
1792

1

1793
1794 Ms. Harris - Let's look at the minutes. I have a few corrections that I need
1795 to call your attention to and then we have to approve the calendar for the next session.
1796
1797 Okay. On page 13, line 556. I think we wanted -- I think Mr. Johnson said by, and by
1798 natural attrition, rather than and be natural attrition, so it should be by, not be.
1799
1800 On page 15 -- is that correct?
1801
1802 Mr. Johnson - Yes, yes.
1803
1804 Ms. Harris - Okay. On page 15, I think this just a typo. Line 662, the word
1805 is said, s-a-i-d and not a-i-d. Think that was just a typo. And on page 65, line 2943.
1806
1807 Mr. Johnson - Sixty-nine?
1808
1809 Ms. Harris - On page 65, line 2943 should be a-n and not a-n-d. You see
1810 that?
1811
1812 Mr. Johnson - A-n?
1813
1814 Ms. Harris - Instead of a-n-d on line 2943.
1815
1816 Mr. Reid - After 1960.
1817
1818 Ms. Harris - I said 2943.
1819
1820 Mr. Bell - Oh I see.
1821
1822 Ms. Harris - I need to look at that myself. Just one moment. To demolish
1823 an old home, a-n, not a-n-d. See that?
1824
1825 Mr. Johnson - Yes.
1826
1827 Ms. Harris - Okay. That's line 2943. Okay. And then there's two more.
1828 There's two more. On page 6, line 271, I think that word was odor, o-d-o-r and not older.
1829 You see it on line 271, page 6?
1830
1831 Mr. Johnson - An odor.
1832
1833 Ms. Harris - Mr. Bell was saying about the odor in particular and not older.
1834 Mr. Bell, you see it?
1835
1836 Mr. Bell - Yes.
1837

1838 Ms. Harris - Okay. And the last one on page 10, line 420, and I was talking
1839 about those dogs and it was guard, g-u-a-r-d castle and not guide, g-u-i-d-e, castle. Okay,
1840 those are the corrections that I see.

1841
1842 Mr. Johnson - Also on page 11.

1843
1844 Ms. Harris - Okay.

1845
1846 Mr. Johnson - Line 465, it's rather than we, it would be you. On page 11.

1847
1848 Ms. Harris - Okay, instead of what?

1849
1850 Mr. Johnson - It says are we getting. It's are you getting rid of those.

1851
1852 Ms. Harris - Okay. Any other changes? Corrections?

1853
1854 Mr. Johnson - That's it. Right.

1855
1856 Ms. Harris - Okay. A motion is in order to approve the minutes as
1857 corrected.

1858
1859 Mr. Johnson - I motion that we approve the minutes with the corrections
1860 made.

1861
1862 Ms. Harris - Is there a second?

1863
1864 Mr. Reid - Second.

1865
1866 Ms. Harris - It's been moved and properly seconded that we approve the
1867 minutes as corrected. Any questions on the motion? All in favor say aye. Opposed say
1868 no. Ayes have it and so order. On a motion by Mr. Johnson, seconded by Mr. Reid, the
1869 Board **approved the minutes** of the June 27, 2019 Board of Zoning Appeals meeting.

1870
1871
1872 Affirmative: Bell, Harris, Johnson, Reid 4
1873 Negative: 0
1874 Absent: Green 1

1875
1876
1877 Ms. Harris - Let's look at the meeting schedule for 2020. Are there any
1878 questions on this schedule? You know, normally we'd meet on the fourth Thursday, but
1879 when it comes to Christmas and Thanksgiving there's a change. So do we need a
1880 motion?

1881
1882 Mr. Blankinship - Yes, ma'am.

- 1884 Ms. Harris - Okay. We need a motion to approve the schedule for 2020.
- 1885
- 1886 Mr. Reid - I make a motion that we approve the schedule of 2020.
- 1887
- 1888 Mr. Johnson - Second.
- 1889
- 1890 Ms. Harris - Okay. It's been moved and properly seconded that we
1891 approve the schedule for 2020. Any questions on the motion? All in favor say aye.
1892 Opposed say no. The ayes have it and so order. On a motion by Mr. Reid, seconded by
1893 Mr. Johnson, the Board **approved the Board of Zoning Appeal's 2020 calendar.**
- 1894
- 1895
- 1896 Affirmative: Bell, Harris, Johnson, Reid 4
- 1897 Negative: 0
- 1898 Absent: Green 1
- 1899
- 1900
- 1901 We had one more thing. As you know, this is my last meeting. And my successor is here,
1902 and I'd like to introduce him to you. Terrell, would you stand? This is Terrell Pollard.
- 1903
- 1904 Mr. Pollard - Good morning.
- 1905
- 1906 Ms. Harris - He's a fine young man.
- 1907
- 1908 Mr. Johnson - Good morning to you.
- 1909
- 1910 Ms. Harris - Just a footnote of who he is. Those of you who are familiar
1911 with the Eastern Henrico Recreation Center. He was a boy scout when he wrote to Frank
1912 Thornton that there were no recreational activities for young people in the eastern area
1913 of the county. And it was his letter that impressed Frank to the point that he started motion
1914 for what became the Eastern Henrico Recreation Center. So if you haven't been over
1915 there, you really need to go visit. It's very well utilized, and we thank Terrell for that.
1916 Terrell, if you have anything to say, you can step to the mic. Come to the mic, because
1917 we can't hear you.
- 1918
- 1919 Mr. Pollard - Good morning.
- 1920
- 1921 The Board - Good morning.
- 1922
- 1923 Mr. Pollard - As Ms. Harris said, I'm Terrell Pollard. I am just honored to
1924 be joining the board and I hope to do as well as Ms. Harris has done, as they are big
1925 shoes to fill. Like you were serving on here for 20 years?
- 1926
- 1927 Ms. Harris - Two boards, 24 years, but 2 boards. I think this one since
1928 2004.
- 1929

1930 Mr. Pollard - 2004, okay. Yeah. So I have my work cut out for me. So it's
1931 very interesting. I'm just happy to serve. So thanks for having me.

1932
1933 Ms. Harris - Thank you. And, ladies, he's single, too. Just, I'm just saying.
1934 I'm just saying. If there's no other business before this board, this meeting is adjourned.

1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947


Mr. Gentry Bell, Vice-Chair


Mr. Benjamin W. Blankinship, Secretary