

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 28, 2022, AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN
5 THE *RICHMOND TIMES-DISPATCH* JULY 11, 2022 AND JULY 18, 2022.
6
7

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

13 Member Absent: Terone B. Green, Chair
14

15 Also Present: Jean M. Moore, Assistant Director of Planning
16 Benjamin Blankinship, Secretary
17 Paul M. Gidley, County Planner
18 R. Miguel Madrigal, County Planner
19 Rob Peterman, Technology Support Specialist
20 Kuronda Powell, Account Clerk
21
22
23

24 Mr. Johnson - Good morning and welcome to today's July 28th meeting of
25 the Henrico Board of Zoning Appeals. For those who are able, would you please stand
26 and join us in the Pledge of Allegiance.
27

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

30 Mr. Johnson - Mr. Blankinship, you will now read our rules.
31

32 Mr. Blankinship - Good morning, Mr. Chair, members of the Board, ladies and
33 gentlemen. I'd like to welcome everyone who is in the room with us today. I'd also like
34 to welcome everyone who is joining us remotely on Webex.
35

36 If you wish to observe the meeting, but you do not intend to speak, welcome and thank
37 you for joining us. For those of you on Webex who wish to speak, we need to know that
38 in advance so we can connect you at the appropriate time. So, if you are an applicant or
39 if you have questions or comments on one of the cases, please press the chat button
40 now. It's located at the bottom-right corner of the screen.
41

42 And when the chat window opens, please select Kuronda Powell from the list of
43 participants and let her know your name and which case you're interested in. The chat
44 feature is only being used to identify speakers, so please do not type questions or
45 comments into a chat, but please send a chat to Kuronda Powell now.
46

47 So acting as secretary I will call each case and then we will ask everyone in the room
48 who intends to speak to that case to stand and be sworn in. Then a member of the
49 Planning Department staff will give a brief presentation, and then the applicant will speak.
50 Then anyone else who wishes to speak will be given the opportunity. After everyone has
51 had a chance to speak, the applicant and only the applicant will have an opportunity for
52 rebuttal.

53
54 This meeting is being recorded so we'll ask everyone who speaks to speak directly into
55 the microphone at the podium in the back of the room. State your name, and please spell
56 your last name to make sure that we get it correctly in the record, and once your case is
57 over, the case you are interested in, you are free to leave. There's no reason for you to
58 stay in the room for the rest of the meeting.

59
60 Under the Code of Virginia, for the Board to rule in favor of an applicant or an appellant,
61 there must be three affirmative votes. We have one member absent today. So, if anyone
62 would like to defer your case until next month ... that may increase your chances of getting
63 three votes in favor. So, if anyone would like to defer your application until next month
64 please let us know.

65
66 And finally, as noted on the agenda, there was one case that was withdrawn. That's
67 VAR2022, number 11, Liberty Homes of Virginia, Inc., a variance from the lot area
68 requirement to build a one-family dwelling at 113 N. Rose Avenue in Highland Springs in
69 the Varina Magisterial District. That case has been withdrawn. So, that case will not be
70 heard this morning.

71
72 **VAR2022-00011 LIBERTY HOMES OF VIRGINIA, INC. - WITHDRAWN**

73
74 We do have one Conditional Use Permit and three Variances remaining on the agenda,
75 and if you are ready, we'll go ahead and proceed.

76
77 Mr. Johnson - Okay.

78
79 Mr. Blankinship - Alright, our first case is Conditional Use Permit 2022, number
80 32, Malla Iwatsubo.

81
82 **CUP2022-00032 MALLA IWATSUBO** requests a conditional use permit pursuant to
83 Section 24-4406 of the County Code to allow an accessory dwelling unit at 11725 Norwich
84 Parkway (HAMPSHIRE) (Parcel 742-774-4587) zoned One-Family Residence District (R-
85 2AC) (Three Chopt).

86
87 Mr. Blankinship - Would everyone who intends to speak to this case please
88 stand and be sworn in. Raise your right hands please. Do you swear the testimony you
89 are about to give is the truth, the whole truth, and nothing but the truth so help you God?

90
91 Mr. Madrigal - I do.

92

93 Mr. Blankinship - Thank you. Mr. Madrigal.

94
95 Mr. Madrigal - Thank you, Mr. Secretary, Mr. Chairman, members of the
96 Board. Good morning, gentlemen.

97
98 Before you is a request to allow an accessory dwelling unit on a one-family lot. The
99 property is part of Section 2 of the Hampshire Subdivision which was recorded in 2003.
100 The lot is approximately 13,000 square feet in area and is improved with a two-story,
101 4,000 square-foot home with an attached two-car garage built in 2004. Other
102 improvements include a 12-by-20-foot rear deck, a concrete patio, an exterior fireplace,
103 and a 12-by-16 pergola.

104
105 The applicants purchased the home in 2019, and in December of last year, they submitted
106 plans for a one-story, 320-square-foot addition to build a master suite and a second, 210-
107 square-foot, rear deck. You can see here on the drawing the addition and then the rear
108 deck here.

109
110 The building permit included converting the existing dining room into a bedroom, adding
111 a full bath, a wet bar, and a small living area that opens onto a new deck with a wheelchair
112 ramp. The total area of the suite would be 515-square-feet. This area will be used to care
113 for the applicant's elderly mother. A building permit was issued in March of this year and
114 construction is underway.

115
116 In June, the applicants decided they would like to replace the wet bar with a full kitchen
117 to facilitate meal preparation for their mother. They subsequently filed for a conditional
118 use permit to convert the suite into an accessory dwelling unit.

119
120 The homeowner's association (HOA) Board of Directors reviewed and approved the
121 original plans for the addition. After the CUP request was provided to them, they
122 reconsidered the project as a separate dwelling unit. Citing a provision of their covenants
123 that prohibits more than one dwelling unit per lot, the HOA Board decided that it can't
124 support this request.

125
126 With respect to the evaluation of this case, staff has found it to be consistent with both
127 the zoning and comprehensive plan designations on the property.

128
129 The overall size of the parcel and home are consistent with the general character,
130 development pattern, and use for this area.

131
132 The proposed accessory dwelling unit will be added to the left rear corner of the home
133 and will appear to be integral to it.

134
135 The home to the west is 25-feet to the applicant's home. Minimal impacts are anticipated
136 because the accessory dwelling unit will appear as an extension of the home and is
137 intended for the care of the applicant's elderly mother. A six-foot-tall privacy fence exists
38 between the rear yards and that will provide some screening for the proposed use. There

139 are no exterior doors facing the side yard closest to the neighbor. Based on these factors,
140 the proposal should not look out of character, scale or intensity with the existing homes,
141 adjacent neighbor, or the immediate area. The proposed use should not have any
142 detrimental impacts on the adjoining properties, as the accessory dwelling unit will be
143 attached to the rear of the home and will appear as an extension of it.

144
145 Although the Homeowners Association originally approved the applicants request for an
146 addition, they are not in support of ADU as their neighborhood covenants prohibits more
147 than one dwelling unit per lot.

148
149 In conclusion, the proposed use is consistent with both the zoning and comprehensive
150 plan designations on the property. The accessory dwelling unit will appear as an
151 extension off the rear of the home and should not pose any significant impacts. However,
152 it appears that approval of the CUP would create a conflict between the County and the
153 HOA. Although staff is supportive of this request, we recommend deferral of this item to
154 allow time for the applicant time to address this issue with their HOA and to see if there
155 is a solution that addresses both of their concerns.

156
157 That concludes my presentation. I'll be happy to answer any questions.

158
159 Mr. Johnson - Thank you. Are there any questions from the Board for staff?
160 Any questions? We will now hear from the applicant.

161
162 Carter Fagan - Good morning, Board. Thank you for your time. I'd say you
163 summarized this pretty well, thank you. As we've come to understand ...

164
165 Mr. Blankinship - State your name, sir.

166
167 Carter Fagan - My name is Carter Fagan F-A-G-A-N, with Balducci Builders,
168 representing the homeowners Malla & William Iwatsubo. As has been spelled out, we
169 have put a request back in with the HOA as of earlier this week, per the request. As there
170 seems to have been some leniency with these types of requests lately, based on these
171 situations, they've agreed to re-review it. We've put our case to them, and we expect in
172 the next week to two weeks to have an answer back from the HOA that pending Board
173 approval, alongside HOA ... anticipated HOA approval, we hope to continue forward with
174 this project with installing this addition just as planned. And so, I think the only thing I
175 would note is we have some more current pictures, as we are a custom home builder. It
176 certainly looks a lot prettier now than it did in these photos, but we do appreciate the
177 consideration and my final thought would be this is purely an application for convenience
178 for a mother who is being taken care of. We think the HOA Board will see it as just that,
179 and we've also been willing to make any documented requests with the county whether
180 it be a publicly recorded document to make sure that both the HOA and the Board can
181 feel comfortable with granting us this approval should that be the case.

182
183 Mr. Johnson - Are there any questions for the applicant?

184

185 Mr. Pollard - I may have missed that part. Has the applicant been in touch
 86 with the HOA?
 187
 188 Mr. Fagan - Yes, sir.
 189
 190 Mr. Pollard - So the HOA is now in favor of it?
 191
 192 Mr. Fagan - They are now re-reviewing it.
 193
 194 Mr. Pollard - Would the applicant be welcoming to a deferral ... just for
 195 more time to work things out with the HOA?
 196
 197 Mr. Fagan - We joined the meeting this morning in hopes that, as one of
 198 the documents outlined, pending ... county approval, pending the approval from the HOA.
 199 That should in the next week or two weeks the HOA give us that approval, we could
 200 expedite the completion of that kitchen as proposed.
 201
 202 What we are facing, right now, as far as the challenge is not only pricing but availability.
 203 So every two ... couple of weeks, couple of months delay that we have it has an impact
 204 on both of those. So what we are hoping in attending today's Board meeting was to gain
 205 any preliminary approval of the Board. And, then once the HOA came back with a very
 206 clearly defined, in our eyes ... hopefully, approval we could submit that to the Board and
 207 then with a short turn around proceed forward with the kitchen as planned.
 08
 209 Mr. Johnson - Are there any other questions for the applicant?
 210
 211 Mr. Reid - I'm not sure if the applicant can answer or if this is for staff,
 212 but what position are we in if we approve this and the HOA does not?
 213
 214 Mr. Blankinship - Staff has recommend a condition that your approval would be
 215 contingent upon HOA approval.
 216
 217 Mr. Pollard - Is that a condition?
 218
 219 Mr. Blankinship - Of course the county is in the business of approving or
 220 denying the building permit. So we would have to ability to enforce a condition like that.
 221 Of course in Mr. Green's absence, that makes it slightly less comfortable to proceed with
 222 an incomplete case. But it is within the Board's purview to process either way.
 223
 224 Mr. Blankinship - Our applicant is on Webex this morning.
 225
 226 Mr. Madrigal - If you look at condition number three, you'll see it addressed
 227 there. ... If you wish to proceed forward ...
 228
 229 Mr. Blankinship - The applicant must obtain approval from the homeowners
 30 association prior to the issuance of a certificate of occupancy.

231
232 Mr. Johnson - Thank you. Is there anyone else who wants to speak in
233 support of this request? None? Does anyone want to speak in opposition of this request?
234 None?

235
236 Mr. Blankinship - Is there anyone on WebEx to speak to this case?
237

238 Mr. Peterman - There's no one on WebEx.
239

240 Mr. Johnson - In that case, the public hearing is now closed. Then a motion
241 would be in order. What is the pleasure of the Board?
242

243 Mr. Reid - Before I make a motion, I just want to say I'm not comfortable
244 on moving to approve until the HOA takes action. I move that we defer this request to
245 August 25th so that the applicant can resolve all the issues with the Homeowners
246 Association.
247

248 Mr. Pollard - I second the motion.
249

250 Mr. Johnson - There has been a motion to defer and it has also been
251 seconded. All in favor ... any discussion of the motion? None? All in favor of the deferral
252 say, aye.
253

254 The Board - Aye.
255

256 Mr. Johnson - All opposed ... None? This has been deferred. Thank you.
257

258 On a motion by Mr. Reid, seconded by Mr. Pollard, the Board **deferred until the August**
259 **25, 2022 public hearing CUP2022-00032 MALLA IWATSUBO's** request for a
260 conditional use permit pursuant to Section 24-4406 of the County Code to allow an
261 accessory dwelling unit at 11725 Norwich Parkway (HAMPSHIRE) (Parcel 742-774-
262 4587) zoned One-Family Residence District (R-2AC) (Three Chopt).
263
264

265	Affirmative:	Bell, Johnson, Pollard, Reid	4
266	Negative:		0
267	Absent:	Green	1

268
269
270 Mr. Blankinship - Alright, that's our only conditional use permit on this morning's
271 agenda. There are three variances. The first is Variance 2022, number 10.
272

273 **VAR2022-00010 MARSHA WITHERSPOON** requests a variance from Section 24-
274 3105.G.1 of the County Code to build an addition at 4501 McGill Street (KINGS HILL)
275 (Parcel 806-716-6764) zoned One-Family Residence District (R-4) (Varina). The front
276 yard setback is not met. The applicant proposes 23 feet front yard setback, where the

277 Code requires 35 feet front yard setback. The applicant requests a variance of 12 feet
278 front yard setback.

279
280 Mr. Blankinship - Would everyone who intends to speak to this case please
281 stand and be sworn in. Raise your right hands please. Do you swear the testimony you
282 are about to give is the truth, the whole truth, and nothing but the truth so help you God?
283

284 Mr. Gidley - I do.

285
286 Mr. Blankinship - Thank you. Mr. Gidley.

287
288 Mr. Gidley - Thank you, Mr. Secretary. Good morning members of the
289 Board.

290
291 The subject property is located just east of the Richmond City line in the Kings Hill
292 subdivision. The applicant's lot is a quarter-acre in area and contains a two-story
293 dwelling. As you can see here, the lot is oddly shaped, with road frontage on both sides
294 and in front of the home as you see on the aerial right here. The applicant cares for her
295 two-year old granddaughter who has special needs with speech and hearing difficulties.
296 She would like to add an addition onto the western side of her home ... this side right
297 here ... to provide additional room for her granddaughter's physical therapy.

298
299 This is the proposed plot plan, and you can see the addition that would come within 23-
300 feet within the property line. And the setback, currently, is 35-feet and then you see here
301 the proposed addition, once again, and the floor plan of the family room being extended
302 out and then the master bedroom, up here, being extended out. And the second floor
303 master bedroom ... that's not directly related to the disability but it would be in line with
304 the first floor addition.

305
306 As far as the threshold requirement, one of three threshold tests must be met for a
307 variance to be granted, in this case, the applicant is claiming the variance would alleviate
308 a hardship by granting a reasonable modification for a person with a disability. The child
309 has speaking and hearing difficulties. They have submitted a letter indicating the child
310 needs additional space for equipment and therapy.

311
312 If the Board believes the requested addition is a reasonable modification to accommodate
313 the child's disability, a variance may be granted. As noted in your staff report, the five
314 subtests appear to be met, including the lack of a detrimental impact on nearby property.
315 There are homes across the street, and then late yesterday, staff did have a call from one
316 of the neighbors who had concerns about the case. She indicated she'd probably show
317 up today so I'll let her speak to those, if she is here.

318
319 So, in conclusion, the applicant is requesting a variance to expand her family room and
320 the second floor master bedroom to allow additional room for her granddaughter's
321 physical therapy. The five subtests appear to be met and staff can recommend approval
22 of this request subject to the conditions in your staff report.

323
324 This concludes my presentation. If you have any questions, I'll be happy to answer them.
325 Thank you.
326
327 Mr. Johnson - Are there any questions from the Board? No?
328
329 Mr. Blankinship - Our applicant is on WebEx this morning.
330
331 Mr. Johnson - Could we hear from the applicant?
332
333 Mr. Peterman - Yes, I have Marsha Witherspoon ready to talk now.
334
335 Ms. Witherspoon - Good morning, can everybody hear me?
336
337 Mr. Blankinship - Yes, Ma'am.
338
339 Ms. Witherspoon - Good morning, I have a granddaughter who actually turns
340 two on today. She has special needs. She is one-hundred percent profoundly deaf as
341 well as she has some difficulties with occupational development. The inside of the home
342 although it has been conducive while she was a little younger and we've been trying to
343 get the therapy in, it is beginning to be a little tight which makes it difficult for her to receive
344 all the benefits of the therapy. She has six appointments every month from the home as
345 well as four additional appointments at the hospital ... but in the home environment, the
346 older she's getting, the more room we need to make sure that she's getting all of her
347 needs met, developmentally. And it's gonna take a couple of years because she's just not
348 where they would want her to be in relation to her occupational, as well as her speech
349 and hearing therapy.
350
351 Mr. Johnson - Okay. Any questions from the Board?
352
353 Mr. Blankinship - Ms. Witherspoon, please stay with us. You will have an
354 opportunity to speak at the end of all the other testament.
355
356 Mr. Witherspoon - Yes, sir.
357
358 Mr. Johnson - Does anyone else wish to speak in support of this. Yes, go
359 ahead.
360
361 Mr. Reid - She's going to be in opposition.
362
363 Mr. Johnson - Yeah.
364
365 Mr. Blankinship - Yeah, I think she's going to be in opposition. Yes, ma'am.
366
367 Ms. Roach - My name is Shelia Roach and I live directly across the street
368 ... right there. Those are my son's car and mine ... his fiancé's car and my truck.

369
70 My concern is we already have issues with watershed. When they built the driveway ...
371 see that concrete driveway to the left, there is no drain pipe underneath that driveway and
372 when it rains, it pours, it floods my entire ditch and yard and everything else.
373

374 The other concern is ... you see how huge that driveway is? They don't park in the
375 driveway. You can see the parking on the road. My concern is two-fold. If you look on
376 the Merle side of the street, they could easily park over there and not block the road.
377 There are times when we have had to park our cars in the yard because they drive these
378 very large vehicles that ... if you go back to the view that shows her red vehicle on the
379 road, it's hard to get down the street and they have a lot of people coming and going,
380 which is wonderful that they've got all this family, the twenties and thirties and it seems
381 like dozens of kids out there under my hip height ... I don't know their ages but very small
382 children running around. So there's a lot of activity going on and my concern is we're
383 building this huge monolith on the end of the house that is gonna shed even more rain.
384 There's gonna be less of her yard to absorb the rain and I am just in a flood zone now,
385 plus the additional traffic, and the kids that are ... you know ... my road is frequently
386 blocked, in all honesty, but we get as far over as we can get on our side of the road but
387 by the time you park these huge SUVs, the road is blocked. So those are my concerns
388 ... that the driveway does not have a drain pipe and it causes it to flood across the street.
389 They're going to put an additional structure there that is gonna cause additional rain,
390 flooding across the street ... and I typically, I frequently, have to walk down my neighbor's
391 driveway ... walk across my front yard to my neighbor's driveway and walk down because
92 my legs aren't long enough to step over the huge puddle of rain that's caused by that. So
93 that's my concern with putting an addition is the increase of people, the rain, I just don't
394 think the neighborhood's set up for all of that.
395

396 Mr. Johnson - Is that ... where you're located ... it's on a hill, isn't it?
397

398 Ms. Roach - I beg your pardon, I can't hear you.
399

400 Mr. Blankinship - Oh ... well you're on.
401

402 Mr. Blankinship - The property is on a hill? Is that correct?
403

404 Ms. Roach - Her's is ... yes, her's is on a hill and everything just flows right
405 across to me. I happen to realize that this is in an entirely different division but I have
406 been discussing this issue with ... since 2018 and with the ... I apologize but I talked to
407 so many departments and they were trying to decide who determines the ditch issue on
408 my side of the road. Steve Johnson, I think, was one of the names.
409

410 I didn't come prepared. I didn't call until yesterday. I've been dealing with my father who
411 had an unexpected illness for the last three weeks and it wasn't until yesterday that I had
412 the opportunity to call. I didn't even realize that this was even going on.
413

414 Mr. Blankinship - Mr. Chair. If the variance is approved, there will be a building
415 permit process after that and the Department of Public Works will be one of the
416 departments reviewing the building permit. So, there will be an opportunity for the county
417 to address any drainage issue at that time. I can't make any promises for what authority
418 they have or what solutions they will come up with ... just that there will be that process,
419 if the variance is approved.

420
421 The question for this Board is whether the addition is really justified in terms of the
422 disability and if it is, will it be a detrimental impact from that addition. We can ask Ms.
423 Witherspoon about the parking and some of those other issues, but if those are issues
424 that are already occurring without the variance, then I'm not sure how directly they would
425 be related to this.

426
427 Ms. Moore - Paul, could you specify the addition, does that encumber
428 parking or is the parking still available as it is today?

429
430 Mr. Gidley - the parking comes basically to the side here and the addition
431 would be off this front side. Let's see if there's a good view here. The addition would
432 come off here and the driveway is here. So, I don't really think it would impact, directly,
433 the parking.

434
435 Mr. Blankinship - It would have some effect on drainage, but it's difficult to say
436 how much. But not on the parking.

437
438 Mr. Johnson - Also, when the drainage runs, there's a street in front, would
439 it run down in the street rather than across as well?

440
441 Ms. Roach - Okay, right there. This is a good ... see where her mailbox is
442 ... there is no opening. There is a drain hole at the other end of her driveway, which you
443 don't have a picture of, to the left, but there is no drain hole right there where that hand
444 is. There's no drain hole at all. So, what happens is it hits the left side and you really can't
445 ... again, I wasn't prepared to take the pictures ... but you can look where my trash can
446 is ... the water literally runs from the left side of her driveway, across the road and floods
447 that entire area whenever we have a heavy rain.

448
449 The other question is I have a child, I had a special needs child that I raised in that house.
450 I grew up in that house and we went to the county library for his ... they had rooms
451 secluded rooms where you can take them for their tutoring, their needs, their training, etc.
452 because I have a far smaller house than she has and I needed to get the room ... and
453 her house is very large. I'm not understanding why they need a whole two-story addition
454 in order to mentor a child who they are training in their disabilities. Mine had this tutor
455 instructor meet with him at the public library, and I took him there. The rooms were
456 available. Clean, neat, quiet.

457
458 Mr. Johnson - Okay, any other questions?

459

460 Mr. Bell - Ma'am, have you made an effort to talk ...
61
462 Mr. Blankinship - You are mute.
463
464 Mr. Bell - Excuse me, I was mute ... which is unusual.
465
466 Have you made an effort to discuss these problems with your neighbor or vice versa, has
467 she made an effort to discuss it with you?
468
469 Ms. Roach - Again, I had no idea that this was going on. She's rarely there
470 and the times that I have come across and knocked on the door, I haven't had anyone
471 come to the door. But during this past month when all of this was going on, again, I was
472 caring for my father who was ailing. I'm not prepared with pictures or documents or
473 anything. I apologize for that and, no, I haven't had the opportunity to speak with her
474 because it was such ... literally, yesterday.
475
476 Mr. Bell - Thank you.
477
478 Mr. Pollard - Sorry for your loss.
479
480 Mr. Johnson - Alright, thank you. Any other questions? None? Are there
481 any in favor? No one?
482
83 Mr. Pollard - Okay.
-84
485 Mr. Johnson - The public hearing is closing.
486
487 Mr. Blankinship - You want to give Ms. Witherspoon an opportunity to reply?
488
489 Mr. Johnson - Is she here?
490
491 Mr. Blankinship - Yes, she's still on Webex.
492
493 Ms. Bibbs - I would like to say something. Can you all hear me?
494
495 Mr. Blankinship - Yes, Ma'am.
496
497 Ms. Bibbs - Okay, this is Michelle Bibbs. I provided the architectural design
498 drawings for Ms. Witherspoon, and I have been over to her home and she already has a
499 lot of equipment for her granddaughter and her family room is actually packed tight with
500 a lot of the equipment that her granddaughter uses. A lot of times her granddaughter
501 sleeps in the same bedroom as her ... so that she can attend to her granddaughter. Her
502 granddaughter has a bed for the room with her grandmother so that she can attend to
503 her. So, her bedroom is also tight. That's one of the reasons why she decided to extend
504 her master bedroom also.
05

506 As far as the drainage issues that the neighbor has, that's something I am sure could be
507 addressed during the construction. Maybe it's something where the mailboxes ... if that
508 pipe is clogged and we haven't noticed that or that she hasn't noticed that's an issue
509 going into the neighbor's yard. I'm sure while the contractors are out there, we can
510 address that issue help prevent the drainage from going across the street.

511
512 I did notice that there is a swell at the driveway, but I haven't been there long enough to
513 realize what's going on with drainage. But I believe that Ms. Witherspoon is very open to
514 addressing those needs so that she can properly care for her granddaughter.

515
516 Mr. Blankinship - Ms. Witherspoon, are you still on?

517
518 Ms. Witherspoon - Yes, sir. I'm here.

519
520 Mr. Blankinship - Can you just confirm that?

521
522 Ms. Witherspoon - Yes, I just have a few concerns myself. I'm a licensed
523 therapist, so I'm working for most of the day. Sometimes I work in the evenings when I
524 have clients, but most of the time I'm home. I have two big vehicles as my neighbor
525 stated. I use my driveway for both my vehicles, but as you can see, that burgundy Armada
526 belongs to me, but oftentimes I'm driving my other truck and I don't always want to pull
527 that one in and out. But even if I didn't want to, that's still my property. I should be able to
528 park on that street, like they are parking their car on their street.

529
530 I have a 16 ... 17-year old great-nephew who lives in my home, as well as I have my
531 grandbaby. I have a large family. I have 14 great nieces and nephews who are all always
532 at my house playing. I have everything in the yard for them to play with. So my house
533 does have a lot of traffic, but it's nothing illegal going on. Nobody's doing anything that
534 they are not supposed to be doing, and they are children who just enjoy being at my
535 house.

536
537 Now as far as the water drainage, I've been in that home for 13-years. The driveway was
538 put in a year after I moved ... that ditch that's right in front of my truck, I have asked ... I
539 have tried to get my yard man to fill the ditch in, I've even called the county to see what
540 we can do to fill the ditch in ... because my driveway has nothing to do with water drainage.
541 I mean ... I get just as much water right there in the ditch because the water is not going
542 anywhere ... than anybody else should be able to get to their property. So, I'm not sure
543 what I can do to make the water drainage better, or what the county can do ... or what
544 we can do as we are building the addition. But, for 13-years, I've dealt with the ditch ...
545 with the water issue and I'm only asking for eight-feet to extend beyond the house so the
546 parking would not have anything to do with nothing. If my trucks are in the way when you
547 are trying to come home, just communicate that with me. Just let me know. ... "Marsha,
548 can you move your truck?" She was the only neighbor's house that I did not go to because
549 they have a really big dog in their yard. And, I was not comfortable knocking on their door.

550

551 I can count on one hand how many times I even tried to talk to them but nobody would
552 ever speak. She has never come to my house because even when I'm not at home,
553 somebody is always at my house, at least ninety-percent of the time. So, if she ever wants
554 to talk to me about anything, I'm here. I'm open to whatever conversation ... I have a
555 really big back-to-school bash every single year. Nobody parks in their driveway, nobody
556 parks in their yard. I make sure that all of my people park on the opposite end. I mean,
557 I'm not sure what else to say or do as it relates to her concerns, but the drainage ... I
558 don't know what to do. But, I don't think me getting an addition for my granddaughter's
559 disability is going to attract more traffic. Because my family is always going to be welcome
560 to come to my home. They are going to always be welcome to cook on the grill. We don't
561 have no neighborhood disturbances. We are not playing loud music. We are not doing
562 anything illegal. We're just a family that likes to be together. And, like I said, I have 14
563 great nieces and nephews, all under the age of thirteen. And, at any given time, they are
564 at my house... they might be on the trampoline ... riding their bikes ... We don't bother
565 anybody else to the point where we are having a disturbance in the neighborhood.

566
567 Mr. Johnson - Thank you, Ms. Witherspoon.

568
569 Ms. Witherspoon - I'm sorry about those concerns, but she has never brought
570 those concerns to me.

571
572 Mr. Johnson - Thank you, Ms. Witherspoon.

573
574 Ms. Witherspoon - You're welcome.

575
576 Mr. Pollard - I don't have any further questions for either the applicant or
577 the young lady that's standing in the back. I forgot your name. I'm sorry. ...

578
579 Mr. Blankinship - Ms. Roach.

580
581 Mr. Pollard - Ms. Roach. Our focus is the eight feet variance. So, and what
582 I've heard from both sides speaking, sounds like there's an opportunity to have a
583 discussion, and it sounds ... both sides need to ... the neighbors need to figure out what
584 their preferences are. And, I didn't hear anything that sounded like it could be hard to
585 reach. So, we'll focus on the eight feet. If there is an opportunity, Ms. Witherspoon, for
586 you to address the drainage during that building ... that sounds like the hardest thing that
587 may be outside the neighbor's control and that the contractors probably could address.
588 So that would be awesome if you could address her concerns if that's a cause and it's not
589 a lot for you to address that.

590
591 Ms. Witherspoon - Okay, absolutely.

592
593 Ms. Bibbs - And I also want to say that Ms. Witherspoon did speak to her
594 immediate neighbors, the ones like within 100-feet of her property to just let them know
595 what she would like to do on her property, and she didn't receive any opposition. Her
596 other issue is her property is actually located on an irregular shaped lot and she has two

597 front yards. One on the McGill side and the other on ... I can't remember the name of the
598 street

599
600 Mr. Blankinship - Merle Street.

601
602 Ms. Bibbs - Merle Street side ... so it causes her an issue even if she tries
603 to add on to the Merle or the McGill, but the McGill Street side is the side that really will
604 help her because that's where her family room is and her master suite is. So, that's pretty
605 much all I wanted to address.

606
607 Mr. Pollard - Thank you, we hear you loud and clear. Sounds like just one
608 more conversation needs to be had. We always appreciate whenever something's being
609 done everyone reaches out to all the neighbors. So, thank you for that.

610
611 Mr. Johnson - Our issue is about the accommodation of the child as well.

612
613 Anyone else? Are you finished?

614
615 Ms. Roach - Yeah, I just disagree with everything she said but because
616 she just flat out lied. I didn't hear her sworn in. She lied about all of that.

617
618 Mr. Pollard - Wait a minute. So ...

619
620 Ms. Roach - That's fine.

621
622 Ms. Bibbs - Well, what did I lie about?

623
624 Mr. Blankinship - Alright, let's close the hearing.

625
626 Mr. Johnson - The public hearing is now closed. Now, is there a motion in
627 order? What's the pleasure of the Board?

628
629 Mr. Pollard - It is necessary for a person with a disability. The hardship was
630 not created by the applicant. There will be no detrimental impact on the neighbors. The
631 other tests are met as stated in the staff report. I move that we approve the variance,
632 subject to the conditions recommended by the staff.

633
634 Mr. Johnson - There's been a motion. Do I hear a second?

635
636 Mr. Reid - Second.

637
638 Mr. Johnson - Motion has been seconded. Are there any discussions?

639
640 No discussion? No? All in favor of the motion say, yea.

641
642 The Board - Yea.

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Mr. Johnson - All opposed, say nay. ... Motion passed.

On a motion by Mr. Pollard, seconded by Mr. Reid, the Board **approved** case **VAR2022-00010 MARSHA WITHERSPOON's** request for a variance from Section 24-3105.G.1 of the County Code to build an addition at 4501 McGill Street (KINGS HILL) (Parcel 806-716-6764) zoned One-Family Residence District (R-4) (Varina). The Board approved the request subject to the following conditions:

1. This variance applies only to the front yard setback requirement for only the proposed addition. All other applicable regulations of the County Code remain in force.
2. This variance applies only to the improvements shown on the plot plan and building design filed with the application. Any additional improvements must comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements will require a new variance.
3. The new construction must match the existing dwelling as nearly as practical in materials and color.
4. Before beginning any clearing, grading, or land disturbing activity, the applicant must obtain approval of an environmental compliance plan from the Department of Public Works.
5. The applicant must obtain a building permit for the proposed addition by July 29, 2024, or this variance will expire. After that date, if the building permit is cancelled or revoked due to failure to diligently pursue construction, this variance will expire at that time.

Affirmative:	Bell, Johnson, Pollard, Reid	4
Negative:		0
Absent:	Green	1

Mr. Blankinship - The next case as I mentioned is Variance 2022, number 11, Liberty Homes of Virginia, Inc., number 11 and that case has been withdrawn. So, that case will not be heard this morning.

VAR2022-00011 LIBERTY HOMES OF VIRGINIA, INC. - WITHDRAWN

Mr. Blankinship - Okay, the case following that is Variance 2022, number 13.

VAR2022-00013 MARIANNE AND MARTIN WILLIAMS request a variance from Section 24-3308.D of the County Code to build a screened porch on an existing deck at 12801 Huntmaster Lane (FOXHALL) (Parcel 730-758-4887) zoned One-Family Residence District (R-2AC) (Three Chopt). The rear yard setback is not met. The applicants propose

690 43 feet rear yard setback, where the Code requires 45 feet rear yard setback. The
691 applicants request a variance of 2 feet rear yard setback.

692
693 Mr. Blankinship - Would everyone who intends to speak to this case please
694 stand and be sworn in. Raise your right hands please. Do you swear the testimony you
695 are about to give is the truth, the whole truth, and nothing but the truth so help you God?
696 Mr. Madrigal.

697
698 Mr. Madrigal - Thank you, Mr. Secretary, Mr. Chair, members of the Board.

699
700 Before you is a variance request for a reduced rear yard setback to build a screened
701 porch. The subject property is located approximately half mile east of the Goochland
702 County line. The lot is part of Section 7 of the Foxhall Subdivision, recorded in 1996. The
703 parcel is located at the eastern end of a cul-de-sac, is flag shaped, and slopes down at
704 an approximately ten percent rate in a southeasterly direction from front to back. The
705 southern stem portion of the lot is predominantly in the flood zone and is wholly in the
706 Resource Protection Area (RPA) due to the presence of wetlands.

707
708 The applicants purchased the home in April of 2020. The lot is improved with a two-story,
709 4,700 square-foot home which includes a finished attic, a walkout basement, and an
710 attached two-car garage, built in 1998. The home has an attached, 12-foot by 30-foot rear
711 deck that is 43 feet distant from the rear property line. The deck cantilevers over a patio
712 at the basement level and doubles as a patio cover. The applicants would like to enclose
713 the rear deck with a screened porch and maintain the existing rear yard setback.

714
715 Open decks are allowed to encroach ten feet into the rear yard setback; however, an
716 enclosed structure with a roof must comply with the principal building setback, which in
717 this case is 45 feet. The applicant is requesting a variance of two feet.

718
719 With respect to the threshold test, the applicant does not meet any of the items listed.
720 Relative to the five subtests, items one and three are not met as outlined in the staff
721 report.

722
723 In conclusion, staff has found that the applicants have reasonable use of the property,
724 and any hardship associated with this request is self-imposed.

725
726 The circumstances that gives rise to this application, a deck extending into the rear yard
727 setback, occur County-wide. If this situation needs to be addressed, it should be
728 addressed by the Board of Supervisors and not the Board of Zoning Appeals.

729
730 Because the application does not meet the requirements of the Code of Virginia, staff
731 recommends denial of this request. I'll be happy to answer any questions.

732
733 Mr. Johnson - Any questions from the Board?

734

735 Mr. Reid - Has the BZA granted variances in the past for these types of
36 requests?
737
738 Mr. Madrigal - Occasionally.
739
740 Mr. Reid - Is the Board of Supervisors looking into doing something?
741
742 Mr. Madrigal - Well, we just adopted the new Code and this item has been in
743 the Code since 1986 or '87, and it just got continued on. So, there hasn't been any
744 significant concern brought to the Board's attention.
745
746 Mr. Reid - Is this something the applicant was made aware of when
747 applying?
748
749 Mr. Madrigal - Yes, sir.
750
751 Mr. Reid - Thank you.
752
753 Mr. Johnson - You'll hear now from the applicant.
754
755 Mr. Williams - Good morning. My name is Martin Williams, I'm the applicant
756 co-owner of the property. I'm sure you guys have reviewed the report provided by the
757 department, as well as I have. One of the things that ... trust me ... I'm not familiar with
58 the Henrico zoning ordinances and I don't think most lay people would be unless it's part
759 of their occupation, or you are a member of the Board of Supervisors or Planning
760 Commission, or Board of Zoning Appeals. What I would say is that in reviewing the
761 materials that were provided to me, I did have an opportunity to review the zoning
762 ordinance; and one of the things that popped out when reviewing the report from staff
763 was the fact that the Planning Director stated that there was no administrative
764 modification that was available for this particular request. I would, respectively, disagree
765 with that. And, I would just like to go through some of that with the Board just to argue
766 that I think that this is a unique exception that I request and property itself which is
767 uniquely situated for this to be approved.
768
769 So, in the zoning ordinance, there is the ability for an administrative modification and there
770 is a table that specifically outlines the parameters that I'm sure you guys know, where a
771 modification can be granted. And pungent to this point, there be fifteen-percent or less
772 variance from the stated setback. In this case, rear setback of 45-feet. Now based on
773 that particular exhibit there, you will notice that the lot is angled, as well as the home. So,
774 the 43-foot difference is not for the entire deck, but rather for a wedge ... and I would think
775 just looking at it and just knowing my point of reference, the home ... it's probably about
776 a quarter, or less of the deck that actually is situated 43-feet from the rear setback where
777 the other remaining three-fourths are within that 45-foot setback. And I've measured that
778 myself, as well as my builder as well. So, if we are looking at the fact that a quarter of the
779 deck stands two-feet ... there's a 43-feet for the rear setback ... that 2-foot difference is
80 approximately four-percent. That's well within the range of the 15% differential that's

781 allowed pursuant to that table. Now, obviously, I think the Board's interpretation of a
782 hardship and my interpretation of a hardship may differentiate. But just add some flavor
783 to that ... the main parameter of the reason why I'm requesting to build this deck is
784 because I have two young boys, and as noted, there is a creek running behind my house
785 and there is a large body of water which for some reason has caused an infestation of
786 mosquitos and my young four-year old, he has welts all over him ... consistently have
787 welts all over him. So, the screening in the deck allows us to have him outside in the
788 backyard with the protection of the screen. So, that's where I would speak as far as the
789 interpretation. Now, is there a substantial differentiating factor between my home and the
790 neighboring home? No. I'd say one of the reasons we got the idea was the home directly
791 to our right did the same thing two years ago. The same exact thing that we are attempting
792 to do ... screening their porch. They did two years ago. So, to us, we thought we could
793 do this. They did it. No problem. But to our surprise, our rear setback ... that quarter of
794 the deck, is prohibiting us from doing that. I don't think there is anything here. You haven't
795 heard any objections. We've spoken to our neighbors. They're in approval of it. It's
796 consistent with the other homes in our building. As part of getting this approved, we
797 actually have ... our declaration requires that we submit plans to the original builder and
798 the HOA. So, those were approved by the original builder and the HOA. If you are familiar
799 with Foxhall, they are probably one of the most stringent neighborhoods when it comes
800 to covenants and things like that. So, my whole thing is that I understand that there are
801 rules, but I think that if we are just strictly just rubberstamping rules I just don't understand
802 why we go through this whole process because it's for staff and it's for the Board to
803 analyze those sets of facts to see if they are consistently applied to the rules or if there
804 ... and I think in this case, there are a set of facts that show that a variance should be
805 granted the minimal ... minimal ... minimal variance from the setbacks. That's all. I'm
806 open to questions.

807

808 Mr. Johnson - Any questions from the Board?

809

810 Mr. Pollard - As you see it, is that the case where it's really like a quarter of
811 the deck that is kind of like preventing him from having from having the 45-foot setback
812 that is required versus the 43?

813

814 Mr. Blankinship - I guess the way that I would look at that from a staff
815 perspective is there may be other design opportunities for him to build a screened porch
816 that does meet the setback, since he does have a significant amount of deck area that is
817 not encumbered by the setback. He may be able to do a design that would fit the setback,
818 but not the design that he submitted.

819

820 On the question of ... you made an excellent point, sir, of saying we each have our own
821 image of what a hardship is and you have an image, staff has an image and each member
822 of the Board has an image ... fortunately, or unfortunately, depending on how you look at
823 it, the Supreme Court of Virginia has expressed their opinion on that question very clearly
824 and very forcefully in several cases that they've handed down. And, because this Board
825 is appointed by the Circuit Court and the Circuit Court works under the Virginia Supreme

826 Court, we consider ourselves to be bound by the Supreme Court's opinion whether our
27 opinion, necessarily, agrees with it or not.

828
829 There are three cases in which the Board can grant a Variance. One you've just seen a
830 moment ago where if there is a necessary reasonable modification to make a reasonable
831 accommodation for a person with a disability. That's covered by a different area of law
832 and so that is one proposal.

833
834 Another is going to be our next case, which is a case where they will say a property that
835 existed and the laws and regulations changed after the property was defined the way it
836 was. In that case it is a subdivision, and in yours ... if this law had been passed and the
837 setback had been increased after your house was built, then the Board would have the
838 flexibility to apply the law differently in that circumstance.

839
840 Where neither of those are in effect, then the third remaining point is if you cannot make
841 any reasonable use of your property, then the Board has the authority to grant a variance.
842 So, we get cases sometimes that has no frontage on a public street, and has no
843 reasonable way to get public frontage on a public street, and if the Board doesn't grant a
844 variance from the public street frontage requirement they he can't build a house on the
845 lot, and that means they can't do anything with the lot. And, so that's the third and last
846 alternative that we can review a variance against and say is there a way that this variance
847 meets that test and, unfortunately, the case where the deck is built into the setback and
848 that's what allowed to extend into the setback, it doesn't fit any of these ... from our view
49 as staff, it doesn't fit into any of those three alternatives.

850
851 Mr. Johnson - Is there ... I'll wait for the discussion.

852
853 Mr. Reid - I have a question. Is it ... Would it be possible to redesign the
854 porch in a way that would meet the setback?

855
856 Mr. Blankinship - Do we have a set of plans?

857
858 Is this is the best diagram, Miguel?

859
860 Mr. Madrigal - So, essentially, this is a side view of their proposal. This is
861 the wall of the house, and then they want to enclose the entire deck. This deck is 12-foot
862 deep. I mean ... one way would be to come back to the ten-foot mark and then it would
863 be just two feet that would just be open and then the rest of it would be enclosed.
864 Unfortunately, with this drawing it's minimal. It's very difficult to do a thorough plan review
865 when it's not set to scale. You don't see the angles clearly. If we would have had a second
866 setback delineated here. Where we may would have come to that conclusion that he
867 expressed that it's on an angle portion of the deck. Based on this drawing, I can't even
868 tell that; I don't think you could. So, you know, with respect to your question, yeah, they
869 could design it so that it would meet the setback requirements. And based on what he
870 said, it would be a portion of the deck that would be open and the majority of it would
71 probably be enclosed.

872
873 Mr. Pollard - Then, could that be added as a condition?
874
875 Mr. Madrigal - I'm sorry?
876
877 Mr. Pollard - Could that be a condition of approval?
878
879 Mr. Blankinship - Well they wouldn't need variance.
880
881 Mr. Madrigal - They wouldn't need a variance, right, at that point.
882
883 Mr. Blankinship - We're saying he could design it to fit within the setback, then
884 the variance would not be necessary.
885
886 Mr. Reid - Mr. Williams, would you be open to that?
887
888 Mr. Williams - You know, at this juncture, I wanted to take the opportunity to
889 present my wife and I's argument before the Board, but I think, you know, we've just come
890 to the conclusion that "hey, you know, if it's not within the parameters of what's required
891 by law then we are just going to move ahead which is replacing the deck and that's about
892 it and dropping this, unfortunately.
893
894 It's been almost a year's process, and you know when we bought this house, we knew
895 the deck had to be replaced and the wood's warped and everything. So, I think that at
896 this juncture, it's just kind of see what the outcome of this hearing would be and then
897 moving forward with either the plans as is or just replacing the deck. And I think while it
898 can be done ... I think ... Would it be done in a matter that is practical for use. That's
899 another question as well.
900
901 Mr. Pollard - You did an excellent job of saying that it wasn't that much of
902 a difference.
903
904 Mr. Williams - With all candor, I'm an attorney. So, I'm not a land use
905 attorney. I'm a real estate attorney. But I'm not ... so when this came across, I got my
906 land use guy and I said, hey, is there someone I can talk to about this? One of the
907 engineers he kind of said this is something you might want to look into ... you know ...
908 they came out to the house, measured and everything and said this is something ... if you
909 want to pay us to do a survey and request an administrative modification ... but when I
910 looked at the report I said it already looked like they denied one and said it wasn't probably
911 worth paying him the money to do that, and I should just kind of present that to you all
912 and see how accepting it was. It's not a ... trust me ... I didn't come up with that one on
913 my own.
914
915 Mr. Pollard - Okay, so it sounds doable but just not with that sketch.
916

917 Mr. Johnson - Is there anyone else who wants to speak in favor? Anyone
918 on Webex?

919
920 Mr. Blankinship - There is one on Webex.

921
922 Mr. Peterman - That's correct.

923
924 Mr. Johnson - Alright, then this is now closed for a motion. The public
925 hearing now is closed.

926
927 Mr. Reid - Yes, I move that we deny the variance. I think we are
928 constricted by what the Code of Virginia says on this. Besides, the property already has
929 a reasonable use. The rear yard setback was already in place when the house was built.
930 This is a general and recurring situation. Not a case where one property has been treated
931 unfairly by the Board and zoning ordinance. It is up to the Board of Supervisors, not the
932 Board of Zoning Appeals to determine how the setbacks are measured.

933
934 Mr. Pollard - Okay.

935
936 Mr. Johnson - Is there a second?

937
938 Mr. Pollard - Second.

939
940 Mr. Johnson - It's been motioned and seconded. All in favor say aye.

941
942 The Board - Aye.

943
944 Mr. Johnson - All opposed say, nay. ... Okay, motion passes.

945
946 Mr. Williams - Thank you for your time. Have a good day.

947
948 On a motion by Mr. Reid, seconded by Mr. Pollard, the Board **denied** case **VAR2022-**
949 **00013 MARIANNE AND MARTIN WILLIAMS** request for a variance from Section 24-
950 3308.D of the County Code to build a screened porch on an existing deck at 12801
951 Huntmaster Lane (FOXHALL) (Parcel 730-758-4887) zoned One-Family Residence
952 District (R-2AC) (Three Chopt).

953
954
955 **Affirmative:** Bell, Johnson, Pollard, Reid 4
956 **Negative:** 0
957 **Absent:** Green 1

958
959
960 Mr. Blankinship - Alright, the last case on this morning's agenda is
961 Variance 2022, number 14.

62

963 **VAR2022-00014 STEVEN AND JEAN HIMELSPACH** request a variance from Section
964 24-6402.A.2 of the County Code to build a one-family dwelling at 9750 Osborne Landing
965 (NEWSTEAD FARMS) (Parcel 807-670-8807) zoned Agricultural District (A-1) (Varina).
966 The lot width requirement and total lot area requirement are not met. The applicant
967 proposes 26,569 square feet lot area and 100 feet lot width, where the Code requires
968 30,000 square feet lot area and 150 feet lot within. The applicant requests a variance of
969 3,431 square feet lot area and 50 feet lot width.

970
971 Mr. Blankinship - Would everyone who intends to speak to this case please
972 stand and be sworn in. Raise your right hands please. Do you swear the testimony you
973 are about to give is the truth, the whole truth, and nothing but the truth so help you God?
974 Thank you.

975
976 Mr. Blankinship - Mr. Gidley.
977
978 Before you begin, I will call your attention to three letters left at your desk this morning.
979 They all pertain to this case.

980
981 Mr. Gidley - Thank you, Mr. Secretary.

982
983 The subject property is located between Osborne Landing and the James River, as you
984 can see here. This is part of Newstead Farms which was subdivided back in 1920. The
985 development included several lots, twelve of which were along the James River, each
986 with less than one acre of lot area. At the time, 1920, Henrico County had no zoning or
987 subdivision division ordinance. So, each of these lots was buildable.

988
989 Lots 9, 10, and 11 along with parts of two other parcels and were acquired in 1944 which
990 you can see here. In 1958, a home was built on lots 10 and 11, which is located here,
991 and this is a view of the home.

992
993 Since this time there have been three new owners, including the current owner who
994 acquired the site last year ... I'm sorry, I mean this year.

995
996 The applicant would like to sell lot 9, which is here in yellow and sell it to his sister so she
997 can build a home on the lot. And, this is a view of that lot.

998
999 The applicant's plans, as you can see, show a one and a half-story building, 2,289 square
1000 feet, and it would be located near the middle of the lot.

1001
1002 In evaluating this request, as Mr. Blankinship noted just a moment ago, one of three
1003 threshold tests must be met for a variance to be granted. The second possible test
1004 speaks of alleviating a hardship related to the property at the time of the effective date of
1005 the ordinance. As noted, Lot 9 was recorded prior to the adoption of the zoning and
1006 subdivision ordinances. The lot width requirement was adopted after the lot's creation. In
1007 addition, the lot would meet the lot area requirement; however, part of the lot is located
1008 within the floodplain, and that does not count towards meeting the lot area requirement.

1009 That change in the Code took effect in 1970. So, as a result, both of variances that are
10 being requested are for items that came about after the lot was recorded. So, staff does
1011 believe this threshold test is met.

1012
1013 As noted in your staff reports, staff believes all five subtests are met. Three other lots,
1014 here mainly to the north, also have less than 100-feet of lot width. So this development
1015 proposal would just continue that pattern.

1016
1017 You did receive a letter from the neighbor to the immediate north, right here, and two
1018 others came in as Mr. Blankinship noted. The neighbor to the north, she expressed
1019 concerns that the proposed home would be too close to her property. This is a view of
1020 her home here. As you can see, this is a driveway over here ... and I'll zoom in on that
1021 ... This is roughly the property line through here. So, the new home would go over on this
1022 lot right here. I would note that the proposed home would meet the setback requirement
1023 of the zoning ordinance. The setback requirement is 20-feet. The side yard setback being
1024 proposed by the applicant is 25-feet, so it would meet the setback requirement of the
1025 Code. However, if the Board is concerned that this proposed home would be detrimental
1026 to the neighbor to the north, it could deny the variance or it could defer the case or have
1027 a condition for a larger setback.

1028
1029 In conclusion, staff believes the case meets the legal requirements for a variance. The
1030 hardship the lot faces, specifically, required lot area and lot width were caused by changes
1031 to the zoning ordinance that occurred after the property was subdivided. Staff believes
1032 the five subtests are met as well. The proposed dwelling would be consistent with the
1033 three properties to the north and would comply with the required setbacks. As a result,
1034 unless the Board chooses to defer this case, staff can recommend approval of this request
1035 subject to the conditions in your staff report.

1036
1037 If you have any questions, I'll be happy to answer those. Thank you.

1038
1039 Mr. Johnson - Are there any questions from the Board of staff?

1040
1041 Also on this lot, does it have the wells for each one of them?

1042
1043 Mr. Gidley - Yes, sir. Let's see if I have that. You can see right here there's
1044 an old well, right here and this is designed to serve the main home, as I understand it.
1045 Before they could sell it separately, they would need to secure the well per the Health
1046 Department regulations. And, then the home here would need a well and septic system
1047 that would need to be on the remainder of the land here, as required by their
1048 regulations. In addition, it looks like the vinyl shed or shelter goes over here on to the
1049 property line. Any accessory structure would need to be three feet off the property line or
1050 need to be removed before Lot 9 could be sold. So, yes sir, you're correct.

1051
1052 Mr. Johnson - Okay. Also, I noticed that it seemed like another ... it looks
1053 like the same well, similar to the well right there near that shelter there. Is that a well or
1054 just as ... Wouldn't both sides have their own wells?

1055
1056 Mr. Blankinship - That would be a requirement if the variance was approved.
1057 That would be a requirement of the Health Department and we would enforce that.

1058
1059 Mr. Johnson - Okay. Alright, thank you.

1060
1061 Mr. Blankinship - The same is true of the septic system. Some of the comments
1062 in the letters were expressing concern that the lot may not be large enough to
1063 accommodate the septic system ... and it may not. It may be that they go through this,
1064 go to the Health Department and the Health Department says there's not enough room
1065 there for a septic system and if so, then they can't go forward.

1066
1067 Mr. Johnson - Alright. Thank you. Any other questions from the Board? Ok,
1068 we'll now hear from the applicant.

1069
1070 Mr. Himelspach - Good morning Chairman, good morning Board. I'm Steve
1071 Himelspach ... H-I-M-E-L-S-P-A-C-H. My wife Jean and I are the property owners of
1072 9770 Osborne Landing, which is the current address assigned to this lot. As staff briefed,
1073 we purchased the lot, basically at the beginning of July ... near the end of June ... July
1074 ... and we're looking for permission to use Lot 9 as was originally divided when the lot
1075 was established in 1920, to sell to my sister-in-law so that she can build a house on the
1076 property adjacent to us.

1077
1078 As was discussed, there is a well. The well for the main house does reside on Lot 9.
1079 We are prepared, going forward, to relocate a new well. A septic system for the house is
1080 currently on Lot 11 so that's not an issue, and we do realize that there's a requirement to
1081 get a perk test and applicable septic for Lot 9 moving forward.

1082
1083 As we put in this request, we were very cognizant of the unique nature of this
1084 neighborhood. It's why we purchased down there ... to be on the river.

1085
1086 The bungalow lots, from Lot 9 north to Kingsland Road, all vary in size from approximately
1087 one acre ... some of them down to 0.49 acres of which they are built on. When we built
1088 ... when we came up with our proposal for building on this, we took that into consideration,
1089 the effect it would have on the neighbors.

1090
1091 Given the large amount of property ... if you could go back to the survey, please ... Given
1092 the large amount of property it does encompass, we did look at the potential of creating
1093 an odd shaped lot that would meet the size and the frontage requirements, but in doing
1094 so, we determined that that would set the house forward and have greater impact on the
1095 neighbors because it would be in the sight lines. Where the house is currently proposed
1096 is adjacent to several old grove trees and the garage would have, in our opinion, the
1097 minimalist effect on neighbor sites and views. Because of the pool there, there's no ability
1098 to create the frontage ... the 150-foot frontage requirement, and as a result, what was
1099 determined to be the least impact was to try to comply with the original dimensions of Lot

1100 9 as set forth in this subdivision and that's what we are requesting a variance to use the
01 setback or the dimensions as originally subdivided in Lot 9.

1102
1103 As far as the concerns for closure, we actually took that into consideration by not going
1104 to the 20-foot setback, but actually adding the extra as much as we could in order to get
1105 25-feet ... and get a greater buffer zone between the houses.

1106
1107 That's our position right now and we're looking, hopefully, for a favorable decision.

1108
1109 Mr. Johnson - Any questions from the Board?

1110
1111 Mr. Himelspach - Oh, I'm sorry, I just came up with just one more thing.

1112
1113 You did mention that you came up with three letters. We've only been provided with two.
1114 We did not get the third one, so we've unfortunately have not had a chance to review it.

1115
1116 Mr. Blankinship - I didn't get it myself until this morning.

1117
1118 Mr. Johnson - Do we have any other in support of this? Any opposed?

1119
1120 Mr. Marshall - Good morning, Mr. Vice Chairman, Mr. Blankinship, Ms.
1121 Moore, members of the Board. My name is Robert Marshall, my mother here is Annie
1122 Marshall, and she is the neighbor who is referred to on Lot 9. And the width requirement
23 is 150-feet. They have a hundred feet. So, I've heard a couple cases already this morning
1124 where they were talking about eight feet, five feet, some smaller distances. This is 50-
1125 feet. I bought a tape measure, but it only goes to 25, so I didn't pull it out ... you know ...
1126 to show how long is 50-feet they are short. As far as the well and septic, it may be
1127 approved but part of this lot is in the floodplain ... I'm not sure if they could move the
1128 house so forward because I think it would end up in the floodplain. So to his remarks that
1129 he did that for our benefit is interesting. This is the first time we have met these folks. Mr.
1130 Pollard, earlier you said earlier how important it was to engage your neighbors, in the
1131 previous case. The Himelspachs, this is the very first time we've met them, have spoken
1132 to them, communicated with them. They bought this house knowing that this variance
1133 was gonna be needed. They bought it, they immediately applied and I told that to Mr.
1134 Blankinship on the telephone. So as far as being a good neighbor or being neighborly,
1135 you know ever since they purchased this home from the lady who was there for many,
1136 many, years. No communication with my mother, no communication with the other
1137 neighbors that I'm aware of at this point and so, that's very disturbing as far as knowing
1138 this lot didn't meet ... now, Mr. Blankinship and I have had a conversation on the phone
1139 where I, you know, brought this to his attention. I'm sympathetic to people who inherit
1140 property ... they can't do something with the lot ... you know ... it's something that they
1141 had received, they inherit or ... this was a calculated move by these folks to profit off
1142 buying this home, which is fine but they knew that it wasn't going to meet the standard.

1143
1144 The house, there is a bungalow style house that was probably built in the 1930s to the
45 right of us that I think they feel like it's a similar style home, but it was built maybe a

1146 hundred years ago. So, we strongly encourage that you deny this request on the grounds
1147 that this a ... Mr. Himelspach was correct, this a very unique part of Varina. Originally, I
1148 think, 12 lots. There are six homes there now. So, for many, many years, there hasn't
1149 been a house built there since I was born in 1970. So, I was the last one to build a house
1150 there ... so it would mess up the character of that neighborhood. Could you put the picture
1151 up showing my parents' house ... going through the woods to the pool house? There's
1152 another one beside me going towards the pool house ... one more ... I think it's ... go on
1153 ... you can look from our driveway to the pool house. Does that really show you when
1154 you look at the diagram on the plat, it just really doesn't show the character of how close
1155 this house is going to be to the property line. It does meet the requirement of 20-feet. We
1156 appreciate he wants to go 25, but the fact is, he is 50-feet short on the lot width. So, we
1157 strongly encourage ... like I said ... you're putting a house right there. It really doesn't
1158 show how close it really is.

1159
1160 My last word is ... we had a case earlier with the neighborhood Hampshire ... I actually
1161 live in Hampshire and when I moved there, I knew I was going to have houses very close
1162 to me. You know and so this neighborhood has been here, like I said, the last house built
1163 ... these folks that all live on this street go there, they live there because we're not up on
1164 each other. So, I strongly encourage you to deny this variance. I know staff and for full
1165 disclosure, I'm on the county Board of Equalization. Henrico County does a great job ...
1166 it's very rare ... sometimes if we ... not a hundred-percent ... we don't disagree with staff
1167 a ton or that Board, so I understand the county does a good job, they've made their
1168 recommendation but I don't think it's correct in this case. Thank you so much.

1169
1170 Mr. Johnson - Okay.

1171
1172 Mr. Blankinship - You want to wait just a moment?

1173
1174 Mr. Marshall - Yes, sir.

1175
1176 Mr. Johnson - Any questions from the Board to the ...

1177
1178 Mr. Blankinship - I do have one question if you don't mind, Mr. Chair.

1179
1180 Paul, would you bring up the site plan again? There was one thing you said, Mr.
1181 Marshall that I felt there might be some misunderstanding between what Mr. Himelspach
1182 said in his testimony and what you said in your statement.

1183
1184 You can see here that the existing house is 172-feet back from Osborne Landing, from
1185 the front property line. You can't see here, but your mother's house is about 105-feet
1186 back. I believe what Mr. Himelspach was suggesting was that he could adjust these
1187 boundary lines so that he would have a lot 150-feet wide until it reaches back to the area
1188 of the pool, and he could build a house on the front of that lot. Now I don't know that he's
1189 correct in that. I'm not trying to make that statement; I'm trying to interpret and understand
1190 what he said versus what you said. You seem to think he was talking about building closer
1191 to the river, I think he was talking about building closer to the road. We can ask him to

1192 clarify that. It looks like there may be room to build a house 50-feet back from the road,
93 and let's say 50-feet from that common property line with your mother's house and would
1194 that be preferable to you? Would you rather, if you had to choose one or the other ... if
1195 your mother had to choose one or the other, would you rather have a new house up closer
1196 to the road or back in line with the other houses, but closer to that side of the home.

1197
1198 Mr. Marshall - Well she would have to answer that question and she
1199 wasn't sworn in to speak, so I think that would be preferable. Actually, there was a house
1200 ... well. I was born in 1970. So, as a kid, there was a house on that lot, on that property
1201 up on the road. A little bit farther going towards Lot 11. There was a house dweller there
1202 when I was a little kid. So, I don't know, but there's plenty of land there to build a house
1203 and do what they want to do. But as I said, it is 50-feet short and so if they want to
1204 readjust, we will gladly take a look at it. This is the first time we ever met these folks.
1205 They haven't had the decency to come say hello or ask us what they are doing ... show
1206 what they are doing. We're really a small community. Most people have lived there since
1207 my entire life practically, and so that's all I have to say, Mr. Blankinship, and thank y'all
1208 for your time. I really appreciate it.

1209
1210 Mr. Johnson - Okay.

1211
1212 Mr. Blankinship - Mr. Chair, if you will indulge me for just another minute,
1213 there's one other thing that I want to say. All three of the letters ... one of the concerns
1214 that was expressed in each of these letters was that this case would set a precedent and
1215 other new houses would be built on that stretch of the road, and I'd just like to assure
1216 anybody who is concerned about that that can't be the case because of the floodplain. If
1217 you overlay the floodplain map on that old subdivision plat, this is the only of those original
1218 1920 lots that would still be buildable. All the others are either already have a house on
1219 them or would be completely within the floodplain. So, at least that one concern can be
1220 laid to rest. There are other concerns raised in those letters that, of course, the Board
1221 must take into account.

1222
1223 Mr. Pollard - Yes.

1224
1225 Mr. Johnson - Anyone else opposed or in favor? Which one?

1226
1227 Mr. Madrigal - Anyone on WebEx?

1228
1229 Mr. Peterman - There is no one on WebEx.

1230
1231 Mr. Pollard - Okay.

1232
1233 Ms. Marshall - The floodplain is not ... I know y'all approved another
1234 house. There was a house torn down years ago and y'all approved a floodplain house
1235 being built next to this lady right here. So, the floodplain ... if you approve this, I believe
1236 anything else would be approved, and that's what I just don't want to start.

37

1238 Mr. Blankinship - Since you are not on the record, I'm just going to
1239 summarize that.

1240
1241 Ms. Marshall's concern is that she is not satisfied that my statement about the floodplain
1242 is adequate protection for their concerns.

1243
1244 Ms. Marshall - I've lived there for 51 years, and I know what
1245 happened. Because I know somebody had wanted to build a house where that house is
1246 right now and y'all wouldn't approve it being built. But somebody else bought it and it was
1247 approved.

1248
1249 Mr. Johnson - Would you have any other ...

1250
1251 Mr. Himelspach - With your pleasure, sir, I would like a chance to rebut a
1252 couple of the statements that were made and after reviewing the letters and a couple of
1253 inconsistencies that I have determined in there.

1254
1255 First of all, I'd like to reiterate that our intention in doing this is not to inconvenience or
1256 encumber upon anybody in the neighborhood. We are simply looking for the ability to
1257 enjoy this property in the same manner as everybody else is that's currently residing
1258 there. To include the other properties with 100-foot frontages that have 3,000 square foot
1259 houses built on them. We are looking to put a 2,200 square-foot house on a similar sized
1260 property in order to minimize the footprint.

1261
1262 While all three of the letters have maintained a reference to Osborne Landing being a
1263 private road with limited access, I'd like the record to show that is not a true statement. I
1264 have correspondence with Lamont Johnson, the Henrico Traffic Engineer, who states on
1265 the record that Osborne Landing is in fact a county road.

1266
1267 There are currently 13 properties, addressed properties on that road before the addition
1268 of this one. So, whether there are the number that are truly inhabited, I can't speak to ...
1269 I have not done the census of that but there are in fact, 13 parcels that are addressed on
1270 that road as far as traffic goes.

1271
1272 I do apologize to Ms. Marshall that we haven't had a chance to meet before today. I did
1273 come by several times ... only your workers and hands were available and they said you
1274 were not available to meet. So, I do regret that this is our chance to meeting. We've
1275 been on the property for a month and a half and, unfortunately, our paths have not
1276 crossed.

1277
1278 I have had a chance to meet with several of the other property owners in the area. We
1279 hope to join that neighborhood and become a part of it, and we'd like our sister to be able
1280 to enjoy the privileges of living down there. Bottom line is that the property, as subdivided,
1281 was a buildable lot. In its current configuration and with its current zoning, it is not a
1282 buildable lot. We're asking for deference back to as it was originally ... the original intent
1283 of that lot, which meets the nature and the character of the other houses on that side.

1284
85 We do not intend to build in the flood zone. We've have made large ... we've actually
1286 made an investment to identify that and provide the proper setbacks, and we are prepared
1287 to make the investments in the property to allow this. We are not looking to profit on this,
1288 as this is a family transaction. And that's, barring any questions, that's all I've got.

1289
1290 Mr. Johnson - This is Lot 9, as it was mentioned earlier, that if you
1291 move the house further to the ... Osborne ... that would make it a little bit larger?

1292
1293 Mr. Himelspach - If we move the house closer to Osborne Landing and
1294 incorporated the street side portions of Lot 10, we would get the 150-foot frontage, we
1295 would get the acreage required. We would have no requirements for a variance and we
1296 could build on the 20-feet with the setbacks as appropriate per the zoning without
1297 requiring any permissions from the Board. But we believe that the proposed placement is
1298 better for preserving the nature, the ruralness of it ... because actually once you move
1299 forward, the house forward on the property, it's going to be in Ms. Marshall's view. And,
1300 if we go back to the picture of the lot, that one is actually taken from the street, itself. It's
1301 not from Ms. Marshall's property. That's looking straight down the property. You can
1302 barely see her house on the right due to all of those trees. Those are the trees and groves
1303 of trees that we are looking to maintain to provide the rural buffer between the properties.

1304
1305 We're willing to add additional ... if it's simply a matter of landscaping and exclusion, we
1306 would be more than willing to work with the neighbors to provide reasonable assurance
07 that we would have screening.

1308
1309 Mr. Johnson - And I also noticed that when you first come in, there
1310 are other houses to the left of her ... that person ... it's close to the road that would be
1311 similar to what we were just mentioning.

1312
1313 Mr. Himelspach - There is ... the one across the street is very close, but
1314 that property is narrower. It does not have the depth. There is a building in the corner lot
1315 there of Osborne Turnpike and Kingsland Road. That is an accessory building. That is
1316 not a primary residence. Most of the residences ... the primary on this road are along that
1317 line there, as close as possible to the floodplain for all the reasons that people live on the
1318 water.

1319
1320 Mr. Johnson - Any other Board member have any questions?

1321
1322 Mr. Blankinship - That's the end of the hearing.

1323
1324 Mr. Johnson - This hearing is now closed and a motion will be in order
1325 for the Board.

1326
1327 Mr. Pollard - You mentioned that the ... so a hardship does exist,
1328 and at the same time you have three of the six houses in opposition. So, I move that we

1329 defer this request to August 25th to allow time for applicant time to address the concerns
1330 of the neighbors.

1331
1332 Mr. Johnson - Second the motion. It's been seconded. All in favor
1333 say, aye. Any discussion before we vote?
1334

1335 Mr. Pollard -- I just want to add that it sounds like there is opportunity
1336 for you to go a little further with the neighbors and figure out a better position because
1337 there is a hardship. It's more than likely that the house is going up, so the neighbors
1338 would benefit to have that discussion to figure out a location for the home.
1339

1340 Mr. Johnson - Any other discussion? Okay, now the motion. All in
1341 favor, say aye.
1342

1343 The Board - Aye.
1344

1345 Mr. Johnson - All opposed. Motion passed.
1346

1347 Mr. Pollard - So we are deferring to August 22?
1348

1349 Mr. Blankinship - August 25th.
1350

1351 On a motion by Mr. Pollard, seconded by Mr. Johnson, the Board **deferred until the**
1352 **August 25, 2022 public hearing VAR2022-00014 STEVEN AND JEAN**
1353 **HIMELSPACH's** request for a variance from Section 24-6402.A.2 of the County Code to
1354 build a one-family dwelling at 9750 Osborne Landing (NEWSTEAD FARMS) (Parcel 807-
1355 670-8807) zoned Agricultural District (A-1) (Varina) until the August 25, 2022 public
1356 hearing.
1357

1358
1359 **Affirmative: Bell, Johnson, Pollard, Reid 4**
1360 **Negative: 0**
1361 **Absent: Green 1**
1362

1363
1364 Mr. Blankinship - Alright, Mr. Chair, this completes all the cases for this morning
1365 and brings us to the approval of the Minutes for the June meeting.
1366

1367 Mr. Bell - I move that we to vote to approve the meeting's notes.
1368

1369 Mr. Johnson - Any discussion?
1370

1371 Mr. Pollard - No, it's okay.
1372

1373 Mr. Blankinship - You need a second on that.
1374

1375 Mr. Reid - It's for the Minutes?
76

1377 Mr. Blankinship - Yes.
1378

1379 Mr. Reid - Second.
1380

1381 Mr. Johnson - The motion has been seconded. Is there any
1382 discussion? None? Okay, all in favor say, aye.
1383

1384 The Board - Aye.
1385

1386 Mr. Johnson - All opposed.
1387

1388 The Board - No.
1389

1390 Mr. Johnson - Motion passed.
1391

1392 On a motion by Mr. Bell, seconded by Mr. Reid, the Board **approved the minutes of the**
1393 **June 23, 2022 Board of Zoning Appeals meeting.**
1394

1395

1396	Affirmative:	Bell, Johnson, Pollard, Reid	4
1397	Negative:		0
98	Absent:	Green	1

1399

1400 Mr. Blankinship - The last item of business on the agenda is the calendar
1401 of meeting dates and filing deadlines for next year. It should have been one sheet loose
1402 in your package. ... I wouldn't be surprised if that was something else I overlooked.
1403

1404 Mr. Johnson - Is this it?
1405

1406 Yes, but it is based on your rules which is to say that from January through October, your
1407 meetings will be on the fourth Thursday. November and December, they will be on the
1408 third Thursday, and with the exception of the January meeting, there is a five-week
1409 deadline prior to the meeting for applications. In January, six weeks because of the
1410 holidays. So, we'll just give ourselves the extra week to sort things out. So, it is your
1411 normal calendar and there are no changes from the routine.
1412

1413 Mr. Johnson - Okay.
1414

1415 Mr. Pollard - So we need a motion?
1416

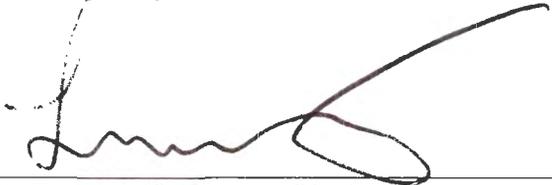
1417 Mr. Blankinship - Yes.
1418

1419 Mr. Pollard - I make a motion that we approve the calendar as
20 stated.

1421
 1422 Mr. Johnson - It's been motioned. Is there a second?
 1423
 1424 Mr. Reid - Second.
 1425
 1426 Mr. Johnson - All in favor.
 1427
 1428 The Board - Aye.
 1429
 1430 Mr. Johnson - All opposed.
 1431
 1432 Mr. Johnson - Then the motion passes. Thank you, Mr. Blankinship.
 1433
 1434 On a motion by Mr. Pollard, seconded by Mr. Reid, the Board **approved the 2023**
 1435 **Calendar of Meeting Dates and Filing Deadlines for the Board of Zoning Appeals.**
 1436

1437			
1438	Affirmative:	Bell, Johnson, Pollard, Reid	4
1439	Negative:		0
1440	Absent:	Green	1

1441
 1442
 1443 Mr. Pollard - Talk about next time ... Is this the moment we talk
 1444 about Chair, Vice Chair?
 1445
 1446 Mr. Blankinship - Next month will be election of officers.
 1447
 1448 Mr. Pollard - Next month?
 1449
 1450 Mr. Blankinship - Yes, every August.
 1451
 1452 Mr. Pollard - Are we adjourned?
 1453
 1454 Mr. Johnson - Motion ... We're adjourned.

1455
 1456
 1457
 1458
 1459
 1460 
 1461 _____
 1462 Mr. Terone B. Green, Chair

1463
 1464
 1465
 1466 

 Mr. Benjamin W. Blankinship, Secretary