

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 MARCH 24, 2022 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN**  
5 **THE *RICHMOND TIMES-DISPATCH* MARCH 7, 2022 AND MARCH 14, 2022.**  
6  
7

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

14 **Also Present:** Jean M. Moore, Assistant Director  
15 Benjamin Blankinship, Secretary  
16 Paul M. Gidley, County Planner  
17 R. Miguel Madrigal, County Planner  
18 Livingston Lewis, County Planner  
19 Lisa Blankinship, County Planner  
20 Kuronda Powell, Account Clerk  
21  
22

23 [Recitation of the Pledge of Allegiance]

24  
25 **Mr. Green -** Thank you. Mr. Blankinship will now read our rules.  
26

27 **Mr. Blankinship -** Good morning, Mr. Chair, members of the Board. Good  
28 morning to those of you who are in the room with us today. And I'd also like to welcome  
29 everyone who is joining us remotely on Webex. If you wish to observe the meeting, but  
30 you do not intend to speak, welcome and thank you for joining us. For those of you on  
31 Webex who wish to speak, we need to know that in advance so we can connect you at  
32 the appropriate time.  
33

34 So if you are an applicant or if you have questions or comments on one of the cases,  
35 please press the chat button now. It's located in the bottom-right corner of the Webex  
36 screen. And when the chat window opens, please select Livingston Lewis from the list of  
37 participants and let him know your name and which case you're interested in. The chat  
38 feature is only being used to identify speakers, so please do not type questions or  
39 comments into a chat, but please send a chat to Livingston Lewis now.  
40

41 So acting as secretary I will call each case and then we will ask everyone in the room  
42 who is interested in speaking to that case to stand and be sworn in. For the conditional  
43 use permits and variances, a member of the Planning Department will then give a brief  
44 presentation and then the applicant will speak and then anyone else who wishes to speak  
45 will be given the opportunity. We'll hear from citizens in the room first and then from those  
46 on Webex.

47  
48 After everyone has had a chance to speak, the applicant and only the applicant will have  
49 an opportunity for rebuttal.

50  
51 There's also one appeal on the agenda this morning and for that case an assistant County  
52 attorney will speak on behalf of the Planning Director and then the appellant will present  
53 their case and each side will have a limit of 10 minutes and then anyone else who wishes  
54 to speak will be given the opportunity with a time limit of 3 minutes. We hear from citizens  
55 in the room first, and then from those on Webex.

56  
57 This meeting is being recorded so for those in the room, we will ask you to speak into the  
58 microphone on the lectern in the back of the room there. Please spell your name -- state  
59 your name and please spell your last name so that we get it correctly in the record and  
60 once your case is over, the case you're interested in is over, you are free to leave the  
61 room. You do not have to stay for the rest of the meeting.

62  
63 We are one member short still. The Code of Virginia requires that for the Board to rule in  
64 favor of an applicant or an appellant, there must be three affirmative votes. If one member  
65 remains absent, then that decreases your possibility of having three affirmative votes. So  
66 if anyone wishes to defer their case until next month, please let the Board know that. But  
67 we do expect Mr. Pollard any moment now. I'm sure he's just stuck in traffic, so that  
68 should not really be an issue.

69  
70 And, finally, Mr. Chair, there is one withdrawal from this morning's agenda. Conditional  
71 Use Permit 2022 number 11, Rachel Haines Gonner.

72  
73 **CUP2022-00011 RACHEL HAINES GONNER** requests a conditional use permit  
74 pursuant to Section 24-4404.A.1 of the County Code to build a detached garage in the  
75 side yard at 7518 Oakmont Drive (OAKMONT HILLS) (Parcel 775-753-8105) zoned One-  
76 Family Residence District (R-3) (Brookland).

77  
78 Mr. Blankinship - That case has been withdrawn, so if you're here for that this  
79 morning, there's no need to remain. With that, go right ahead.

80  
81 Mr. Green - Thank you. Can you please call our first request?

82  
83 Mr. Blankinship - There are three conditional use permits on this morning's  
84 agenda. The first is Conditional Use Permit 2022, number 12, Steven R. Yaeger.

85  
86 **CUP2022-00012 STEVEN R. YAEGER** requests a conditional use permit pursuant to  
87 Section 24-4406 of the County Code to allow an accessory dwelling unit at 8311  
88 Lansdowne Road (FORDSON ACRES) (Parcel 757-750-6058) zoned One-Family  
89 Residence District (R-3) (Three Chopt).

90  
91 Mr. Blankinship - Would everyone who intends to speak to this case, please  
92 stand and be sworn in? Raise your right hands, please. Do you swear the testimony

93 you're about to give is the truth, the whole truth, and nothing but the truth so help you  
94 God?

95  
96 Mr. Yaeger - I do.

97  
98 Mr. Blankinship - Thank you. You can be seated and, Mr. Madrigal, you can  
99 begin.

100  
101 Mr. Madrigal - Thank you, Mr. Secretary, Mr. Chair, members of the Board.  
102 Good morning. Before you is a request to allow an accessory dwelling unit in an R-3  
103 District. The subject property is in the Fordson Acres Subdivision and consists of two  
104 100-foot-wide lots that total over an acre in area.

105  
106 The parcel is improved with a 1-story, 2,300-square-foot home with a 2,600-square-foot  
107 basement constructed in 1963. County records indicate that 2,100 square feet of the  
108 basement is finished and the remaining square footage is unfinished in the basement  
109 area.

110  
111 The home is set back 100 feet from the right-of-way and it has a 24-foot-wide driveway  
112 and that driveway leads to a large parking pad adjacent to the home. You can see that  
113 here.

114  
115 The applicant purchased the property in September of 2020 and the following month he  
116 applied for a building permit to add a second bedroom and expand a wet bar in the  
117 basement. After completing this project, the finished basement consists of two bedrooms,  
118 an office, a full bathroom, a half-bath, and a kitchenette with a center island facing a great  
119 room.

120  
121 The applicant would now like to convert a portion of the basement into an accessory  
122 dwelling unit which is allowed by way of a conditional use permit and subject to  
123 requirements outlined in code. The ordinance does limit the size of the accessory  
124 dwelling unit to 35 percent of the finished floor area of the home and -- or 800 square feet.  
125 Whichever's less. In this case, the 800-square-foot limit applies.

126  
127 The applicant's proposal does not physically separate the accessory dwelling unit from  
128 the rest of the basement. If approved the accessory dwelling unit will have to be an  
129 independent and physically separate space from the rest of the basement, not exceeding  
130 800 square feet, to meet the intent of code.

131  
132 With respect to the evaluation of this request, the existing and proposed use is consistent  
133 with both the zoning and comprehensive plan designations on the property. The  
134 proposed accessory dwelling unit will have to comply with the requirements outlined in  
135 code, including the size limit and that it be a physically separate space from the rest of  
136 the basement. Because the proposed accessory dwelling will be located within the  
137 basement level of the home, it should be indis -- indisting -- indistinguishable -- I can't  
138 speak today -- from the existing dwelling.

139  
140 This will result in it being consistent with the general character of the neighborhood and  
141 keeping in scale and intensity. The large size of the lot, the deep setbacks and large  
142 parking area adjacent to the home will facilitate the proposed use and it should not result  
143 in any detrimental impacts.

144  
145 Based on these facts, staff recommends approval subject to the conditions attached in  
146 the report. We have not received any letters or phone calls in opposition. And that  
147 concludes my presentation.

148  
149 Mr. Green - Are there any questions from the Board to staff? Hearing  
150 none. We'll hear from the applicant.

151  
152 Mr. Yaeger - Good morning. My name is Steven Yaeger. Yaeger is spelled  
153 Y-a-e-g-e-r. All right. Well, first off, thank you very much for hearing my case. Thank  
154 you to Mr. Madrigal for the time spent analyzing it and to the Board members and  
155 everyone involved. I greatly appreciate it.

156  
157 Family is not an important thing. It's everything. This quote by Michael J. Fox summarizes  
158 why my wife and I would like to be able to designate 760 square feet of our home as an  
159 accessory dwelling unit.

160  
161 Sadly, our family has experienced trauma, and currently medical reports indicate the need  
162 for us to care closely for family members in many years to come. My wife and I would  
163 like to create a home environment where we can closely care for a family member, but  
164 also provide them spaces for independent living.

165  
166 The plan for caring for our family starts with my brother now and extends to my wife's  
167 mother in coming years. Really, we just want to give the area that my brother already  
168 exists in an oven. Given the revised zoning ordinance that was underway in 2020 and  
169 then was being reviewed in several drafts, finally approved in September of 2021, was  
170 likely to include this provision for an accessory dwelling unit. My wife and I applied for  
171 and were approved for the oven -- for the wire for an oven -- but not for the oven itself.

172  
173 The code does allow for an application for accessory dwelling units, and we greatly  
174 appreciate the time again.

175  
176 The analyst's report recommends the conditional use permit with a series of conditions.  
177 We would like to designate this area presented as an accessory dwelling unit with little to  
178 no additional modifications. We have already spent close to \$15,000 to create those  
179 spaces. Additional modifications would be costly, could appear arbitrary, and would  
180 impede our ability to care for family members occupying the proposed accessory dwelling  
181 unit. We believe we have created a well-defined independent living space that is separate  
182 and represents our proposed accessory dwelling unit.

183

184 As a former banking regulator and now an internal credit review leader for over 17 years,  
185 I know all too well the importance of rules and regulations. Ensuring the consistency is  
186 upheld between different situations is an -- is an important part of the process so that  
187 leaders and public constituents know that a fair process is in place.

188  
189 Sorry. My notes are all out of order.

190  
191 Definitions and written rules, especially the ones recently revised, are key parts of that  
192 fair process. The ordinance notes that an accessory dwelling unit must provide a  
193 bathroom, a kitchen, and a living space separate from the primary dwelling. Separate but  
194 not physically separate is what's mentioned within the ordinance.

195  
196 Our plans and the actual uses of that space reflect that and are consistent with how the  
197 ordinance is written. The key aspect of our situation is that we have created well-defined  
198 space and that the documentation supports this request. And specifically the pillars  
199 surrounding the kitchen space do help define that space as a separate part of that room.  
200 Which, if you think about appraisals, if you think about different situations, there are  
201 different spaces that are considered separate even though they are not fully enclosed.

202  
203 My brother has gone through some difficult times with the loss of his wife. And the path  
204 to getting him back on his feet is looking promising right now. In September of 2021 he  
205 fainted and fell, hitting his head and causing significant bleeding. He's fine now, but had  
206 to see a neurologist, and it's something being monitored closely. If he were in a separate  
207 house or a fully walled off living space, then he might not have been discovered before it  
208 was too late.

209  
210 It's very sad but rational to envision similar situations happening in the future with our  
211 family members. Namely my mother-in-law. Assuming that my brother hopefully moves  
212 out in the coming years.

213  
214 Keeping some of those well-defined spaces not fully walled off allows us to provide the  
215 best care for our family members. The written ordinance supports our well-defined --  
216 proposed accessory dwelling unit, and the aspects of it being well defined creates  
217 separation and those conditions could be applied to future applicants.

218  
219 Also speaking to the intents of the ordinance, I have found language online from when  
220 the original bill, House Bill 151 that turned into the ordinance was submitted. It notes that  
221 locality shall regulate the size and design of accessory dwelling units through an approval  
222 process as well as regulate fees, parking, other requirements provided that the  
223 regulations are not so arbitrary, excessive, or burdensome individually or cumulatively to  
224 unreasonably restrict the ability of property owners to utilize or create accessory dwelling  
225 units.

226  
227 We could construct walls and hallways around all these separate areas. They constitute  
228 the accessory dwelling unit however I believe this would create actually more of a duplex  
229 setup and create a bit of an oddity for the house's layout itself.

230  
231 The current setup provides an avenue for us to check on and interact with family members  
232 without significant construction costs that could approach \$10,000 and further doors and  
233 hallways that would be more difficult to navigate if the person is handicapped. The code  
234 finalized in September 2021 does speak to allowing accessory dwelling units within  
235 primary dwellings. But it does not include language requiring that physical surrounds  
236 surround it. It notes it should be separate. Definition of separate is forming or viewed as  
237 a unit apart from itself.

238  
239 The -- this occurs in zoning all the time when tracts of land are subdivided and they are  
240 designated as being a unit apart or by themselves, but they do not necessarily have  
241 physical walls surrounding them.

242  
243 I am concerned also about the condition of being physically separated with walls around  
244 it. Because from what I can see, there are no specifications in the building code that list  
245 out how an accessory dwelling unit within a home must be physically separated so there  
246 would be more arbitrary decisions coming down that path and some ambiguity for just me  
247 as a homeowner. We're trying to figure out what is going to be permissible.

248  
249 As I noted at the beginning, our family is everything to us. I'm very thankful for the time  
250 spent on this application and this hearing today. It means the world to my family. You've  
251 taken the time to hear the details of our application and how it could more deeply and  
252 effectively lead us to caring for our family in years to come. Thank you.

253  
254 Mr. Green - Are there any questions from the Board to Mr. Yaeger in  
255 reference to his request? Are there any --

256  
257 Mr. Johnson - You mentioned that you had House Bill -- what number was  
258 that?

259  
260 Mr. Yaeger - It was House Bill 151.

261  
262 Mr. Johnson - And what was your reason for iterating that one? You said  
263 what about it?

264  
265 Mr. Yaeger - It was the part of the bill when it was proposed that spoke to,  
266 like, the arbitrary aspects of the regulations that can be provided. And the reason I  
267 brought that up is I'm concerned that the physical separation, that being a condition -- it's  
268 noted as condition number 3 in the analysts' report -- that the word physical being added  
269 in but not actually being part of the ordinance is an arbitrary piece that's being added in  
270 and there would be a lot of ambiguity around that for myself and for future applicants.

271  
272 Mr. Green - Okay. Thank you. Are there any more questions from the  
273 Board to the applicant? Do we have anybody on -- in the audience or -- and or Webex  
274 who would like to speak for or against this application?

275

276 Mr. Johnson - No.  
277  
278 Mr. Lewis - There is no one on Webex to speak to this case.  
279  
280 Mr. Green - Okay. We'll hear -- we'll listen to -- I think Mrs. Yaeger would  
281 lie to speak, too.  
282  
283 Ms. Yaeger - Thank you.  
284  
285 Mr. Green - I presume.  
286  
287 Ms. Yaeger - Good morning. My name is Bera Yaeger, and that's B-e-r-a,  
288 last name Y-a-e-g-e-r. I grew up in a multi-generational home. It's something that is  
289 common and valued in my culture. I enjoy the benefits of having extended family and a  
290 home growing up that I -- and I want my children to have the same experience. I'm lucky  
291 to have a husband that shares my views and values and value set.  
292  
293 One thing that this pandemic has taught both of us is that we would not want to put our  
294 parent in a retirement home and we would want them to have an option to, one of them,  
295 to live with us when the time comes. We bought this big house in the middle of a  
296 pandemic with that in mind. My -- our -- the main reason we bought this house was  
297 because it was perfect for us to have a family member living with us and also have the  
298 ability to have a space of an -- of our own.  
299  
300 My brother-in-law is currently living with us and our kids love it. All we want is to provide  
301 him with a space for him to make his own meals without having to share a stove with us.  
302  
303 We like having the space and we can all gather in the basement and watch a game or  
304 play pool. Enclosing the basement will not only be very expensive for us, but it will also  
305 ruin the layout of our house. It would defeat the purpose for us actually helping our  
306 parents and -- because we wouldn't have access straight through the house.  
307  
308 With prices of everything going up, with aging parents, disabled stepfather, and college-  
309 aged siblings and working from home changes we know that our house will be a place  
310 where a senior family member can live with for years to come. Thank you.  
311  
312 Mr. Green - Thank you, Ms. Yaeger. The individual on Webex.  
313  
314 Mr. Blankinship - I think she said there was no one on Webex.  
315  
316 Mr. Green - Oh. Okay. I'm sorry. I thought she said there was. Are there  
317 any discussions among the Board once again to staff and or the applicant? Okay.  
318  
319 Mr. Reid - I have a question. Is it possible to -- has this been done in the  
320 past where the condition has been removed so that they can achieve what they want to  
321 without the physical -- creating a physically separate?

322  
323 Mr. Madrigal - No, sir. That has not. This is a new section of the code. Prior  
324 to September 1 this option was not available to folks. So this is a brand-new section.  
325 And, you know, when you look at the intent of the code, the intent of the code is essentially  
326 to create a physically separate unit limited to 800 square feet. And that can be attached  
327 or detached. In this case it is attached.

328  
329 If you look at the proposed plan now, if it remains the same, you're essentially violating  
330 that 800-square-foot-limit, because you end up with a 21 -- or you got about 2,100-square-  
331 foot duplex or, you know, unit downstairs. You know. There's no physical separation,  
332 and you can see the photos here. This is the kitchen area with an island on the -- and  
333 this is what they call the Great Room. So, you know, how do you achieve that 800-  
334 square-foot limit?

335  
336 Mr. Reid - Is that statewide?

337  
338 Mr. Blankinship - That's for our code.

339  
340 Mr. Blankinship - No. That's just our code. Yes, sir. And you do have the  
341 authority to remove that condition if you decide that it is separate enough just to have the  
342 pillars there. As the applicant pointed out, there is nothing in the code that clearly states  
343 it has to be enclosed by walls. But that's the interpretation we put on it. Because  
344 otherwise how do you say what size it is if you -- if it's not clear where it begins and ends.

345  
346 Mr. Reid - Thank you.

347  
348 Mr. Madrigal - Now we do have a definition in the code for a dwelling unit  
349 and I'll read that to you. Basically, it says within the dwelling one or more rooms  
350 connected together and constituting a single housekeeping unit with independent  
351 cooking, bathroom, and sleeping facilities designed or used for occupancy by a single-  
352 family or housekeeping unit for owner occupancy or rental for periods of three consecutive  
353 days or more and separate from any other dwelling units or rooms in the same building.

354  
355 Mr. Pollard - As staff sees it, condition three makes the -- makes approval  
356 more possible from --

357  
358 Mr. Madrigal - I'm sorry. One more time.

359  
360 Mr. Pollard - As staff sees it, condition 3 makes approving it more possible.  
361 Makes you -- makes us able to approve it versus if the -- we remove that condition, then  
362 we will be violating the code.

363  
364 Mr. Blankinship - I wouldn't say violating the code. But it calls into question the  
365 meaning of the code. I think, you know, the Board is charged with interpreting the code  
366 as well. So it is the -- a decision I think that is within your purview. Our recommendation

367 is that it should -- there should be a clear physical separation indicating where the 800  
368 square feet begins and ends.

369  
370 Mr. Pollard - To avoid the confusion of where it begins and ends.

371  
372 Mr. Blankinship - Yes, sir.

373  
374 Mr. Pollard - Okay.

375  
376 Mr. Green - Mr. Yaeger, the staff has done a thorough review and  
377 recommended approval with the conditions. Are you -- would you accept the conditions?  
378

379 Mr. Yaeger - So I think I agree. Like, it does need to be separate. It needs  
380 to be a single housekeeping unit that is separate and I do believe what I proposed with it  
381 being a well-defined unit with a lease substantiating this space that is permissible for a  
382 use and that defines that same outlined area and the way it is actually used by the people  
383 that live within it. Define that as a separate unit.

384  
385 The pillars I do believe create an actual architectural distinction for what separates it from  
386 the rest of the room. And similar, as you can see, it's kind of quartered off by pillars there  
387 and even the ceiling creates it at some separation. The code -- the ordinance does not  
388 say physically separated and that was something that was added in in the analyst's report.

389  
390 I do agree that separation is important and that my case and future cases would be very  
391 difficult to navigate if an area was not well defined. And that it was not separate. I do  
392 think we have provided documentation and assurances that it is separate. So I would  
393 appreciate condition 3 being stricken as part of the approval process.

394  
395 Mr. Green - Discussion among the Board as to the applicant's request to  
396 strike condition 3.

397  
398 Mr. Yaeger - And I could further clarify that by just striking the word  
399 physically and leaving the word separate. Because that would be consistent with how the  
400 ordinance is written and, I believe, the documentation we've supported help created a  
401 well-defined unit that is consistent with that ordinance.

402  
403 Mr. Green - So you would agree with the conditions of approval all six with  
404 the exception of removing physically from number three.

405  
406 Mr. Yaeger - Yes, sir. Yeah. The elements about, like, the spotlights.  
407 Making sure they're shielded and the other things that were noted and then getting the  
408 Certificate of Occupancy. You know. We would go through all those courses and, you  
409 know, we want to comply with the ordinance and with the -- and with the rules and set this  
410 up appropriately.

411

412 Mr. Green - Mr. Madrigal, what would you think of that?  
413  
414 Mr. Madrigal - I'm sorry, sir.  
415  
416 Mr. Green - What are your thoughts on that request to remove that word,  
417 physically.  
418  
419 Mr. Madrigal - If that's the will of the Board, then that's quite fine. You know.  
420 It just becomes an -- for the future it ends up being a management issue. If this property  
421 sells and there's an inspection and we get a, you know, a person that's doing an  
422 evaluation on it, is it two units and what do, you know, is it a 2,300-square-foot-unit  
423 upstairs and a 2,100-square-foot unit downstairs? How is that managed? You know. If  
424 the -- if the conditions is a separate area, is it by floor or is it 800 square feet, and then  
425 how do you define that 800 square feet in the basement level?  
426  
427 Mr. Green - Right. Do you agree with us keeping the word physically in?  
428  
429 Mr. Yaeger - Well, no. Just because it's not part of the ordinance and I think  
430 it creates an added ambiguity because there is nothing in the building code that defines  
431 what needs to be -- how that physical separation needs to occur for an accessory dwelling  
432 unit.  
433  
434 You know. Real -- we really just want to use this for our family. And I -- what happens  
435 after we sell it, we don't really care about. So if, you know, if conditions are possible as  
436 part of this process, we would be fine with the condition that it's only applicable for us, as  
437 we're the owners of the home, if that's something that can be added in. You know.  
438 Whatever can make it flexible so that it's not boxing, you know, boxing the County in so  
439 that it's something that they don't want to be put into.  
440  
441 But I think with the way the ordinance is written, it speaks to separation but not physical  
442 separation. And there's a lot of ambiguity that, you know, thinking of future decisions that  
443 would come with how that's defined in different codes.  
444  
445 Mr. Green - Mr. Blankinship, do you have any comment on that?  
446  
447 Mr. Blankinship - I mean, we could try to draft a condition that would limit to, you  
448 know, while the occupant is a member of the family. But then you're just really expanding  
449 the challenge of administering this. We're not notified when people sell homes. We don't  
450 do inspections when people sell homes.  
451  
452 Mr. Green - Right.  
453  
454 Mr. Blankinship - We like for permits to run with the land rather than with the  
455 owner, because then you get into equal protection problems. It's a possible solution. It's  
456 not one that I would favor.  
457

458 Mr. Green - Yes, sir.  
459  
460 Ms. Moore - I would add, if you don't mind, it's a little bit -- I would say it's  
461 unique. I think this is our first one.  
462  
463 Mr. Blankinship - Yes.  
464  
465 Ms. Moore - I would add that, you know, you have to draw the line  
466 somewhere. But looking at it, we do see the dilemma. It's not like they have an extra  
467 bedroom structured out where it's another occupancy. It is an open space. I don't know  
468 by defining that 800 what you really gain from that except wasted space. So that's just  
469 my -- it's a dilemma. I can see that.  
470  
471 Mr. Johnson - And also, another question, is on the screen you just had up  
472 there. Could you go back to the -- yep. Not that one  
473  
474 Mr. Blankinship - The other one.  
475  
476 Mr. Johnson - Yes. Looking back to the -- there's an opening in the -- how  
477 far is that -- how many feet is that from that pole over to the wall that we can't see?  
478  
479 Mr. Yaeger - The wall that's behind where I took the picture?  
480  
481 Mr. Johnson - Yes. You see -- then you can see a little table in the back, but  
482 it's --  
483  
484 Mr. Yaeger - From there to there.  
485  
486 Mr. Johnson - From there over to the --  
487  
488 Mr. Yaeger - It's probably about, like, 16 feet, I would say. Something  
489 around there. It's a pretty big room which makes it difficult because when we were --  
490 when we went down this construction path, there was not this square-foot limitation in the  
491 proposed ordinance at that time.  
492  
493 And I can -- I can tell you that that is how my family uses it. The kids don't really stray  
494 into that zone. They know that's Uncle Dave's zone. And their stuff is strewn all over the  
495 other parts of, you know, their scooters and games and endless balls and trinkets are all  
496 over the other part of the basement.  
497  
498 Mr. Madrigal - If it helps the Board any, here's the rear façade of the house  
499 so you can see the basement level stretches from one -- from this wall all the way to the  
500 wall way back here. And here's the side entrances. There's two entrances into the  
501 basement level. Woops. Let's see here. So here you can see the parking pad and the  
502 side of the house and there's the two entrances. So it's a really big space. It's basically  
503 spans the entire width of the house. And, you know, from front to back.

504  
505 Mr. Pollard - I think being the time that it is, when we're struggling like this,  
506 might need your reaction to just return to being -- making it clear from a physical -- for a  
507 physical (indiscernible) end. That's my two cents.

508  
509 Mr. Green - Yes.

510  
511 Mr. Reid - I'm just concerned if we -- they were setting a precedent where  
512 we're going to box in ourselves moving forward if we strike condition 3 or strike physically.  
513 You know. What are we going to do in the future cases? We can't predict what we're  
514 going to be seeing the next few years.

515  
516 Mr. Johnson - So physical -- three would still be in the regulations as well.  
517 You know. So we want to be able to -- that we can make some adjustments. We  
518 understand your situation. You know.

519  
520 Mr. Yaeger - I guess from a citizen's perspective, I'm concerned with the  
521 word physical being in three just because it's not in the ordinance and from a building  
522 construction I'm not sure how to comply with that. Like, we could talk about how much  
523 needs to be walled off. Like, can there be doors to the interior. That there couldn't be  
524 doors, like, it creates more of an atmosphere where it's hard to care for family. Which is  
525 kind of, like, the whole point of this in-law suite if we have to walk around the outside of  
526 the entrance or if they have to walk up stairs to get into the houses. Right now there are  
527 no stairs involved with who would live there.

528  
529 Mr. Johnson - I was just concern -- Yeah. I was just thinking about just  
530 having a temporary role that just come in in that location and maybe they can --

531  
532 Mr. Madrigal - I'll read to -- I'll read to the Board the item here for the  
533 accessory dwelling unit. There's several items, basically A through I, that need to be met.  
534 Item E of the code basically says the floor area of an accessory dwelling unit must not  
535 exceed the lesser of 800 square feet or 35 percent of the finished floor area of the principal  
536 dwelling excluding carports, garages, and unfinished basements. So that's where the  
537 code sets a definite size limitation on these things.

538  
539 Mr. Green - Thank you.

540  
541 Mr. Yaeger - That is -- that is one element of -- that I've seen before. And  
542 I think one thing we could do to -- do to address that is to provide separate flooring,  
543 separate and distinct flooring for that area. With adding laminate floor for that area if, you  
544 know, throughout -- our flooring isn't that great to begin with. So that's just the whole  
545 laminate tile right now.

546  
547 Mr. Blankinship - Would that be separate if it had a different floor?

548

549 Mr. Green - The thing -- the thing -- it appears that we kept physically in  
550 you'll have a strong chance of getting this thing approved. If we take it out, I don't think  
551 that it's not going to make it. So would you reconsider keeping physically in so you can  
552 approve? Because this is my district and I would -- I am moving to approve this. But  
553 hearing the concerns of my fellow Board members if -- I don't know if I'm -- if I move to  
554 approve, I would have the necessary votes if you take out the physically. And so I would  
555 ask you to strongly reconsider the word physically and look at the conditions of approval  
556 and accept them. If you accept them, then I think we have a good shot at this thing.  
557

558 Mr. Yaeger - Well I appreciate that. And, you know, we definitely do want  
559 it to be approved and appreciate the time taken to talk about this. And I know we're  
560 probably over time here. I guess with the word physically, I'm not sure how to meet those  
561 definitions based on what is actually in the ordinance and what is in other codes. And,  
562 you know, we would like it to be accessible that we could, you know, have -- if it was  
563 physically quartered off, like, is that half-walls? Is that doors? Is that, you know, is it just  
564 completely a great wall of China type situation around this whole thing?  
565

566 Mr. Blankinship - That could all be determined at the time of building permit.  
567 Condition 6 requires you to submit a building permit application. So we -- we'll review  
568 that with you and determine at that time what it means. And if you, you know, you can't  
569 come to an agreement with staff over that, then we'll be back here again.  
570

571 Mr. Yaeger - All right. I guess with -- will there be some discussion of, you  
572 know, what constitutes an accessory dwelling unit. Because this would be a bit of, like,  
573 groundbreaking discussion for a unit within a -- within a home.  
574

575 Mr. Blankinship - Yeah. We'll work all that out at building.  
576

577 Mr. Yaeger - Okay. Thank you.  
578

579 Mr. Green - So would you accept us leaving physically in?  
580

581 Mr. Yaeger - I guess, reluctantly, yes, sir.  
582

583 Mr. Blankinship - If the choice is deny. Okay.  
584

585 Mr. Yaeger - Yes, sir. Probably. Yes.  
586

587 Mr. Green - Okay. All right. Based on that, as the Three Chopt  
588 Representative District, I recommend that we approve this conditional use permit. I move  
589 that we approve subject to conditions recommended by staff. It is consistent with  
590 comprehensive plan and zoning ordinance. This is intended for family member. It will  
591 not increase the intensity and use of the property. And I agree with staff that the 800-foot  
592 -- square-foot-area should be enclosed. Is there a second?  
593

594 Mr. Pollard - I second the motion.

595  
596 Mr. Green - The motion has been moved by myself, Mr. Green, seconded  
597 by Mr. Pollard. All in favor say aye. All those opposed like sign. Approved.  
598

599 On motion by Mr. Green, seconded by Mr. Pollard, the Board **approved case CUP2022-**  
600 **00012 STEVEN R. YAEGER's** request for a conditional use permit pursuant to Section  
601 24-4406 of the County Code to allow an accessory dwelling unit at 8311 Lansdowne Road  
602 (FORDSON ACRES) (Parcel 757-750-6058) zoned One-Family Residence District (R-3)  
603 (Three Chopt). The Board approved the request subject to the following conditions:  
604

605 1. This conditional use permit authorizes an accessory dwelling unit within the basement  
606 of a one-family dwelling. All other applicable regulations of the County Code remain in  
607 force.  
608

609 2. This conditional use permit applies only to the improvements shown on the site plan  
610 filed with the application. Any additional improvements must comply with the applicable  
611 regulations of the County Code. Any substantial changes or additions to the design or  
612 location of the improvements will require a new conditional use permit.  
613

614 3. The applicant must modify the proposed floor plan to create an independent accessory  
615 dwelling unit, not exceeding 800 square feet, physically separate from the finished  
616 basement of the home.  
617

618 4. The applicant must adhere to the requirements of Sec. 24-4406, Accessory Dwelling  
619 Unit.  
620

621 5. Any exterior lighting must be shielded to direct light away from adjacent property and  
622 streets.  
623

624 6. A building permit must be obtained for the proposed accessory dwelling unit by March  
625 25, 2024, or this conditional use permit will expire. If the building permit is cancelled or  
626 revoked after that date due to failure to diligently pursue construction, this conditional use  
627 permit will expire at that time.  
628

629  
630 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5  
631 **Negative:** 0  
632 **Absent:** 0  
633

634 Mr. Yaeger - Thank you very much for your time.  
635

636  
637 Mr. Blankinship - All right. Next case is Conditional Use Permit 2022, number  
638 14.  
639

640 **CUP2022-00014 COMMONWEALTH CATHOLIC CHARITIES** requests a conditional  
641 use permit pursuant to Section 24-4205 of the County Code to allow a children's

642 residential facility at 1307 Lakeside Avenue (Parcel 784-751-0555) zoned One-Family  
643 Residence District (R-4) (Fairfield).

644  
645 Mr. Blankinship - Would everyone who intends to speak to this case please  
646 stand and be sworn in? Raise your right hands, please. Do you swear the testimony  
647 you're about to give is the truth, the whole truth, and nothing but the truth so help you  
648 God? Thank you. You can be seated. Mr. Madrigal.

649  
650 Mr. Madrigal - Thank you Mr. Secretary, Mr. Chair, members of the Board.  
651 Before you is a request to allow a children's residential care facility in an R-4 District. The  
652 subject property was acquired in 1955 by the Camboni Missionary Sisters and since then  
653 has been -- or I'm sorry. Since 1965 has been used as their convent campus.

654  
655 Site improvements include the convent that you can see here, the chapel, the school  
656 building, and then the dormitory building, which is back here, which is the subject of this  
657 conditional use permit. Commonwealth Catholic Charities has purchased the property  
658 and they would like to operate a children's residential facility similar to their existing  
659 operation on Pump Road.

660  
661 The population they serve is unaccompanied minors who are waiting to be reunited with  
662 family members. The children would live in the vacant dormitory building and attend  
663 school in the classroom building. The Camboni Sisters would continue to live in the  
664 convent and use the on-site chapel. The dormitory building is approximately 12,000-  
665 square-feet in area, and contains 14 bedrooms as well as a kitchen, dining room,  
666 recreation room, and an office.

667  
668 The applicant does not intend to build any new buildings or make any significant changes  
669 to the existing improvements. A children's residential facility is defined as any facility,  
670 childcaring institution, or group home that is maintained for the purpose of receiving  
671 children separated from their parents or guardians for fulltime care, maintenance,  
672 protection, and guidance, or for the purpose of providing independent living services to  
673 persons between 18 and 21 years of age who are in the process of transitioning out of  
674 foster care.

675  
676 These facilities are licensed and supervised by the Virginia Department of Social  
677 Services. The site and proposed use are consistent with both the zoning and  
678 comprehensive plan designations on the property.

679  
680 This location has been used as a convent for over 50 years. It is large enough to  
681 accommodate the proposed use. In addition to the active convent, the dormitory building  
682 is currently not in use. The proposed children residential facility would be compatible with  
683 the existing religious use.

684  
685 With respect to the surrounding uses, there are one-family dwellings to the north of the  
686 site across Lakeside Avenue that may be affected by this proposal. Beyond that, there  
687 should be no adverse impacts to the adjacent properties or the surrounding

688 neighborhood. The 6-acre site is large and spacious and has all the facilities necessary  
689 for the proposed operation.

690

691 Additionally, the applicant has experience operating a similar facility within the County.  
692 As long as the proposed use is operated in accordance with state regulations, it should  
693 have little to no affect on the neighborhood.

694

695 In conclusion, the property has been used as a convent for over 50 years. It has more  
696 space than it currently needs. And the applicant has applied to use the vacant building  
697 for a children's residential facility.

698

699 The proposed use is a semi-public use consistent with the Comprehensive Plan  
700 Designation and the R-4 District. Based on these findings, staff recommends approval  
701 subject to conditions.

702

703 Mr. Blankinship - I should have mentioned, Mr. Chair, there is one email that  
704 was left at -- on the table for you this morning in support of this application. And we  
705 received one other this morning that just hasn't been printed yet.

706

707 Mr. Green - Are there any questions from staff? I mean, from the Board  
708 to staff in reference to this conditional use permit. Hearing none, we'll now hear from the  
709 applicant.

710

711 Mr. Brown - Thank you, Mr. Secretary, Mr. Chair, and members of the  
712 Board. I'm Jay Brown with Commonwealth Catholic Charities. With me is Ms. Toosdhi  
713 Jackson. I'm Jay Brown, B-r-o-w-n, like the color, and Jackson is J-a-c-k-s-o-n.

714

715 Commonwealth Catholic Charities is headquartered here in Henrico County and provides  
716 quality and compassionate services for individuals, families, and children in eastern,  
717 central, and southwest Virginia. We were founded and continue to be primarily an  
718 organization dedicated to providing for the welfare of children and are here before you to  
719 request a conditional use permit to operate a licensed children's residential facility at 1307  
720 Lakeside Avenue. A property that we do intend to purchase from the Camboni Missionary  
721 Sisters. Ms. Jackson is here to provide additional background on our application and our  
722 proposed use.

723 ?

724

725 Mr. Madrigal - Children's residential facility is a tongue twister.

726

727 Ms. Jackson - It is. Good morning. We are proposing to operate a 16-bed  
728 children's residential facility for both boys and girls. Which includes siblings. Our children  
729 will be aged 5 to 17 years old and they are waiting to be released to their families. The  
730 primary goal of our program is to reunify children with their families. The placement is  
731 short-term and the average length of stay is 20 to 30 days. Our CCC staff of  
732 Commonwealth Catholic Charities will be on site 24 hours a day, 7 days a week, to  
733 provide on-site supervision.

734

735 The services include efforts towards family reunification, counseling, recreation,  
736 coordination of medical needs, and our children will be educated on site.

737

738 We believe that our proposed use is compatible with the current use type, as we plan to  
739 utilize the larger dormitory-style building and the small building while the Camboni  
740 Missionary Sisters will be welcome to continue to occupy the independent single home  
741 on the premises. All right.

742

743 Mr. Green - Are there any questions from the Board to the applicant?

744

745 Mr. Johnson - The ages, will you have, will they go up to 18 or something?

746

747 Ms. Jackson - Seventeen.

748

749 Mr. Johnson - Seventeen?

750

751 Ms. Jackson - Mm-hmm.

752

753 Mr. Johnson - Okay.

754

755 Mr. Green - Are there any other questions from the Board to the applicant?  
756 Is there anyone on Webex?

757

758 Mr. Blankinship - There was one other person in the room who wanted to speak.

759

760 Mr. Green - Okay. I'm sorry.

761

762 Ms. Mayo - My name is Cheryl Mayo, M-a-y-o, and I'm a resident of the  
763 Fairfield District. I'm Catholic. A member of Our Lady of Lourdes Parish and a friend of  
764 the Camboni Missionary Sisters. And I just wanted to speak out in support of this project.  
765 I'm really happy to learn that this will be the use of the property. The Camboni Missionary  
766 Sisters are a life-affirming, community-building, group of women. And I'm sure that there  
767 will be an army of volunteers who will want to help provide comfort and care for the  
768 children that will be housed here. Thank you.

769

770 Mr. Green - Thank you. Is there anyone on Webex to speak for or against  
771 this conditional use permit?

772

773 Ms. Blankinship - There is no one on Webex to speak to this item.

774

775 Mr. Green - Hearing none, are there any other questions or concerns from  
776 the Board to staff and or the applicant? Hearing none, I'd like to entertain a motion.

777

778 Mr. Pollard - I move that we approve the conditional use permit subject to  
779 condition -- the conditions recommended by staff. It is consistent with the comprehensive

780 plan and the zoning ordinance. The Community needs this service. The applicant has  
781 experience providing it. There is plenty of room on the site to accommodate this use.

782  
783 Mr. Johnson - I second it.

784  
785 Mr. Green - Motion was moved by Mr. Pollard, seconded by Mr. Johnson.  
786 Any discussion? Hearing no discussion, all in favor of approving the conditional use  
787 permit say aye.

788  
789 The Commission - Aye.

790  
791 Mr. Green - All those opposed, like sign. Approved.

792  
793 On motion by Mr. Pollard, seconded by Mr. Johnson, the Board **approved case**  
794 **CUP2022-00014 COMMONWEALTH CATHOLIC CHARITIES** request for a conditional  
795 use permit pursuant to Section 24-4205 of the County Code to allow a human care facility  
796 at 1307 Lakeside Avenue (Parcel 784-751-0555) zoned One-Family Residence District  
797 (R-4) (Fairfield). The Board approved the request subject to the following conditions:

798  
799 1. This conditional use permit authorizes the use of the property for a children's residential  
800 facility. All other applicable regulations of the County Code remain in force.

801  
802 2. This conditional use permit applies only to the existing improvements on the property.  
803 Any additional improvements must comply with the applicable regulations of the County  
804 Code. Any substantial changes or additions to the design or location of the improvements  
805 will require a new conditional use permit.

806  
807 3. This approval is subject to the licensing and inspection requirements of the Virginia  
808 Department of Social Services. Any violation of those requirements may be grounds for  
809 revocation of this conditional use permit.

810  
811 4. Any school or preschool operated on the property will serve only children enrolled in a  
812 program or service operated by Commonwealth Catholic Charities and licensed by the  
813 Department of Social Services.

814  
815  
816 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5  
817 **Negative:** 0  
818 **Absent:** 0

819  
820 Mr. Blankinship - All right. The last conditional use permit on this morning's  
821 agenda is conditional use permit 2022, number 18, Yolanda Allen.

822  
823 **CUP2022-00017 YOLANDA ALLEN** requests a conditional use permit pursuant to  
824 Section 24-4430.A.1 of the County Code to allow short-term rental of a dwelling at 4813  
825 Annlyn Drive (SANBURNE PARK) (Parcel 819-715-5449) zoned One-Family Residence  
826 District (R-3) (Varina).

827  
828 Mr. Blankinship - Would everyone who intends to speak to this case, please  
829 stand and be sworn in? Raise your right hands, please. Do you swear the testimony  
830 you're about to give is the truth, the whole truth, and nothing but the truth so help you  
831 God? Thank you. Mr. Gidley.

832  
833 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr. Chair,  
834 members of the Board. The subject property is located in the Sanburne Park Subdivision  
835 which is between Interstate 64 and Williamsburg Road just west of Airport Drive. The  
836 property contains a 3-bedroom, 2-bath house that is located on roughly 1/3 of an acre of  
837 land.

838  
839 The applicant would like to offer the home for short-term rentals and this requires a  
840 conditional use permit for two reasons. First, these will be unhosted stays, so the  
841 applicant will not be there during the rental. Second, she is requesting permission to rent  
842 for over 60 days a year.

843  
844 This is a view of the applicant's home here. In evaluating this request, the use of the  
845 property for a one-family dwelling is consistent with the R-3 zoning and the Suburban  
846 Residential 2 designation on the comprehensive plan. The neighborhood is fairly  
847 spacious as you can see here. And the nearest home is located over 70 feet away. There  
848 is also adequate parking on the property.

849  
850 As noted, the applicant is asking permission for unhosted stays where the clients are  
851 present but not the property owners. Now these types of stays are more likely to have  
852 noise and other impacts on neighbors as compared to hosted stays when the owner is  
853 actually present. As a result, having unhosted stays for more than 60 days is a concern.

854  
855 Finally, staff did notice two inoperative vehicles on the property that had expired tags.  
856 These will need to be resolved along with the building materials that were stored outside.

857  
858 In conclusion, the applicant is requesting permission for hosted stays for more than 60  
859 days a year. Since the nearest neighbor is over 70 feet away and there is adequate  
860 parking on the site, staff believes the site is appropriate for a short-term rental. As noted,  
861 we do have concerns about the more than 60 days a year, as this would increase the  
862 likelihood of negative impacts on neighbors.

863  
864 In the future, if the applicant were to operate this successfully without complaints from the  
865 neighbors and, in fact, there's demand for more than 60 days a year, she's free to come  
866 back in the future and say, Hey, I've successfully run this for less than 60. How about  
867 considering more. So that's an option for her.

868  
869 So staff's recommendation is to approve this for the unhosted stays, but to deny the more  
870 than 60 days at this point. That concludes my recommendation and report here. If you  
871 have any questions, I'll be happy to answer them. Thank you.

872

873 Mr. Green - How do you enforce if someone decides that we're going to  
874 give them 60 days, but they're going to extend it to 70 days. Another 10 days. How do  
875 we really going to enforce that?  
876

877 Mr. Blankinship - Let me answer. We have a service that we pay for -- the  
878 County subscribes to -- that scrapes all of the different websites, Airbnb, Vrbo, and about  
879 50 more on a regular basis and they track that. They don't have an exact number, but  
880 they can tell. They might not know whether it's 60 or 61, but they'd know if it was 60 or  
881 80. So they report that to us.  
882

883 Mr. Green - So they're basically looking for an Airbnb?  
884

885 Mr. Blankinship - Yes.  
886

887 Mr. Green - Okay. Are there any other questions from the staff -- from the  
888 Board to the staff? Then I will --  
889

890 Mr. Johnson - You all answered the question that I was going to ask.  
891

892 Mr. Green - Hearing none, we'll hear from the applicant.  
893

894 Ms. Allen - Good morning. My name is Yolanda Allen. I asked for the  
895 application so I could run the Airbnb business and I will be available to the vacationers at  
896 the home for any concerns. And I am prepared to go by any rules and regulations. And  
897 it will only be rented during the months of June, July, and August.  
898

899 Mr. Blankinship - Oh, okay.  
900

901 Ms. Allen - And it'd give people a place to come stay when they come to  
902 Virginia. A three-bedroom home with a hot tub, a jacuzzi, and a back deck.  
903

904 Mr. Johnson - Yeah. You answered the question I was going to ask you  
905 about.  
906

907 Mr. Gidley - I don't think she said she's going to actually be there. She  
908 said that she'd be available.  
909

910 Mr. Green - Right.  
911

912 Mr. Gidley - There's a difference between being there physically and --  
913 someone is required to be nearby to be available to respond, but that's not a hosted stay.  
914 That needs to be clear.  
915

916 Mr. Green - Right. But you understand that you have to at least stay there  
917 180 days.  
918

919 Ms. Allen - Yeah. It would only be available to them during June, July,  
920 and August. During the summer months when the kids are out of school.

921

922 Mr. Green - Right. Any questions from the Board to the applicant?

923

924 Mr. Reid - How close will you be to the property?

925

926 Ms. Allen - Right off of Lakeside.

927

928 Mr. Johnson - And, also, do you have a --

929

930 Ms. Allen - I have cameras and everything in there.

931

932 Mr. Green - No. We're concerned about where you will be.

933

934 Ms. Allen - Oh. With my mom.

935

936 Mr. Johnson - And also, how many do you have at a time in the facility? How  
937 many can it hold?

938

939 Ms. Allen - So it can sleep up to four.

940

941 Mr. Johnson - Okay. And I noticed it has driveways on both sides of the  
942 home as well.

943

944 Ms. Allen - Yes. And I will be removing the vehicles.

945

946 Mr. Johnson - Okay.

947

948 Mr. Green - Are there any other questions from staff to the applicant?  
949 Those in the audience -- I thank you. Thank you. You can sit down. Is anyone in the  
950 audience to speak for or against this proposal?

951

952 Ms. Leftwich - Good morning. I am Alice Regina Leftwich and I reside on  
953 Subrenda. And my property is adjacent albeit that diagonally to the property on Annlyn.  
954  
955 My concern, and I had called when I received the notification of the property, as to what  
956 type of short-term rental would this property be. I will say this, I have been a resident of  
957 Subrenda Drive for -- it would be 5 years later this year. However, I have been visiting  
958 this area for over 20 years. As a matter of fact, one of the residents along Subrenda told  
959 me about a house --- in that sense why I bought it.

960

961 I'm going to be honest with you. I'm really not feeling the Airbnb on the property. For one  
962 of the reasons because Subrenda and Annlyn are only two blocks wide -- I mean two  
963 blocks -- and there's only one way in and one way out. The neighborhood is basically --  
964 it consists of a lot of children. We have a bus stop at Colleen and Subrenda and we have



1011 looking for alternatives to hotels. They're price shopping. And they're doing an array of  
1012 things. So I am warming up to them. You know.

1013  
1014 I also have to recognize that this is the new reality of what we're beginning to deal with.

1015  
1016 And if the applicant stated that she's met that condition, the applicant stated that she  
1017 would be typically in the house 180 days or more. So that tells you that she's going to be  
1018 there more than the three months that she will potentially rent it out. And then I think  
1019 sometimes you have to trust and just look at -- follow some of the processes.

1020  
1021 And if they didn't allow it, then the County should, you know, restrict all Airbnbs. But  
1022 until we get some complaints or some additional concerns, I just wanted to, you know,  
1023 share those concerns. So I understand what you're saying. But the reality is that we're  
1024 expanding in the County and allowing these Airbnbs to occur.

1025  
1026 Are there any other questions? Any other concerns from members of the Board? Or  
1027 questions?

1028  
1029 Mr. Pollard - One question.

1030  
1031 Mr. Green - Yeah go ahead.

1032  
1033 Mr. Pollard - I keep asking this question every time we have one of these  
1034 cases. If approved, how long does it last?

1035  
1036 Mr. Blankinship - The Board can put a limit on it, if you wish. I think staff's  
1037 perspective on this case was that by limiting it to 60 days per year, we were already  
1038 constraining it, and that if she wants to expand the business, she would have to come  
1039 back to change that condition. But if the Board wants to put a period of years on it, you  
1040 can.

1041  
1042 Mr. Pollard - Thank you.

1043  
1044 Mr. Green - Which we have not done in the past.

1045  
1046 Mr. Blankinship - Not up to this point. No, sir.

1047  
1048 Mr. Green - Right. I think I would recommend that before we even think  
1049 about doing that, we do it independent of this one and just do it as a general rule. And  
1050 not -- that way we're not looking like we're picking on any particular applicant.

1051  
1052 Mr. Pollard - Right. I wasn't leaning towards limiting. I just wanted to  
1053 understand, if approved, would there be a predetermined time limit.

1054

1055 Mr. Green - Yeah. The other question I have is how do we judge the  
1056 complaints that we get from the County as it relates to the proliferation of Airbnbs? Who  
1057 monitors that?  
1058  
1059 Mr. Blankinship - The Department of Community Revitalization has the Division  
1060 of Community Maintenance. They are responsible for following up on the complaints.  
1061  
1062 Mr. Green - And do we get a lot of complaints?  
1063  
1064 Mr. Blankinship - Very few. There are about 200 active Airbnbs in the County  
1065 and it varies from day to day depending on, you know, who's listing their house and who's  
1066 not. We've had complaints on, I would say, between 5 and 10. So the vast majority of  
1067 them we haven't had any complaints. And the complaints that we have had for the most  
1068 part we've been able to resolve pretty promptly. Most people who rent out their house  
1069 don't want it to be used for parties.  
1070  
1071 Mr. Green - Right.  
1072  
1073 Mr. Blankinship - So, you know, we do not allow people, as you pointed out,  
1074 with the -- we required them to live there 185 days. We do not allow people to buy a  
1075 house and operate it as an Airbnb and have that be the sole use of the house. That tends  
1076 to cause problems. And so Henrico does not allow it.  
1077  
1078 Mr. Green - Right.  
1079  
1080 Mr. Gidley - If you have to be there 180 days, you tend to want --  
1081  
1082 Mr. Blankinship - It has to be your home.  
1083  
1084 Mr. Gidley - Right. Take care of it while they're there.  
1085  
1086 Mr. Green - And I noticed that the Airbnb that I saw this past weekend, I  
1087 mean, they had a lot of personal affects in there. Pictures, you know, artifacts, trinkets.  
1088 While it was respected, you know, I was surprised that it didn't -- it didn't look sterile. It  
1089 looked like a home.  
1090  
1091 Mr. Pollard - Someone else's home.  
1092  
1093 Mr. Green - Yeah. Johnson.  
1094  
1095 Mr. Johnson - Ms. Allen, one more question.  
1096  
1097 Ms. Allen - Yeah.  
1098  
1099 Mr. Johnson - You said you would be having at least three stays for the  
1100 Airbnb. How often would you be there?

1101  
1102 Ms. Allen - I would be there during the rest of the months. It's only for  
1103 June, July, and August. So I would be there the rest of the year.  
1104  
1105 Mr. Johnson - You would be in between those time periods.  
1106  
1107 Ms. Allen - Yeah. That's my home. Right.  
1108  
1109 Mr. Johnson - Okay. I thought you said you would be staying someplace  
1110 else. Okay.  
1111  
1112 Mr. Blankinship - When it's rented, she'd be staying with --  
1113  
1114 Ms. Allen - Yeah.  
1115  
1116 Mr. Johnson - That clears what I was saying.  
1117  
1118 Mr. Green - And we can't assume that it's going to be rented the entire  
1119 time.  
1120  
1121 Ms. Allen - Right.  
1122  
1123 Mr. Green - So if it's not rented in July, you might be there in July.  
1124  
1125 Ms. Allen - Exactly.  
1126  
1127 Mr. Green - So.  
1128  
1129 Mr. Johnson - That answered the question I wanted.  
1130  
1131 Ms. Allen - It depends on if it's booked.  
1132  
1133 Mr. Pollard - Right. And one more question. This is to the Board and staff.  
1134 If this is approved and the existing limit is 60 days, -- let's say it's approved, the neighbors  
1135 are happy, don't have any complaints, and realize that, you know, there's a good situation.  
1136 How long would she have to wait to come back and request the additional 30 days?  
1137  
1138 Mr. Blankinship - There is a limit of one year to bring back substantially the  
1139 same request if it's been denied. I'm not sure if that would kick in here, because it would  
1140 really be a different request substantially. But given what she's stated, I would think she  
1141 would make it through this year, see how things go, and then come back next year if what  
1142 she's interested in is doing just the summer months.  
1143  
1144 Mr. Green - Most folks that we hear will come in and ask for just an Airbnb.  
1145 It seems like you put a specific timeframe from June to August. Is that your intent to just  
1146 keep it that way or if it gets more successful, you're going to increase it?

1147  
1148 Ms. Allen - It depends. For now it's just, like, the summer months. It's a  
1149 home with, you know, jacuzzi. So to me it's just going to be for the summer months.  
1150  
1151 Mr. Green- Okay. Any other questions from the Board to the applicant?  
1152  
1153 Mr. Johnson - And also you'll be monitoring the persons there as well.  
1154  
1155 Ms. Allen - Yes. Because I don't want my home to be, you know, torn to  
1156 pieces. I redid that home.  
1157  
1158 Mr. Johnson - And I also noticed that the County had also put a circle in the  
1159 driveway next to you. Is that right?  
1160  
1161 Ms. Allen - They put a what now?  
1162  
1163 Mr. Johnson - Just the next block over they got --  
1164  
1165 Ms. Allen - Oh in the middle of the street?  
1166  
1167 Mr. Johnson - Yes. In the middle of the street. Yes.  
1168  
1169 Ms. Allen - Yes.  
1170  
1171 Mr. Johnson - Is that to alleviate some of the speed on it --  
1172  
1173 Ms. Allen - I'm not sure. I was wondering the same thing. I just saw it  
1174 when it came on.  
1175  
1176 Mr. Johnson - Okay.  
1177  
1178 Unknown Speaker - (indiscernible)  
1179  
1180 Mr. Blankinship - Please do. Whoever's --  
1181  
1182 Unknown Speaker - Well it's 45-mile-an-hour speed in the neighborhood.  
1183 (indiscernible).  
1184  
1185 Mr. Green - Yeah.  
1186  
1187 Unknown Speaker - (indiscernible) 45-miles-an hour (indiscernible) and also  
1188 (indiscernible) up (indiscernible) put up.  
1189  
1190 Mr. Blankinship - No that's all right. It's not really testimony on this case.  
1191 Someone was asking you to step to the microphone, but what you're saying is not really  
1192 testimony on this case. So it's fine. It's a traffic calming device is the short answer.

1193  
1194 Mr. Johnson - Okay.  
1195  
1196 Mr. Green - So there's no one on Webex?  
1197  
1198 Mr. Blankinship - Oh. Let's ask. Is there anyone on Webex for Case 17?  
1199  
1200 Ms. Blankinship - No, sir. There's no one on Webex for this case.  
1201  
1202 Mr. Green - Hearing that, I will entertain a motion.  
1203  
1204 Mr. Johnson - I move that we approve the condition use permit subject to the  
1205 conditions recommended by staff and that is consistent with the comprehensive plan and  
1206 the zoning ordinance. And there is ample room for parking. And the house is near the  
1207 airport. And also short-term rental should be popular. Now I'll agree with the staff that  
1208 we should start with 60 days, that's per year, and if it goes well, we should apply to  
1209 increase it.  
1210  
1211 Mr. Green - No that's for her to decide to apply. Not us.  
1212  
1213 Mr. Johnson - Oh. Okay. But I'm recommending it to her.  
1214  
1215 Mr. Pollard - I second that.  
1216  
1217 Ms. Allen - Okay. Thank you. I appreciate it.  
1218  
1219 Mr. Green - So the motion was moved by Mr. Johnson, seconded by Mr.  
1220 Pollard. Any discussion? Hearing no discussion, all in favor say aye. All those opposed  
1221 like sign. Thank you.  
1222  
1223 On a motion by Mr. Johnson, seconded by Mr. Pollard, the Board **approved case**  
1224 **CUP2022-00017 YOLANDA ALLEN's** request for a conditional use permit pursuant to  
1225 Section 24-4430.A.1 of the County Code to allow short-term rental of a dwelling at 4813  
1226 Annlyn Drive (SANBURNE PARK) (Parcel 819-715-5449) zoned One-Family Residence  
1227 District (R-3) (Varina). The Board approved the request subject to the following  
1228 conditions:  
1229  
1230 1. This conditional use permit authorizes the short-term rental of the existing dwelling,  
1231 including unhosted stays, for no more than 60 days per year. Rental may include no more  
1232 than six guests at a time. All other applicable regulations of the County Code remain in  
1233 force.  
1234  
1235 2. This approval is subject to the County noise ordinance (Sec. 10-67 through 10-69),  
1236 registry ordinance (Sec. 20-280 through 20-282), and short-term rental development  
1237 standards (Sec. 24-4430).  
1238



1284 Mr. Blankinship - Would everyone who intends to speak to this case, please  
1285 stand and be sworn in? Do you swear the testimony you're about to give is the truth, the  
1286 whole truth, and nothing but the truth so help you God? Thank you. Mr. Madrigal.  
1287

1288 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair. Members of the Board.  
1289 Before you is a variance request for reduced front and side yard setbacks to build a one-  
1290 family dwelling. The subject property is located in Lakeside and is part of the  
1291 Bloomingdale subdivision, which was established in 1907. The parcel consists of three  
1292 50-foot-wide lots of varying depth that back onto a creek. The parcel slopes down toward  
1293 the creek at an 8 to 10 percent rate. Approximately 37 percent of the property is  
1294 designated to be in the flood zone and most, if not all, the parcel is in the Chesapeake  
1295 Bay Resource Protection Area.  
1296

1297 A sewer line bisects the property at the northern end, and a sewer main runs along the  
1298 rear of the parcel. The property is currently vacant and overgrown with weeds and  
1299 vegetation. Because a subdivision was recorded prior to 1960, the Zoning Ordinance  
1300 requires a minimum lot width of 50 feet and a minimum lot area of 6,000 square feet  
1301 exclusive of the flood zone in the R-4 District.  
1302

1303 The property has 150 feet of lot width and approximately 7,800-square-feet of lot area  
1304 outside the flood zone. The property was purchased by Linnwood for Tyler Garret in  
1305 1981. That same year he obtained a variance to build two homes on the property which  
1306 never came to fruition and the permit expired. Mr. Garret passed away in 2004 and his  
1307 children have entered into a purchase agreement with Liberty Homes subject to the  
1308 approval of a variance for a new home on the property.  
1309

1310 Liberty would like to construct a two-story, 1,400-square-foot home on the property.  
1311 Because the topography and shape of the property, the limitations imposed by the  
1312 floodplain and the sewer line, and encroachment into the resource protection area, they  
1313 have requested reduced front and side yard setbacks to accommodate the proposed  
1314 home.  
1315

1316 In September of 2020, they did apply for the Chesapeake Bay RPA exception. That case  
1317 can't move forward to the Planning Commission unless the Board approves this variance  
1318 request.  
1319

1320 With respect to the threshold test, the applicant meets two of the three criteria. Relative  
1321 to the 5 subtests, all 5 items are met as outlined in the staff report. Staff has found that if  
1322 a variance were to be approved and the proposed home is built, it would not result in a  
1323 detrimental impact, since the home would be consistent with the character and existing  
1324 development pattern in the neighborhood.  
1325

1326 In conclusion, the proposed home is consistent with the zoning and comprehensive plan  
1327 designations on the property. A single-family dwelling would be the highest and best use  
1328 of the property, as long as the applicant can overcome the development limitations related

1329 to the flood zone, the RPA, the topography, and the other physical conditions related to  
1330 the site.

1331  
1332 A new home would be consistent with the character, use, and development pattern of this  
1333 neighborhood. Absent of variance, the property will continue to sit as vacant, unused  
1334 land, negatively impacting adjacent properties in the neighborhood.

1335  
1336 Based on the facts of the case, staff recommends approval of this request subject to  
1337 conditions. Staff has not received any correspondence for or against the request. This  
1338 concludes my presentation. I'll be happy to answer any questions.

1339  
1340 Mr. Green - Are there any questions from Board members to staff?  
1341 Hearing none, we'll now hear from the applicant.

1342  
1343 Mr. Rempe - Good morning, Mr. Chairman, Board members, and staff. My  
1344 name is Mark Rempe. I'm here to speak on behalf of the applicant. We appreciate staff's  
1345 time on this application. We concur with staff's findings that the variance should be  
1346 approved, the tests have been met. We request that the Board move in favor of the  
1347 application. I will point out that we still have to go through a long process with going  
1348 through the RPA exemption and then also going through the building permit process.  
1349 Henrico's Department of Public Works will take a hard look at this. The Building  
1350 Department will take a hard look at it. Zoning will take another look at it.

1351  
1352 There'll be plans to build a beautiful house for a first-time homebuyer and there's not --  
1353 with the market being so hot right now, there's not many homes right now for affordable  
1354 housing.

1355  
1356 Mr. Green - Are there any questions from the Board to the applicant?  
1357 Hearing none. Are there any individuals in the audience to speak for or against this  
1358 variance? Hearing none. Are there any individuals on Webex to speak for or against this  
1359 variance?

1360  
1361 Mr. Blankinship - There is no one on Webex to speak to this item.

1362  
1363 Mr. Green - Hearing none. Hearing no concerns from the Board. Is there  
1364 a motion?

1365  
1366 Mr. Pollard - I move that we approve the variance subject to the conditions  
1367 recommended by the staff. It meets the threshold test because there is no other  
1368 reasonable use for the property. It was a buildable lot before the code was changed. The  
1369 lot is big and overgrown. A new home would be an improvement to the neighborhood.  
1370 This situation is unique because the floodplain comes so close to the street. Other tests  
1371 are met, as stated in the staff report.

1372  
1373 Mr. Green - Is there a second?  
1374

1375 Mr. Bell - Second.

1376  
1377 Mr. Green - The motion was made by Mr. Pollard, seconded by Mr. Bell.  
1378 All those in favor say aye. All those opposed like sign. Variance is approved.

1379  
1380 On a motion by Mr. Pollard, seconded by Mr. Bell, the Board **approved case VAR2022-**  
1381 **00002 LIBERTY HOMES OF VIRGINIA, INC.** requests a variance from Section 24-  
1382 3105.G.1 of the County Code to build a one-family dwelling at 5605 Bloomingdale Avenue  
1383 (BLOOMINGDALE) (Parcel 782-746-4001) zoned One-Family Residence District (R-4)  
1384 (Fairfield). The Board approved the request subject to the following conditions:

1385  
1386 1. This variance applies only to the front and side yard setback requirements for one  
1387 dwelling only. All other applicable regulations of the County Code remain in force.

1388  
1389 2. This variance applies only to the improvements shown on the plot plan and building  
1390 design filed with the application. The front yard setback must be no less than 25 feet and  
1391 the interior side yard setback must be no less than 10 feet. The front façade of the  
1392 proposed home must be consistent with elevation E. Any additional improvements must  
1393 comply with the applicable regulations of the County Code. Any substantial changes or  
1394 additions to the design or location of the improvements will require a new variance.

1395  
1396 3. Any dwelling on the property must be served by public water and sewer.

1397  
1398 4. Before beginning any clearing, grading, or land disturbing activity, the applicant must  
1399 obtain an exception to the Chesapeake Bay Resource Protection Area, approval of an  
1400 environmental compliance plan from the Department of Public Works, and any required  
1401 approvals from the Corps of Engineers or Department of Environmental Quality.

1402  
1403 5. Before applying for a building permit, the applicant must obtain approval of and record  
1404 either a minor subdivision or final plat, as determined by the Planning Director, to  
1405 consolidate lots 4, 5, and 6 as one lot.

1406  
1407 6. The applicant must obtain a building permit for the proposed home by March 25, 2024,  
1408 or this variance will expire. After that date, if the building permit is cancelled or revoked  
1409 due to failure to diligently pursue construction, this variance will expire at that time.

1410  
1411  
1412 **Affirmative: Bell, Green, Johnson, Pollard, Reid 5**  
1413 **Negative: 0**  
1414 **Absent: 0**

1415  
1416  
1417 Mr. Blankinship - All right. The other variance this morning is Variance 2022,  
1418 number 3, Kristina Calhoun.

1419  
1420 **VAR2022-00003 KRISTINA CALHOUN** requests a variance from Sections 24-4306.E.1  
1421 and 24-6402.A.2 of the County Code to build a one-family dwelling at 20 Kambis Drive

1422 (Parcels 836-690-1480 and 836-690-3359) zoned Agricultural District (A-1) (Varina). The  
1423 public street frontage requirement and lot width requirement are not met. The applicant  
1424 proposes 0 feet public street frontage and 100 feet lot width, where the Code requires 50  
1425 feet public street frontage and 150 feet lot width. The applicant requests a variance of 50  
1426 feet public street frontage and 50 feet lot width.

1427

1428 Mr. Blankinship - Would everyone who intends to speak to this case please  
1429 stand and be sworn in? Raise your right hand, please. Do you swear the testimony  
1430 you're about to give is the truth, the whole truth, and nothing but the truth, so help you  
1431 God? Thank you.

1432

1433 Mr. Gidley - Thank you, Mr. Secretary. The subject property is located  
1434 northeast of the intersection of Yahley Mill Road and Darbytown Road. It's also at the  
1435 southern terminus of Kambis Drive. It's right here. Two variances were previously  
1436 approved out here for this lot right here. Both of these expired because no action was  
1437 taken as follow up.

1438

1439 This Board may recall back in 2019 a third request was heard, but this was withdrawn by  
1440 the applicant following significant opposition from the neighbors. As noted, the previous  
1441 requests were for this one-acre lot right here and this is at the southern terminus of  
1442 Kambis. And the lot also fronts on Yester Oaks Lane. This is a private road, Yester Oaks  
1443 Lane, right here. And then this picture here, this is Kambis. You can see way down here  
1444 Yester Oaks Lane and then the access would come in off of Kambis. The driveway would  
1445 cross here over to the properties right in this area.

1446

1447 In addition to this one-acre lot, today's request also involves a 1.87-acre parcel located to  
1448 the southeast. The applicant has purchased both of these parcels and wishes to build a  
1449 home on the back parcel. As you can see here. Although they have direct access to  
1450 Kambis Drive, frontage on the terminus of the public street does not count towards the  
1451 public street frontage requirement. Thus the need for the variance along with the fact the  
1452 lot width down here by the street is not met.

1453

1454 In reviewing this request, as you're aware for a variance to be granted one of three  
1455 threshold tests need to be met. Staff believes one, even two, are met in this case. Absent  
1456 of variance the property would not have any reasonable beneficial use. In addition, when  
1457 the smaller lot was created in 1950, there was no public street frontage. That was  
1458 adopted 10 years later in 1960. So there was a change in code that put that lot in violation.  
1459 Although the 150-foot lot width requirement -- that was in effect.

1460

1461 So although one, perhaps two, of the threshold tests are met, the applicant must also  
1462 meet all five of the subtests as well. Staff is concerned the second subtest dealing with  
1463 detrimental impact on nearby property is not met.

1464

1465 During the 2019 hearing on the variance for the smaller 1-acre lot up here, several of the  
1466 neighbors expressed concern about the impact of developing the property on their homes  
1467 and property from flooding and also well water quality. This is because you have a natural

1468 drainage area that comes back through here. Because this is much lower back through  
1469 here. There's also drainage that comes off Kambis and flows through this lot here.

1470  
1471 At the time, staff supported the variance request, but had a recommended condition that  
1472 the back 100 feet of the lot he maintained in its natural state. You know, again, helping  
1473 to slow down and to absorb water that's flowing through there. And that was our position  
1474 at the time.

1475  
1476 The proposal before you today, however, is quite different from the previous ones. This  
1477 is because the second larger parcel has been added and this is, again, located within the  
1478 drainage area. There would be substantial clearing not only for a driveway and a well,  
1479 but also for the home and its surrounding yard and the primary and secondary drainfield.  
1480 So a lot of this lot would be cleared. And I actually have a map here.

1481  
1482 You can see right here this is the lot. You'd have the well where the driveway would come  
1483 in off Kambis. You'd have the well area here. You'd have the home and the surrounding  
1484 yard. And most of this back portion here would be for the drainage area. The septic and  
1485 primary and reserve fields and the engineers are requiring a positive slope off of that, so  
1486 it would drain off of this area onto the surrounding land.

1487  
1488 So that's obviously a concern for staff. The applicant after the reports went out did send  
1489 in a drainage map. Let's see. Here's this. Yes. This is theirs. This evidently was  
1490 provided by the same engineer that did her septic system and it basically shows the center  
1491 of the drainage area here coming down and then trying to make a point that it drains off  
1492 the lots to the west that you see right here.

1493  
1494 Staff did our own topo map. It's similar but shows things a little more clearly. This is the  
1495 140 elevation, so the area surrounding it's higher. The red line here is kind of the lowest  
1496 area where the water goes now. As you can see, it goes right behind these properties  
1497 here and also down here. And there's a drainage off of Kambis that cuts through here.

1498  
1499 So to the extent you start clearing this land, water's going to flow through faster and, you  
1500 know, when you raise up this land for your home and for the septic fields going from here  
1501 to here is feet --

1502  
1503 Mr. Green - Mr. Gidley, you're talking, but what you're showing us we don't  
1504 see.

1505  
1506 Mr. Blankinship - They don't see it.

1507  
1508 Mr. Gidley - Oh. I'm sorry.

1509  
1510 Mr. Blankinship - Funny. You can see it on these displays, but you can't see it  
1511 on our desktop displays. I just noticed that.

1512

1513 Mr. Gidley - I was wondering why everyone was looking here. Okay.  
1514 Basically the land slopes greater from west to east to the low part. On the east side it  
1515 rises a little bit, but not much. And the drainage right now goes right behind a couple  
1516 houses there. So to the extent more water gets pushed that way, some of it's probably  
1517 going to start to encroach more to the east where those houses are. And it already flows  
1518 right behind the houses. So there's not a lot of room for error and there's going to be  
1519 substantial clearing. In fact, most of this 1.87-acre parcel is going to be cleared.

1520  
1521 So bottom line for staff is we supported the earlier request with the understanding that the  
1522 back portion would be left natural. We felt that was a good compromise between trying  
1523 to get the reasonable use for the property owner and protecting the neighbors. Adding  
1524 now a 1.87-acre parcel right in the middle of the drainage area, that's going to be mostly  
1525 cleared. Staff does share the neighbor's concerns that that could impact, you know,  
1526 flooding on their property and perhaps even well water quality.

1527  
1528 Particularly when it comes to flooding on the homes to the east. So because of that we  
1529 don't believe the lack of a substantial detrimental impact is met. Because that second  
1530 subtest is not met, unlike the first three cases, in this case we're going to recommend  
1531 denial of the variance for that reason.

1532  
1533 Sorry you don't have the pictures up there.

1534  
1535 Mr. Blankinship - We can see the image, we just can't see the mouse move.

1536  
1537 Mr. Green - Right. Yeah.

1538  
1539 Mr. Gidley - Oh. Okay.

1540  
1541 Mr. Green - So if they were to keep more trees on the lot, you'd be in favor  
1542 of supporting it?

1543  
1544 Mr. Gidley - I would say no, sir. Not right off hand. The original 1-acre  
1545 parcel we wanted the back kept clear. Now you're talking a larger lot. And they're going  
1546 to have to clear a lot of it, because they need the reserve and the primary drainfields.  
1547 Which, again, you can see a copy of the back. 40 percent of this lot's hashed here, and  
1548 that's going to be their drainfield. They're going to need a site for their home and the area  
1549 for their well and their driveway.

1550  
1551 Mr. Green - So is there anything that you've taught them about that they  
1552 could do to build it?

1553  
1554 Mr. Gidley - They would need --

1555  
1556 Mr. Green - That would satisfy the conditions and satisfy the neighbors?

1557  
1558 Mr. Gidley - I question whether they could. We did contact the applicant

1559 early on to say, Hey, we know we supported the earlier request. This is a different request  
1560 here. Because of that, we wanted to give you a heads up that we're not going to support  
1561 it this time. It's in your interest to go ahead and try to address some of these questions.  
1562

1563 The applicant did send this in from their -- again, the person that did their well work and  
1564 their septic drainfield work, but she expressed concern about the cost of having an all-out  
1565 study that would look at the impact of everything on all the neighbors. So unless there  
1566 was a study that clearly showed it was not going to have negative impacts on the  
1567 neighbors, staff's not in a position to recommend approval.  
1568

1569 Mr. Blankinship - If they could build a house on the front 150 or 200 feet of the  
1570 smaller lot without clearing any of the back land, then I think we would support it. And  
1571 that's what we've seen twice before and what we have supported. But, apparently, it's not  
1572 possible to do that. Apparently in order to build a house there, they have to clear the back  
1573 of the land for the septic system. And that's what's creating the detrimental impact.  
1574

1575 And there's no County sewer available in this area so they have to come up with some  
1576 kind of a septic system. And once they clear the land for the septic system, especially  
1577 here, apparently because of the soil, they have to actually build up the septic system. It's  
1578 not in the ground like it would be in good soil. And all of that combined is creating the  
1579 detrimental impact on the neighbors.  
1580

1581 Mr. Green - Would it be to their advantage to defer this to further talk to  
1582 you and see if in fact something else could really be worked out or have you exhausted  
1583 that?  
1584

1585 Mr. Gidley - At this stage -- and this was discussed with the applicant, they  
1586 would need to get some sort of drainage study that was detailed and they expressed  
1587 concern about the cost of that. Because that's not going to come cheap. But we'd want  
1588 to be assured that there's not a situation where people are going to start having water go  
1589 into their homes and what have you. And as far as us sitting down with the neighbors  
1590 now, given the opposition from the neighbors in the past and from what I've heard on this  
1591 case, I don't think they're going to casually accept something less.  
1592

1593 Mr. Johnson - And also, I noticed when I was out there that even at the circle  
1594 they are -- there are several underground -- where going into each one of the houses,  
1595 running into that right on the same side and there's three different crossovers that water  
1596 runs through. I mean there I was noticing that too, as well. And also there's water  
1597 standing in some of the areas.  
1598

1599 Mr. Gidley - I trooped it. As you get back there, there's a lot of vines, as  
1600 well as thorns and brambles. And it's quite muddy. So. Yeah.  
1601

1602 Mr. Johnson - This is right at that circle as well, you know.  
1603

1604 Mr. Green - Okay. Any other questions from the Board to staff? Hearing  
1605 none. We'll now hear from the applicant.

1606

1607 Mr. Calhoun - Good morning. My name's Sandy Ray Calhoun. That's my  
1608 wife Kristina. And obviously we were here to apply for the variance for the driveway when  
1609 this situation with the water drainage came up.

1610

1611 As he stated, we did have concern with paying a substantial amount of money with having  
1612 these studies done. You know. Not knowing whether or not this would be approved as  
1613 we've already put a substantial amount of money into this project. Nearly \$30,000 as it  
1614 stands.

1615

1616 We initially put this variance in because we were planning to build this house on this lot.  
1617 Which is family land. The back 1.9 acres.

1618

1619 As you can see, the 7741 Yester Oaks Lane that is my wife's mother's property. She is  
1620 disabled and we are building this property because we recently had a child and we live  
1621 an hour away. So it's becoming more difficult to help her day-to-day. And while also  
1622 raising a newborn.

1623

1624 As far as the water runoff goes, there is a drainage ditch that goes around the outside of  
1625 the property on the, I believe, north and eastern line of the property. You can't see it from  
1626 the satellite images, but I believe her name was Michelle Peace sent in an email with  
1627 photographs from around the property. And you can see images of the drainage ditch on  
1628 the property or going around the property, I should say.

1629

1630 And the property to the west on Yester Oaks, that property as it sits you can see in the  
1631 pictures it does not drain onto our property. It is standing water. Our property raises a  
1632 little bit right there before it comes onto our property.

1633

1634 Mr. Blankinship - The Michelle Peace email was left on the table for you this  
1635 morning.

1636

1637 Mr. Green - Okay.

1638

1639 Mr. Calhoun - But if there's any questions or concerns that you all have, I will  
1640 be happy to answer them.

1641

1642 Mr. Green - Are there any questions from the Board to the applicant?

1643

1644 Mr. Johnson - Your entrance -- are you going to be going in from that circle  
1645 there?

1646

1647 Mr. Calhoun - Yes, sir. There's actually already a culvert put in place. So  
1648 there will be minimal disruption to the road itself. This literally would just be laying down  
1649 gravel. There's already a culvert to drive onto the land actually. Yes. Right there where

1650 the mouse is. So, honestly, it would affect drainage less if we come off of Kambis Drive,  
1651 because there's already a culvert and that leads into that drainage area that I was talking  
1652 about that leads down beside the property.

1653  
1654 Mr. Johnson - But then where would that water go to -- I noticed that there's  
1655 also power lines out coming cross there at that entrance too.

1656  
1657 Mr. Calhoun - Right. So all that -- all the water drains down through that  
1658 culvert and then from the picture you're looking at right now, it would go off to the left or  
1659 on the map it would drain east following along the property line as it does.

1660  
1661 Mr. Blankinship - Go back to the aerial, Mr. Gidley. And so you would see it  
1662 would come down that eastern property line and you can see that the two houses just  
1663 above and to the left of the title block there -- or, I'm sorry, it's one house with a garage.  
1664 All the water would head in the direction of that property. And then there's another house  
1665 under the title block there. That drainage ditch continues on to their property. That's our  
1666 concern. That additional water is going to flow down that channel and affect the neighbors  
1667 downstream.

1668  
1669 Mr. Green - Okay. Are there any other questions from the Board to the  
1670 applicant?

1671  
1672 Mr. Johnson - It's a nice neighborhood out there. Like I said, I noticed the  
1673 drainage as well as how it's soaking out there as well.

1674  
1675 There's no other entrance -- no other way to get there without --

1676  
1677 Mr. Calhoun - No, sir. Not from the back side of the lot. We actually bought  
1678 that one acre specifically to put a driveway in.

1679  
1680 Mr. Green - Any other questions from members of the Board to the  
1681 applicant? Hearing none. We'll hear from those opposed and in favor of the application.  
1682 Thank you. Is there anyone in the audience opposed or in favor of this application? Sir.

1683  
1684 Mr. Blankinship - And there's one on Webex who wishes to speak now.

1685  
1686 Mr. King - Good morning. Thank you for hearing me. My name is  
1687 Stephen King, with a p-h. And my wife and I are the owners of the property right to the  
1688 east. That piece of property right there.

1689  
1690 There is a drainage line that runs all the way down the property line and then cuts across  
1691 the back of my property and continues on. I've lived there for 20 years and most of the  
1692 water that comes through that area from the north down to me comes through that ditch.  
1693 There's a culvert right there that the water flows through and runs through the ditch.

1694

1695 I'm not a civil engineer, but I can give you 20 years of anecdotal things, and I spend a lot  
1696 of time trying to keep that ditch open from everything that runs into it. This past winter,  
1697 my wife and I spent \$4,000 having someone come through. He cleaned it all out so that  
1698 it would continue to flow. That was three months ago and there are already several places  
1699 in the ditch that have become clogged again and I'm getting to the point in my life and  
1700 health that I can't spend a lot of time cleaning it out myself.

1701  
1702 I did bring images in case anybody wanted to see them. Just what it looks like from this  
1703 morning after the rain yesterday.

1704  
1705 Mr. Green - Yeah. I'd like to see what it looks again.

1706  
1707 Mr. King - It constantly overflows.

1708  
1709 Mr. Green - Okay.

1710  
1711 Mr. Blankinship - Oh. It's on his iPad.

1712  
1713 Mr. King - Yeah. I'm sorry about that. I didn't know how else to bring it.

1714  
1715 Mr. Blankinship - Ideally, we'd be able to project that, but we don't have that  
1716 capability right now.

1717  
1718 Mr. King - That's --

1719  
1720 Mr. Madrigal - We're keeping that iPad! Right?

1721  
1722 Mr. Blankinship - Yeah. Right.

1723  
1724 Mr. King - Yeah just keep that.

1725  
1726 Mr. Blankinship - It's evidence now! So.

1727  
1728 Mr. King - But that's just one image from this morning. I actually built a  
1729 bridge across the drainage field so that I can get back to the area on the back of my  
1730 property which raises up. Which is where my septic field is. So my concern, of course,  
1731 is if we clear that piece of property off, erosion, more water draining into the ditch that  
1732 can't handle what it's designed for now. It was my understanding that my property was  
1733 originally the main contractor when they built the subdivision and he took care of that  
1734 drain line and everything, too, because of it.

1735  
1736 So that would be my major concern. Even though I'm a supporter of people's property  
1737 rights and when they own the property, they should be able to do much of what they would  
1738 like as long as it doesn't tremendously and adversely affect people surrounding them.  
1739 And my opinion is without a complete study by a civil engineering firm that says, This is

1740 what's going to happen and this is what we need to be done to mitigate it and so forth,  
1741 I'm just concerned that it would be an increasing problem. Thank you.

1742  
1743 Mr. Green - Okay. We have someone on Webex who would like to speak  
1744 in opposition.

1745  
1746 Mr. King - Thank you.

1747  
1748 Mr. Green - Can the person weigh in please?

1749  
1750 Ms. Blankinship - Yes, sir. Ms. Wilson, you are now unmuted.

1751  
1752 Ms. Wilson - Hi. My name is Carolina Wilson. My husband and I, who's  
1753 also attending live at 773 Yester Oak Lane. We have been to multiple variances from  
1754 2017, 2019. We bought our house in 2014 so we were not at that variance. So you can  
1755 kind of see how long we have been fighting it.

1756  
1757 I have a few concerns. Obviously the most important, drainage. If you look at where the  
1758 driveway is located, it would be very close to our drainfield. And if that's approved, what's  
1759 going to happen is water's going to dump right back onto our drainfield causing additional  
1760 problems to our septic system. We should not have more water on this drainfield area.

1761  
1762 In addition, what happens when their driveway floods? They cannot be using Yester Oaks  
1763 to come down, since this is a private road. So how are they going to get to their home  
1764 when the driveway floods?

1765  
1766 In addition, the draining, how it's sloped down, if they have to get back up onto their  
1767 property behind our property, what's going to happen is it's going to dump water back  
1768 onto the back end of our property.

1769  
1770 I'd also like to point out that Sandy and Kristina Calhoun were aware of these drainage  
1771 issues prior to purchasing said lot, because Debbie Hacker was in attendance at the other  
1772 variance meetings and was actually against building on the lot on Kambis Drive.

1773  
1774 So I'm very frustrated that we have to keep coming back to this. Especially when we're  
1775 concerned that our properties are going to be affected by the decision. That's really all I  
1776 have to provide at this time.

1777  
1778 I know Dr. Peace has also provided some photos with a map, and you can see that this  
1779 was taken two weeks ago. It rained one day. Not even a full day. And you can see -- I  
1780 think at that time the weather said it was only one inch of rain and you can see how much  
1781 flooding is occurring in this area. And it would have detrimental impact to our properties.  
1782 And that's all I have to state on this variance.

1783  
1784 Mr. Green - Yes.

1785

1786 Mr. Blankinship - Are there any questions for Ms. Wilson?  
1787  
1788 Mr. Green - Are there any questions for Ms. Wilson from the Board? You  
1789 all have an opportunity to rebut, to be heard.  
1790  
1791 Mr. Calhoun - One of the issues that Caroline brought up was, honestly, I  
1792 believe has nothing to do with this variance. Which was talking about how we're going to  
1793 get onto our property when our driveway floods.  
1794  
1795 I think one of her biggest issues and why she's against this, is because she believes that  
1796 we'll be coming up the private drive to get to our property. And, honestly, we bought that  
1797 piece of land specifically so we didn't have to come up to the private drive to get to our  
1798 property.  
1799  
1800 And as far as the, like I said, the water running to her property, she is on the west side of  
1801 the property line. Everything drains east. Her lot actually doesn't drain east. It sits  
1802 stagnate, as you can see on the pictures from this piece. I sent in some pictures. So I  
1803 don't believe anything that we would do would cause more water to go onto her property  
1804 as it's uphill from ours.  
1805  
1806 Mr. Green - Are there any questions from the Board to the applicant? The  
1807 drainage is one of the important things there with this project. On the surrounding  
1808 properties around it. Have we looked at anything else that we could do with the drainage?  
1809  
1810 Mr. Calhoun - I'm sorry. Say that again.  
1811  
1812 Mr. Green - That would not encroach on any other properties or  
1813 something.  
1814  
1815 Mr. Calhoun - So far everyone we've spoken to has indicated that it would  
1816 not cause an issue with anyone else's property. And -- sorry. What was that?  
1817  
1818 Ms. Calhoun - I was just saying -- I'm sorry -- I'm sorry. So we spoke to, the  
1819 site engineer who drew the septic plans, John Ritter. John Harper who do the topo map.  
1820 He was the soil evaluator and the surveyors. And all of them are saying that this is not  
1821 going to impact them. You know. As they mentioned, we just spent a lot of money and  
1822 it would be a lot more to have a study done when everyone that we're speaking to that  
1823 has a professional interest in it is saying that based on their expertise it's not going to be  
1824 an issue.  
1825  
1826 I did also want to mention that the lot was there -- my family owned this lot prior to all of  
1827 the surrounding dwellings. So, like, when we owned the lot, Yahley Mill Estates didn't  
1828 exist. So all of the homes in that subdivision were not there to drain on my lot. That make  
1829 sense? I inherited this lot. So it's not something that we pursued, you know, as she was  
1830 saying, like, we purchased this lot.  
1831

1832 I inherited this lot. We just had to purchase road access to the lot because they won't  
1833 allow us to come down the private drive. They're refusing that. And so there was -- it  
1834 was the only way to access it. So then we bought that and now we're still not able to  
1835 access it. But it's been in my family for over 40 or 50 years. Many, many years ago.

1836  
1837 Mr. Green - Also, one more question, do you have public water service, or  
1838 do you have wells out there?

1839  
1840 Ms. Calhoun - It's wells until you go a couple streets over. So on Kambis  
1841 Drive its wells and then the same on Yester Oaks.

1842  
1843 Mr. Pollard - I think this is already answered, but just to be sure -- and I  
1844 understand that it's been a lot of resources put into it so far. There is not another location  
1845 for the home or the driveway that would kind of avoid the drainage issue?

1846  
1847 Ms. Calhoun - So the driveway we can put wherever the County sees fit. The  
1848 home, I mean, we don't mind shifting it. But from the plans that were drawn I think that's  
1849 where it needed to be. Because we have to have an alternative septic to build there.  
1850 Which is also an additional cost. It's, you know, your average is going to be, like, \$10,000.  
1851 And they're saying ours is going to be \$30,000. So it's very expensive and complicated,  
1852 unfortunately, to try and avoid the issues that, you know, are a concern.

1853  
1854 Now I will say, we lived on Kambis Drive, the 20 Kambis that actually touches that cul-de-  
1855 sac there. And what we were required to do to avoid the water issue was have a French  
1856 drain. And we were told that -- or, I'm sorry, when we looked into it, it said that the  
1857 Common Law in Virginia is that water is a common enemy and so we have the right to  
1858 improve upon our land. And if it impacts, you know, water as long as it's not negligent it's  
1859 truly just improving upon our land and that. Then the other property owner has the ability  
1860 to improve upon their land to improve themselves such as a French drain or a berm. But  
1861 it's not our responsibility for surface water from Virginia Common Law from what I could  
1862 find.

1863  
1864 But we don't mind doing anything that you guys see fit in order to make it happen. This  
1865 is what we've been given so far.

1866  
1867 Mr. Pollard - I think the issues is have is another set of experts that are very  
1868 concerned about the drainage. And I think you have to figure out something where those  
1869 experts can agree that this location, where the driveway is. And I understand what you're  
1870 saying as far as the inheritance and I'm sensitive to the predicament you're in. But if  
1871 French drains would help, then you would need to get with your neighbors and have them  
1872 agree to that. But I think you have to kind of go back to the drawing board and figure out  
1873 a way where you can put the house that it'd kind of get everybody on the same page in  
1874 terms of those concerns.

1875  
1876 Ms. Calhoun - And I think you guys mentioned before, I tried to write it down  
1877 so I'd remember correctly. You said that we could have a study done. So if we have a

1878 study done and it shows in favor, would we then be approved or, like, could we defer it?  
1879 So I found out three weeks ago and I just had a really hard time trying to get anyone to  
1880 do much of anything. I had one person that was able to send me the topo map, but other  
1881 than that, they were like, Hey, it's really busy right now. And they -- that was pretty much  
1882 the best I could do. I had a builder that was trying to get more information for me, but  
1883 they just hadn't gotten it to us.

1884  
1885 Mr. Blankinship - Are you asking if you can defer the case and ask somebody  
1886 to do a study for more information?

1887  
1888 Ms. Calhoun - Yeah. If we spend the money to have the study done and it  
1889 shows that it's not going to impact them, you know, as they're saying. Then would it be  
1890 approved? We just don't want to, you know, from what we understand, it's going to be,  
1891 like, 5 or so more thousand to do that. We just don't want to put another 5 on top of the  
1892 over 30,000, you know, and then it still not be approved is kind of our concern.

1893  
1894 Mr. Blankinship - Well. It's difficult to answer that question until we see the  
1895 study.

1896  
1897 Mr. Green - Right.

1898  
1899 Mr. Pollard - Question for the staff. The study, would that evaluate the  
1900 plans as is? Or does that evaluate where the best place to go?

1901  
1902 Mr. Blankinship - I would think an engineer would make recommendations as  
1903 to where, you know, what sort of provisions to put in place. It looks to me like you're going  
1904 to need a pipe or at least, you know, an improved drainage channel. And they're probably  
1905 going to need to work with Mr. King because the drainage is going to go on to his property  
1906 one way or the other. So they'll at least need to discuss with him. Ideally, they could  
1907 come up with a joint solution that would handle the water. But we would expect an  
1908 engineer to make recommendations as to what needs to be done to solve the problem.

1909  
1910 Mr. Johnson - And I think that's a good idea to have them to look at it to come  
1911 up with something. Because what you have now impacts other neighbors as well. You  
1912 know. So if you can -- I would suggest that you do that.

1913  
1914 Ms. Calhoun - Okay.

1915  
1916 Mr. Green - So, basically, what he's saying is you might want to defer this  
1917 case and get with the staff, get with your neighbors, and see if something can be worked  
1918 out. Because there's a possibility that this thing could be denied and at least under a  
1919 deferral you may have an opportunity that, you know, you may have to spend some  
1920 money, but --

1921  
1922 Mr. Johnson - As the chairman mentioned that it would take you longer to go  
1923 back through the process again than just to be better to do that.

1924  
1925 Ms. Calhoun - Yeah. I think we would like to defer.  
1926  
1927 Mr. Johnson - Okay.  
1928  
1929 Ms. Calhoun - If that's okay.  
1930  
1931 Mr. Blankinship - Do you have a sense of how long? I know you said everybody  
1932 told you they're busy. Which I can certainly confirm every engineering firm is very busy  
1933 right now. Do you want to call it three months and then see if you can be ready by then?  
1934  
1935 Ms. Calhoun - That sounds good.  
1936  
1937 Mr. Blankinship - That would be June the 23rd, Mr. Johnson, if you wanted to  
1938 make a motion to that affect.  
1939  
1940 Mr. Johnson - Yes. If you're okay with that, I would refer to defer it because  
1941 if we deny it, it'll be a whole lot longer.  
1942  
1943 Mr. Pollard - I think we're just waiting on the vote.  
1944  
1945 Mr. Johnson - Yes.  
1946  
1947 Ms. Calhoun - Yeah.  
1948  
1949 Mr. Pollard - Make a motion to defer.  
1950  
1951 Mr. Johnson - Now I make a motion to the staff that we defer and move it to  
1952 June 23rd. There needs to be additional information and also to address the neighbor's  
1953 concerns. That'll be on June 23rd.  
1954  
1955 Mr. Pollard - Second the motion.  
1956  
1957 Mr. Green - The motion was made by Mr. Johnson. Seconded by Mr.  
1958 Pollard. Is there any discussion among the members of the Board? Hearing none. All  
1959 in favor say aye. Opposed like sign. The motion is deferred.  
1960  
1961 On a motion by Mr. Johnson, seconded by Mr. Pollard, the Board **deferred case**  
1962 **VAR2022-00003 KRISTINA CALHOUN's** request for a variance until the June 23, 2022  
1963 public hearing.  
1964  
1965  
1966 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5  
1967 **Negative:** 0  
1968 **Absent:** 0  
1969

1970  
1971 Ms. Calhoun - Thank you.  
1972  
1973 Mr. Blankinship - Well that completes the variances. There is one appeal on  
1974 this morning's agenda. That is Appeal 2022, number 1. Jonathan Ralston.  
1975  
1976 **APL2022-00001 JOHNATHAN RALSTON** appeals a decision of the director of planning  
1977 pursuant to Section 24-2320 of the County Code regarding the property at 10506 Thames  
1978 Drive (CANTERBURY) (Parcel 741-745-8739) zoned One-Family Residence District (R-  
1979 2) (Tuckahoe).  
1980  
1981 Mr. Blankinship - Would everyone who intends to speak to this matter, please  
1982 stand and be sworn in? Raise your right hands, please. Do you swear the testimony  
1983 you're about to give is the truth, the whole truth, and nothing but the truth so help you  
1984 God?  
1985  
1986 Mr. Murphy - Yes.  
1987  
1988 Mr. Blankinship - All right. Thank you. Mr. Murphy. As I mentioned in the  
1989 beginning, there'll be 10 minutes for the County attorney, 10 minutes for the appellant,  
1990 and 3 minutes for anyone else who wishes to speak.  
1991  
1992 Mr. Murphy - Sorry. Is there a slide up here?  
1993  
1994 Mr. Blankinship - Oh. Yeah. Fred could --  
1995  
1996 Mr. Murphy - That's not it. This one. Good morning. May it please the  
1997 Board. My name's Ryan Murphy. I'm the Assistant County Attorney with Henrico County  
1998 Attorney's office. My office is representing the Director in this appeal brought by Mr.  
1999 Ralston regarding the property at 10506 Thames Drive.  
2000  
2001 The question presented in this appeal is did the Planning Director correctly determine that  
2002 the appellant's shipping container is subject to the standard's for portable storage in  
2003 County Code section 24-4511(D) which prohibits storage containers from being located  
2004 on property within a residential district for more than one period not exceeding 10  
2005 consecutive days in any 6-month period.  
2006  
2007 My office contends that the answer to that question is yes. The shipping container is  
2008 subject to the standards and county Code section 24-4511(D) and those standards  
2009 prohibit the appellant from keeping the shipping container on his property for more than  
2010 one period not exceeding 10 consecutive days in any 6-month period.  
2011  
2012 For the standard review that is applicable to these appeals is found in Virginia Code  
2013 section 15.2.2309, subsection 1, and Henrico County Code section 24-2320, subsection  
2014 D. The Director's determination is presumed to be correct. It is the appellant's burden to  
2015 rebut that presumption and prove the determination was incorrect.

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2061

There's five key points in the presentation of this appeal. First, the appellant's property is zoned R-2. That's a One-family Residence District. Second, portable storage is permitted only as a temporary use in the R-2 District under the County Zoning Ordinance subject to the standards that are in 24-4511(D) which prohibit the keeping of the storage container for more than one period of up to 10 consecutive days in any 6-month period.

Third, the appellant has kept the shipping container on his property for at least 90 consecutive days. Fourth, the definition of portable storage specifically includes shipping containers. And, finally, a shipping container is not customarily accessory to a residence. Therefore, under the Henrico County Zoning Ordinance it cannot be an accessory use or structure.

This is a picture of the property and also the shipping container, which you can see in the side yard by the driveway. A little background, the case began on or about December 9, 2021 when a County Code Compliance Inspector went to the property to investigate complaints that have been received by the County. She left her contact information for the appellant and after some communications with the appellant she returned to the property on January 20th, issued an NOV citing Section 24-4511(D) and giving a compliance deadline of February 22, 2022.

It is my understanding that the shipping container continues to be on the property as of today.

As I mentioned, portable storage is permitted only as a temporary use in the R-2 District. This is an excerpt of Table 4502. If you go across the rows and columns and you see that portable storage is permitted in the R-2 District, but it is subject to the standards that are in 24-4511. I'll move to that section.

The applicable subsection is subsection D and that section states that except for storage containers located on construction sites, which is not applicable here, storage containers must not be located on an individual parcel or site for more than one period exceeding 10 consecutive days in a 6-month period in a residential district.

Now there is no dispute that this is a residential district. Property is located in the R-2 district. And there's no dispute that the shipping container has been located on the property for a period that exceeds that 10-day allotment. So appellant's argument seems to center on the definition of portable storage. The definition of portable storage expressly includes shipping containers that can be transported by mounting on a chassis and PODS, or smart-box type boxes that can be transported on a flat bed or a truck. You can see that it also specifically distinguishes these types of containers from prefabricated sheds.

Now the appellant seems to contend that because he intends to keep it on his property permanently that it should be treated as an accessory use or a structure. The problem with the appellant's argument is that the County Zoning Ordinance provides general

2062 standards for all accessory uses and structures under Section 24-4403. And there it  
2063 states that accessory uses and structures must be customarily accessory. And what that  
2064 means is it needs to be commonly used here on a residential property. And shipping  
2065 containers are quite simply not commonly used on residential properties in the Henrico  
2066 Community.

2067  
2068 If we assume, however, just for the sake of argument, that what the appellant is proposing  
2069 to do is some sort of unlisted use. Then the Zoning Administrator, the Director, had the  
2070 authority to evaluate unlisted uses and structures to determine the most similar use type  
2071 or use category including whether the unlisted use may be permitted or treated as an  
2072 allowable accessory use or structure.

2073  
2074 And for it to be treated as an allowable accessory use or structure, you look to the  
2075 standards and the criteria that are in County Code 24-8407(C). And when you consider  
2076 these criteria, despite appellant's arguments, you see that a shipping container is not like  
2077 the permitted uses for structures that are accessory to single-family dwellings in the R-2  
2078 District.

2079  
2080 So, as I mentioned earlier, a shipping container is not customary, it's not commonly found  
2081 on residential property. It's not commonly used like a shed or other outbuilding like a  
2082 garage. And it's not consistent with the example accessory uses in the Household Living  
2083 Category that's an applicable category here. Some of those examples are garages,  
2084 greenhouses, and homes. Something along those lines.

2085  
2086 The industrial commercial nature of the shipping container is quite evident just from the  
2087 appearance. It has slats for a forklift's tines to lift a shipping container. They also come  
2088 equipped with corner casings so a crane can lift the shipping container, put it onto a  
2089 flatbed truck or a boat or a train. But they're plainly designed not to be permanently affixed  
2090 to property, but to transport goods, other materials, for industry or commercial uses. And  
2091 you can see here that the criteria are conjunctive. My office contends it doesn't meet any  
2092 of those criteria, but if it doesn't meet any single one of them, it cannot be treated as an  
2093 allowable accessory use under the County Zoning Ordinance.

2094  
2095 So my office contends that it is most similar to portable storage and that the Zoning  
2096 Administrator, the Director, was correct in treating it as such. So to return to the question  
2097 that I presented earlier. My office contends that the answer to that question is, "Yes". It  
2098 is subject to the standards for portable storage found in County Code, section 24-4511.  
2099 And the appellant may not keep the shipping container on his property for more than one  
2100 period not exceeding 10 consecutive days in a 6-month period. And, for those reasons,  
2101 I ask that the Board make the following motion.

2102  
2103 For the reason presented by the County attorney, the Board finds that the Director  
2104 correctly determined the appellant's shipping container is subject to the standards in  
2105 Section 24-4511 of the County Code. Because the appellant has kept the shipping  
2106 container on his property in the R-2 District for over 10 consecutive days, he is in violation

2107 of Section 24-4511(D). Accordingly, we ask that the Board affirm and uphold the  
2108 Director's decision.

2109  
2110 Thank you. And I'm happy to answer any questions.

2111  
2112 Mr. Green - Yes. Are there any questions from the Board to the attorney?  
2113 Hearing none, we'll move to the applicant. You can pull that up.

2114  
2115 Mr. Ralston - Okay. There we go. My name is Jonathan Ralston, R-a-l-s-  
2116 t-o-n. Thank you this morning for the opportunity to meet before the Board. My wife and  
2117 I, we purchased a decommissioned shipping container on November 5 to use as a shed.  
2118 During the last 4 months we have been waiting to locate the container in our backyard to  
2119 meet all required setbacks, paint the container, and landscape around it. We are excited  
2120 to move forward with these plans after this meeting.

2121  
2122 The Director seems to have two major concerns with us repurposing our container for a  
2123 shed. The first revolves around the definition of portable storage. Although the words,  
2124 Shipping container are listed in the definition, a shipping container is not in and of itself  
2125 the definition of portable storage. Instead, a shipping container is an example of  
2126 something allowable by the County to be used as temporary portable storage.

2127  
2128 The definition in Article 8, Division 5 reads, A container that is designed and rented or  
2129 leased for the temporary storage of commercial, industrial, or residential household  
2130 goods. The language is clear, this only applies to containers that are rented or leased for  
2131 temporary storage.

2132  
2133 The assumption cannot be made that this applies to all containers, or it should be written  
2134 as such. Our container is owned. It is not rented or leased. I have a copy here of the  
2135 invoice. There's some other pictures also that will be coming up.

2136  
2137 Additionally, we are not using the container for temporary storage, but instead for  
2138 permanent storage like any other shed. Finally, our container is not portable storage.  
2139 Although it came on the back of a truck, like any other shed would, we are not using it to  
2140 transport our storage from one location to another. It is also inaccurate to state that  
2141 because the words, Shipping Container, are listed under portable storage, that a shipping  
2142 container can serve no other purpose. The County has already set precedent by allowing  
2143 and permitting properties to use shipping containers for uses other than temporary  
2144 portable storage. And those are some of the pictures there.

2145  
2146 2400 Mechanicsville Turnpike uses a shipping container as part of their restaurant. And  
2147 3025 Hilliard Road uses shipping containers as a home. I am also aware of 2300  
2148 Anniston Street, and 1600 Crump Street that use shipping containers as permanent  
2149 storage.

2150  
2151 The other concern is that a shipping container is not customarily accessory. This is no  
2152 more than an incorrect opinion. The definition for accessory structure in Article 8, Division

2153 5, states a use or structure subordinate to the principal use or structure on the same lot  
2154 and serving a purpose customarily incidental there, too.

2155  
2156 This is not a question of whether a shipping container has a customary appearance or  
2157 design as other sheds. The definition states, a customary purpose. The purpose for the  
2158 container is for storage, which is the exact customary purpose of a shed.

2159  
2160 The County -- nowhere in the code is there a definition or specifications on what is or is  
2161 not a shed. My container has four walls, a roof, doors, and is made of metal like hundreds  
2162 of other sheds in the County and complies with all 9 requirements of accessory structures  
2163 listed in Section 24-4403(B).

2164  
2165 The other picture there is a shed near my house on Midway Road. As you can see, if you  
2166 look at a picture of my shipping container which currently is still red, but, like I said, we  
2167 want to move it in the back and paint it and make it pretty. It kind of looks just like a  
2168 shipping container with a gable roof on it. And the picture that I provided. And then, also,  
2169 just some anecdotal things. The company I bought the shipping container from, they're  
2170 a local company, they sell over 300 containers a year locally in the Richmond area. They  
2171 sell these mainly for storage buildings.

2172  
2173 And, you know, any internet search will show all of the countless ways people are  
2174 repurposing shipping containers. Anything from, you know, homes, offices, sheds,  
2175 gazebos. I mean, anything you can think of. That's all I have to say. Thank you.

2176  
2177 Mr. Green - Mr. Ralston, what is the purpose of your shipping container?  
2178 What will you use it for?

2179  
2180 Mr. Ralston - Well, I want to use it for storage. We had moved here almost  
2181 four years ago. We've had a storage unit since then and, you know, they just keep raising  
2182 the prices every month and so, you know, I figured that actually purchasing this over, you  
2183 know, just two years would, you know, be equivalent in price. So really just to store, you  
2184 know, whether it's my tools or, you know, gardening equipment, things like that. You  
2185 know. It's just another accessory use. Another shed.

2186  
2187 Mr. Green - And, I guess, not trying to be too intrusive. But you live in  
2188 such a beautiful neighborhood. Why wouldn't you just build a shed? Put a shed up? A  
2189 normal-style shed that would fit the neighborhood?

2190  
2191 Mr. Ralston - Right. Well. I mean. I think, you know, I mean, I agree with  
2192 you. I'm sure people think that, you know, doesn't look good. But, you know, the house  
2193 I showed you that the County allowed to be built, in my opinion, is an ugly house. Right?  
2194 But it's their home and it's their property. You know. Yes. I could buy a shed that would  
2195 at least be twice the cost. And, you know, where I plan to put it in this picture, it kind of  
2196 has to fit between two trees. And, really, that skinny long shape of the shipping container  
2197 would be the best use to fit in my yard. There's not another place to build a large shed.  
2198 So it's just best for our family and for, you know, just as far as cost.

2199  
2200 Mr. Green - That shed that we just saw, is that in your yard now?  
2201  
2202 Mr. Ralston - Yes, sir.  
2203  
2204 Mr. Green - So you already have a shed?  
2205  
2206 Mr. Ralston - Yes, sir.  
2207  
2208 Mr. Green - So you would keep that shed as well?  
2209  
2210 Mr. Ralston - That's correct.  
2211  
2212 Mr. Green - So you would have two sheds?  
2213  
2214 Mr. Ralston - That's what I'm hoping for. Yes. I don't think that is in  
2215 contradiction to any of the codes or anything.  
2216  
2217 Mr. Johnson - Are both of them the same -- look the same?  
2218  
2219 Mr. Ralston - No. The shipping container won't quite look like that. But we,  
2220 like I said, we do plan to paint it and, you know, make it a little prettier and get it out of the  
2221 end of our driveway. We've just been waiting -- as is stated in the report we're, you know,  
2222 the guidance was not to do that. Because every step along the way, you know, every  
2223 time the County's told me to do something, You need to get a building permit. And I did  
2224 that. And, you know, You need to do this. And I did -- every time they keep trying to  
2225 block me from having this and then at the end of the road they just said, Look, you're  
2226 never going to be able to have this. Don't waste your time moving it into your backyard  
2227 or painting it. You know. So.  
2228  
2229 Mr. Pollard - So these conversations were before you got this shipping  
2230 container?  
2231  
2232 Mr. Ralston - No. And that's another thing is glancing through the code, I  
2233 mean, I would not assume to look in temporary portable storage because I'm not using  
2234 this for temporary portable storage. If you're going to get a POD or a Rat Pack or one of  
2235 those things, that's temporary portable storage.  
2236  
2237 I bought this to use as a shed. So when you look under accessory use structures, I mean,  
2238 the 9 points in no way, you know, prohibit me from having something just because it's  
2239 ugly or, you know, in someone's opinion looks industrial. So, you know, I bought it and  
2240 now I'm kind of at this hardship of, you know, I own it. I just want to keep it on my property.  
2241 And it's, you know, the county's kind of just been trying to tell me not to. I just think  
2242 because they think it's ugly. And, you know.  
2243  
2244 Mr. Pollard - But the County became aware of it because of complaints.

2245  
2246 Mr. Blankinship - Yes.  
2247  
2248 Mr. Ralston - That's what I understand. Yes.  
2249  
2250 Mr. Bell - Real quickly --  
2251  
2252 Mr. Johnson - Go ahead.  
2253  
2254 Mr. Bell - Real quickly. What does a shed look like to you?  
2255  
2256 Mr. Ralston - Well, I think a shed is something you can store things in.  
2257 That's another thing. I sent an email to Ms. Jennifer Sale on January 13 before they cited  
2258 me the violation, you know, outlining basically the same argument I just had. And I  
2259 specifically asked that there are no architectural, aesthetic, or design guidelines anywhere  
2260 in the Henrico Code. And I asked what it is that would constitute a shed and what I would  
2261 need to do to have the County accept this as a shed. Because, you know, a shed is not  
2262 defined. And if you're going to ask me, it's --  
2263  
2264 Mr. Bell - You're making the assumption you don't know what a shed  
2265 looks like.  
2266  
2267 Mr. Ralston - Well I think -- I know what a shed is used for. So I don't know  
2268 if what it looks like is really, you know, important.  
2269  
2270 Mr. Green - But you keep referring to this as the -- as a shipping container.  
2271 Its primary use is as a shipping container. Correct?  
2272  
2273 Mr. Ralston - Well, but it cannot be used for that. I mean, they get  
2274 decommissioned. I can't take that and fill it with items and put it on a cargo ship and send  
2275 it to China. You know. That's what it was built as, but that's not its purpose and that's  
2276 not what I'm using it for, nor am I using it for temporary portable storage. So it just comes  
2277 down to, you know, what are you using it for. If you're going to use it for temporary  
2278 portable storage, the reason why that is in the code is so that way people only have 10  
2279 days or outside of residential districts have 30 days.  
2280  
2281 Mr. Pollard - Is there a process to repurpose shipping containers, for lack  
2282 of another example? Like, I'm trying to figure out how we're -- how was a, like, two or  
2283 three shipping containers able to create a house out of that. Are you able to use a  
2284 shipping container as your home?  
2285  
2286 Mr. Blankinship - They went through a building permit to be able to do that. I  
2287 know that.  
2288  
2289 Mr. Ralston - And that's if I may because that's something that, you know,  
2290 it's another difference is Virginia Building Code, there are specifications on what is a

2291 home, what can be a bedroom, egress, you know, all these things that you need to be a  
2292 home. But there is nothing for a shed.

2293  
2294 And actually in the Virginia Building Code, which was revised last year as the building  
2295 inspector of, you know, let me know, that in section 102.311, which is the exemptions of  
2296 the code, it specifically states that if you're going to keep a shipping container on your  
2297 property for storage, it is exempt from the code. Which makes sense, because there's  
2298 no way for an inspector to come and say, Oh, you know, these welds aren't tight enough  
2299 or, you know, anything like that. I mean, if you're going to use it as a storage building  
2300 then, you know, the building inspectors aren't concerned.

2301  
2302 Mr. Blankinship - And it is customary to use them that way in industrial areas.

2303  
2304 Mr. Ralston - Yeah. I mean, definitely, but I don't think only industrial areas.  
2305 Just because it's frowned upon in Henrico County, I mean, maybe there would be more  
2306 available if the County didn't prohibit it. You know. So in Richmond City and Hanover, I  
2307 mean, there are plenty of other surrounding counties that people use them. You know.

2308  
2309 Mr. Johnson - And also the ones that you would use in showing the  
2310 examples prior they also look like the house. They also had roofs and -- like that. So it  
2311 wasn't looking totally like something you were just bringing in to use to take away.

2312  
2313 Mr. Ralston - Right. And, once again, I mean, I stated that we will paint it.  
2314 I mean, I've even discussed with my wife painting, you know, fake windows on it and  
2315 really making it look like a shed. But I think it just comes down to that nowhere in the  
2316 code does it dictate, Well, yes you can keep it once it has a gabled roof. Because I can  
2317 build a shed that same size out of metal with a flat roof, with no windows. I mean, I can  
2318 make that into a shed. And this has been going on a long time, like I said.

2319  
2320 It wasn't just I got cited one day and here we are. I mean, I got the building permit and,  
2321 you know, I've been talking with Planning and Building and all of this. And, you know,  
2322 one person admitted to me, I said, Well what if I just took a torch and cut it all apart and  
2323 got an engineer to put drawings together of me welding it back together and I built it,  
2324 would it then be a shed? And, you know, so it just kind of comes down to these, you  
2325 know, what is a shed and all of this. And --

2326  
2327 Mr. Pollard - Two more questions. So did you anticipate your neighbor's  
2328 reaction?

2329  
2330 Mr. Ralston - No. It's unfortunate. No one in the community has come and  
2331 spoken with us directly. And so I don't know, I mean, I guess we'll hear from them. I don't  
2332 know exactly what their thoughts are but, you know, I mean, every time I drive around  
2333 with my wife I have to hear about, you know, I wouldn't have planted that there or I  
2334 wouldn't paint my door that color.

2335

2336 So, I mean, these are all just opinions that, you know, really, you know, don't have validity  
2337 I guess on what someone's shed looks like on their property if it's not up to the standards.  
2338 That's the reason why I don't live in an HOA. And I suppose if they want that kind of, you  
2339 know, architectural control, maybe, you know, they should live in an HOA. Because there  
2340 are plenty of neighborhoods right around us that have HOA guidelines.

2341  
2342 Mr. Pollard - I was going to ask you that. It didn't seem like an HOA existed,  
2343 but I just wanted to ask.

2344  
2345 My last comment is, I think you make some great arguments. I think that's something you  
2346 should make before you purchased the container and put it outside your house.

2347  
2348 Mr. Ralston - Yeah. You're not the first one to tell me that. When I applied  
2349 for the permit they said, Oh, well you're thinking about buying it, well you can't. I said,  
2350 Well, no. It's in my driveway right now. So I was told to get a permit.

2351  
2352 Mr. Green - Okay. All right. Thank you.

2353  
2354 Mr. Ralston - Okay.

2355  
2356 Mr. Green - Is there any opposition to this --

2357  
2358 Mr. Blankinship - Appeal.

2359  
2360 Mr. Green - -- appeal. I'm sorry.

2361  
2362 Mr. Green - Would you spell your name, please?

2363  
2364 Mr. Kistler - Hi. My name is Grant Kistler. I live on Thames Drive, two  
2365 houses down. I'll just keep this short and sweet. Two things in my opinion. This is a  
2366 commercial, industrial structure intended to be placed in the middle of a beautiful  
2367 residential neighborhood. I've had multiple people, visitors to my home, see the shipping  
2368 container and ask, What's the deal with the shipping container? Not, What's the deal with  
2369 the shed?

2370  
2371 And just something one of the Board members brought up in regards to asking neighbors  
2372 what they thought about this before the purchase of it. I've lived in the neighborhood for  
2373 3 1/2 years. I built a privacy fence on our property. I called the County. Made sure of  
2374 what I could and couldn't do.

2375  
2376 I went to all of my surrounding neighbors before I purchased any of the materials and I  
2377 let them know that I intended to build a fence. Just to see what their reaction was. If they  
2378 were okay with it. If they weren't okay with it. And that has not happened in this -- in this  
2379 case. But, in conclusion, in my opinion as a homeowner in this neighborhood that is not  
2380 a shed.

2381

2382 Mr. Green - Are there any other individuals  
 2383  
 2384 Mr. Lawson - Thank you Chairperson and Board members and staff. My  
 2385 name is Joe Lawson. I live on 1510 Monmouth Drive, and I'm very near the vicinity to  
 2386 this -- to this home and this container.  
 2387  
 2388 First off, I'd like to draw attention to a petition I believe you have in your possession. That  
 2389 petition was signed by owners of 26 homes surrounding this property and I'll tell you in  
 2390 conversations with many of those homeowners they feel similar as I do that this is a, you  
 2391 know, an industrial, ocean-going shipping container and it should not be repurposed as  
 2392 an accessory structure. It's completely out of character for the neighborhood and, you  
 2393 know, even if you were to paint it or paint some windows on it, you're still putting lipstick  
 2394 on a pig. And so, you know, I am opposed to it, and I hope that you deny the appeal.  
 2395 Thank you.  
 2396  
 2397 Mr. Green - Thank you. Are there any other individuals going to speak in  
 2398 opposition? Anyone out there to speak in support? Is there anyone on Webex to speak  
 2399 in support or opposition to this?  
 2400  
 2401 Mr. Lewis - There's no one on Webex to speak to this item.  
 2402  
 2403 Mr. Green - He can rebut that. Right?  
 2404  
 2405 Mr. Blankinship - No. Not for appeals.  
 2406  
 2407 Mr. Green - Okay. What is the wish of the Board?  
 2408  
 2409 Mr. Reid - After hearing both the arguments and with all due respect to  
 2410 the property owner, I move that we affirm the Director's decision and uphold the notice of  
 2411 violation for the reasons presented by the County Attorney. I think the Director correctly  
 2412 determined that the shipping container is subject to the standards in Section 24-4511(D)  
 2413 of the County code. Because the shipping container has been on the property for over  
 2414 10 days, it is in violation of section 24-4511(D).  
 2415  
 2416 Mr. Green - Is there a second?  
 2417  
 2418 Mr. Pollard - I'll second.  
 2419  
 2420 Mr. Johnson - Second.  
 2421  
 2422 Mr. Green - The motion was made by Mr. Reid. Seconded by Mr. Pollard.  
 2423 Is there any discussion? The discussion I have is once we vote and if we uphold the  
 2424 Director's decision, when will this thing have to be removed?  
 2425  
 2426 Mr. Blankinship - I believe it would be 30 days. But I'd have to discuss that with  
 2427 Community Maintenance. That's a separate process from yours.

2428  
2429 Mr. Green - But are you all understand that if we vote to uphold the appeal,  
2430 that it would be removed within 30 days. We're still in discussion.

2431  
2432 Mr. Johnson - My discussion would be if that was -- with a roof on it -- just  
2433 forget it.

2434  
2435 Mr. Green - Motion to --

2436  
2437 Mr. Pollard - It's up there. I would add something, probably along the lines  
2438 of Mr. Johnson. You just want to talk to your neighbors first. In so many cases you find  
2439 out if the neighbors had talked a little bit, it's tweaks people could have made and it still  
2440 might have, you know, one guy said it's lipstick on a pig. So you might not have convinced  
2441 them, but it could have saved you this process at a minimum. Or you could have kind of  
2442 shared your intent. So I think it's one of those ask for forgiveness instead of permission  
2443 situations.

2444  
2445 Mr. Green - The motion has been made and seconded. All in favor of  
2446 upholding the Director's decision say aye. Opposed like sign. It shall be removed within  
2447 30 days.

2448  
2449 On a motion by Mr. Reid, seconded by Mr. Pollard, **the Board affirmed the decision of**  
2450 **the director of planning and denied the appeal.**

2451  
2452  
2453 **Affirmative:** Bell, Green, Johnson, Pollard, Reid 5  
2454 **Negative:** 0  
2455 **Absent:** 0

2456  
2457  
2458 Mr. Blankinship - Minutes from February?

2459  
2460 Mr. Green - Has everyone had an opportunity to review the minutes from  
2461 February? Is there a motion to approve?

2462  
2463 Mr. Reid - So moved.

2464  
2465 Mr. Johnson - I motion. Second.

2466  
2467 Mr. Green - All in favor say aye. All opposed like sign. Minutes been  
2468 approved.

2469  
2470 On a motion by Mr. Reid, seconded by Mr. Johnson, the Board **approved the minutes**  
2471 **of the February 27, 2022 Board of Zoning Appeals meeting.**

2472  
2473

2474	<b>Affirmative:</b>	<b>Bell, Green, Johnson, Pollard, Reid</b>	<b>5</b>
2475	<b>Negative:</b>		<b>0</b>
2476	<b>Absent:</b>		<b>0</b>

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Mr. Blankinship - Mr. Chair, I listed on the agenda a request for reconsideration. We did not receive a request. I had spoken to the person so I put it on the agenda as a placeholder, but they did not come in with a request. I would like to trespass on your valuable time for just another moment, though, just to say that this is in appreciation of and recognition for continuous and loyal service. We present this certificate to Paul M. Gidley for 25 years of service on the 4th day of September.

Mr. Johnson - Congratulations, Paul.

Mr. Gidley - Thanks.

Mr. Pollard - Congratulations.

Mr. Blankinship - Make a very short speech.

Mr. Gidley - It's been a long day but thank you. I appreciate it. I came to the County as an inspector, so I know the work they do and appreciate that and always try to be helpful to them as I worked my way up. And I have great coworkers who I enjoy working with. Thank you very much and thank you to the Board for, you know, the service you give as well.

Mr. Green - Thank you. Congratulations. So, you're going to work another, what, 25 years?

Mr. Gidley - I want to go somewhere warm.

Mr. Johnson - Yes.

Mr. Green - Like Omaha! Turn the mic's off. All you all going to turn the mics off?

Mr. Pollard - Do we need a motion to adjourn?

Mr. Green - Is there a motion to adjourn?

Mr. Bell - So moved.

Mr. Johnson - Second.

Mr. Green - Second. All in favor. Aye.

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**Affirmative:**  
**Negative:**  
**Absent:**

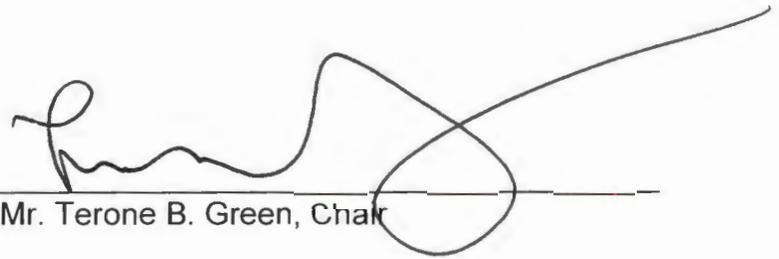
Bell, Green, Johnson, Pollard, Reid

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The mic is still on.

Mr. Blankinship -

Thank you for your awareness.



Mr. Terone B. Green, Chair



Mr. Benjamin W. Blankinship, Secretary