

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 MAY 23, 2019 AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE**  
5 ***RICHMOND TIMES-DISPATCH* MAY 6, 2019 AND MAY 13, 2019.**  
6  
7

8 Members Present: Helen E. Harris, Chair  
9 Gentry Bell, Vice Chair  
10 Walter L. Johnson, Jr.  
11 Terone B. Green  
12 James W. Reid  
13

14 Also Present: Jean M. Moore, Assistant Director of Planning  
15 Lee Ann Anderson, Senior Assistant County Attorney  
16 Andrew R. Newby, Assistant County Attorney  
17 Benjamin Blankinship, Secretary  
18 Paul M. Gidley, County Planner  
19 R. Miguel Madrigal, County Planner  
20  
21

22 Ms. Harris - Welcome to the May 23rd meeting of the Board of Zoning  
23 Appeals. All who are able please stand and pledge allegiance to the flag.  
24

25 [Recitation of the Pledge of Allegiance]  
26

27 Ms. Harris - Mr. Blankinship, who acts as our secretary, will read the rules  
28 now that govern this meeting.  
29

30 Mr. Blankinship - Good morning, Madam Chair, members of the board, ladies  
31 and gentlemen. The board actually adopted some new rules last month, so the rules for  
32 this meeting are as follows:  
33

34 Acting as secretary I will announce each case. We'll do the conditional use permits first,  
35 and then we'll do the variances and then we'll do the appeals. I'll announce each case  
36 and then we will ask everyone who intends to speak to that case to stand and be sworn  
37 in.  
38

39 Then for the use permits and variances a member of the staff will give a brief introduction,  
40 and then the applicant will present their case, and then anyone else who wishes to speak  
41 will be given the opportunity to speak. After everyone has had a chance to speak the  
42 applicant and only the applicant, will have an opportunity for rebuttal.  
43

44 On the appeals a member of the County Attorney's staff will make the presentation on  
45 behalf of the Director of Planning, and then the appellant will give their argument, and  
46 then that will be the end of the hearing.

47  
48 The board will now make their decisions at the end of each hearing. If you've been here  
49 before, that is the main change to the rules. We used to make all of the decisions at the  
50 end of the meeting. We're going to begin to make the decisions after each case in the  
51 normal fashion.

52  
53 This meeting is being recorded, so we will ask everyone who speaks to speak directly  
54 into the microphone on the podium. State your name, and please spell your last name so  
55 that we get it correctly in the record.

56  
57 There are no requests for deferrals or withdrawals, and I believe that's everything.

58  
59 Ms. Harris - Okay. Well can we please call the first request.

60  
61 **CUP2019-00017 RICHMOND MONTESSORI SCHOOL** requests a conditional  
62 use permit pursuant to Section 24-116(d)(1) of the County Code to allow a temporary  
63 classroom trailer at 501 N Parham Road (Parcel 752-737-6676) zoned One-Family  
64 Residence District (R-2) (Tuckahoe).

65  
66 Mr. Blankinship - Would all who intend to speak to this case please stand and  
67 be sworn in? Raise your right hands please. Do you swear the testimony you're about to  
68 give is the truth, the whole truth, and nothing but the truth, so help you God? Thank you.  
69 Madam Chair, before we begin let me call to your attention that there are some changes  
70 to the recommended conditions on this case and they were left before your place at the -  
71 - all right. Mr. Gidley.

72  
73 Mr. Gidley - Thank you Mr. Secretary. Good morning Madam Chair,  
74 members of the board.

75  
76 Ms. Harris - Good morning.

77  
78 Mr. Gidley - The Richmond Montessori School is located off Parham  
79 Road, just south of its intersection with Derbyshire Drive. The site contains 10 acres of  
80 land that, as you can see, backs up to the Forest Ridge and Yorkshire subdivisions.

81  
82 Back in 2012 the Planning Commission approved a plan of development authorizing  
83 construction of a 7,400-square-foot classroom building along with two future buildings.  
84 Although the classroom building has been constructed, the school has an immediate need  
85 for two classrooms to hold their foreign language instruction. To accommodate this need  
86 they are requesting permission to use a modular building on a temporary basis.

87  
88 In evaluating this request, the site is zoned a combination of R-2 and R-3, one-family  
89 residence districts, and is designated as semi-public on the future land use plan. The use  
90 of the property is consistent with these designations. As far as any substantial detrimental  
91 impact, this is a picture of the modular building here. It would measure 65 feet wide and  
92 28 feet deep. And the proposed plot plan is here. This is where the modular building would

93 go, right here. The closest residents are behind it here, roughly 150 feet distant. This is a  
94 view looking west towards Parham Road. The proposed location that you just saw in the  
95 plot pan would go right here behind these trees. And then turning around and looking  
96 towards the east, this is the closest resident. And as you can see between the evergreen  
97 shrubs and the trees in the distance there is quite a bit of screening, so staff really doesn't  
98 anticipate any substantial detrimental impact. In addition, this use permit would have a  
99 two-year time limit on it.

100  
101 In conclusion, the Richmond Montessori School received approval for two additional  
102 classroom buildings on campus. However, due to their immediate need for foreign  
103 language instruction classrooms they are requesting permission for a temporary modular  
104 building to be placed on the site. Due to the temporary nature of this request along with  
105 the screening between the school and the adjacent properties, staff recommends  
106 approval of this request subject to the modified conditions that you have been provided.  
107 And If you have any questions, I will be happy to answer those.

108  
109 Mr. Blankinship - That's probably a good place for me to interrupt and take you  
110 through the conditions. Mr. Gidley wasn't even aware of this. I spoke to the applicant I  
111 believe it was yesterday, might have even been the day before. If you'll look at condition  
112 number four, we had recommended lattice skirting, and that's our standard condition.

113  
114 The applicant informed me that their package that they're leasing actually includes a solid  
115 vinyl skirting, which is really preferable to a lattice skirting in my view, so we changed that  
116 to read "Solid vinyl or lattice skirting." Either the standard condition or better.

117  
118 And then, on the seventh and eighth conditions, as you know, your authority on these use  
119 permits is strictly limited to 24 months, and the question is when does the 24 months  
120 begin. Normally its when the permit is approved, but they're not going to actually have the  
121 trailer on site for another month or two, so in this case the 24 months will run from their  
122 certificate of occupancy. And that way it's still limited to 24 months, but it will allow them  
123 to get through the school year and into the summer again.

124  
125 Ms. Harris - Is there a change in the condition of eight?

126  
127 Mr. Blankinship - Yes, ma'am. It's the same change. Rather than keying off of  
128 the date of approval, it's from the date of the certificate of occupancy.

129  
130 Ms. Harris - Okay. Do we know the construction of the modular trailer?

131  
132 Mr. Gidley - Let's go back -- this doesn't really show it.

133  
134 Mr. Blankinship - The applicant also provided some other information; it should  
135 be on the desktop there.

136  
137 Mr. Gidley - Okay, let's see.

139 Mr. Blankinship - It's not part of our presentation. Yes, that's it right there. If  
140 you just want to flip through those. And perhaps we should let the applicant speak to that,  
141 but this is some additional information that was just provided.

142

143 Mr. Gidley - I can let them address that, since they're familiar with their  
144 building.

145

146 Ms. Harris - Okay, sorry. Any questions for Mr. Gidley? Thank you, sir.

147

148 Mr. Gidley - Thank you, ma'am.

149

150 Ms. Harris - Okay, would the applicant please come forth and give us your  
151 name and spell your last name, please.

152

153 Ms. Wilburn - Good morning. I'm Tracy Wilburn, W-I-L-B-U-R-N, and I'm  
154 Director of Finance and Operations at Richmond Montessori School.

155

156 Ms. Murray - Good morning. I'm Grainne Murray, M-U-R-R-A-Y, and I'm the  
157 Head of School at Richmond Montessori School.

158

159 Mr. Wray - Good morning. I'm Charles Wray, W-R-A-Y, Principal with  
160 Quinn Evans Architects.

161

162 Mr. Wimks - Thank you. Jonathan Wimks, W-I-M-K-S, with VHB, we're the  
163 civil engineer for the previous project on the site.

164

165 Ms. Harris - Okay. Do you want to state your request please?

166

167 Ms. Murray - So, we are requesting a temporary modular learning unit for  
168 the next 24 months for our foreign language program. So, we have had a slight uptick in  
169 enrollment over the last couple of years that looks like it will continue for the next year or  
170 two, academic years, and so we're trying to accommodate those students.

171

172 Ms. Harris - Okay. Would Mr. Wimks address the construction of the  
173 exterior of the modular trailer?

174

175 Ms. Wilburn - Yes. I believe it's a vinyl-clad unit.

176

177 Ms. Harris - Okay. Had you completed your statement?

178

179 Ms. Murray - Yes.

180

181 Ms. Harris - You had, okay. I do have a question about the restrooms. I  
182 noticed that in the report there are no restrooms in the facility, right?

183

184 Ms. Murray - That's right.

85  
186 Ms. Harris - Aren't you concerned about the weather and people having to  
187 go out of this building to the permanent location?  
188  
189 Ms. Murray - So, students will be in the building, or in the classrooms, for  
190 no longer than one hour at a time, and the building backs up onto the permanent structure  
191 where the restroom is right there, so our students are familiar with moving around through  
192 buildings, because it's a middle school, so we don't foresee this to be a problem.  
193  
194 Ms. Harris - Okay. It's just a few steps from one building to the other.  
195  
196 Ms. Murray - It's a few steps, yes.  
197  
198 Ms. Harris - Okay. Are there other questions by board members? Have  
199 you seen the new conditions?  
200  
201 Ms. Murray - Yes.  
202  
203 Ms. Harris - And so you do agree with those?  
204  
205 Ms. Murray - Yes. We agree.  
206  
207 Ms. Harris - Okay. If there are no more questions, we thank you for coming  
208 in and we congratulate you on your great success and wealth.  
209  
210 Ms. Murray - Thank you.  
211  
212 Ms. Harris - Okay. Mr. Blankinship.  
213  
214 Mr. Blankinship - A motion will be in order.  
215  
216 Ms. Harris - Okay. A motion is in order for this --  
217  
218 Mr. Blankinship - Oh, I'm sorry. We haven't asked for anyone else.  
219  
220 Ms. Harris - Oh.  
221  
222 Mr. Blankinship - They were the only ones who stood, but we should call.  
223  
224 Ms. Harris - Right. We do have to pause to see if there's anyone who is in  
225 favor of this request or is there anyone who is opposed to this request. Okay, now we're  
226 ready to --  
227  
228 Mr. Blankinship - Now a motion, I think.  
229  
230 Ms. Harris - Take our vote. What is the pleasure of the board?

231  
232 Mr. Reid - As the Tuckahoe representative, I move that we approve  
233 conditional use permit number 2019-17, to permit the Richmond Montessori School to put  
234 a modular building on their campus subject to the conditions recommended by the staff.  
235

236 The school has plans to expand, and this will allow them to meet their needs temporarily.  
237 The school is consistent with the zoning and comprehensive plan for the area, and I do  
238 not anticipate any detrimental impact on the neighbors from the approval.  
239

240 Ms. Harris - Okay, is there a second?

241  
242 Mr. Green - Second.  
243

244 Ms. Harris - It's been moved and properly seconded that we approve this  
245 conditional use permit. Are there any questions on the motion? All in favor of the approval  
246 say aye. Those opposed say no. The vote is unanimous.  
247

248 After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Green,  
249 the Board **approved** application **CUP2019-00017 RICHMOND MONTESSORI**  
250 **SCHOOL's** request for a conditional use permit pursuant to Section 24-116(d)(1) of the  
251 County Code to allow a temporary classroom trailer at 501 N Parham Road (Parcel 752-  
252 737-6676) zoned One-Family Residence District (R-2) (Tuckahoe). The Board approved  
253 this request subject to the following conditions:  
254

255 1. Only the improvements shown on the plot plan and building design filed with the  
256 application may be constructed pursuant to this approval. Any additional improvements  
257 shall comply with the applicable regulations of the County Code. Any substantial changes  
258 or additions to the design or location of the improvements shall require a new conditional  
259 use permit.  
260

261 2. Before beginning any clearing, grading, or other land disturbing activity, the applicant  
262 shall obtain approval of an environmental compliance plan from the Department of Public  
263 Works.  
264

265 3. The applicant shall obtain all necessary building permits. The modular building shall  
266 not be occupied until a certificate of occupancy has been issued.  
267

268 4. The applicant shall install solid vinyl or lattice skirting around the base of the modular  
269 building.  
270

271 5. All exterior lighting shall be shielded to direct light away from adjacent property and  
272 streets.  
273

274 6. The existing redbud trees along the adjacent access drive shall be retained.  
275

276 7. One year from the issuance of a certificate of occupancy, the applicant shall submit a

report to the Planning Department describing their plans for permanent classroom space.

8. The modular building shall be removed from the property within two years from the issuance of a certificate of occupancy, at which time this permit shall expire. This permit shall not be renewed.

Affirmative:	Bell, Green, Harris, Johnson, Reid	5
Negative:		0
Absent:		0

Ms. Harris - We move on to the next case, Mr. Blankinship.

Mr. Blankinship - Conditional Use Permit 2019, number 18.

**CUP2019-00018**                      **JOSEPH DICKENS** requests a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow a detached shed in the front yard at 1004 Francisco Road (ROLLINGWOOD ADDN) (Parcel 758-740-4512) zoned One-Family Residence District (R-3) (Tuckahoe).

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

Mr. Madrigal - Thank you, Mr. Secretary. Madam Chair, good morning.  
Members of the board.

Ms. Harris - Good morning.

Mr. Madrigal - Before you is a request to allow a detached shed in the front yard of a one-family dwelling. The subject property is in the Rollingwood addition subdivision. The lot is over 14,000-square-feet in area, it is wedge-shaped, and follows the inside curve of Francisco Road.

The subdivision plat established a building setback line of 40 feet along its entire frontage. The lot's physical condition makes for a very wide and arching front yard area. Further complicating matters, the lot slopes up in an easterly direction at a 14 percent slope, and the home sits at a higher elevation than the street. The property is improved with an existing one-story, 1420-square-foot home, with a partially finished basement and open parking. It was built in 1955.

Within the last year the applicant had an 80-square-foot shed installed in the landscape plantings located between the two driveways -- between the two driveway openings along the street. And here you can see the shed. Driveway openings are on either side. Because

323 of the small size of the shed, a building permit was not required, but it still must comply  
324 with setback requirements and the established 40-foot building line. The current shed  
325 placement violates both of these requirements.

326  
327 Because of the shed's high visibility, the county did receive a complaint. Due to the  
328 shallow nature of the rear yard, existing landscaping, and the sloping nature of the lot, the  
329 applicant has limited options as to where he can place the shed on the property.

330  
331 The applicant's proposal is to locate the shed further into the lot and closer to the  
332 residence, out of the front set-back area. This location will provide good access, capitalize  
333 on the existing driveway, and provides partial screening from the street. The shed is going  
334 to go behind the car. And here's a different view, so it's going to be essentially in this area  
335 here.

336  
337 Although the shed is further back on the lot, it is still technically in the front yard, and  
338 requires the approval of a conditional use permit. The property is zoned R-3 and is  
339 designated SR-2 on the 2025 Future Land Use map. A one-family dwelling is a principal  
340 permitted use in the R-3 district and is consistent with the comprehensive plan.

341  
342 Sheds and accessory structures are customary and incidental to a one-family dwelling  
343 and are allowed by right in the rear-yard. When located in the front or side-yard they are  
344 required to obtain a CUP. In this case the applicant is limited by the lot size, shape and  
345 topography. The home's placement further limits where he can locate the shed.

346  
347 The rear yard is approximately 26-foot-deep and has a small retaining wall and berm that  
348 prohibits the shed's placement. And here you can see the rear yard and the berming that's  
349 occurring.

350  
351 Although the shed will be in the front yard, it will be towards the rear of the home, and  
352 partially visible from the street. The lot sits at a higher elevation than the street, and a  
353 significant portion of the lot's frontage is heavily landscaped with shrubs and trees  
354 providing screening. And here you can see the front planting area and there's the shed.  
355 The shed will be visible from the driveway openings, and along the front of the home,  
356 which should have a minor impact on the street. And the shed's placement will be right  
357 where the cursor's at, and only right there.

358  
359 The most impacted neighbor is to the west, here. Approximately 30 feet distant from the  
360 shed. The shed's visual impact on that neighbor should be minimal, since their home sits  
361 at a higher elevation, and the back of the shed will face their side façade. Additionally,  
362 there's a 6-foot tall privacy fence and landscaping to further screen the shed from the  
363 neighbor's view.

364  
365 An alternate location for the shed is difficult due to the sloping nature of the lot, existing  
366 retaining walls, soil berming, and landscaping. Based on these physical conditions, staff  
367 does not anticipate any significant or substantial detrimental impacts on adjacent property  
368 or the neighborhood.

69  
370 In conclusion, the proposed use is consistent with the zoning and comprehensive plan  
371 designations of the property. Although the shed is located in the front yard, It has minimal  
372 impact on the streetscape and adjacent neighborhood, due to the existing screening and  
373 landscaping.  
374

375 The shed's placement takes advantage of a flat and partially screened area on the lot and  
376 makes use of the existing driveway. The shed's location also preserves existing  
377 landscaping and screening, which helps limit its impact on the adjacent property and the  
378 neighborhood. Staff does not anticipate any significant detrimental impacts. Based on the  
379 facts of the case staff recommends approval subject to the conditions.  
380

381 This concludes my presentation. I'll be happy to answer your questions.  
382

383 Ms. Harris - Mr. Madrigal, so is it our understanding that they will remove  
384 the current shed?  
385

386 Mr. Madrigal - Yes, ma'am. Go to the plot plan here. The shed is roughly in  
387 this area, so they're going to be taking it and moving it back here.  
388

389 Ms. Harris - Okay.  
390

91 Mr. Madrigal - Code requires a 10-foot distance between the shed and the  
392 home, so they are going to have to actually slide it a little bit further, which will require him  
393 to do a little bit of grading in that area.  
394

395 Ms. Harris - Okay.  
396

397 Mr. Madrigal - Let's see here. Here you can see they're going to have --  
398 probably have to remove some shrubs here as well as these steps, take some soil out,  
399 so they create a flatter area for the proposed shed.  
400

401 Ms. Harris - Okay. Other questions from board members?  
402

403 Mr. Johnson - Yes. You said the property is elevated on the rear -- or the  
404 side?  
405

406 Mr. Madrigal - Yes, sir. Here we are on the street and you can see the lot  
407 slopes up. And if you're looking at the home, you can see a pretty significant grade change  
408 between the street and the property. And here you can see, standing on the street, the  
409 shed's going to be back here. So, this is probably where it's going to be the most impactful  
410 as far as visibility of the shed. But again, it's going to be in the back, so it should be  
411 minimal.  
412

413 Mr. Johnson - Yes, okay.  
414

415 Ms. Harris - Are there other questions from board members? Now when I  
416 drove by there, I was wondering about it toppling over, you know. I said a serious  
417 rainstorm or a mud storm or -- we have a problem here. So, I'm glad to know that they  
418 want to move it.

419  
420 Mr. Madrigal - Yes, ma'am.

421  
422 Ms. Harris - Any other questions for Mr. Madrigal? Thank you so much.

423  
424 Mr. Madrigal - Thank you.

425  
426 Ms. Harris - We would like the applicant to come forth now and give us the  
427 reasons for your request.

428  
429 Mr. Dickens - Hi. My name is Joseph Dickens, D-I-C-K-E-N-S. I live at 1004  
430 Francisco Road. And I retired about a year and a half ago, and I was living up in Maryland.  
431 And I wanted to come back here, because I'm a Richmond Spider, and that's close to my  
432 alma matter.

433  
434 And so, I purchased that house and the guy that was doing some work for me suggested,  
435 he said, "Well, you know, you'll probably need to have a shed." Because I moved from a  
436 house that had a little bit more than 4,000 square feet, and this house basically even with  
437 the basement, is only about 1,800 square feet. And so, I got rid of a lot of stuff, but I still  
438 have a bunch of junk. I mean it's, you know, it's amazing when you move and you're old.  
439 But anyway, and so he said, "Well, you know, you ought to put a shed on the property,  
440 and 8 by 10 shed, and this is the perfect space for it." You know. Well, I didn't know any  
441 different, and so that's where they put the shed. And then someone pointed out to me, I  
442 was talking to Ben, and said, "Well, you know, you can't have it there, because, there's  
443 this no build zone." Which I wasn't aware of.

444  
445 And so now I'd like to move it, you know, closer back there and, honestly, it'll be in kind  
446 of a little notch there and I don't think it'll impact people very much. You know. And it also  
447 matches the house, you know, the roof's pretty much the same color, the, you know, the  
448 color of the shed kind of matches the house as well. So, anyway, yeah. I'll be happy to  
449 answer any questions. I just don't know what you're interested in.

450  
451 Ms. Harris - Right. What type of foundation do you -- are you using for that  
452 and is it the same foundation that you used for the pervious shed? What is it resting on?  
453 What is it resting on now?

454  
455 Mr. Dickens - Oh, okay. You know, well, I mean, I think, as I understand it  
456 and I -- look, you know, I'm a scientist, not a builder. You know. But it'll just be on the  
457 ground, I think. Because I think they said that the support on the bottom, is treated and,  
458 you know, it'll be installed the way they install it. Currently it kind of sits on some blocks,  
459 you know, which they put under there to level it. I think I was told that it probably won't  
460 need to be on blocks once it's moved, because it'll be on a level area there.

61  
462 Ms. Harris - Okay. And you going to anchor it to what? You don't -- you  
463 don't know how they're going to anchor it?  
464

465 Mr. Dickens - I don't really know. I mean, it's pretty heavy. But they could  
466 anchor it, I guess. It's going to have in it a lot of research notes and publications and stuff,  
467 so that's pretty heavy.  
468

469 Ms. Harris - Okay, it's going to be difficult to blow away, in other words.  
470

471 Mr. Dickens - No. I don't think so. God willing.  
472

473 Ms. Harris - Okay.  
474

475 Mr. Dickens - Well, I mean, anything can happen, you know.  
476

477 Ms. Harris - Right.  
478

479 Mr. Dickens - But I don't think so. And plus, it's kind of in a little notch there,  
480 and if you were to see where it is, which it's elevated all around it, you know, and so the  
481 wind I don't think -- I don't think that'd be a problem.  
482

83 Ms. Harris - Okay. Okay. Are there other questions of Mr. Dickens?  
484

485 Mr. Reid - Mr. Dickens, I think one of your neighbors had a complaint  
486 about the location of the shed now.  
487

488 Mr. Dickens - Yeah.  
489

490 Mr. Reid - Is everybody happy with where you going to put it back -- as  
491 far as you know?  
492

493 Mr. Dickens - Well, the people that are the most impacted, yes, the people  
494 who would -- like across of the street, you know, they -- well, I mean, right at the driveway  
495 entrance they said, "Yeah, you know, that would be fine." But I -- my other neighbor I  
496 really haven't had much contact with, because he's the one I think who asked that it be  
497 moved. You know, so -- anyway.  
498

499 Mr. Reid - Thank you, sir.  
500

501 Mr. Dickens - Okay, you're welcome. And any other questions, or  
502 comments?  
503

504 Ms. Harris - Any other questions from the board members? Thank you for  
505 coming.  
506

507 Mr. Dickens - Okay. Thanks.

508  
509 Ms. Harris - Is there anyone who is in favor of this petition? Is there anyone  
510 who opposes this petition? If not, think we're ready to vote. What is the pleasure of the  
511 board?

512  
513 Mr. Reid - I move that we approve conditional use permit number 2019-  
514 18 to allow Mr. Dickens to move his shed to another location on his property subject to  
515 the conditions recommended by the staff.

516  
517 He has agreed to move the shed to a location that complies with the front yard setback,  
518 so it will be consistent with the zoning and comprehensive plan. There is no room in the  
519 rear yard for the shed. The fence and landscaping should screen it from view so I do not  
520 think it will have any detrimental impact on the neighbor.

521  
522 Ms. Harris - The one question we did not ask Mr. Dickens was did he  
523 approve of the conditions. Had he read the conditions, and did he subscribe to those. I  
524 think that the nod is in the affirmative. Okay, we have -- we had the motion. Is there a  
525 second?

526  
527 Mr. Bell - Second.

528  
529 Ms. Harris - Good. It's moved and properly seconded that we approve this  
530 conditional use permit. Are there any questions on the motion? Okay. All in favor of  
531 approving this conditional use permit say aye. Those opposed say no. the ayes have it  
532 and this conditional use permit has been approved.

533  
534 After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Bell, the  
535 Board **approved** application **CUP2019-00018 JOSEPH DICKEN'S** request for a  
536 conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow a  
537 detached shed in the front yard at 1004 Francisco Road (ROLLINGWOOD ADDN) (Parcel  
538 758-740-4512) zoned One-Family Residence District (R-3) (Tuckahoe). The Board  
539 approved this request subject to the following conditions:

540  
541 1. Only the improvements shown on the plot plan filed with the application may be  
542 constructed pursuant to this approval. Any additional improvements shall comply with the  
543 applicable regulations of the County Code. Any substantial changes or additions to the  
544 design or location of the improvements shall require a new conditional use permit.

545  
546 2. All exterior lighting shall be shielded to direct light away from adjacent property and  
547 streets.

548  
549 3. The shed shall be located at least 10 feet from the dwelling.

550  
551 4. The shed shall be moved to the proposed location no later than September 1, 2019.

552

53

554 Affirmative: Bell, Green, Harris, Johnson, Reid 5

555 Negative: 0

556 Absent: 0

557

558

559 Ms. Harris - Mr. Blankinship, please call the next case.

560

561 **VAR2019-00012** **MARK COSTON** requests a variance from Section 24-94 of  
562 the County Code to build a one-family dwelling at 2659 Darbytown Road (Parcel 816-  
563 699-0818) zoned Agricultural District (A-1) (Varina). The lot width requirement is not met.  
564 The applicant proposes 55 feet lot width, where the Code requires 150 feet lot width. The  
565 applicant requests a variance of 95 feet lot width.

566

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

570

571 Mr. Madrigal - Thank you Mr. Secretary, Madam Chair, members of the  
572 board. Before you is a request to build a one-family dwelling in an A-1 district. The subject  
573 property was created in 1930 and is approximately 2.224 acres in area. The lot is L-  
574 shaped and has approximately 54 feet of street frontage on Darbytown Road.

575

576 The lot is currently undeveloped, virtually flat and heavily wooded towards the rear.  
577 County water is available along Darbytown road, while county sewer is not readily  
578 available.

579

580 The applicant purchased the property and an adjacent 1-acre lot to the southeast in April  
581 of 2018, and this is that adjoining lot. The adjacent 1-acre lot is improved with a one-story,  
582 1,000-square-foot dwelling constructed in 1937. Although the subject property meets the  
583 street footage and lot area requirements, it does not meet the lot width requirements.  
584 Here is a view of the property from the street.

585

586 The applicant would like to construct a one-story, 1,326-square-foot dwelling at the rear  
587 of the lot and has requested a variance to waive the lot width requirement.

588

589 With respect to the threshold question, the subject property satisfies the state statute on  
590 both counts in the code -- in that the code unreasonably restricts the utilization of the  
591 property, and the lot's unusual shape contributes to its hardship.

592

593 The subject property has been in its current configuration since 1939, predating lot size  
594 and lot width requirements, which were first adopted by the county in 1945.

595

596 Although the lot satisfies the street frontage and lot area requirements, it does not meet  
597 the current lot-width requirement due to its unusual shape. As a result, it has remained  
598 undeveloped for the last 80 years. Because the 1-acre lots on either side of the property

599 are also non-conforming as to lot width and are improved with dwellings, the applicant  
600 cannot acquire additional land to satisfy the 150-foot lot width requirement.

601  
602 Additionally, the subject lot is too small for any meaningful agricultural use. Absent of  
603 variance the property has no reasonable beneficial use. Because the zoning ordinance  
604 unreasonably restricts the use of the property, and its shape contributes to its hardship,  
605 a variance should be approved subject to the five tests being met.

606  
607 Item number one; good faith acquisition. The subject property and the adjoining 1-acre  
608 lot were purchased separately by Agnes G. Chenault in the 1930s. Ms. Chenault passed  
609 away 1992 and bequeathed the property to family. The applicant purchased both parcels  
610 in April of 2018 and sold the adjoining 1-acre lot in September of 2018. It appears that  
611 the acquisition was in good faith, and the applicant bears no responsibility for the creation  
612 of the current hardship.

613  
614 Item number two; substantial detriment. The properties along Darbytown Road are  
615 agriculturally zoned and the majority are improved with one-family dwellings on lots  
616 ranging in size between 3/10s of an acre to 11 acres in area. Because the front portion of  
617 the subject lot is too narrow to accommodate the dwelling, the applicant wishes to  
618 construct a one-family dwelling towards the rear of the property. A one-family dwelling  
619 should not pose any substantial detrimental impacts to adjacent or nearby property, since  
620 it will be consistent with the established development pattern in the area.

621  
622 The rear portion of the subject lot is of sufficient size to accommodate the proposed home  
623 and should not significantly infringe on the privacy of adjacent property owners.

624  
625 Item number three; a general recurring nature. Subject property was created prior to the  
626 adoption of lot width and lot area requirements. It has been in its current configuration for  
627 80 years. These factors are unique to the property.

628  
629 Items four and five are satisfied as outlined in the staff report.

630  
631 In conclusion, the property was created in the late 1930s prior to the adoption of county  
632 standards for lot width and lot size requirements. It has been in its current configuration  
633 for 80 years and has not been developed in all that time. The proposed use is consistent  
634 with the underlying zoning and comprehensive plan designations for the property. The  
635 proposed home will be consistent with the existing development pattern along Darbytown  
636 Road and the immediate area.

637  
638 Absent of variance the property is undevelopable and it is unreasonably restricted by the  
639 code and limited by its physical shape.

640  
641 Staff is not aware of any detrimental impacts from the applicant's proposal. Based on the  
642 facts of the case, staff recommends approval subject to the conditions.

643  
644 This concludes my presentation. I'll be happy to answer your questions.

45  
646 Ms. Harris - Okay. Mr. Madrigal, were you given any plans for the house?  
647  
648 Mr. Madrigal - No, ma'am. I was not.  
649  
650 Ms. Harris - Okay. And the road that we see on the photos, is this the road  
651 that will gain -- they will use to access the property?  
652  
653 Mr. Madrigal - Yes, ma'am. You can see the access point here, and then this  
654 is a view of the current, I guess, access route, or driveway. It's going to be further  
655 improved per the conditions.  
656  
657 Ms. Harris - Okay. Is the other house using this road at all? Is this road  
658 only going to be used by this property?  
659  
660 Mr. Madrigal - It's just for this subject property. Here's a view of the interior  
661 of the lot.  
662  
663 Ms. Harris - I noticed you said there would be no county sewage. So.  
664  
665 Mr. Madrigal - That's correct. Yeah, that's not a layable -- area.  
666  
667 Ms. Harris - So we need to talk to the applicant about that.  
668  
669 Mr. Madrigal - I'm sorry?  
670  
671 Ms. Harris - We need to talk to the applicant about the fact that there is  
672 water, but no sewage.  
673  
674 Mr. Madrigal - Yes. Well, essentially, he will be putting in a septic system to  
675 address those requirements.  
676  
677 Ms. Harris - Okay. We have other questions of board members?  
678  
679 Mr. Johnson - The roadway that was just mentioned, is it supposed to be  
680 paved as well?  
681  
682 Mr. Madrigal - If you look at the staff report, we've got a condition in there  
683 that basically requires improvement of the drive. It's condition number six.  
684  
685 Mr. Reid - Number six.  
686  
687 Mr. Madrigal - The driveway from Darbytown Road to the dwelling shall be  
688 improved with a durable asphalt or compacted gravel surface, at least 10 feet wide with  
689 12 feet of horizontal clearance and 14 feet of overhead clearance to provide access for  
690 police, fire, emergency medical services, and other vehicles.

691  
692 Mr. Johnson - Yeah.  
693  
694 Mr. Madrigal - So it's his choice whether he wants to put asphalt or gravel.  
695  
696 Ms. Harris - And notice, Mr. Madrigal, that the applicant did not answer  
697 questions one, two, three and four in the application, but I noticed that in your presentation  
698 you seemed to have covered those areas.  
699  
700 Mr. Madrigal - Yes.  
701  
702 Ms. Harris - Okay. Any more questions from board members? Thank you  
703 so very much.  
704  
705 Mr. Madrigal - Thank you.  
706  
707 Ms. Harris - And now we'll hear from the applicant. Would you come forth,  
708 give us your name, spelling your last name please, sir.  
709  
710 Mr. Costan - Mark Costan.  
711  
712 Ms. Harris - Okay.  
713  
714 Mr. Costan - C-O-S-T-O-N.  
715  
716 Ms. Harris - Thank you. Okay, and let us know what you want and why you  
717 want it.  
718  
719 Mr. Costan - I live across the street, actually, and I want to build a home --  
720 I bought that whole property there. I rehabbed the old house, that's my house, and then  
721 the little house on the 1-acre -- I don't know how to do this. But that house there was in  
722 poor condition and I rebuilt it and it's a beautiful home, and there's a military fellow that  
723 lives there that's a very good neighbor. And he doesn't mind me building. I made it clear  
724 to him that when I sold him the house I was going to try and build a house behind there  
725 on the two acres.  
726  
727 There's enough woods there, a buffer, to where the houses can't even see each other,  
728 and the house that I'm going to build is at the back of the two acres. You're not even going  
729 to be able to see it from the road, or no neighbors can see it. And nobody can build next  
730 to it, because it's encapsulated there, and then 895 goes along beside it. I have someone  
731 that's already interested in the house. They're dying to get started with it.  
732  
733 I am going to improve the driveway. It's going to be quite nice. What you see now is  
734 crushed concrete and I'm using that during construction with all the trucks and traffic to  
735 pack it down, and then I'm going to come back with a real nice 57 aggregate and it's going  
736 to be a little bit wider than 12 foot. It's going to be about 14 foot, actually, and it's going to

737 go in and it's going to circle for convenience and fire, rescue, whatever will not have a  
738 problem.

739  
740 There is going to be some clearing on the lot, but it's going to be primarily wooded, and  
741 I'm going to do a little attached garage to the house. And the lot is wider than what it  
742 looks like where it meets the street there. And if we could go that picture. Does anybody  
743 know how to get to there? I could show you. Okay. The lot starts right here at this little  
744 white flag, and actually goes all the way across to over here, to this little white flag, so  
745 that's your 55-foot right there and then that goes straight back and then it opens up into  
746 two acres.

747  
748 Ms. Harris - Okay. Do you have a copy of your plans for the house with  
749 you?

750  
751 Mr. Coston - I do not. I do not have them. I've turned everything into the  
752 County of Henrico.

753  
754 Ms. Harris - Okay. Are you a contractor?

755  
756 Mr. Coston - I am. I'm a Class A contractor.

757  
758 Ms. Harris - So we'll assume you know how to build this house.

759  
760 Mr. Coston - Yes. This is my first zoning --

761  
762 Ms. Harris - Okay.

763  
764 Mr. Blankinship - Just looking at the property that you said you bought. Well, I  
765 see on the record that you bought and rehabbed, and it looks like the value of that  
766 increased from about 130,000 to about 300,000.

767  
768 Mr. Coston - Yes. Yes.

769  
770 Mr. Blankinship - So, is that same quality of work that you expect to do on this  
771 site?

772  
773 Mr. Coston - Yes, sir.

774  
775 Ms. Harris - Okay. Other questions from board members?

776  
777 Mr. Green - I think we all are curious to see what the house is going to look  
778 like.

779  
780 Ms. Harris - You're going to have to give us a tour.

781  
782 Mr. Blankinship - Nobody's going to see it!

783  
784 Mr. Bell - Just have you read the conditions and understand and  
785 approve them?  
786  
787 Mr. Coston - Yes. Yes, sir.  
788  
789 Mr. Bell - Thank you.  
790  
791 Ms. Harris - Do you have a copy of the report that we have?  
792  
793 Mr. Coston - Yes. I think I do.  
794  
795 Mr. Blankinship - Yes.  
796  
797 Mr. Johnson - With the conditional use.  
798  
799 Mr. Coston - It was mailed to me.  
800  
801 Mr. Blankinship - Yes. That's it.  
802  
803 Ms. Harris - Yes, okay.  
804  
805 Mr. Coston - Yes, I did.  
806  
807 Mr. Blankinship - And you're familiar with the septic system health department  
808 approval process.  
809  
810 Mr. Coston - I've already had it -- yes, sir. I've already had it prepped and  
811 approved -- or designed for a system that's going to be underground. It's a shallow  
812 system.  
813  
814 Mr. Blankinship - I see.  
815  
816 Mr. Coston - It's about \$15,000 -- . Oh, there is no sewer, because I tried  
817 to hook my house up to sewer across the street, but there is gas, too.  
818  
819 Mr. Blankinship - I didn't know that.  
820  
821 Mr. Coston - There's water and gas and I'm going to connect to the county  
822 for the water and the gas.  
823  
824 Ms. Harris - Okay. Other questions from the board on this?  
825  
826 Mr. Johnson - That's good. He answered my question.  
827  
828 Ms. Harris - Okay. Thank you so very much for coming in.

829  
830 Mr. Coston - Thank you.

831  
832 Ms. Harris - Is there anyone else who wishes to speak in favor of this  
833 application? Is there anyone who opposes this application? Thank you. We're ready to  
834 vote. Okay. What is the pleasure of the board on this variance?

835  
836 Mr. Johnson - I move to approve the variance subject to the conditions  
837 recommended by the staff. And that the lot had this size and shape since 1930, and there  
838 was no lot width requirement. And during that time the lot wasn't -- there was no  
839 designations for the lots or that the applicant did not cause their hardship. Unless the  
840 variance is granted, there is no reasonable use for the lot. And there is a house on both  
841 sides, so they cannot meet the lot width by acquiring additional property. The lot will have  
842 its own driveway on Darbytown Road, and the house will be 400 to 500 feet from the other  
843 houses in the area so there would be no detrimental impact of the nearby property. I  
844 recommend approval.

845  
846 Mr. Bell - Second.

847  
848 Ms. Harris - It's been moved and properly second that we approve this  
849 variance. Are there any questions on the motion? All in favor of approval say aye.  
850 Opposed say no. The ayes have it, and so order.

851  
852 After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr. Bell,  
853 the Board **approved** application **VAR2019-00012 MARK COSTON's** request for a  
854 variance from Section 24-94 of the County Code to build a one-family dwelling at 2659  
855 Darbytown Road (Parcel 816-699-0818) zoned Agricultural District (A-1) (Varina). The  
856 Board approved this request subject to the following conditions:

857  
858 1. This variance applies only to the lot width requirement for one single-family dwelling  
859 only. All other applicable regulations of the County Code shall remain in force.

860  
861 2. Only the improvements shown on the plot plan filed with the application may be  
862 constructed pursuant to this approval. Any additional improvements shall comply with the  
863 applicable regulations of the County Code. Any substantial changes or additions to the  
864 design or location of the improvements will require a new variance.

865  
866 3. Approval of this request does not imply that a building permit will be issued. Building  
867 permit approval is contingent on Health Department requirements, including, but not  
868 limited to, soil evaluation for a septic drainfield and reserve area.

869  
870 4. Any dwelling on the property shall be served by public water.

871  
872 5. Clearing, grading, or other land disturbing activity shall not begin until the applicant has  
873 submitted, and the Department of Public Works has approved, an environmental  
874 compliance plan.

875  
876 6. The driveway from Darbytown Road to the dwelling shall be improved with a durable  
877 asphalt or compacted gravel surface at least 10 feet wide with 12 feet of horizontal  
878 clearance and 14 feet of overhead clearance to provide access for police, fire, emergency  
879 medical services, and other vehicles.

880  
881 7. A building permit must be approved by May 23, 2021, or this variance will expire. If the  
882 building permit is cancelled or revoked because it was not diligently pursued, this variance  
883 will expire at that time.

884  
885  
886 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
887 Negative: 0  
888 Absent: 0

889  
890  
891 Ms. Harris - We'll move on to the next case.

892  
893 **VAR2019-00013** **KENNETH PARHAM** requests a variance from Section 24-  
894 95(c)(1), 24-95(b)(6), 24-95(k) of the County Code to build a one-family dwelling at 3514  
895 Waverly Boulevard (EAST HIGHLAND PARK) (Parcel 798-735-6052) zoned One-Family  
896 Residence District (R-4) (Fairfield). The lot width requirement, total lot area requirement,  
897 least side yard setback, total side yard setback and street side yard setback are not met.  
898 The applicant proposes 5,400 square feet lot area, 45 feet lot width, 5 feet least side yard  
899 setback, 8 feet sum of side yard setbacks, and 3 feet street side yard setback, where the  
900 Code requires 6,000 square feet lot area, 50 feet lot width, 7 feet least side yard setback,  
901 13.5 feet sum of side yard setbacks, and 15.5 feet street side yard setback. The applicant  
902 requests a variance of 600 square feet lot area, 5 feet lot width, 2 feet least side yard  
903 setback, 5.5 feet sum of side yard setbacks, and 12.5 feet street side yard setback.

904  
905 Mr. Blankinship - Would everyone who intends to speak to this case please  
906 stand and be sworn in? raise your right hand, please. Do you swear the testimony you're  
907 about to give is the truth, the whole truth, and nothing but the truth, so help you God?  
908 Thank you. Mr. Gidley.

909  
910 Mr. Gidley - Thank you Mr. Secretary, members of the board. The subject  
911 property, as you can see here, is a corner lot located at the intersection of Byron Street  
912 and Waverly Boulevard. It previously contained a dwelling that in recent years has been  
913 vacant. The property was acquired by its current owner just last year who subsequently  
914 had the old home demolished. This is the view of the lot here. And in March of this year  
915 the county received a building permit application for a new variance, however, this could  
916 not be approved because the lot was 5,400 square feet in area rather than the required  
917 6000 square feet, in addition it had 45 feet of lot width rather than the required 50 feet of  
918 lot width. The applicant is also requesting both setback variances on the sides.

919  
920 If you'd look at the plot plan here, just to orient you, Byron Street, again, is to the side

21 here, Waverly Boulevard to the front. This is a reverse corner lot in that instead of backing  
922 upon the lot to the rear back-to-back, it backs onto the adjacent lot across the alley onto  
923 their side yard. As a result, instead of the typical 10 feet setback off the street side, you  
924 have an increase to 15 1/2 feet. In this case the applicant is requesting three feet. Over  
925 on the interior side, against the neighbor, the standard setback is 7 feet. The applicant is  
926 requesting 5 feet. And then, finally, the sum of the two side yard setbacks is required to  
927 total 13 1/2 feet. In this case, however, 3 feet and 5 feet as proposed by the applicant  
928 totals 8 feet rather than 13 1/2 required.

929  
930 So, you have five variance requests; lot area, lot width, street side, interior side, and then  
931 sum of the side yard setbacks.

932  
933 In evaluating this request -- looking at the threshold questions, the applicable one would  
934 appear to be, is the property unreasonably restricted by the zoning ordinance? Because  
935 the lot lacks adequate lot area and lot width, a home could not be constructed on it at all  
936 absent of variance, so this request would appear to meet this test, most certainly.

937  
938 The additional request for side yard variances, however, are more difficult to justify. This  
939 is because the lot, although fairly narrow, is quite deep, and the applicant, one would  
940 think, would come in with a home design that reflects this. And in this case, however, the  
941 home at 37 feet in width and 32.4 feet in depth, the home's actually wider than it is deep,  
942 which is not really what you would expect on a lot that has good depth, but not as much  
943 width.

944  
945 If you'd look at the site map again you'll note the home next to it and the three behind it;  
946 these lots are actually wider than the subject property, and yet despite that, all of these  
947 homes here, here and here and here, were designed with greater depth, taking advantage  
948 of the shape of the lot to be able to fit the homes onto the property, so staff doesn't believe  
949 it's unreasonable to request the applicant to do likewise with his home.

950  
951 Now, that said, requiring a reverse corner setback of 15 1/2 feet off of Byron Street on a  
952 lot that is already fairly narrow, staff does believe is excessive and unreasonable. Instead,  
953 staff would recommend the standard 10 feet off of Byron Street, reducing the setback, in  
954 effect, from 15 1/2 down to 10 feet. Which, again, is typical for a street side setback.

955  
956 When it comes to the interior side setback the typical requirement, again, is 7 feet,  
957 however, in this case many homes in the area were built legally at 5 feet, which was the  
958 previous requirement under the zoning ordinance. So, staff is able to support the  
959 applicant's request for 5 feet on the interior side. And if you take the recommended 10  
960 feet street side and 5 feet interior side as recommended by the staff, there would be no  
961 need for the sum of side yard setbacks, because that would be met.

962  
963 In looking at the subtests staff believes most of these are met. The only one we would  
964 have a concern about is the first one, which deals with whether or not this was a hardship  
965 created by the applicant. In this case the applicant should, in staff's opinion, design a  
966 home that better takes into account the lot's shape, rather than coming in with one that is

967 wider than it is deep. And, in that case, it is more of a self-created hardship.  
968  
969 In fact, if you go back to the homes I'd just showed you, all of these homes are 28 to 30  
970 feet wide, which would fit into the proposed building area that staff is recommending as  
971 far as setbacks, which would be 30 feet. So this certainly can be done and reflect what's  
972 occurring in the area.  
973  
974 Mr. Blankinship - Also notice, if I can interrupt you, the three homes to the west  
975 there, 1401, 1403 and 1405 coming down Byron Street, those all are set back 10 feet. So  
976 that's part of the reason why we recommend that 10-foot setback on the side yard of this  
977 house.  
978  
979 Mr. Gidley - Thank you, Mr. Secretary. In addition to the safety aspects, I  
980 mean, we turn on the news and see where a car has spun out of control and hit a  
981 residence or something like that. So, you really don't want a setback that's only three feet  
982 off the street right-of-way for safety reasons as well.  
983  
984 Mr. Blankinship - Right.  
985  
986 Mr. Gidley - So, in conclusion, because the lot lacks the required lot area  
987 and lot width, it is unable to be used for a dwelling absent a variance. As a result, staff  
988 recommends approval of the lot area and lot width request. Staff also supports the  
989 requested 5-foot interior side setback. Staff does not support, however, having just a 3-  
990 foot setback off the Byron Street right-of-way. Instead, we support eliminating the 15 1/2-  
991 foot street side setback and reducing that down to 10 feet.  
992  
993 This concludes my presentation and I'll be happy to answer your questions if you have  
994 any. Thank you.  
995  
996 Ms. Harris - Mr. Gidley, do you know how wide the ditch is on Byron  
997 Street?  
998  
999 Mr. Gidley - Let's see here.  
1000  
1001 Ms. Harris - See -- go the right of this picture.  
1002  
1003 Mr. Gidley - There is a better view here. Let's --  
1004  
1005 Ms. Harris - You can't see it too well, but you can see that there's -- I can  
1006 just imagine the rain, when it rains, I imagine it fills up pretty much.  
1007  
1008 Mr. Gidley - Yes.  
1009  
1010 Ms. Harris - But that was -- was that about 3 feet, you think?  
1011  
1012 Mr. Blankinship - I don't -- Madam Chair --

1013 Mr. Gidley - I'd just be guessing, but it's not an abnormally large -- it's a  
1014 pretty typical ditch against Byron there.  
1015  
1016 Ms. Harris - Right. And did we get plans with this application? House  
1017 plans?  
1018  
1019 Mr. Gidley - We have floor plans here.  
1020  
1021 Ms. Harris - Okay.  
1022  
1023 Mr. Gidley - And then the elevation here. This is a front elevation, and then  
1024 the side and rear elevations.  
1025  
1026 Ms. Harris - Okay. Did you notice the house directly across the street from  
1027 that on Waverly? The lot is larger, but it seems to be almost --  
1028  
1029 Mr. Gidley - Oh, that's across Byron.  
1030  
1031 Ms. Harris - Directly in front of where this applicant wants to build. I'm not  
1032 sure. But I was concerned about the two-story building so close to the street. That's like  
1033 a blind curve almost. You have a very tall building there. I guess it depends on the setback  
1034 of the house, too. If they're going to --  
1035  
1036 Mr. Gidley - Well, the setback off the right of way would be three feet with  
1037 the applicant's variance as requested.  
1038  
1039 Ms. Harris - Yes.  
1040  
1041 Mr. Gidley - Again, staff is recommending the 10 feet, which is the typical  
1042 for a street side.  
1043  
1044 Ms. Harris - Okay, and what about Waverly?  
1045  
1046 Mr. Gidley - The front yard setback would be met.  
1047  
1048 Ms. Harris - Okay.  
1049  
1050 Mr. Gidley - As proposed. Yes, ma'am.  
1051  
1052 Ms. Harris - Okay. Okay, are there questions from board members?  
1053  
1054 Mr. Johnson - I was noticing the house next to it, how close that one is to the  
1055 line on that side, rather than in the center of their property. But which has no bearing on  
1056 this one. But think that because of the conditions we -- there should be some changes  
1057 there.  
1058

1059  
1060 Ms. Harris - Okay.  
1061  
1062 Mr. Gidley - And that's one reason we supported the 5 foot on the interior  
1063 side, is because at the time when many of these homes were built, such as the one next  
1064 door, 5 feet was the interior side setback. So, it didn't appear to be giving the applicant in  
1065 that case any special privilege over his neighbors, or anything like that giving him the 5  
1066 feet there.  
1067  
1068 Ms. Harris - Okay. Are there other questions of board members? Thank  
1069 you, Mr. Gidley.  
1070  
1071 Mr. Gidley - Thank you.  
1072  
1073 Ms. Harris - We'll hear now from the applicant. Okay. Please give us your  
1074 name, spelling your last name.  
1075  
1076 Mr. Parham - How you doing? My name is Kenneth Parham, Parham like  
1077 Parham Road, P-A-R-H-A-M.  
1078  
1079 Ms. Harris - And let us know what you want and why you want it.  
1080  
1081 Mr. Parham - Okay. I guess we got to take a trip back on when we first  
1082 acquired this property. We bought this property at the Henrico County Auction in front of  
1083 the court building. Since we bought that property we got numerous calls from your office,  
1084 your permit office, saying that, yeah, we have to do something with this property quickly,  
1085 because it's been an eyesore for 11 years, and pretty much, you know, it's a blight on the  
1086 community. And that's exactly what we intend on doing, but without all the extra calling.  
1087  
1088 But what we basically put in place was a plan to basically either renovate it or tear it down  
1089 and start over. Basically, in that process, we were told by your permit office that it was  
1090 okay to tear the property down and build it right back where it was at, which is actually  
1091 the same setbacks and all of that that we're requiring. And basically, nothing else was  
1092 said of saving part of the building to adhere to a code that was in effect in 1960, which  
1093 was actually what we ran into when we were trying to go ahead and get this permit  
1094 approved.  
1095  
1096 But they were saying that, yeah, we should have saved part of the building, but we were  
1097 not told that in the process dealing with the permit office at all. And if -- I don't know if you  
1098 can go back to actually click on where the actual property is at, you can see where literally  
1099 it's on the same lines that we're requesting. We're not requesting anything different from  
1100 what was already there, or anything like that. And that's what we were told we could do.  
1101  
1102 I researched this thoroughly, I did my due diligence, and pretty much this was a problem  
1103 that actually was made by your permit office.  
1104

05 Ms. Harris - Okay.  
1106  
1107 Mr. Parham - And, basically, we're just trying to put a beautiful house in a  
1108 nice neighborhood. We've done several properties in that same neighborhood, actually  
1109 we're -- the reason why that neighborhood actually didn't suffer any loss in the market  
1110 crisis in 2008, 2009, we pretty much tried to buy anything and everything that was in that  
1111 area to keep that community going and actually we've raised the property value in that  
1112 community substantially. And we plan on putting something there very nice.  
1113  
1114 We're trying to do more than three-bedroom homes when it ever comes to anything that  
1115 we try to do, because that's kind of a niche. Nobody builds four to five-bedroom houses  
1116 anymore. And it's kind of hard on large families and that actual community offers very  
1117 good schools for the kids, has a community center at the other end, on Dill Road, has  
1118 access to pretty much any major highway or anything in that area. Like I said, very nice  
1119 community. Hardly any crime, period, in that side of town.  
1120  
1121 So, we just want to put something nice up, keep our process going and keep our  
1122 community happy. We know a lot of people in that area. We've sold homes to people that  
1123 we know in that area. So, I don't think anybody would complain about what we're going  
1124 to put up, and it's going to be one of the nicer houses in the area.  
1125  
1126 Ms. Harris - Mr. Parham, the house that was torn down, was that a two-  
27 story house?  
1128  
1129 Mr. Parham - Actually, it was a two-story style Cape. It was basically built  
1130 as tall as a two-story, because it had the big, super tall roof and pretty much -- if you  
1131 notice the -- I don't know if you can notice. The only thing we're doing is basically  
1132 straighten up the level of the roof. We're basically just opening it up. It's pretty much  
1133 almost the same roof line and everything that was already there.  
1134  
1135 Ms. Harris - So similar to the house next door. Right?  
1136  
1137 Mr. Parham - Excuse me?  
1138  
1139 Ms. Harris - It is similar to the house next door that you --?  
1140  
1141 Mr. Parham - I'll be honest with you, the house next door is kind of a --  
1142  
1143 Ms. Harris - No I don't -- I don't mean the house that --  
1144  
1145 Mr. Parham - Oh, you mean across the street?  
1146  
1147 Ms. Harris - The new construction that you plan to build is not what I'm  
1148 referring to. I'm referring to the house that was actually torn down. Because you say in  
49 your argument that you tore down this old house and you should be able to put up this  
150 new house, but the one that you want to put up is much larger than the one that was torn

1151 down.  
1152  
1153 For example, look at the picture, the southwestern view of property and adjacent --  
1154 someone help him with that. Okay, that house. The house that you tore down, was it  
1155 similar to that house that you see there?  
1156  
1157 Mr. Parham - No, ma'am. Not at all.  
1158  
1159 Ms. Harris - It was much taller?  
1160  
1161 Mr. Parham - It was much wider, and much taller as in the roof line. The roof  
1162 line actually itself was like one of those steep roofs that kind of reminds you of a tall Cape  
1163 without the windows in front.  
1164  
1165 Ms. Harris - Okay.  
1166  
1167 Mr. Parham - It's kind of hard to explain.  
1168  
1169 Ms. Harris - And it was close to Byron Street?  
1170  
1171 Mr. Parham - Yeah. It was. We want to put it exactly where that actual  
1172 property was. That was our request, and this --  
1173  
1174 Ms. Harris - No. I'm not asking you about the house that you plan to build.  
1175 I'm asking you -- because your argument is saying that you tore down and you want to  
1176 be able to put another one there.  
1177  
1178 Mr. Parham - Yes.  
1179  
1180 Ms. Harris - So I'm trying to see how did the house look and what was the  
1181 frontage, what was the footage, what was the lot size, you know, the one that you plan to  
1182 build. You said it did not look like this one. Look on the screen. It did not look like this one.  
1183 The house that you tore down did not look like this one?  
1184  
1185 Mr. Parham - No, ma'am.  
1186  
1187 Ms. Harris - It was a lot larger?  
1188  
1189 Mr. Parham - Yes, ma'am.  
1190  
1191 Ms. Harris - And closer to the street?  
1192  
1193 Mr. Parham - Yes, ma'am.  
1194  
1195 Ms. Harris - Okay. That's what I was wondering.  
1196

1197 Mr. Johnson - Madam Chair.  
1198  
1199 Ms. Harris - One more question. Are you a contractor?  
1200  
1201 Mr. Parham - No, ma'am.  
1202  
1203 Ms. Harris - Okay. Have you seen the conditions we have here?  
1204  
1205 Mr. Parham - Yes, ma'am.  
1206  
1207 Ms. Harris - That if you scale back the house to allow more side lot and  
1208 probably the interior will provide 5 feet. How do you feel about that?  
1209  
1210 Mr. Parham - Well, like I was saying, it's not a -- we didn't create the  
1211 problem. It was basically created by your permit office when they said we can do exactly  
1212 what we're trying to do. And I already got blueprints and all that stuff --  
1213  
1214 Ms. Harris - No. that's not my question. I'm asking you now about the  
1215 house that you plan to build. You asked for 3 feet on the Byron Road side.  
1216  
1217 Mr. Parham - Okay.  
1218  
1219 Ms. Harris - Okay, and we're looking in the condition at more than 3 feet.  
1220 We're asking maybe for, was it 10 feet?  
1221  
1222 Mr. Blankinship - Ten.  
1223  
1224 Ms. Harris - Ten feet on the Byron side. And I drove by there, and I'm sure  
1225 most of the board members who went by there saw. You're going to build this two-story  
1226 house on the corner there with just three feet on the street side of Byron, just three feet,  
1227 with the ditch taking up at least two. You're going to be very, very close to the corner. We  
1228 don't want to have a blind curve. You know, we don't want to have a humungous house  
1229 built there on that corner. That's a substandard lot, too. I guess you know that.  
1230  
1231 Mr. Parham - Okay.  
1232  
1233 Ms. Harris - Okay. And driving by I noticed that at the other end of the  
1234 block there's another substandard lot. So, what we do here will have a meaning for the  
1235 future in that community.  
1236  
1237 Mr. Parham - Okay.  
1238  
1239 Ms. Harris - People building large homes right on the corner, you know,  
1240 not allowing enough room for people to even see. So, I'm asking, can you deal with 10  
1241 feet on the -- scale your house down, so that you will have 10 feet on one side and 5 feet  
1242 on the other.

1243  
1244 Mr. Parham - I mean, if I have to, I mean, I guess I have to.  
1245  
1246 Ms. Harris - Okay. That's the answer -- that was the answer I wanted to  
1247 hear. Okay. Other board members.  
1248  
1249 Mr. Johnson - Yes, Madam Chair. The house you was mentioning on the plot  
1250 we have, they showed the top of it and how it was made and, et cetera. In addition to  
1251 what she was saying would you consider cutting it back from the roadway 10 feet, and if  
1252 you have to make it longer to the back, you might have some consideration to do that if  
1253 you want to change your plans.  
1254  
1255 Mr. Parham - Yes. I definitely, like I said, you know, I'd, you know, I'm not  
1256 trying to put anything anywhere that, you know, makes the neighborhood congested or  
1257 anything like that, but yet and still, at the same time, yes, if I have to change it I definitely  
1258 will.  
1259  
1260 Mr. Johnson - And also, in addition, you mentioned the properties behind it,  
1261 how the distance there are from the roadway, which would be consistent all the way, you  
1262 know from on Byron as well. That'll make it a whole lot better. If you can consider that.  
1263  
1264 Mr. Parham - Okay. I definitely can consider it. Like I said, you know, trying  
1265 to build a house, though, definitely. You know, whatever I need to do to make it work for  
1266 you and the board.  
1267  
1268 Mr. Blankinship - Madam Chair, in an attempt to answer your original question,  
1269 the Google Street View was taken before the previous house was demolished.  
1270  
1271 Mr. Parham - Right.  
1272  
1273 Mr. Blankinship - So there's actually a very good view of the house on Google.  
1274 And the staff is going to bring that up on the monitors in just a second.  
1275  
1276 Ms. Harris - Oh, that will be great. I appreciate it. Meanwhile, are there  
1277 other questions from board members? Mr. Parham, did you notice the houses right there  
1278 across the street from that?  
1279  
1280 Mr. Parham - Yes, ma'am  
1281  
1282 Ms. Harris - And to me, that doesn't create congestion, it's not a blind  
1283 curve, it doesn't affect visibility.  
1284  
1285 Mr. Parham - Well that house actually sets back further from the street, so  
1286 literally if you're coming -- like so you see if you're coming from that way, you're coming  
1287 toward that house, that house actually sits back, like, further off the road on both sides.  
1288 Like, on the front side and the other side.

1289  
1290 Ms. Harris - Yes. That's why I was wondering have you - had you  
1291 considered doing something like that.  
1292  
1293 Mr. Parham - To be honest with you, it just would -- that yard itself is kind of  
1294 a funny-made yard, and it's kind of, like -- that's why we wanted to put it exactly back the  
1295 way it was. And If you can see what I was talking about, the roof pitch and all that, it's  
1296 pretty high.  
1297  
1298 But it was kind of like if you push the house back further, you're not going to really be able  
1299 to put a driveway back there. So, it's kind of like your front yard, our front yard, is going  
1300 to be -- if this is the house beside it --  
1301  
1302 Ms. Harris - Go to the mic.  
1303  
1304 Mr. Parham - Our house is going to be like this.  
1305  
1306 Ms. Harris - Mr. Parham, talk in the mic so we can hear you.  
1307  
1308 Mr. Parham - Oh, I'm sorry. If you kind of look at the house that you all were  
1309 pointing to, they're actually kind of lined up. And if we go back further, we're going to be  
1310 back like this. So, it's kind of hard to see where you wouldn't even be able to put parking  
1311 in the back. So, yeah, we're just trying to put it where it made the most sense, which is  
1312 kind of like where it was at.  
1313  
1314 Ms. Harris - This is where it was at.  
1315  
1316 Mr. Parham - Yes, ma'am.  
1317  
1318 Ms. Harris - Okay. We were able, thanks to Google and Mr. Blankinship  
1319 and staff, pull it up.  
1320  
1321 Mr. Parham - Yeah. It wasn't a small house. It was a pretty big house, but it  
1322 just wasn't salvageable. It was just a lot of stuff that was in there that needed to be taken  
1323 out.  
1324  
1325 Ms. Harris - So there's a different between the house you pulled down and  
1326 the one you propose to build.  
1327  
1328 Mr. Blankinship - You're going from a one-story house to a two-story house.  
1329  
1330 Mr. Johnson - Two story.  
1331  
1332 Mr. Parham - Yeah, but that house was a Cape. Like, so it actually had an  
1333 upstairs.  
1334

1335 Mr. Blankinship - Put it back on --  
1336  
1337 Ms. Harris - Yes, we need to see it again. Because they pulled it up so we  
1338 saw it, so it's a Cape style.  
1339  
1340 Mr. Blankinship - I mean, you could call that a Cape. But it's --  
1341  
1342 Ms. Harris - That's not quite a Cape, is it?  
1343  
1344 Mr. Blankinship - No. that's a one-story house.  
1345  
1346 Ms. Harris - That's a one -- mm-hmm.  
1347  
1348 Mr. Johnson - Right.  
1349  
1350 Mr. Blankinship - Bungalow is a better word for it.  
1351  
1352 Ms. Harris - Right. Right.  
1353  
1354 Mr. Parham - Well, I mean --  
1355  
1356 Mr. Blankinship - I mean, there are no dormers or anything like you'd normally  
1357 see in --  
1358  
1359 Mr. Parham - Yes. That's what I was saying, other than the windows on the  
1360 front. We actually bought one down the street from there and all we did was push out the  
1361 backside and literally it's 8 feet of clearance on the inside. So, I mean, yeah. It's kind of  
1362 like you kind of got to have a vision.  
1363  
1364 Mr. Blankinship - Right.  
1365  
1366 Mr. Parham - So you add in stairs you could actually -- how tall are you?  
1367  
1368 Mr. Blankinship - 6'2", but you're replacing a one-story house with a two-story  
1369 house. So I think that's the Chair's point.  
1370  
1371 Mr. Parham - Yep. There's no attic. So, yes, just a storage space upstairs.  
1372  
1373 Ms. Harris - Okay. Are there any other questions from board members?  
1374 We thank you for coming in.  
1375  
1376 Mr. Parham - Okay.  
1377  
1378 Ms. Harris - And now we will see if there's anyone who opposes or who is  
1379 in favor of this request now.  
1380

1381 Mr. Green - Just for clarification, would you accept the conditions that we  
1382 will impose?

1383

1384 Mr. Parham - Yes. Yes. Yes.

1385

1386 Ms. Harris - Okay, thank you.

1387

1388 Mr. Parham - Thank you.

1389

1390 Ms. Harris - Is there anyone who is in favor of this petition? Is there anyone  
1391 who opposes this petition? If not, we're prepared to vote. Okay. On Variance 13 here, I  
1392 move that we approve this variance with the following conditions.

1393

1394 We're going to approve the lot area and the lot width variance and reduce the setbacks  
1395 to 10 feet on the street side and 5 feet on the interior side, subject to the conditions  
1396 recommended by the staff. The lot has been this size and shape since 1917 when there  
1397 was no zoning ordinance. The applicant did not cause the hardship, and unless the  
1398 variance is granted there is no reasonable use for the lot.

1399

1400 However, we're concerned about the applicant's request for 3 feet on the street side,  
1401 because we felt that that would create an unsafe condition along the street, so with 10  
1402 feet of the setback Mr. Parham can build a house 30 feet wide, which is reasonable, and  
1403 the other test on that is explained the staff report. Is there a second?

1404

1405 Mr. Johnson - I second.

1406

1407 Ms. Harris - Good. It's been moved and properly second that we approve  
1408 this variance. Are there any questions on the motion? All in favor of approving say yes. I  
1409 should have said "aye" but -- it works. Is there anyone who opposes? The ayes have it  
1410 and it is so ordered.

1411

1412 On a motion by Ms. Harris, seconded by Mr. Johnson, the Board **granted** the requested  
1413 variances from the lot width requirement, total lot area requirement, and least side yard  
1414 setback. The Board **denied** the request to allow 3 feet street side yard setback, but  
1415 instead **granted** a variance to allow 10 feet street side yard setback. The Board approved  
1416 this request subject to the following conditions:

1417

1418 1. This variance allows one proposed dwelling with a minimum lot area of 5,400 square  
1419 feet, a lot width of 45 feet, interior side yard setback of 5 feet, and street side yard setback  
1420 to 10 feet. All other applicable regulations of the County Code shall remain in force.

1421

1422 2. Any dwelling on the property shall be served by public water and sewer.

1423

1424 3. A building permit must be approved by May 23, 2021, or this variance will expire. If the  
1425 building permit is cancelled or revoked because it was not diligently pursued, this variance  
1426 will expire at that time.



1473 Ms. Anderson - All right. Good morning. My name is Lee Ann Anderson. I'm  
1474 with the County Attorney's Office, and I represent the Director of Planning in this appeal  
1475 that has been brought by David Petton, and he his appealing a notice of violation that was  
1476 attached as Exhibit B to the county's submission.  
1477

1478 I'll review briefly the facts that serve as the background for this appeal. We are dealing  
1479 with the property at 10014 Three Chopt Road, where Commonwealth Tree Care LLC  
1480 operates a tree removal and tree servicing business located at that property. The  
1481 property, I have the site map up, it is bounded to the west by Gaskins Road. This is at the  
1482 I-64 interchange near Three Chopt, and it is bounded to the east by -- bordered to the  
1483 east by Ruxton Townhouses. It is zoned as an O-2C, office district, and I will put up the  
1484 aerial map of this -- it has proffered conditions that require a landscape buffer on the east  
1485 side of the site to be maintained between the property and the Ruxton Townhouses, up  
1486 to 40 feet along the portion of the common boundary with those townhouses. Those are  
1487 the facts regarding the property.  
1488

1489 The notice of violation was initiated after the county received a complaint on February  
1490 11<sup>th</sup> of this year from a neighbor in the Ruxton Townhouses. A Community Maintenance  
1491 Inspector went out, inspected the property, and observed heavy equipment that is  
1492 customarily used in the tree pruning business at that location. Bucket trucks, wood  
1493 chippers, large storage containers, and fuel tanks.  
1494

1495 The Community Maintenance inspector left a business card. Not hearing anything back  
1496 from the property owners or the business owners he issued a notice of violation on  
1497 February 21<sup>st</sup> of this year. The notice of violation, add Exhibit B to the county's  
1498 submission, cited violations of two sections of the zoning code. Section 24-6, which  
1499 mandates conformance with the zoning code, and section 24-62.1(p), noting that the tree  
1500 service is a permitted principal use in a B-3 business district, not in an O-2C district.  
1501

1502 The notice of violation also noted the right of the appeal within 30 days. That notice was  
1503 issued on February 21st, 2019. The appeal was not filed until April 2 of 2019. A copy of  
1504 the appeal is attached as Exhibit C to the county submission.  
1505

1506 Before I get into the argument section, I'll just remind the board of the standards of review,  
1507 which you are very familiar with. The board has the power to hear and decide appeals  
1508 from a decision or determination by an administrative officer enforcing the zoning code,  
1509 and the decision of the administrative officer shall be presumed to be correct. Here it is  
1510 the appellant that bears the burden of proof in determining that the correctness -- that the  
1511 administrator was not correct in issuing the notice of violation.  
1512

1513 I will submit to the board that you should deny the appeal for three reasons. The first  
1514 reason is a procedural reason. The appeal was filed too late. The appeal was allowed to  
1515 be filed within 30 days of the decision appealed from, it was not filed within that 30-day  
1516 period, and so the notice should be final and unappealable. But, in addition to that  
1517 procedural reason, you have substantive reasons for denying this appeal, and I would  
1518 ask that you take those into consideration as well.

1519  
1520 The primary substantive reason is that the decision of the county was correct. The notice  
1521 of violation correctly notes that the tree pruning business is not a permitted or accessory  
1522 use in an O-2 district, either as a principal use or as an accessory use. In fact, county  
1523 code, zoning code, expressly permits use of a tree service business in a B-3 district, which  
1524 is not what the property is zoned for.

1525  
1526 The third reason for denying this appeal is that appellant has not offered you a basis for  
1527 his appeal. In his notice of appeal, which is Exhibit D to your submission, to the county's  
1528 submission, he notes that he received a business license for operating his business at  
1529 that location. The business license correctly notes by the zoning administrator that the  
1530 parcel is zoned as an O-2C. So, he could operate an office for a tree servicing business  
1531 at that location, but he cannot then go forward and operate a tree servicing business with  
1532 wood chippers, bucket trucks, fuel tanks, at that location.

1533  
1534 So, for those three reasons; the procedural reason and the two substantive reasons, I  
1535 would submit to the board that the BZA should deny this appeal and sustain the notice of  
1536 violation. I can take any questions that you might have.

1537  
1538 Ms. Harris - Okay. Are there any questions of Attorney Anderson?

1539  
1540 Mr. Johnson - Yes, Ms. Anderson, you mentioned that they applied for a  
1541 license. When was that?

1542  
1543 Ms. Anderson - The business license was signed June 29, 2018.

1544  
1545 Mr. Johnson - 2018.

1546  
1547 Ms. Anderson - Yes.

1548  
1549 Ms. Harris - Any other questions of Attorney Anderson?

1550  
1551 Mr. Green - Do you have any pictures? A better view of the property in  
1552 pictures?

1553  
1554 Ms. Anderson - There are other pictures available here, which I can navigate  
1555 through. This is the driveway from Three Chopt into the property. As you can see from  
1556 the aerial, you have two houses; there's one here, there's one further back in the property.  
1557 This is the business. This area, so you're going back, driveway, that's the, I think, the  
1558 second house. He's got some fuel tanks, and then this is an area that has got some heavy  
1559 equipment, stump piles, that is a storage container that's currently on the property. Other  
1560 storage. And then between the buffer, that's looking from the property to the east and you  
1561 can view the Ruxton Townhouses there.

1562  
1563 Mr. Green - This is the old Guirkin Plumbing and Heating property?  
1564

1565 Mr. Blankinship - Yes sir.  
1566  
1567 Mr. Green - Ah, I'm familiar with it.  
1568  
1569 Mr. Bell - And just for verification, actually so I understand, Mr. Petton  
1570 has ascertained that he's doing it for four years at that location, but he did not have a  
1571 license until 2018?  
1572  
1573 Mr. Johnson - 2018.  
1574  
1575 Mr. Bell - Yeah, right.  
1576  
1577 Ms. Anderson - That is a good observation. I cannot -- I don't have information  
1578 of how long he's been operating at that location. I do, as you can see from the business  
1579 license, it was not approved by the county until, it was submitted to the county last June  
1580 in 2018 and was approved last in 2018.  
1581  
1582 Mr. Bell - Thank you.  
1583  
1584 Ms. Harris - And then the information that you submitted Attorney  
1585 Anderson, to us, Exhibit G. I noticed that this was a new business license application  
1586 dated 2018. Under the comments section I do see the O-2C notation.  
1587  
1588 Ms. Anderson - Yes.  
1589  
1590 Ms. Harris - This is the application, but this is not a copy of the actual  
1591 business license. Right?  
1592  
1593 Ms. Anderson - This is the application, and just the approval that he would  
1594 have received from zoning.  
1595  
1596 Ms. Harris - Okay.  
1597  
1598 Ms. Anderson - So noting that the parcel is O-2C.  
1599  
1600 Ms. Harris - Okay. Are there other questions? We thank you so very much.  
1601  
1602 Ms. Anderson - Okay.  
1603  
1604 Ms. Harris - The burden of proof remains now with the appellant, and we'd  
1605 like to have the appellant to come forth. Give us your name please and spell your last  
1606 name.  
1607  
1608 Mr. Rawls - Sure. My name is Brewster Rawls, R-A-W-L-S, and I'm one  
1609 for the owners of Commonwealth Tree Care located at this address.  
1610

1611 Mr. Nolley - How are you guys doing? I'm Robert Nolley, I'm the office  
1612 manager there. My last name's N-O-L-L-E-Y.

1613  
1614 Ms. Harris - Okay. Now can you tell us, or prove to us, why this case  
1615 should be appealed?

1616  
1617 Mr. Rawls - I joined a partnership with Mr. Petton in April of 2018, at which  
1618 point we formed Commonwealth Tree Care LLC. I was the one who applied for the  
1619 business license, went to the licensing and permitting office and received -- the  
1620 designation does say O-2C, however when explaining to the lady that I had the permit --  
1621 or got the permit from, I did explain what I would be doing there and received the permit.  
1622 Looking back I should have done my due diligence to understand what was allowed in  
1623 that area, and -- but as of right now I'm mainly trying to come to see and plead with you  
1624 all that since I've started in April we started with 3 employees, I now have 11 employees.  
1625 We are set to do more than \$1.2 million in revenue this year, and having to move all of  
1626 my stuff immediately would be a large detriment to my business that would really be  
1627 unfair. The effects would be mainly felt by employees who have allowed me to become  
1628 successful and expand.

1629  
1630 In terms of having the notice filed late, there is no excuse for that. I was out of town. I'd  
1631 asked my business partner to take care of that and, you know, I would agree with the  
1632 attorney in saying that from a procedural standpoint that does not look good for us.

1633  
1634 My main intention is to say that I had no ill will in thinking getting a permit there, knowing  
1635 the standards and then blatantly disregarding them. It has never been our intention and  
1636 is not -- and we are very, very willing to, you know, to do anything that we have to, you  
1637 know, to maintain our position in that area as it has been extremely helpful for our  
1638 business and where we operate out of.

1639  
1640 The majority of the people who work here have all been born and raised and grew up in  
1641 Henrico County. It is where 90 percent of our business takes place, and so our busy  
1642 season runs from April till, you know, end of September. Essentially I'm, you know, I  
1643 understand that your hands are tied on things, but allowing myself to get through my busy  
1644 season will make it much more plausible to find a place that is zoned correctly, whether  
1645 it's in the county or out of the county, that will meet those criteria.

1646  
1647 Ms. Harris - Okay. Any questions? Mr. Blankinship, I need to ask you this.  
1648 If they are disallowed to continue this operation as far as the -- not the office, but the --

1649  
1650 Mr. Blankinship - Heavy equipment?

1651  
1652 Ms. Harris - Yes. How long will they have before they have to comply with  
1653 this request.

1654  
1655 Mr. Blankinship - Yes. It's unfortunate that our Assistant Director, Ms. Moore, is  
1656 not present this morning, because she'd be the most appropriate person to address this.

1657 But, speaking instead of as Secretary of the Board, on behalf of the county, I would say  
1658 we are certainly welcoming of businesses and supportive of businesses, especially our  
1659 local homegrown business, and we certainly want to do what we can to help you find a  
1660 location that is suitable. And from the enforcement side, that does not come before this  
1661 board, that is a separate county department and there is certainly some flexibility, some  
1662 ability to, you know, to work toward a solution. We always work toward voluntary  
1663 compliance and solutions that work for everybody. So that's certainly the position that the  
1664 county comes from.

1665  
1666 Now taking that hat off and putting my Secretary of the Board of Zoning Appeals hat back  
1667 on, the questions before this board are is the property zoned O-2, and is a tree service a  
1668 permitted use in an O-2 district, and that's really the only question, I think, that is properly  
1669 before this board.

1670  
1671 But we will, you know, back to the county side, we will do what we can to help you find a  
1672 new location that is suitable to you and works for your employees, and not, you know,  
1673 we're not going to be out there with handcuffs tomorrow morning or anything. I mean, the  
1674 goal is compliance, not punctual.

1675  
1676 Mr. Rawls - And we have been in contact with Felicia at the Economic  
1677 Development Department, and she has been sending us properties and raw land.

1678  
1679 Mr. Blankinship - Right.

1680  
1681 Mr. Rawls - And one of the main reasons that this is so hard for us is  
1682 because it has been great working with Henrico County and started our business. And  
1683 as far as -- I did the fuel tanks in that picture on the left side, the first one you see is  
1684 actually a heating oil tank that goes to the house, and the shipping container is there  
1685 because we have had, in nine months, we've been broken into three sperate times, and  
1686 so we've had to resort to putting our equipment in there. They even broke into that and  
1687 now we have to park a truck in front of it.

1688  
1689 Mr. Blankinship - And in a perfect world this would've been handled better at  
1690 the permit stage. When you applied for the business license. I'm sure that the application  
1691 could have been explained more clearly on both sides. So, you know, the county certainly  
1692 does not duck our responsibility for not making the regulations clear to you up front. We  
1693 failed you in that responsibility, and I'm sorry for that.

1694  
1695 But, again, that question's not before this board.

1696  
1697 Mr. Rawls - Yes, sir.

1698  
1699 Ms. Harris - Any other questions Mr. Green?

1700  
1701 Mr. Green - Yes. I'm very familiar with that property, because that used to  
1702 be Guirkin Plumbing and Heating, and they used to service my hone. Actually, when

1703 driving into work I will come down that route, get on Gaskins to hit 64, and/or if I'm coming  
1704 back down Three Chopt I can always look over to that property just to see. How long have  
1705 you all been there?

1706  
1707 Mr. Rawls - I have only -- Commonwealth Tree Care has only been there  
1708 since April 11th. Before that my business partner had a friend of his who lived at that  
1709 house and then he kept some trailers and some things up there on the space at the lot.

1710  
1711 Mr. Green - Because from the road, I'm just giving them some  
1712 background. From the road you can't -- once you go up in there in the back you really  
1713 can't see anything. So, I'm surprised if it was a -- as much as I used it, that there was a  
1714 tree service there.

1715  
1716 I'm surprised that there was a tree service there. My question is, because that's such a  
1717 busy intersection, have there been any concerns of those trucks pulling out into the street,  
1718 or any complaints, because --

1719  
1720 Mr. Rawls -- Yes.

1721  
1722 Mr. Green - Right now when you're coming out of that area, that's where I  
1723 could see some major problems. There can be trucks coming in and -- have there been  
1724 any traffic complaints, or --

1725  
1726 Mr. Blankinship - Yes, sir. Some of the complaints that were received did  
1727 involve traffic pulling out onto Three Chopt right at the intersection.

1728  
1729 Mr. Green - Yeah.

1730  
1731 Mr. Blankinship - And I apologize for almost interrupting you there. As you can  
1732 see in the aerial here, some of the area behind that second building has been cleared  
1733 fairly recently and you see how close it is to that rural townhouses.

1734  
1735 I think that's the reason this was suddenly brought to our attention, because it did have a  
1736 direct impact, I think, on some of the neighbors closest to it.

1737  
1738 Ms. Harris - Okay. Are there other questions? Does the other gentleman  
1739 want to speak?

1740  
1741 Mr. Nolley - I think Brewster pretty much covered everything that I wanted  
1742 to touch, as well, and I know that, you know, this is a conversation for another board, but  
1743 we are trying to find a place to stay in the county and stay here and operate and we are,  
1744 you know, speaking with economic development. We're really not arguing. We know  
1745 we're not zoned well for what we're doing and how we operate, but we are trying our best  
1746 to find another place in the county to move to. And so, I don't know who we would ask  
1747 for more time, just so we don't have to pack and leave immediately, because that would  
1748 be destroying our season right now.

1749  
1750 Mr. Blankinship - I can help you with that after the hearing.  
1751  
1752 Mr. Nolley - Thank you.  
1753  
1754 Ms. Harris - And now we – yes, questions Mr. Bell.  
1755  
1756 Mr. Bell - When you say you would ask for more time, how much time?  
1757  
1758 Mr. Nolley - Well, our busy season, I believe that, you know, on the  
1759 violation it said 30 days. We would love to have 90 days, you know, just to continue to  
1760 operate while, you know, to get through our busy season and not have to really worry  
1761 about personnel and just be able to hit our marks where we need to.  
1762  
1763 Ms. Harris - Mr. Johnson, question?  
1764  
1765 Mr. Johnson - No. That answered my question.  
1766  
1767 Ms. Harris - Okay. Any other questions? Okay, Mr. Green.  
1768  
1769 Mr. Green - I'm not clear on how this will impact your personnel. All you  
1770 potentially would end up having to do is move. If you move to another location, just like  
1771 any other business, your personnel would potentially move with you. It's just the fact that  
1772 it's zoned -- not zoned properly and the equipment. So I'm little perplexed on the  
1773 personnel piece.  
1774  
1775 Mr. Nolley - Currently our rent at that property is \$1250 a month. The  
1776 closest place that we could find that is zoned B-3 is in Ashland, it's a 10,000-square-foot  
1777 property, and it's \$7 a square foot per year. So, it would essentially triple our overhead of  
1778 operations, which I cannot afford to have 11 employees at that point. So, it would affect it  
1779 in that way in the sense that this is our second year. Our goal is to try to be a debt-free  
1780 business after four years, and as of right now we have bought more equipment, invested  
1781 our money into improving our business, and there's not really left -- any left over to have  
1782 to increase our overhead by that amount.  
1783  
1784 Ms. Harris - Okay.  
1785  
1786 Mr. Johnson - Madam Chair.  
1787  
1788 Ms. Harris - Thank you. Yes, Mr. Johnson.  
1789  
1790 Mr. Johnson - If you had 90 days would that help you any within --?  
1791  
1792 Mr. Nolley - Yes, sir. When the violation was first brought to our attention  
1793 and we talked to people that we knew then within the county for advice we immediately,  
1794 on the financial side of -- implemented a budgeting process, which we've been doing for

1795 about two months now and with the hope that by the end of our busy season that we will  
1796 be able to have enough cash saved up to at least find a down payment on the property  
1797 that will be suitable for us and in the county. 90 days would allow us not to be forced into  
1798 a place that may not be ideal for us.

1799

1800 Ms. Harris - Okay.

1801

1802 Mr. Green - One more question.

1803

1804 Ms. Harris - Mr. Green.

1805

1806 Mr. Green - My bank always told me when folks come and ask for money  
1807 they always under ask for what they need. And if you're going into your busy season, is  
1808 90 days realistic, or do you really think you need more time? I mean, I know you --

1809

1810 Mr. Nolley - Ideally, sir, you know, 90 days would be -- it would be pushing  
1811 it and making it tight. And if any sort of storm event or weather event came in it wouldn't  
1812 -- it would make it very difficult. Five to six months would put us past the busy season.  
1813 Also, during our busy season we would generally hire temporary help, college kids are  
1814 great, cheap labor. So, getting past September into kind of October and November would  
1815 be our ideal situation, but right now we're basically just kind of trying to put ourselves at  
1816 you all's mercy and work with you all.

1817

1818 Mr. Blankinship - Let me just reiterate that that question is not before this Board.

1819

1820 Mr. Nolley - Right.

1821

1822 Ms. Harris - Right.

1823

1824 Mr. Blankinship - This board's responsibility is to determine whether onto the  
1825 notice of violation is valid.

1826

1827 Mr. Nolley - Okay.

1828

1829 Mr. Blankinship - And then the county will do what we can.

1830

1831 Mr. Nolley - Thank you.

1832

1833 Ms. Harris - Yes. I was going to say we need just to make a decision to  
1834 deny or affirm the appeal. But it's good to know that you do have these concerns and you  
1835 know to talk to Mr. Blankinship and whomever else, you know, to get your needs met. But  
1836 we congratulate you on the success of your business.

1837

1838 Mr. Nolley - Oh, thank you so much.

1839

1840 Ms. Harris - Thank you for coming in.

41  
1842 Mr. Rawls - Thank you.  
1843  
1844 Ms. Harris - Is there anyone else who wishes to speak -- any one in  
1845 attendance who wishes to speak to this case? Opposed or in favor? Give us your name  
1846 please, first.  
1847  
1848 Ms. Myers - Linda Myers, M-Y-E-R-S.  
1849  
1850 Ms. Harris - Okay.  
1851  
1852 Ms. Myers - I'm a resident of Ruxton, and I have to say the noise has been  
1853 incredible. Constant noise interfering with the quiet enjoyment of our homes. And  
1854 especially knowing that they were in violation and that we have to still be victimized by all  
1855 this. Not only that, the debris; the amount of woodchips, tons of woodchips back there,  
1856 breeding snakes, rodents. You have termites that -- you should see how close our homes  
1857 are to that. And we just oppose that their appeal is going to -- please deny their appeal,  
1858 because we've been suffering long enough.  
1859  
1860 Ms. Harris - Okay.  
1861  
1862 Ms. Myers - And our property values, too, would be affected.  
63  
1864 Ms. Harris - Thank you.  
1865  
1866 Mr. Bleacher - I'm Dale Bleacher, Bleacher, B-L-E-E-C-H-E-R. Again, I'm a  
1867 member of the Ruxton Community Board. I'm prepared to support the denial for the same  
1868 reasons that Linda has already listed.  
1869  
1870 Ms. Harris - Okay.  
1871  
1872 Mr. Bleacher - Thank you.  
1873  
1874 Ms. Harris - Thank you.  
1875  
1876 Mr. Bernstein - Good morning. My name is Sanford Bernstein, It's B-E-R-N-  
1877 S-T-E-I-N. I'm a new resident of Ruxton. I've been there for 3 1/2 years. My townhouse  
1878 is one of the townhouses in that block that is directly backed up to the property. All I  
1879 wanted to do was just share some thoughts with the county based on what I have seen,  
1880 personal experience.  
1881  
1882 I always remember the Richmond and Tuckahoe Jaycees who ran a project up in the  
1883 north side that was on a woodlot. That project called Project Warm, was specifically  
1884 designed to help people in the county, in the city, that were low income people. It worked  
85 off of a woodlot. In the years I was involved with that there was problems with the debris

1886 and rodents and snakes and other things that it would breed. That is a concern of mine.  
1887 A concern as my neighbors in my block that I've talked to about that.

1888  
1889 How that plays out with your decision, that's up to you all, but that is a concern. I know  
1890 that the property values, you know, is also another issue. That really didn't come up in  
1891 any conversations I had, but I just wanted to share my personal experiences of what I  
1892 had seen, been involved with, in terms of being on a woodlot. I don't know how these  
1893 gentlemen run their woodlot. I know that it's very hard to police nature in this specific  
1894 instance. And the concern is that once they start breeding, or give grounds for something  
1895 like that to breed, once they get done foraging in one area where are they going next?

1896  
1897 This business is far too close to the residents. And that's one of our concerns. Thank you.

1898  
1899 Ms. Harris - Thank you, Mr. Bernstein. I think suffice it to say the applicant,  
1900 you know, has admitted that the appeal was too late and that they were sure about the O-  
1901 2C zoning and I think they almost agree that, you know, the appeal should be denied, but  
1902 we thank you for coming in and expressing your viewpoints on this issue.

1903  
1904 Is there anyone else who wishes to speak to this issue who's in attendance? Okay. We  
1905 are going to vote at this moment. Okay? What is the pleasure of the board on this  
1906 appellant case number two?

1907  
1908 Mr. Reid - I move that we affirm the decision of the Director of Planning  
1909 to deny the appeal of number 2019-2. It's clear that the appellant is operating a tree  
1910 service on the location, and it's also clear that the zoning of the property is O-2C, which  
1911 does not allow a tree service. Therefore, the notice of violation must be affirmed.

1912  
1913 Mr. Green - Second.

1914  
1915 Ms. Harris - It's been moved and properly seconded that we deny this  
1916 appeal. Are there any questions on the motion? Okay. All in favor of denying the appeal  
1917 say aye. Those opposed say no. The appeal is denied.

1918  
1919 After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Green,  
1920 the Board **affirmed** the above-referenced decision of the director of planning and **denied**  
1921 the appeal.

1922  
1923  
1924 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
1925 Negative: 0  
1926 Absent: 0

1927  
1928  
1929 Ms. Harris - The next case, Mr. Blankinship.

1930

31 **APL2019-00003**

**MICHAEL PATTERSON** appeals a decision of the director of planning pursuant to Section 24-116(a) of the County Code regarding the property at 1208 Valley Drive (FOREST HEIGHTS) (Parcel 759-741-1098) zoned One-Family Residence District (R-3) (Tuckahoe).

1932  
1933  
1934  
1935  
1936 Mr. Blankinship - Would everyone who intends to speak to this case please  
1937 stand and be sworn in? All raise your right hands, please. Do you swear the testimony  
1938 you're about to give is the truth, the whole truth, and nothing but the truth, so help you  
1939 God? Thank you. Mr. Newby.

1940  
1941 Mr. Newby - Thank you, Madam Chair, members of the board, my name is  
1942 Andrew Newby, I'm an Assistant County Attorney with the County of Henrico, Virginia,  
1943 appearing today on behalf of the Director of Planning.

1944  
1945 This is an appeal involving a short-term rental. This is the third such appeal this board  
1946 has seen in the last year and a half almost two years. There's a little bit of nuance here  
1947 in that instead of the R-4 district we're in the R-3 district, but you will recognize my  
1948 analysis.

1949  
1950 Before I launch into that analysis, let's take a look just at the general layout of the  
1951 neighborhood for everyone's edification. We're in the Tuckahoe Magisterial District just  
1952 north of Patterson and south of Three Chopt, east of Forest, in that little wedge, if you're  
1953 familiar with it, on Valley Drive. Here is the aerial view of your R-3 district. Here's a view  
1954 of the lovely property at issue, a Cape. There is your street parking. Fairly narrow street.

1955  
1956 A view there of some parking restriction signs on the property. Trying to direct people to  
1957 be respectful of the neighborhood as this is a short-term rental. So, you'll see we've got,  
1958 "No parking in driveway please." "No more than three cars allowed to house", and "do  
1959 not park in front of the neighbor's house, please." Those are the house rules. Again, trying  
1960 to be respectful of the neighborhood. That's the rear of the house and the shallow yard.  
1961 The home on the left and the home on the right give you a sense of the neighborhood.  
1962 So, there is just a visual of what we're dealing with.

1963  
1964 I have a very short PowerPoint, which I'm really putting forward more for the record.  
1965 Again, you're probably very familiar with this analysis. So, the county started with two  
1966 complaints, that's why we're here, is because we received complaints about short-term  
1967 rentals at the property. The zoning inspectors always investigate the complaints, and  
1968 upon finding them to be true, issued a notice of violation, because in the Director of  
1969 Planning's opinion, short-term rentals are not allowed in the R-3 district.

1970  
1971 Mr. Patterson, who is here today, agrees that the property is or was rented for short-term  
1972 rentals, but is arguing to the board that the rentals are allowed in the R-3 district. That our  
1973 interpretation of the zoning ordinance is incorrect. The sole legal question for this morning  
1974 is whether the zoning inspector was correct as short-term rentals are not allowed in the  
1975 R-3 district. As Ms. Anderson said in the last case, the burden of proof is on Mr. Patterson

1976 to prove that the zoning inspector was wrong, and that the Director of Planning's  
1977 interpretation is incorrect.

1978  
1979 You are familiar by this time with the key Virginia law. The general assembly passed a  
1980 law in 2017, codified at 15.2-983 of the Code of Virginia, which defines short-term rentals  
1981 as those rentals which lasted less than 30 days, amongst other things, and it specifically  
1982 acknowledges local authority to regulate short-term rentals through zoning. Which is  
1983 something that, not to skip to the end, that you're probably aware the Planning  
1984 Commission is currently undertaking.

1985  
1986 And, in fact, Mr. Patterson's been very involved in that process, trying to shape an  
1987 ordinance that will legalize potentially short-term rentals subject to regulations. But it's the  
1988 Director of Planning's position, of course, that the current Henrico County Zoning  
1989 Ordinance does not allow short-term rentals.

1990  
1991 So, we always start with 24-6. This is key to any analysis under the zoning ordinance.  
1992 Every property in the county shall not be used except in conforming with the regulation  
1993 specified for that district. It's a matter of does the zoning ordinance specifically allow it,  
1994 not whether the zoning ordinance specifically denies it. So, we have to look at what's  
1995 allowed in the R-3 district to determine whether it includes short-term rentals. And, of  
1996 course, the laws in the R-3 district has principal uses, conditional uses, provisional uses  
1997 and accessory uses, which you all are familiar with.

1998  
1999 The principal use that's really at issue here is a one-family dwelling, and that term is key.  
2000 The principal use isn't residential uses, or something that blanket, which I think is the  
2001 basis for Mr. Patterson's argument. It's a one-family dwelling use. And the code  
2002 specifically defines "family" and that's critical for a one-family dwelling. And that term  
2003 "family" does not include paying transient occupants, such as a group of persons  
2004 occupying a hotel, a motel, a tourist home, a boarding house, or lodging house, or similar  
2005 uses.

2006  
2007 So the code adopted way back, I guess, in the 1960s, may not have known about Airbnb,  
2008 which is a new technology, but it certainly knew about paying transient uses, and it went  
2009 out of its way, my opinion, to say, "That's not what we're looking for in our one-family  
2010 dwellings." So, we're looking for more of the stable set.

2011  
2012 So, there's no provision for a short-term rental business specifically in principal uses, but,  
2013 of course, that doesn't end the analysis. We would look at conditional uses just to briefly  
2014 gloss over, there's no short-term rental business for which a CUP is allowed. And, of  
2015 course, Mr. Patterson doesn't claim to have a conditional use permit for this use.

2016  
2017 Same with provisional use permits, but I would note, to me this is always interesting. Bed  
2018 and breakfasts are allowed, and Airbnb is an "Air" bed and breakfast. I suppose that's  
2019 what the "B-N-B" stands for. But of course, you would have to go and get a provisional  
2020 use permit from the Board of Supervisors, and you would be subject to all the regulations

21 for bed and breakfasts, which includes minimum square footage of the house, availability  
2022 of rooms, the owner lives onsite with the guests, amongst other things.

2023  
2024 So, there's no provisional use permit for short-term rental businesses like Mr. Patterson  
2025 is doing, but there is bed and breakfasts, if you want to change the model of this business  
2026 to comply with the regulations.

2027  
2028 I should point out that Mr. Patterson is an -- I would describe him as an entrepreneur.  
2029 He'll tell you, and I think he said in his appeal, he owns many rental properties. This  
2030 property is the only fulltime Airbnb property he operates, but he has other more long-term  
2031 rental properties in the county.

2032  
2033 So, finally we would look at accessory uses, and here you can see there are provisions  
2034 for guest houses, but they would be for nonpaying guests, and keeping roomers and  
2035 boarders, which are typically thought of as more long-term stays. And, of course, Mr.  
2036 Patterson's use isn't either of these, because he has paying guests and his occupants  
2037 are short-term and they're not his roomers and boarders. He doesn't live with them and  
2038 provide them room and board. They're transient occupants.

2039  
2040 So that leads to the conclusion that the current zoning ordinance does not allow short-  
2041 term rentals in the R-3 district. That is the analysis of the Director of Planning.

2042  
2043 I want to address the case raised by Mr. Patterson in his appeal. And that's the case of  
2044 Scott vs. Walker. It's not a zoning ordinance case, it's a case determining whether  
2045 something is a residential use for purposes of restrictive covenants in a homeowner's  
2046 association. But that's not really the analysis here. This isn't an analysis of whether the  
2047 use is residential or not, it's an analysis of whether this is being used as a one-family  
2048 dwelling or not. And the key is that it's not a one-family dwelling. It's more of a transient  
2049 use, which the term "family" specifically excludes.

2050  
2051 And as I mentioned at the beginning of my presentation, this is an issue that's definitely  
2052 under very, very serious consideration. I can't believe a year and a half later, or however  
2053 long it's been, I'm still telling you it's in front of the Planning Commission, but it is.

2054  
2055 The Planning Commission has held meeting after meeting after meeting with stakeholder  
2056 groups doing its due diligence to try to find something that maybe won't please everybody  
2057 in an adopted ordinance, but will balance the rights of property owners to use their  
2058 properties in a way that's beneficial to them, and the rights of neighbors to live in a stable  
2059 residential neighborhood of a character that they thought that they were originally buying  
2060 into. And, again, I would be remiss if I didn't point out that Mr. Patterson has been  
2061 extremely helpful in that process. But we're here today on whether his current use is legal  
2062 or not. That's my presentation. Thank you.

2063  
2064 Ms. Harris - Okay. Are there questions? Mr. Newby, do we have an idea  
2065 of when the Planning Commission is going to make a decision?

2066  
2067 Mr. Newby - A decision, no. But I can tell you the upcoming schedule.  
2068  
2069 Ms. Harris - Okay.  
2070  
2071 Mr. Newby - They finished their most recent round of stakeholder  
2072 meetings. Mr. Emerson was advising the Planning Commission yesterday morning, in this  
2073 very board room that there's a meeting scheduled for June where this will be on the  
2074 agenda. But Mr. Emerson's going to strongly recommend that they defer it until later, in  
2075 August or September so that staff can meet and come forward with a new proposal based  
2076 on the feedback we've received from Airbnb operators, from homeowners' associations,  
2077 and from affected neighbors.  
2078  
2079 Ms. Harris - Okay.  
2080  
2081 Mr. Bell - What was the month? Until September?  
2082  
2083 Mr. Newby - Potentially. That would be Mr. Emerson's recommendation.  
2084 But, of course, it'll be up to the will of the Planning Commission.  
2085  
2086 Mr. Bell - I mean after September it might or might not be --?  
2087  
2088 Mr. Newby - That's correct, sir. And then, of course, it would then have to  
2089 go to the Board of Supervisors for ultimate approval.  
2090  
2091 Ms. Harris - Other questions from board members? Thank you, Mr.  
2092 Newby.  
2093  
2094 Ms. Harris - We need the applicant to come forth and establish the burden  
2095 of proof that you are seeking what is in the code or what should be approved.  
2096  
2097 Mr. Patterson - Good morning. My name is Mike Patterson. I understand that  
2098 you've heard this case twice now. I have read the notes from that case, and I hope that  
2099 you'll be willing to hear a different perspective, because I disagree with the perspectives  
2100 that the prior appellants offered in their appeal.  
2101  
2102 A few things that I want to address that Mr. Newby mentioned, is that this recently passed  
2103 bill by Governor McAuliffe gave local authority the authority to regulate short-term rentals  
2104 as defined by 30 days. That's true, but what is the definition of "regulate"? We live in a  
2105 Dillon State Rule, where unless authority clearly given, then it has not been given. So  
2106 "regulate" does not mean "Prohibit because the neighbor doesn't want it."  
2107  
2108 If you look at Loudoun County and you look at Virginia Beach, they've taken the term  
2109 "regulate" as require registration, collect taxes, abide by all the rules, and several other  
2110 things. They're not going about prohibiting it, and I don't believe that -- I don't believe that  
2111 the power was vested to do that in "regulate" means shut down. I don't believe that.

12

2113 The second thing is Mr. Newby talked about the use of a single-family dwelling. However,  
2114 the county's definition of "family" is: "A person living alone, or any number of persons  
2115 living together as a single housekeeping unit, including domestic servants, caregivers,  
2116 foster children, and adults." So, the county's own definition of "family", first of all, all of our  
2117 leases are with one person. It could be a family. It could be two couples. Just like when I  
2118 lease one of my other properties. If I lease it to four college students am I breaking the  
2119 family requirement? The county's loose definition of "family", in my opinion, washes out  
2120 that argument.

2121  
2122 The first thing I want to talk about is the main cause that the county is alleging for this  
2123 case of violation is that the term "short-term rental" is not in section 24-11 of the Henrico  
2124 County Code. It does not specifically say, "short-term rental". And I assume you're all  
2125 familiar with that. I know you've heard this before.

2126  
2127 I'm looking at the permitted uses here, and I see "living facilities, group homes, childcare  
2128 centers, pumping stations" et cetera. What I don't see in the permitted uses list as an  
2129 allowed use, is a rental property in any duration. I do not see renting your property as a  
2130 permitted use. So, does that mean that the county's stance is that rental properties in  
2131 Henrico County are illegal? It's not a permitted use. And following the same logic all rental  
2132 properties in Henrico County are illegal, because it's not a permitted use. It's not listed  
2133 there.

34

2135 So, we've established that rental properties of any duration are not listed in the code as  
2136 a permitted use. So, the question has become why has the county gone after rentals that  
2137 are being leased for less than 30 days? And the reason is because they're choosing to  
2138 arbitrarily define less than 30 days as a transient use.

2139  
2140 So, if a tenant stays 29 days, it is transient use, but if a tenant stays 30 days, it's non-  
2141 transient use. Unfortunately, this case has already been resolved in a court of law. The  
2142 Texas State Supreme Court recently voted unanimously 9-0 that residential use or non-  
2143 use of a property is not determined by length of duration. Now I realize we're not in Texas,  
2144 but a unanimous 9-0 decision. So that can be 29 days, 31 days or 300, that does not --  
2145 the duration alone does not determine the transient or residential use of a property.

2146  
2147 And so, while we're not in Texas, I would recommend that we take a step back and  
2148 consider the likelihood of this notice of violation standing up in a court of law on the single  
2149 premise that someone staying 29 days or less is transient and someone staying 30 days  
2150 is not transient. They're doing nothing differently. One day makes no difference in that.

2151  
2152 The county also makes the accusation that a short-term rental is being used as a hotel.  
2153 However, the definition of a hotel by the county, by their own code, specifically states that  
2154 a hotel is a building or group of attached or detached buildings containing in combination  
2155 three or more lodging or dwelling units. Three or more lodging or dwelling units is required  
2156 for it to be a hotel. A single-family residential property does not have three or more  
2157 lodging units. It's not a hotel. So the argument that this is a hotel is incorrect.

2158  
2159 I have also heard the point made from a complaint that I should have done my homework  
2160 on this case. That I should have made myself aware of the legalities of Airbnb properties  
2161 before I began operating one. And, in fact, I did.

2162  
2163 In September of 2018 before we began operating the property, I called the Henrico County  
2164 Real Estate Division to do just that. After being routed around to several different people  
2165 asking them questions about the legality, I was passed along to a gentleman named  
2166 Stephen Bond who was in the Real Estate's Short-Term Rental Property Tax Division.  
2167 Sounds like the exact place one should go to ask the question about legality.

2168  
2169 So I asked if short-term rentals were allowed, I asked if I needed to register for it, and I  
2170 asked if I needed to collect taxes, or if there's anything else I needed to be aware of. The  
2171 response I received was that short-term rentals were currently allowed in the county, and  
2172 that nothing was currently required of operators, but the issue was likely to be addressed  
2173 in 2019 legislative sessions, so to pay attention to the county's calendar.

2174  
2175 Based on this information from the county we spent \$5,000 to refinance. We had the  
2176 house on the market and based on this information we spent \$5,000 to refinance the  
2177 house and roughly \$7,500 to furnish the house. If these costs were incurred because of  
2178 a discrepancy between two county divisions that obviously should have been on the same  
2179 page about an issue as, frankly, simple as this, then we would like to be reimbursed for  
2180 these expenses we incurred because of misinformation.

2181  
2182 Also of note, when we received the violation in November I called the same division again  
2183 two months later, and I received the exact same answer again. That there was no  
2184 restrictions in the county. So, I find that kind of contradiction within divisions in the county  
2185 unacceptable, and I hope you do as well.

2186  
2187 In summary, the county has, in my belief, illegally issued a notice of violation, and has  
2188 done so in a manner that is completely inconsistent. I received a notice of violation while  
2189 others didn't, because my neighbor didn't like us operating a short-term rental and other's  
2190 neighbors didn't apparently mind.

2191  
2192 My request is simple, I request as this ordinance is being worked through, that my  
2193 violation be tabled until the county passes an official ordinance, clarifying the  
2194 requirements of rental properties with less than 30 days. Once the county's position is  
2195 approved, we will abide by that ordinance. This will do -- this will allow us to do two things.  
2196 It will allow us to recuperate costs we incurred from misinformation given to us by the  
2197 county, and will also allow us to not have to cancel the vacation lodging plans for  
2198 Richmond visitors who have booked stays with us for next month, several of whom are  
2199 flying into town.

2200  
2201 I'd also like to point out, as Mr. Newby said, I've been very involved and trying to be very  
2202 helpful in the development of this ordinance to be a commonsense legislation that can  
2203 work for both parties. I'm absolutely a fan of regulation. I think it needs to be regulated. I

2204 don't think that -- I don't -- but as I said, there's currently nothing in there stating any rental  
2205 property is a permitted use. So, to come out and say, "Well, 30 days aren't allowed  
2206 because they're not in there." Well, rental properties are not in there either.

2207  
2208 So, I want to close my argument with the fact that people can have -- people have a right  
2209 to an opinion. You can have a right -- I get it all the time in my rental properties. People  
2210 don't want to live next to a person that's renting a property, period. Even a long-term.  
2211 They want homeowners, so they get frustrated if I buy a rental property and put a tenant  
2212 in there, even long-term. They don't want tenants in there.

2213  
2214 Same thing with short-term rentals. It's your right to not like that. It's your right to not want  
2215 to live next to somebody because you don't like them. That does not give you the right to  
2216 limit their property rights.

2217  
2218 Mr. Blankinship - That's your time.

2219  
2220 Mr. Patterson - And so I appreciate your time and consideration this morning,  
2221 and happy to answer any questions.

2222  
2223 Ms. Harris - Okay. Are there questions from board members? Yes. Mr.  
2224 Green.

2225  
2226 Mr. Green - First, you state that a family could be college students. I  
2227 disagree with that. As a parent who has student's in college, when my daughter was  
2228 moving last Fall to a complex with other students, I don't consider that a family. Her family  
2229 is her family. Her natural family.

2230  
2231 The second thing is, you talk about 29 vs 30 days. This may not be a good analogy, but,  
2232 you know, numbers mean something, and we need to follow the rules of the numbers. If  
2233 I'm jumping a cliff and in order for me to clear the cliff, I need 30 inches, or 30 feet to jump  
2234 it, and I miss the cliff by 29, I'm dropping and killing myself. So that's why those particular  
2235 numbers may be in place.

2236  
2237 You talk about Texas. Well, sir, I live in the State of Virginia, the County of Henrico. I'm  
2238 going to follow the rules accordingly. Now if you were citing the State of Virginia and not  
2239 Texas, that's fine, because different states have different rules, different counties,  
2240 different localities have different rules that we have to follow. And as a member of this  
2241 Board of Zoning Appeals, I'm going to follow the rules as stipulated according to the  
2242 statutes that we are given. And that's my comments.

2243  
2244 Mr. Patterson - May I respond?

2245  
2246 Ms. Harris - Please.

2247  
2248 Mr. Patterson - My definition of family as four college students was in  
2249 response to Mr. Newby saying that the people coming into my property may not meet the

2250 traditional definition of family of a husband and wife and two children and my -- what I'm  
2251 saying is if that's the case, if that's the argument, then if I rent a property to four students  
2252 in a single family dwelling, that's like -- that's doing the same exact thing that he's arguing  
2253 is not allowed.

2254  
2255 Mr. Blankinship - The disingenuous thing there is that you read the first  
2256 sentence of the definition, and you didn't read the second sentence, which clearly states  
2257 that it does not include transients.

2258  
2259 Mr. Patterson - I mean, again, I didn't do that intentionally. I mean, I know --  
2260 so, but I mean, that brings up this question of what is "transients". I mean, so to your  
2261 second point of 29 versus 30 days, I understand this is Virginia --

2262  
2263 Mr. Blankinship - And that number is taken from the state code. There's nothing  
2264 arbitrary about it.

2265  
2266 Mr. Patterson - It is taken from the state code. I don't believe that to be a legal  
2267 position that will hold up in court.

2268  
2269 Mr. Bell - Well, it tells us we can use it under the general use for zoning,  
2270 and it's our responsibility to do it. That's exactly what we did.

2271  
2272 Ms. Harris - Okay.

2273  
2274 Mr. Reid - Mr. Patterson, let me ask you a question. You have all these  
2275 other rental properties; which I assume you have leased out on longer term basis. Why  
2276 would you go into a nice, quiet, settled neighborhood and have one of these short-term  
2277 rental places where people come in for the weekend for a wedding or for an alumni event  
2278 or something, they're all drinking, carrying on, parking wherever they please, upsetting  
2279 other people's property. Why isn't this one on a long-term rental basis?

2280  
2281 Mr. Patterson - I mean, it's mainly the demand. I mean, this is an Uber versus  
2282 taxi argument we're having right now. The demand -- the demand out there -- the shift is  
2283 into, in Uber and taxi, the shift is people want Uber, they don't want taxi. It's the same  
2284 thing now. People don't want to stay in a hotel room. I cannot think of a single hotel room  
2285 in Richmond, other than maybe the Jefferson, where the experience is part of the trip.

2286  
2287 The notion that people come into these houses and rent them and just party and go crazy  
2288 is very frustrating, because that's incorrect. There's been four complaints that I'm aware  
2289 of in Henrico in all these properties in two years. I get more complaints in my rental  
2290 properties for domestic abuse. I get so many more complaints on my long-term properties,  
2291 and the main reason is I clean this house in between tenants. Right?

2292  
2293 And so, I don't want -- I don't want party animals that are staying up late. So, when --  
2294 before I allow someone to stay in the property, I go in and I read their reviews. And if  
2295 they've done anything negative in prior stays we block them, and we will not let them stay.

2296 I don't want to go over and pick up beer cans and clean people's throw-up up. So, I mean,  
2297 the notion that, you know, everyone that stays in these is just a party animal is just crazy.  
2298

2299 I mean, if you were traveling with another couple, say my wife and I were traveling with  
2300 another couple, we wanted a shared space. We wanted to cook meals together. Where  
2301 can we do that in a hotel? Where can we sit and watch a movie together? It's the dynamic  
2302 shift of the lower generation going towards, they want shared space, and it's just the way  
2303 it's going.  
2304

2305 Ms. Harris - How do you get these clients, these tenants, these persons  
2306 who rent space in your property here? How do you secure them?  
2307

2308 Mr. Patterson - So we use an online platform, Airbnb, or VRBO, which allows  
2309 us to screen the tenants and, obviously, they can screen our property and see our  
2310 reviews, which we have 40, 5-star reviews, so we've never had any issues with any  
2311 tenants.  
2312

2313 And then we're able to screen the tenants as well to see if they've had any history of  
2314 issues with other property owners. And then we hold a deposit in case, you know,  
2315 anything happens.  
2316

2317 Ms. Harris - Okay. Do you know if there are offenders of any kind? Do you  
2318 check police records and all of that?

2319 Mr. Patterson - I believe Airbnb does. You have to do a background check on  
2320 Airbnb.  
2321

2322 Ms. Harris - Okay. You talked about the power to regulate, and I think you  
2323 said that -- I may paraphrase that "regulation" does not mean to shut down a business,  
2324 but if you're regulating something and you find that people are not in compliance with your  
2325 regulation then what do you do?  
2326

2327 Mr. Patterson - There's nothing in there saying, as I said, there's nothing in  
2328 there saying you can or can't rent a property. There's nothing in there saying you can't  
2329 rent a 30-day property. So, this whole thing of "You're breaking the law." What law? I  
2330 mean, that's my whole thing is 30 days, okay, okay, but there's nothing -- and if you want  
2331 to pass an ordinance that says that, then yeah, and then I continue, I don't disagree. But  
2332 there's -- the county is currently trying to enforce something that's not there, and I will  
2333 say, "Well, it's not there, but because it's not there you can't do it." Exactly my point. I  
2334 can't rent any properties, because it's not in there.  
2335

2336 So you can't have it both ways. You can't say, "Well, you can rent long-term even though  
2337 it's not in there. But we're not going to let 30-days. Which is also not in there." We pass  
2338 an ordinance to get there, which the county is doing. And that's what I'm saying. Once  
2339 you do it, great. Then I'll absolutely agree that if I continue, I'm in violation, absolutely.  
2340

2342 But what I'm saying is that -- and that's, I think, why the real estate division that I spoke  
2343 to was so confused he gave me misinformation about it.

2344  
2345 Ms. Harris - Okay. Are there other questions from board members? I think  
2346 that's why the Planning Commission is looking into this. You know, they want to be very  
2347 specific, you know, about this regulation. But when we have quiet residential areas  
2348 complaining about tenants and Airbnbs, we do have to consider the health, safety and  
2349 welfare of the residents as members of this board. Are there other questions?

2350  
2351 Mr. Green - Yes, I do. I have a question.

2352  
2353 Ms. Harris - Okay.

2354  
2355 Mr. Green - Mr. Patterson, in your neighborhood do you have any Airbnbs  
2356 in your neighborhood?

2357  
2358 Mr. Patterson - I don't, because my HOA disallows them.

2359  
2360 Mr. Green - Okay.

2361  
2362 Mr. Patterson - Which is a great way to prohibit them.

2363  
2364 Ms. Harris - Are there any other questions of board members? Thank you  
2365 so very much. Okay. Do we have any persons in attendance who wish to address this  
2366 issue? Would you please come forth, and we need your name and would you spell your  
2367 name.

2368  
2369 Ms. Parrott - Hi. Cathy Parrott, P-A-R-R-O-T-T. I live at 1206, right next  
2370 door. I sent an email with pictures that I could fit into the email earlier this week.

2371  
2372 Mr. Blankinship - That's provided at your table.

2373  
2374 Ms. Parrott - So, I'm not going to really repeat any of that. Make this short.  
2375 But, what really it's the parking problem, and even after it was denied at the last meeting,  
2376 on the 11th there was 7 cars parked in front of that house, and it's constant. And I'm not  
2377 saying the people aren't nice, the house is just as cute as it can be, but who wants to live  
2378 like that? And I live alone, I don't ever know who's over there. And I was blessed to have  
2379 neighbors for a long time by my house.

2380  
2381 Another thing is about the rental. Sometimes these are rented to -- this one has been  
2382 rented to workers who come with big utility vehicles and pickup trucks and sometimes  
2383 trailers. There's no room for any of that.

2384  
2385 And the other thing is, I don't think it contributes anything to the neighborhood. I think it's  
2386 like a business operating 24/7 with a little parking area. And I would ask that if this is  
2387 denied, again, at least make it cease until something is legal about it, because it's a mess.

88  
2389 Ms. Harris - Thank you, Ms. Parrott.  
2390  
2391 Ms. Parrott - I think I'm done. Thank you.  
2392  
2393 Ms. Harris - Do we have someone else who wants to address this issue.  
2394  
2395 Mr. Green - Excuse me. Ms. Parrott, I have a question. You said that this  
2396 has been denied before. This property?  
2397  
2398 Ms. Parrott - I thought that's what the appeal was about.  
2399  
2400 Mr. Blankinship - Oh, he's been served a notice.  
2401  
2402 Mr. Green - He's been served a notice.  
2403  
2404 Mr. Blankinship - This is the first hearing, but he's been served a notice of  
2405 violation by an administrative officer.  
2406  
2407 Ms. Parrott - Oh, okay.  
2408  
2409 Mr. Blankinship - And this is an appeal.  
10  
2411 Ms. Parrott - I must have misread that. I'm sorry.  
2412  
2413 Mr. Green - No. I just got the impression that --  
2414  
2415 Mr. Blankinship - Thank you. Now we understand what you meant.  
2416  
2417 Ms. Parrott - A lot of it was legal stuff I didn't understand. I'm sorry.  
2418  
2419 Mr. Green - No, no. No problem.  
2420  
2421 Mr. Blankinship - Well now we understand what you meant. Thank you.  
2422  
2423 Mr. Green - Yes.  
2424  
2425 Ms. Parrott - Okay. Am I done?  
2426  
2427 Ms. Harris - Yes, thank you.  
2428  
2429 Ms. Parrott - Thank you.  
2430  
2431 Mr. Upshur - Hi, good morning.  
132  
2433 Ms. Harris - Good morning.

2434  
2435 Mr. Upshur - My name is Conway Upshur, last name's U-P-S-H-U-R, and I  
2436 live at 1210 West Valley. It's the house on the right, if you're looking at the front here. I've  
2437 lived there with my family since 2014.

2438  
2439 Last year, you certainly know the background on the house, was vacated by the original  
2440 owner, sold and became a short-term rental. It's not a primary residence. In short, at the  
2441 very least I'd like to see short-term rentals in neighborhoods like this restricted to maybe  
2442 the primary residences. But I know I've submitted a written statement to you all as well,  
2443 but I'll just summarize here.

2444  
2445 The main issue I have with this particular property is its effect on the feel of our  
2446 neighborhood. Residents, buyers, sellers in a neighborhood looking for a traditional  
2447 residential neighborhood experience do not want a house next door. The average person  
2448 is going to say it's much closer to a hotel than a regular family home. And regardless of  
2449 how you define "dwelling" "residence" "length of stay", these kind of things, I think a house  
2450 that's rented just a few days at a time is going to be seen by the average person as  
2451 fundamentally different than a regular residential neighborhood home.

2452  
2453 Our street is certainly full of folks who have been there for years, if not decades. I've been  
2454 there for years and hope to be there for decades, and we certainly value the sense of  
2455 community that comes from being there for an extended period of time.

2456  
2457 Regrading specifics, I've had three personal direct issues with the property. All related to  
2458 parking. They were all resolved politely, but two of the instances required me to go over  
2459 and personally confront two sperate guests on two separate occasions, apart from a  
2460 single, formal complaint that I made with the county. And although these were certainly  
2461 all resolved, I'd certainly rather not have to face the possibility with each new set of guests  
2462 of being the bad guy and going and having to complain. I've got to think there'd be less  
2463 chance of any problems if there was a stable resident next door.

2464  
2465 Regardless of your relationship that you might have with a long-term neighbor, be it good  
2466 or bad, I think that over time a certain stable state kind of occurs, and you know what to  
2467 expect from each other and that's certainly more comfortable than just having a new set  
2468 of expectations every couple: of weeks.

2469  
2470 I certainly wish this argument here didn't impact his finances. I know he's put a lot into the  
2471 house. Mr. Patterson, certainly like the county attorney had mentioned, is an  
2472 entrepreneur, savvy with these kind of things. He's got a number of properties. I would  
2473 think that with an issue like this that's not new, that this, you know, being cited and having  
2474 to face this would be an expectation. Certainly, on one side of the issue you've got short-  
2475 term rental operators and online booking agencies. In neighborhoods where this happens  
2476 you've got everybody else on the other side. And until regulation is crystal clear I think  
2477 there's going to be opposition.

2478  
2479 Mr. Blankinship - And that's your time.

80

2481 Mr. Upshur - Thank you.

2482  
2483 Ms. Harris - Thank you.

2484  
2485 Ms. Enghauser - Good morning.

2486  
2487 Ms. Harris - Good morning.

2488  
2489 Ms. Enghauser - My name is Mary Enghauser, that's E-N-G-H-A-U-S-E-R. And  
2490 I'm the neighbor up the street. And I have used Airbnb and I have owned Airbnb, so I  
2491 support my neighbors and I also support Airbnb.

2492  
2493 I'm not in favor of overreaching regulations of Airbnb because I think they're beneficial to  
2494 the consumer. Some of you may have seen the article in the Wall Street Journal  
2495 yesterday. The net gain has been the consumer, because it's lowered hotel prices and all  
2496 of that. And it's also beneficial to folks who are seeking supplemental incomes, sometimes  
2497 of necessity, sometimes just -- at any rate --

2498  
2499 So, however, I do have issues with this particular site. Predominately safety concerns  
2500 because of the cars. The biggest problem is there's no off-street parking. I have a guest  
2501 house that I built in my backyard when we moved in 16 years ago, and part of what we  
2502 did is provide off-street parking. So right now, my daughter and her husband are living in  
2503 our guest house. We have four cars. None of them are on the street. And I paid to have  
2504 pavement put in.

2505  
2506 And there're often multiple cars at this location, as my neighbors have mentioned, and  
2507 there are many children. This is a really lovely neighborhood in the sense that it's a  
2508 mixture of ages, it's a mixture of family dynamics, my grandchildren play with Mr. Upshur's  
2509 children. There's often, especially in the late afternoons, there can be as many as 10  
2510 children, and we have a kind of a wilderness area, you know, across the street from this  
2511 property, and they have a good time playing. And that street becomes a passageway in  
2512 the late afternoon, people cut through it. And that's often when they're out playing.

2513  
2514 The vehicles block the access. It does not impact me directly on a day to day but passing  
2515 through there is often difficult because the number of cars that are there. In my opinion,  
2516 the better use of the property is long-term rental. My family owns long-term rentals in the  
2517 neighborhood, we have put a lot of money into upgrading the properties, we get good  
2518 tenants that stay there a long time. It's a great school district. You can command higher  
2519 prices.

2520  
2521 So, that -- and at the end of the day, I'm more concerned with my neighbors who live  
2522 there, and we have a great neighborhood where we know each other, we care about each  
2523 other, and so that's why I wanted to come and speak. Thank you.

81

2525 Ms. Harris - Thank you. Are there other questions? Other questions? Ms.  
2526 Enghauser we need you to come back to the podium there for a question. Mr. Johnson.  
2527  
2528 Mr. Johnson - Yes. You mentioned you live in that area. Right?  
2529  
2530 Ms. Enghauser - Right up the street. I'm at 1405 Savern. The street changes  
2531 names just right where this house is.  
2532  
2533 Mr. Johnson - How long you been living there?  
2534  
2535 Ms. Enghauser - Sixteen years.  
2536  
2537 Mr. Johnson - Do you have a homeowner's association?  
2538  
2539 Ms. Enghauser - No. And that is a good thing to me. I like a little clothesline and  
2540 stuff like that to -- that's part of the reason it was desirable for my husband and me,  
2541 because we've lived in neighborhoods with larger houses that are very -- anyway, that's  
2542 just me personally.  
2543  
2544 Ms. Harris - Okay. Mr. Green.  
2545  
2546 Mr. Green - The problem I have with this, I don't, you know, when you  
2547 have people parking and you have to leave your property and step onto someone else's  
2548 property, you don't know what could happen. Anything could happen. And that is my grave  
2549 concern. And having recently encountered something like that myself where someone  
2550 stepped on my property to goad me into a debate, I don't like that. This gentleman may  
2551 be well intentioned, but you don't know what you're getting all the time when you're renting  
2552 out these places, and to put the neighbor's safety at risk, you know, these are tax-paying  
2553 citizens who bought they're homes. I've bought my home and I don't want to see nothing  
2554 like this in my neighborhood. And nothing like this in my neighborhood. Period.  
2555  
2556 Ms. Enghauser - I will add, we have lots of rental homes, as is mentioned. My  
2557 family owns two of them. I've never seen that as a negative impact, because there's  
2558 stability of the people. Number one, the rent is high, so you're going to eliminate a, you  
2559 know, a certain element, if that's kosher to say. But I've never had any problem with  
2560 people that rent homes in our neighborhood.  
2561  
2562 Ms. Harris - This is the only Airbnb you have in your neighborhood.  
2563  
2564 Ms. Enghauser - It is as far as I know.  
2565  
2566 Ms. Harris - Okay. Any other questions of board members? Okay, we  
2567 thank you so very much. Does anyone here who's in attendance who wishes to address  
2568 this issue? Okay. Following our guidelines, we're ready to vote. What is the pleasure of  
2569 the board on this appellate case number three.  
2570

71 Mr. Reid - I move that we affirm the decision of the Director of Planning,  
2572 denying the appeal of 2019-00003. It's clear from what's been said this morning that the  
2573 problem -- the problem -- the property is being rented on a short-term basis, and several  
2574 times in the past year, at least twice, short-term rental of the dwelling is not a permitted  
2575 use in the one-family residential districts.  
2576

2577 The Code of Virginia specifically defines short-term rental, and specifically authorizes  
2578 local governments to regulate short-term rentals through zoning. Therefore, the notice of  
2579 violation must be affirmed.  
2580

2581 Mr. Green - Second.

2582  
2583 Ms. Harris - Okay. It's been moved and properly seconded that we deny  
2584 this appeal. Are there any questions on the motion? I think that when the Planning  
2585 Commission, then later on the Board of Supervisors, make a decision about Airbnb this  
2586 case will probably be revisited. But until that time, I think we have to be concerned about  
2587 the issues expressed already by Mr. Reid and the safety of the community. Any more  
2588 discussion?  
2589

2590 Mr. Johnson - Yes ma'am.

2591  
2592 Ms. Harris - Oh, yes, Mr. Johnson.

93  
2594 Mr. Johnson - Yes. Also want to iterate that we also operate under the state  
2595 code, so that's one of the things that we are taking in consideration.  
2596

2597 Ms. Harris - Any other statements? Okay. All in favor of denying this  
2598 appeal say aye. Those opposed say no. The ayes have it and so ordered.  
2599

2600 After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Green,  
2601 the Board **affirmed** the above-referenced decision of the director of planning and **denied**  
2602 the appeal.  
2603  
2604

2605 Affirmative:	Bell, Green, Harris, Johnson, Reid	5
2606 Negative:		0
2607 Absent:		0

2608  
2609  
2610 Ms. Harris - The next appeal.  
2611

2612 **APL2019-00004 DAVID WILLIS** appeals a decision of the director of planning pursuant  
2613 to Section 24-116(a) of the County Code regarding the property at 914 Pepper Avenue  
2614 (PINE RIDGE) (Parcel 766-738-7213) zoned One-Family Residence District (R-3)  
2615 (Brookland).  
2616

2617 Mr. Blankinship - Would everyone who intends to speak to this case please  
2618 stand and be sworn in? Do you swear the testimony you're about to give is the truth, the  
2619 whole truth, and nothing but the truth so help you God? Thank you. Mr. Newby.

2620  
2621 Mr. Newby - Thank you Mr. Blankinship, Madam Chair, members of the  
2622 board. Once again, Andrew Newby on behalf of the Director of Planning. Let's re-orient  
2623 ourselves to an identical legal issue, but a new neighborhood.

2624  
2625 Here we are on Pepper Avenue, I believe I'm in the Brookland District. Hearing no  
2626 objection. There's the aerial of the property. There's the street view of the home. The  
2627 parking pad, again, the front façade of the home at issue. A rear view of the yard with a  
2628 fire pit. The home on the left and the home on the right. We're back in the R-3, single-  
2629 family residential district.

2630  
2631 I have another PowerPoint, which I'll simply bring up. Again, this is more to make a  
2632 complete record, submit this, in addition to my letter that's already been submitted to the  
2633 board, and just to walk through it very quickly, since it's almost 90 percent identical.

2634  
2635 We received a complaint on this short-term rental property as well. This is Mr. Willis'  
2636 property. The zoning inspector investigated it and confirmed that the complaint was  
2637 accurate and issued a notice of violation based on the short-term rentals in the R-3 district.  
2638 I believe Mr. Willis will agree that the property is or was rented for short-term rentals, but  
2639 I believe he will dispute the application of the zoning ordinance to those rentals. The legal  
2640 question is identical. It's whether the zoning inspector was correct, that short-term rentals  
2641 are not allowed in the R-3 district.

2642  
2643 I will submit these slides as being identical to what was previously discussed, highlighting  
2644 only what Mr. Blankinship raised in the last appeal, which is that the definition of "family"  
2645 has a second sentence which specifically excludes uses that are similar to hotel, motel,  
2646 tourist home, boarding house or lodging house from the definition of "family". That's the  
2647 key point for that definition. So, I won't belabor going through the analysis of principal,  
2648 conditional, provisional and accessory uses. I will submit that in that the conclusion would  
2649 be the same in this case. The zoning ordinance does not allow short-term rentals in the  
2650 R-3 district. I will be happy to answer any questions.

2651  
2652 Ms. Harris - Okay. Are there any questions for Mr. Newby? Did we get  
2653 multiple complaints do you know, regarding this case?

2654  
2655 Mr. Newby - I thought this was a single complaint.

2656  
2657 Ms. Harris - Okay.

2658  
2659 Mr. Newby - I'm aware of one complaint.

2660  
2661 Ms. Harris - Okay.

2662

63 Mr. Newby - I don't know that anyone is here to speak to those complaints  
2664 this morning.  
2665

2666 Ms. Harris - Okay. Other questions of Mr. Newby? We thank you.  
2667

2668 Mr. Newby - Thank you.  
2669

2670 Ms. Harris - Now the applicant who needs to establish the burden of proof  
2671 will come forth now and do that. Please give us your name spelling your last name.  
2672

2673 Mr. Willis - Yes, ma'am. David Willis, last name W-I-L-L-I-S. And thank  
2674 you all for speaking to me today. For the most part my argument is very similar to his  
2675 argument, so I'll try to save everyone some time.  
2676

2677 I wanted to, in addition to the points that were raised before, raise a couple of additional  
2678 points that I think are valuable. The first has to do with the definition of the short-term  
2679 rental in the State of Virginia as being 30 days. I recognize the point that the actual letter  
2680 of the law says 30 days, and that's just a numeric number, but it is my belief that that 30-  
2681 day number is established primarily based on the length of time of a month, and I think  
2682 similar to the argument that the other gentleman was making, if you rented in February,  
2683 for example, for a period of 28 days, would that count as a short-term rental? So, I just  
2684 raise that as a question. It's my belief that if you're kind of basing it upon a month, that  
2685 puts a random and strange constraint on someone who needed to be living in a property  
2686 in a 28-day month.  
2687

2688 The next one I wanted to raise was one that you raised, Mr. Green, regarding the issue  
2689 of parking. Or, I'm sorry, guests -- a neighbor raised the issue of parking, and you brought  
2690 up issues of the number of cars on a street and safety concerns and people walking on  
2691 your property.  
2692

2693 Mr. Green - No, I didn't.  
2694

2695 Mr. Willis - You didn't? I must have misheard you. I'm sorry. So the  
2696 stipulation -- the point I would make there, is whether you live in a home or you have  
2697 short-term rentals or long-term rentals, as far as I'm aware, and I could be wrong, there  
2698 is not many requirements in some neighborhoods on how many cars can park in a street.  
2699 Parking lots are a separate issue.  
2700

2701 When I rented back in a neighborhood close to where this property is, we had a neighbor  
2702 who lived there, and they had four cars, and they were constantly parked in the street and  
2703 in front of our home. So, you know, I don't understand how that's necessarily pertinent to  
2704 the short-term rental argument. And, of course, to that point that they could park in front  
2705 of someone's house, I also want to reiterate how do you define a dwelling for a family unit  
2706 for a residential purpose?

707

2708 And, again, I just want to re-iterate the point that was made earlier that the definition of a  
2709 family unit as defined in the code indicates that any group of people that are living together  
2710 to fulfill the needs of a family unit, such as, you know, maintaining the home, cleaning,  
2711 cooking, et cetera, does count as family.

2712  
2713 I also acknowledge the point about what a transient use is, and I do question exactly how  
2714 one defines transient use in the code. I couldn't find anything that specifically defined that.  
2715 I get that loosely it's someone who's staying there for a period of time that is less than  
2716 another person, but again, if there's -- there seems to me at least to be some squishiness  
2717 around the idea of what that period of time must be. I get the Virginia code on 30, but to  
2718 the point I made earlier on that.

2719  
2720 The last point I'll raise, that I think is perhaps different than the point that was raised by  
2721 the previous gentleman, is at the time that the, I guess, there was a complaint made, that  
2722 was in January, and at the point in time I received the violation notice was in March. And  
2723 during that entire period of time we had one individual under contract for renting the  
2724 property, so in a point of fact they were there for a period much exceeding 30 days. So,  
2725 to that end, as far as I understand it, does not count as a short-term rental.

2726  
2727 Now I did use Airbnb as a service to secure the renter, but so far as I can tell, that doesn't  
2728 in and of itself make it a short-term rental.

2729  
2730 Mr. Blankinship - That's correct.

2731  
2732 Mr. Willis - Okay. Thank you. So, I believe that's most of my arguments.  
2733 I appreciate your time. Thank you.

2734  
2735 Ms. Harris - Okay. Are there questions of Mr. Willis?

2736  
2737 Mr. Green - Just a point of clarification. Mr. Willis, what I was referring to is the  
2738 gentleman having to go next door and ask folks to, you know, to address the parking  
2739 issue. You know. That put potentially could put him in a tense situation, a dangerous  
2740 situation, because you don't know how the individuals will react when you challenge them  
2741 in a situation like that. And that was my concern. I just think that we want to avoid as much  
2742 conflict as possible.

2743  
2744 Mr. Willis - Can I respond?

2745  
2746 Mr. Green - Sure.

2747  
2748 Mr. Willis - That's where I did not understand that point on the argument,  
2749 and I do understand that. Again, I would just re-iterate that while, you know, while I get  
2750 the point that a short-term rental would perhaps increase the frequency of such things  
2751 that does not preclude it. That happens all the time, whether you live in the property or  
2752 not.

2753

2754 Ms. Harris - Mr. Willis, you did hear that the Planning Commission for  
2755 Henrico County will be considering this issue. Had you planned to attend any of those  
2756 meetings?  
2757

2758 Mr. Willis - The last one I heard about was in the evening, I think it was in  
2759 April, and I did attend that, and I believe the conversation was postponed. You know, one  
2760 of my concerns is if, you know, if you guys deny the appeal today then I will have to seek  
2761 another methodology for the home; either sell it or put it toward long-term rent, and so  
2762 then I'm precluded at that point from short-term renting it for at least a year. And to a point  
2763 that was made earlier, the potential for increased revenue is higher under the short-term  
2764 rental.  
2765

2766 Ms. Harris - Okay. Yes, we talked about the word "transient". Do you think  
2767 motive has a lot to do with how we define the word "transient"? Motive.  
2768

2769 Mr. Willis - The motive of the renter?  
2770

2771 Ms. Harris - Of the renter, yes.  
2772

2773 Mr. Willis - I'm not sure I follow. Sorry.  
2774

2775 Ms. Harris - I plan to stay here forever I'm definitely not transient.  
2776

2777 Mr. Willis - Okay.  
2778

2779 Ms. Harris - But if I plan to be here for a weekend I would think that the  
2780 motive of the renter will determine just how that word is defined.  
2781

2782 Mr. Willis - Yes. I understand that. Again, it goes back to what's the period  
2783 of time -- is there a period of time that defines "transient"? As far as I can tell the only  
2784 numeric that I can use is the 30 days, and that goes back to my question about how the  
2785 30 days is derived in February.  
2786

2787 Ms. Harris - Right. I was not addressing the time. And we've heard a lot  
2788 about the time period.  
2789

2790 Mr. Willis - Sure.  
2791

2792 Ms. Harris - But I was addressing the fact that the motive might be a  
2793 determining factor. Okay, well, that's neither here nor there. We're going to open up for  
2794 questions. Mr. Bell, you have a question? Any questions from board members? Mr. Willis,  
2795 thank you for coming in. I believe that will close your testimony. Do we have anyone in  
2796 attendance who wishes to address this particular case? If not, we're prepared to vote on  
2797 the appellate case number four. What is the pleasure of the board?  
2798

2799 Mr. Bell - I move that we affirm the decision of the Director of Planning  
2800 in denying the appeal. It is clear from the evidence presented that the appellant is renting  
2801 the property on a short-term basis. The board has twice in the last year -- in the last year,  
2802 short-term rental of a dwelling is not permitted in the one-family residential district.  
2803 Therefore, the notice of violation must be affirmed.

2804  
2805 Ms. Harris - Okay.

2806  
2807 Mr. Johnson - I second.

2808  
2809 Ms. Harris - It's been moved and properly seconded that we will deny the  
2810 appeal, affirming the decision of the attorney, or the county. Is there any discussion on  
2811 the motion? Okay. All in favor of denying this appeal say aye. Those opposed say no.  
2812 Ayes have it and that closes this case.

2813  
2814 After an advertised public hearing and on a motion by Mr. Bell, seconded by Mr. Johnson,  
2815 the Board **affirmed** the above-referenced decision of the director of planning and **denied**  
2816 the appeal.

2817  
2818  
2819 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
2820 Negative: 0  
2821 Absent: 0

2822  
2823  
2824 Let's look at the agenda, please. We've received copies of the agenda. What is the  
2825 pleasure of the board?

2826  
2827 Mr. Blankinship - You said agenda, I think you meant minutes.

2828  
2829 Ms. Harris I'm sorry, minutes.

2830  
2831 Mr. Green - So move.

2832  
2833 Mr. Johnson - Second.

2834  
2835 Ms. Harris It's been moved and properly seconded that we approve the  
2836 minutes.

2837  
2838 Mr. Johnson - Yes.

2839  
2840 Ms. Harris All in favor of, well, is there any discussion on the motion? All  
2841 in favor of approving the minutes say aye. The minutes from April have been approved.

2842  
2843  
2844

2845	Affirmative:	Bell, Green, Harris, Johnson, Reid	5
2846	Negative:		0
2847	Absent:		0

2848  
2849

2850 Mr. Blankinship - Madam Chair, I have one item of new business to bring before  
2851 you. I'm going to pass to each of you a letter from Roger Bowers who I will ask to come  
2852 to the podium and present his request.

2853  
2854 As you know, there is a requirement in your old rules which was removed last month,  
2855 having to do with use permits expiring after two years if you haven't taken all of the steps  
2856 necessary to follow them. There is also a section in the county code which is still in force  
2857 similarly requiring that a use permit expires if the applicant has not begun construction or  
2858 operation of the activity authorized by the use permit.

2859  
2860 Two years ago in May you approved a use permit for a solar farm out on Meadow Road,  
2861 not the one on Turner Road now, but the one up by the interstate on Meadow Road. And  
2862 a solar farm is something that cannot be approved within two years for reasons Mr.  
2863 Bowers will explain. And so, they're in jeopardy of their permit expiring and Mr. Bowers is  
2864 here to seek relief from that.

2865  
2866 Ms. Harris - Okay. Mr. Bowers, are you at the microphone?

2867  
2868 Mr. Bowers - Yes, ma'am.

2869  
2870 Ms. Harris - Please spell your last name.

2871  
2872 Mr. Bowers - Yes, ma'am. Good morning. My name is Bowers, B-O-W-E-  
2873 R-S.

2874  
2875 Ms. Harris - Okay.

2876  
2877 Mr. Bowers - Good morning Chair Harris, members of the board, and Mr.  
2878 Blankinship. Thank you for seeing me today. I appreciate your hearing me today. Briel  
2879 Farm Solar was granted CUP2017-00022, on May the 25th of 2017 and per the approval  
2880 letter that I received that CUP needs to be acted upon within two years, by May 25th of  
2881 '19.

2882  
2883 Briel Farm Solar has been diligently pursuing permitting for this project, but the long and  
2884 short of it is that solar approvals and permits take more than two years. As Mr. Blankinship  
2885 said. Briel Farm Solar had received its CUP approval from you folks. It then applied for  
2886 and received its permit by rule approval from the state DEQ, which is state agency review,  
2887 including Department of Historic Resources and Department of Game and Inland  
2888 Fisheries as well as DEQ itself. Received that permit in June 14th of 2018 and they,  
2889 concurrently with the state approvals, they also need to get approval from the electric

2890 cooperative in order to be able to join the interconnection. That's a small generator  
2891 interconnection agreement that was approved and signed on April the 3rd of 2019.

2892  
2893 In addition, this project was acquired by Next Energy Capital in April of last month and  
2894 you may have seen there was an RTD article about that acquisition back on April the  
2895 25th.

2896  
2897 Next Energy Capital is a firm that specializes and has extensive experience in solar  
2898 energy, both in the UK and here in the U.S. and they will be the project operator for this  
2899 project. Next has made a \$733,000 deposit with Dominion for the interconnection of this  
2900 project. They have also made a \$1.6-million deposit on the loan lead time items to order  
2901 panels. They are committed to building this project, they just need to get through the  
2902 approval process.

2903  
2904 They have re-engaged Dray Braydon, who was the civil engineer for the original approval  
2905 to put together the POD package, and Dray Braydon is working through that right now.  
2906 As you know, that involves not just the exact layout of the panels, which needed to know  
2907 the exact kind of panels to exactly how they lay out, but also stormwater and erosion,  
2908 sediment control and working with the Parks and Recreation on the 1-acre donation that  
2909 is required by the zoning proffers from 1989 on this property for the historic marker area  
2910 up on Meadow Road.

2911  
2912 Briel Farm Solar is diligently pursuing the project and the permits for that. I have here  
2913 today with me the project manager for Green -- the contractor, Harriet Erring (ph), and  
2914 Shawn E. Harmon (ph) who was representative from Next Energy. They are here and if  
2915 you have any questions about the project, we'd be happy to talk to you about them.

2916  
2917 We seek, in terms of looking forward, Dray Braydon tells us that they will be in a position  
2918 to submit the POD application in June. They have -- they won't give us an exact date in  
2919 June, because they're working through that. You know POD sends their hundreds of  
2920 pages of documents and calculations that go behind them. But with that, we will be  
2921 seeking the POD this summer. As soon as that is granted, we will then pull our land  
2922 disturbance permit.

2923  
2924 One of the things that's a little bit of a disconnect is that the approval talks about pulling  
2925 a building permit, but for a solar facility you actually don't pull any kind of a building permit,  
2926 you pull a land disturbance permit, but it's for all intents and purposes the permit for the  
2927 project.

2928  
2929 They expect to be under construction in the fourth quarter of '19 with the majority of the  
2930 construction being the first quarter of '20, and that same interconnection agreement that  
2931 they signed up with Dominion to tap into the power grid gives them a slot to energize the  
2932 facility in April of '20, and then to turn on and then to be producing power up to the grid in  
2933 May of '20. So, therefore, we respectfully request that the period to act upon the CUP be  
2934 extended by one year due to the applicant's continued diligent efforts to obtain permits  
2935 and to construct this project.

2936  
2937 If there's any questions for me, the contractor, or representative, we're here to answer  
2938 those questions.

2939  
2940 Mr. Green - Point of clarification, Madam Chair.

2941  
2942 Ms. Harris - Yes.

2943  
2944 Mr. Green - If you follow our board minutes and agenda under other new  
2945 business, it's none, and I would -- before we go any further I think since we're going to  
2946 accept new business, I think we need to vote that we're going to accept new business,  
2947 because when you look at the date of the communication, May 15<sup>th</sup>, and the date that we  
2948 received this, which is today, it was a 7-day period, this is by electronic communication.  
2949 So, this could have gotten to us either electronically so we could review this and not have  
2950 to review it on the same day.

2951  
2952 It's not to say I'm opposed to it. It's just I'm just being correct in the event that somebody  
2953 ever tries to challenge us that this -- we're dealing with an issue that was not put on our  
2954 agenda. I think we officially need to put it on our agenda and protect ourselves.

2955  
2956 Ms. Harris - Right. This is the first time we've had this type of thing, right?

2957  
2958 Mr. Blankinship - Yes, ma'am. It is.

2959  
2960 Ms. Harris - Okay. And I was looking at our rules and regulations. You  
2961 know, we know about conditional use permits and variances appeals, but this extension  
2962 -- I know we do have time limits for all of the CUPs, but when a particular establishment  
2963 cannot conform to the extension date, what is normally done? Normally they don't come  
2964 back to us. Right?

2965  
2966 Mr. Blankinship - There are not that many cases where it's a problem. Usually  
2967 either they're moving forward or they're not. Like, if somebody's building a deck or if they  
2968 want a kennel for, you know, more than four animals or they're operating a family day  
2969 home, the kind of things that routinely come before the board for use permits it's not really  
2970 a question. If they haven't started in two years, it's because they're not trying.

2971  
2972 Ms. Harris - Okay.

2973  
2974 Mr. Blankinship - So, it normally isn't an issue. This is a unique type of project  
2975 where the timeline for approval just doesn't fit within two years.

2976  
2977 Mr. Green - And, point of clarification. Before we move forward, I'd like to  
2978 put it to a vote that we're going to hear what we're hearing.

2979  
2980 Ms. Harris - Yes. I'm trying to get a point of clarification as far as --

2981

2982 Mr. Blankinship - What it is we're hearing.  
2983  
2984 Ms. Harris - What it is that we're hearing. Because in the rules and  
2985 regulations that we all agreed on they tell -- specifically, and I brought a copy for me, for  
2986 me, yeah, it does not address these types of cases. So, I guess we have to -- we have to  
2987 -- I'm sorry, I didn't hear what you said, Mr. Bell.  
2988  
2989 Mr. Bell - Do you think that we should include something now along with  
2990 the vote?  
2991  
2992 Mr. Blankinship - I think that was Mr. Green's statement. That the first step  
2993 would be to add this to the agenda.  
2994  
2995 Mr. Green - Yes. Because in an event that someone opposes, or  
2996 someone is reading our minutes and they don't, they don't know that this is coming before  
2997 us, and then we bring something before us, I don't want to be subjected to criticism about,  
2998 "Well, how come that was not on the agenda?"  
2999  
3000 Ms. Harris - I understand that. My question is whether we need to add this  
3001 to the rules and regulation. Whether or not we deal with issues of this particular type,  
3002 because this is a first.  
3003  
3004 Mr. Green - Right.  
3005  
3006 Ms. Harris - In recent years.  
3007  
3008 Mr. Green - What's your recommendation there?  
3009  
3010 Ms. Harris - I'm going have to rely on how we think about it, because, Mr.  
3011 Bowers, if you'll just excuse us --  
3012  
3013 Mr. Bowers - That's fine. I have inquired --  
3014  
3015 Ms. Harris - A point of law here.  
3016  
3017 Mr. Bowers - I have inquired a couple of weeks ago with planning about  
3018 how we would go about this as soon as I was engaged, and it actually took planning a  
3019 little bit to think about it, too. And they came to the conclusion as I did, I thought, was the  
3020 correct conclusion, because this was the board that -- the body that granted the original  
3021 permit.  
3022  
3023 Mr. Green - Right.  
3024  
3025 Mr. Bowers - That to request an extension would come back before this  
3026 body.  
3027

3028 Ms. Harris - Right.  
3029  
3030 Mr. Bowers - But that's my purpose for being here.  
3031  
3032 Ms. Harris - Well, it makes sense, but do you want to open the floodgates?  
3033 This is the first case, and we may have other violations, or other cases that require  
3034 extensions. Are we going to add this to our rules and regulations for this board?  
3035  
3036 Mr. Green - Well, if we don't, then what happens?  
3037  
3038 Ms. Harris - They will have to find someplace else to handle situations.  
3039  
3040 Mr. Green - Right.  
3041  
3042 Ms. Harris - In other words, we normally don't handle, I guess, regulations.  
3043  
3044 Mr. Green - Okay.  
3045  
3046 Ms. Harris - If a person or a company or an enterprise does not conform  
3047 to the time that is set, we normally don't go back and deal with that. They may come  
3048 before us for an extension, and maybe that's what he's asking.  
3049  
3050 Mr. Blankinship - Yes. That is essentially what he's requesting.  
3051  
3052 Mr. Bowers - I'm not asking for a decision on compliance, ma'am. I'm  
3053 asking for an extension of your CUP approval. If there was a question about whether we  
3054 were in compliance or not, that would be before you on a violation. We're not in violation.  
3055 We would like to ask for an extension on the existing approval that was given by this  
3056 Board.  
3057  
3058 Mr. Green - Point of clarification. Again, before we --  
3059  
3060 Ms. Harris - I got it. I got it you.  
3061  
3062 Mr. Green - We continue to talk. I want to interrupt it again.  
3063  
3064 Ms. Harris - Mr. Green, I have it, you don't have to bridge it. In other words  
3065 we need to ben on the agenda.  
3066  
3067 Mr. Bell - Well what Mr. Bowers said is very important and needed. Any  
3068 way you write it is if you say it's for extension of, you'd better be right. Because if you put  
3069 in CUPs and everything else you don't know how many cases that we're going to continue  
3070 to have over and over.  
3071  
3072 Mr. Johnson - Right.  
3073

3074 Mr. Bell - Versus just having some way of granting someone special  
3075 exemptions or send it back to a law group and the -- we're probably more in line to make  
3076 that type of decision.  
3077  
3078 Ms. Harris - So maybe we do need to continue this discussion at the next  
3079 meeting, giving us 30 days to think about how we would proceed in matters like this. Are  
3080 we up against a deadline?  
3081  
3082 Mr. Blankinship - Well yes --  
3083  
3084 Mr. Johnson - Yes.  
3085  
3086 Ms. Harris - In the next 30 days?  
3087  
3088 Mr. Blankinship - Their permit is going to expire tomorrow, or the day after  
3089 tomorrow.  
3090  
3091 Ms. Harris - Oh.  
3092  
3093 Mr. Blankinship - But today is the deadline for applications for your next  
3094 meeting, so if you want to advertise this for public hearing for the June meeting we can  
3095 do that.  
3096  
3097 Mr. Green - Or we can just vote to hear this and hear it and then decide.  
3098  
3099 Mr. Blankinship - Yes.  
3100  
3101 Mr. Green - All I'm trying to do is just from point of clarification make sure  
3102 that it's understood that we are hearing what he is presenting and will --  
3103  
3104 Ms. Harris - Yes. It's fine if we want to vote to hear it. Yes, sir.  
3105  
3106 Mr. Johnson - Yes, Madam Chair, because the violation is going to expire  
3107 soon. It's something that we could -- since we've already heard this before. Would we be  
3108 okay to vote on this now?  
3109  
3110 Also, the district, you just mentioned the street, you know. But I'm just asking a question  
3111 not to the board --  
3112  
3113 Mr. Bowers - Oh. We're in the Varina District.  
3114  
3115 Mr. Johnson - Right.  
3116  
3117 Mr. Bowers - This project is. Yes. Briel Farm is on Meadow Road just east  
3118 of the bridge over 295.  
3119

3120 Mr. Johnson - Reason I was mentioning that, any time they're doing that we  
3121 should mention the district, so even though we know where it's at, but something like that.

3122  
3123 Mr. Green - That's why if it's on the agenda all that would have been  
3124 spelled out and we would have known. Because it's not on the agenda, and also because  
3125 this could have easily been transmitted to us. Because if you look at the date, it came in  
3126 on May 15th, today is the 23rd, that's 7 days, so that's ample time for us to receive this  
3127 well in advance to review it.

3128  
3129 I personally don't like reviewing things the day of.

3130  
3131 Ms. Harris - Thank you. Let's have a motion to review this at the next  
3132 meeting. Is that motion in order to review this?

3133  
3134 Mr. Green - Well, given what Mr. Blankinship said, that could become a  
3135 potential problem as since this thing --. My motion is to hear this case today, since it's  
3136 already been started. That's all I wanted to just put on the record that we're hearing a  
3137 request for extension for submission of CUP 2017-00022, that we hear it today.

3138  
3139 Ms. Harris - Mr. Green, I don't know if that motion is in order if it has not  
3140 been advertised.

3141  
3142 Mr. Green - Well then, we can't hear it. That's my point.

3143  
3144 Ms. Harris - So the motion could be that we hear it at the next meeting.  
3145 Would you consider doing that? And then Mr. Bowers will inform his clients that we have  
3146 this on our docket for the next meeting.

3147  
3148 Mr. Green - Well, I don't think we necessarily need to do that. They can  
3149 just put it on the agenda for the next meeting. We don't have to make a --

3150  
3151 Mr. Johnson - Madam Chair.

3152  
3153 Ms. Harris - Yes, Mr. Johnson.

3154  
3155 Mr. Johnson - I think it was mentioned, Mr. Blankinship, that their regulations  
3156 would expire before --

3157  
3158 Mr. Blankinship - Yes. Their current approval will expire. You could reauthorize  
3159 it at next month's meeting.

3160  
3161 Mr. Johnson - Okay.

3162  
3163 Mr. Blankinship - And, if it's approved next month, then that wouldn't change  
3164 anything. Of course, there's no guarantee that it would be improved next month. So that  
3165 would leave his clients in a precarious position if it was not.

3166  
3167 Mr. Bowers - If it's the will of the board that we be heard next month we're  
3168 happy to be heard next month. If it would be at all within your favor, I would just ask that  
3169 if you would be willing to put on the record that we are continuing to act upon that approval,  
3170 and it's being considered by this board. Not that you had made any motion, but that you  
3171 understood the request has been made and that we are acting upon the permit and have  
3172 been acting upon the permit diligently in good faith?

3173  
3174 You don't want to go that far I understand, but -- and that due to the timing of the hearing  
3175 that you will hear us at the next board meeting. We would be happy to have an opportunity  
3176 to present to you and make sure it is advertised as Mr. Green said. And we apologize due  
3177 to the timing of -- we thought that the POD application would be in, and we understood  
3178 previously from discussions in Planning that getting that POD application in would be that  
3179 validation and as long as we continue to diligently pursue that due to the technical nature  
3180 of putting that package together, it's going to take us a few more weeks to do so, but yes.  
3181 We would appreciate any accommodation that could be done to indicate that we're  
3182 continuing to act upon this permit through our application to you folks and through the  
3183 efforts as I've already testified to by the applicant to commit to bringing this project to  
3184 Henrico.

3185  
3186 Ms. Harris - Okay. Can we get a motion?

3187  
3188 Mr. Johnson - Madam Chair.

3189  
3190 Ms. Harris - Yes, sir.

3191  
3192 Mr. Johnson - I motion that we bring it back next month to get the said  
3193 evidence.

3194  
3195 Ms. Harris - Okay. Is there a second that we bring this case back next  
3196 month with the said evidence? I second the motion. Okay. It's been moved and properly  
3197 seconded that we will bring this case back next month and have a proper hearing. Any  
3198 questions on the motion? All in favor say aye. Those opposed say no.

3199  
3200  
3201 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
3202 Negative: 0  
3203 Absent: 0

3204  
3205  
3206 Ms. Harris - Okay, gentlemen, is there anything else before this board?

3207  
3208 Mr. Green - Well, I guess the other thing is, can we make sure that, I  
3209 guess, in our rules, our bylaws, and no offense to Planning that we don't run across this  
3210 again where we get surprised with something that's not been brought to our attention.

3211 I'm sorry that they sat there and wasted -- sat there since 9:00 for this to happen. But,  
3212 you know, we have to think about the proper advertisement.  
3213  
3214 Ms. Harris - Okay. Any other statements before we adjourn?  
3215  
3216 Mr. Johnson - Yes, Madam Chair I received a mailing sent out from the  
3217 school that we had for BZA.  
3218  
3219 Mr. Blankinship - Oh, did you receive something from -- oh, okay. I have none.  
3220  
3221 Ms. Harris - I didn't either.  
3222  
3223 Mr. Johnson - It was just talking about a class, and the class was dealing  
3224 with --  
3225  
3226 Ms. Harris - Oh, yes. I was sent this. An email regarding the --  
3227  
3228 Mr. Johnson - Yes. And I was just inquiring about would that affect us, or  
3229 should we just --  
3230  
3231 Mr. Blankinship - Yes. If you would like to register for that please let me know,  
3232 and I'll pass that on up the chain of command.  
3233  
3234 Ms. Harris - What date is this? June.  
3235  
3236 Mr. Blankinship - I was not familiar either.  
3237  
3238 Ms. Harris - What date is that? June 11th?  
3239  
3240 Mr. Blankinship - Did you on your list.  
3241  
3242 Ms. Harris - Probably on your email.  
3243  
3244 Mr. Johnson - It's June 11th.  
3245  
3246 Ms. Harris - Okay..  
3247  
3248 Mr. Green - 7:45 to 3:30, and it says the location Florida Avenue.  
3249  
3250 Ms. Harris - It's going to be in Richmond?  
3251  
3252 Mr. Johnson - Yes.  
3253  
3254 Ms. Harris - Okay. It's just one day? How many days is it?  
3255  
3256 Mr. Johnson - I think it's one day.

3257  
3258 Ms. Harris - Okay. Is you're interested in this please see Mr. Blankinship.  
3259 I think there is a charge for participation in the seminar.  
3260  
3261 Mr. Johnson - And that they have here it's \$75.  
3262  
3263 Ms. Harris - Right. So, I've done it before. It's worthwhile. I've done it twice  
3264 before. Okay. If there's no more business before this body the meeting is adjourned.  
3265  
3266  
3267  
3268  
3269   
3270 \_\_\_\_\_  
3271 Ms. Helen E. Harris, Chairman  
3272  
3273  
3274  
3275   
3276 \_\_\_\_\_  
3277 Mr. Benjamin W. Blankinship, Secretary  
3278  
3279  
3280