

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**
4 **SPRING ROADS, ON THURSDAY NOVEMBER 17, 2016 AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH OCTOBER**
6 **31, 2016, AND NOVEMBER 7, 2016.**

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Members Present: Dennis J. Berman, Vice Chairman
Gentry Bell
Helen E. Harris
William M. Mackey, Jr.
James W. Reid

Also Present: Jean M. Moore, Assistant Director of Planning
Benjamin Blankinship, Secretary
Paul M. Gidley, County Planner
R. Miguel Madrigal, County Planner
Sally Ferrell, Account Clerk

9
10
11 Mr. Berman - Welcome to the November 17, 2016 meeting of the
12 Henrico County Board of Zoning Appeals. I ask you all to please stand and join us
13 in the Pledge of Allegiance.

14
15 Please be seated. Our Board secretary, Mr. Blankinship, will now read our rules.

16
17 Mr. Blankinship - Good morning, Mr. Chair, members of the Board,
18 ladies and gentlemen. The rules for this meeting are as follows: Acting as
19 secretary, I'll announce each case. And as I'm speaking, the applicant is welcome
20 to come down toward the podium. We will then ask everyone who intends to speak
21 to that case to stand and be sworn in. Then a member of staff will give a brief
22 introduction to the case. Then the applicant will have the opportunity to present
23 their case. Then anyone else who wishes to speak will have an opportunity to
24 speak. After everyone has had a chance to speak, the applicant, and only the
25 applicant, will have an opportunity for rebuttal.

26
27 After the Board has heard each case, they will continue to the public hearing on
28 the next case. They will render all of their decisions at the end of the meeting. So
29 if you wish to hear their decision on a specific case, you can either stay until the
30 end of the meeting, or you can check the Planning Department website—we
31 usually get it updated within the hour after the end of the meeting—or you can call
32 the Planning Department later today.
33

34 This meeting is being recorded, so we ask everyone who speaks to speak directly
35 into the microphone on the podium and state your name. Please spell your last
36 name just to make sure we get it correct in the record.

37

38 Mr. Chairman, I'm not aware of any deferrals or withdrawals, and it looks like we
39 have all five members. So I believe we are ready to proceed.

40

41 Mr. Berman - Thank you, Mr. Secretary. Let's now call our first
42 request.

43

44 **CUP2016-00028 DARRYL R. AND SANDRA R. KEMP** request a
45 conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow
46 accessory structures in the front and side yards at 7815 Walkenhut Drive
47 (WALKENHUT ESTATES) (Parcel 768-751-7766) zoned One-Family Residence
48 District (R-3) (Brookland).

49

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

54

55 Mr. Kemp - I do.

56

57 Mr. Blankinship - Thank you. Mr. Madrigal, you may begin.

58

59 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the
60 Board, good morning.

61

62 Before you is a request to allow the installation of a carport in the front yard of a
63 one-family dwelling. The subject property is located in the Walkenhut Estates
64 subdivision, which was approved in 1979. The lot in question is 11,180 square feet
65 in area and is improved with a two-story, 2,800-square-foot dwelling with open
66 parking, which was originally constructed in 1982.

67

68 The applicants purchased the property in 1989 and since then made several
69 additions to the home, incrementally adding over 1,200 square feet to the
70 residence. In 2002, the applicants obtained a variance to reduce the side yard
71 setback in order to build an attached garage onto the south side of the dwelling. If
72 you look at the photo here, the former garage was here. The applicants would now
73 like to install a detached metal carport in the front yard.

74

75 The property is zoned R-3 and is designated as Suburban Residential 2 on the
76 Comprehensive Plan. The existing residence is a permitted use in an R-3 district
77 and is consistent with the Land Use Plan. Carports are allowed as an accessory
78 use to a one-family dwelling when located in a rear yard and require a conditional
79 use permit when proposed in a front or side yard.

80

81 While the Board typically receives requests for accessory structures in the side
82 yard, it only occasionally receives a request to have one in the front yard. In this
83 case, the applicants wish to place an 18x21-foot metal carport in the front yard of
84 a standard-sized lot. The existing home has a 44-foot front yard setback. Once the
85 carport is situated and provides the required 10-foot separation from the residence,
86 the front yard will be reduced to 13 feet, which will significantly impact the curb
87 appeal of the home and deviate substantially from the existing development
88 pattern of the neighborhood. If approved, this would set a negative precedent with
89 potential detrimental impacts on adjacent property and the neighborhood.

90

91 The applicant has stated that locating the proposed carport in the northern side
92 yard is not a viable option due to the limited amount of existing space and would
93 necessitate the removal of an existing structure. The northern side yard is currently
94 21 feet wide and would need to be at least 31 feet wide in order to accommodate
95 the detached carport and provide necessary setbacks. An attached carport in the
96 side yard is also not a feasible option since it would have to meet principal building
97 setbacks of 12 and 30 feet for the least and sum of side yards. Another variance
98 would be required to further reduce the side yard setbacks to 3 and 10 feet
99 respectively. That would be to accommodate the attached carport.

100

101 In conclusion, the applicant's request stems from the elimination of an existing
102 garage and converting it to living space. Although carports are allowed as an
103 accessory use, they should be visually and physically unobtrusive. If this isn't
104 possible, then they should contribute to the aesthetic quality of the home and
105 comply with the required setbacks. In this case, the proposed carport would be the
106 most prominent feature on the lot. The proposed design and location would
107 significantly detract from the curb appeal of the home, adjacent property, and
108 surrounding neighborhood. The proposed carport would also exceed any existing
109 projection on this block and detract from the streetscape. Alternatively, the
110 applicants have sufficient room to place the proposed carport in the rear yard.

111

112 Based on these reasons, staff recommends denial of the applicant's request. This
113 concludes my presentation. I'll be happy to answer any questions.

114

115 Mr. Bell - Mr. Madrigal, if they put the carport in the backyard,
116 where would the driveway go?

117

118 Mr. Madrigal - They could put the driveway basically on this side of
119 the lot. They have 21 feet here between the property line and the house, so they
120 would go through the side here towards the back. But again, that would necessitate
121 the removal of a tree and a fence. There's a propane tank here, which they
122 probably have enough area to go around it. But they could relocate that.

123

124 Mr. Bell - The picture you're showing in the handout of the
125 18x21-foot garage, is that actually the structure they propose to put up there?

126
127 Mr. Blankinship - I think he means carport photo, Miguel.
128
129 Mr. Madrigal - Oh, the carport photo? This one here?
130
131 Mr. Bell - Is that the actual one?
132
133 Mr. Madrigal - I'm assuming so, yes. That's what they circled on what
134 was submitted.
135
136 Mr. Bell - Thank you.
137
138 Mr. Berman - Mr. Madrigal, is an awning an acceptable structure,
139 attached?
140
141 Mr. Madrigal - It's the same thing as an attached carport, essentially.
142 Are you talking about an extendable awning, like a cloth awning?
143
144 Mr. Blankinship - I think if it was something that was not permanent,
145 extended and then retracted, that would not be considered a structure.
146
147 Mr. Madrigal - Yes, I guess it would be okay.
148
149 Mr. Berman - Okay, thank you.
150
151 Ms. Harris - Mr. Madrigal, that propane tank that's on the side there,
152 what is that used for?
153
154 Mr. Madrigal - I have no idea.
155
156 Ms. Harris - Okay.
157
158 Mr. Madrigal - I think you'd have to ask the applicant that.
159
160 Mr. Berman - Any further questions for Mr. Madrigal? Okay. We
161 would like to now hear from the applicant.
162
163 Ms. Kemp - Good morning.
164
165 Mr. Berman - Good morning. Can you please state your name and
166 spell it, please?
167
168 Ms. Kemp - My name is Sandra Kemp. The last name is spelled K-
169 e-m-p.
170
171 Mr. Berman - Thank you.

172

173 Ms. Kemp - The question about the propane tank, the propane tank
174 is used for the sunroom that has a propane heater that's used three seasons of
175 the year.

176

177 Around June of this year, we had a real bad storm in the area, and it damaged the
178 three trees in our yard. We had no problem with shade. We were satisfied with the
179 situation. But we had to take the trees down because they were hazardous to the
180 home. So we searched around and we came up with the idea of some kind of
181 structure. The heat in the car this summer reached 106. And I do have a medical
182 condition that requires that I stay out of the heat. So I would like something to cover
183 my car, whatever kind of structure. But I do need some kind of cover for the car.

184

185 I do not believe that this structure which is—you saw the picture of it. The color is
186 brown. It would match the color of the building. It would protrude slightly in the
187 community, as he said. There's no other one like that, but there are two other
188 carports like that in the community. One abuts the house, and that's obvious on
189 that street. Another one sits in the driveway. So it's not like it's the only one in the
190 community and it's really an eyesore; it's not.

191

192 As far as the backyard, that would be a costly proposal. We have a tree that's very
193 large. And I've had estimates. We had the three trees that were taken down. They
194 cost us around \$2,000. The same company would take that tree down for \$4,000.
195 We would have to remove the enclosure, and the gas tank, and also two fences.
196 One is metal and one is picket. And then there's a little decking on the side. And
197 we have two rock gardens in the backyard. So we would have to rearrange our
198 backyard. But if that's the only option, I would go for that. But I would prefer the
199 one in the front or maybe an awning or some structure to give us shelter for our
200 vehicles.

201

202 Mr. Berman - Ms. Kemp, approximately what is the cost of the
203 proposed carport?

204

205 Ms. Kemp - Based on the one we had put up in Powhatan at our
206 other property, it ran about \$2,000.

207

208 Mr. Berman - So we have discussed some other options. Obviously,
209 the side yard doesn't sound very good. And that's a beautiful shade tree. We'd
210 hate to lose that one as well, let alone the expense. We talked about the possibility
211 of an awning. I don't know how much they are.

212

213 Ms. Kemp - Yes, I've seen those.

214

215 Mr. Berman - A remote start from your house to cool the car off and
216 even to heat it in the winter is \$500 or less. There are solar-powered fans that can
217 go in the car that will cool it. There are umbrellas. There's another shade tree that

218 you could plant. It seems that there are a lot of other options that you could work
219 through.

220
221 With respect to your observations of other carports in the neighborhood, up and
222 down Walkenhut, specifically 7807 and 7808, I did see two other accessory
223 structures. However, they were, as you stated, to the side of the dwellings and not
224 in the front. So my main concern is the curb appeal, as stated by Mr. Madrigal.
225 Would you be opposed to any of those options or researching other options other
226 than putting an accessory structure in your front yard? You don't have to make that
227 decision today. I'm just suggesting.

228
229 Ms. Kemp - I would like some kind of structure. So if all else fails, I
230 would probably go for the backyard option.

231
232 Mr. Berman - Okay, thank you. I have no other questions.

233
234 Ms. Harris - Ms. Kemp, you do have plenty of space in the backyard
235 to place a carport?

236
237 Ms. Kemp - I need some specifications on that. I know they said
238 three feet from the north side, the adjacent property. But there is the back property,
239 and I'm not sure how many feet are required for that.

240
241 Mr. Blankinship - That would also be three feet.

242
243 Ms. Kemp - So I'd have to have someone go out there and measure
244 it.

245
246 Ms. Harris - What type of tree is it that you don't want to remove?

247
248 Ms. Kemp - I plan to remove it in the future anyway because it's just
249 a large tree. With the weather patterns that we're having, I'm afraid that it will fall
250 on our home and the adjacent home. So that tree will be removed eventually
251 anyway.

252
253 Ms. Harris - I had mine taken down, and it not cost me \$4,000, so
254 I'll share with you the person's name.

255
256 Ms. Kemp - Okay.

257
258 Ms. Harris - Thank you.

259
260 Ms. Kemp - Thank you.

261
262 Mr. Berman - Any further questions for the applicant?

263

264 Mr. Bell - How did the awning idea sound to you?
265
266 Ms. Kemp - I've seen some awnings, but the only thing about
267 those—I had one in my backyard at one time. And they're like others made out of
268 canvas. Over a period of time, if they have any cotton or polyester, they deteriorate.
269 So you're replacing them every four or five years, unless they have some that are
270 made out of aluminum.
271
272 Mr. Bell - Thank you.
273
274 Mr. Berman - If there are no further questions, thank you very much.
275
276 Ms. Kemp - Thank you.
277
278 Mr. Berman - Is there anybody else here who wishes to speak in
279 support of this request or anyone against the request? Okay. Hearing none, as Mr.
280 Blankinship stated, we will make a motion on this request after all the other
281 requests are presented today. For now Mr. Secretary, can we call the next request.
282
283 **[After the conclusion of the public hearings, the Board discussed the case**
284 **and made its decision. This portion of the transcript is included here for**
285 **convenience of reference.]**
286
287 Mr. Berman - Do I hear a motion?
288
289 Mr. Bell - I move that we deny the request based on one, it would
290 be legal in the backyard without a conditional use permit or a variance to the code.
291 And two, there are other options. I sympathize with the medical condition, and
292 that's what we have to address first and foremost. And we do have options at this
293 point that we can look at. One of them would be, like was pointed out, where you
294 can buy keys to your car where you cool the car up from inside your house and
295 then go out and get in the cool car. You have the awning situation, which in and of
296 itself presents problems, but it is a temporary solution. And the fact that a garage
297 can be put in the backyard. You put all of them together, and once she goes
298 through those, hopefully she'll find an answer. But at this point, I have to move that
299 it's denied. I also agree with the reason that was stated in the report which deals
300 with the curb appeal as well. So I make a motion that we deny it.
301
302 Mr. Berman - Mr. Bell has made a motion of denial. Do I hear a
303 second?
304
305 Ms. Harris - I second the motion. I concur with everything that
306 Mr. Bell said. And I really believe that it would be more pleasing to the neighbors
307 if we followed the code in this case. We don't want to create an eyesore and a lot
308 of complaints. So I think that if we follow the code on this, I think everybody will
309 eventually be happier.

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Mr. Berman - Ms. Harris has seconded the motion. Is there any further discussion? Hearing none, all in favor of denial of this application, signify by saying aye. Any opposed? None opposed. Five ayes. The motion passes and the request is denied.

After an advertised public hearing and on a motion by Mr. Bell seconded by Ms. Harris, the Board **denied** application **CUP2016-00028, DARRYL R. AND SANDRA R. KEMP's** request a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow accessory structures in the front and side yards at 7815 Walkenhut Drive (WALKENHUT ESTATES) (Parcel 768-751-7766) zoned One-Family Residence District (R-3) (Brookland).

Affirmative:	Bell, Berman, Harris, Mackey, Reid	5
Negative:		0
Absent:		0

[At this point, the transcript continues with the public hearing on the next case.]

Mr. Blankinship - That is the end of the conditional use permit portion of the agenda. The last two cases are both variances and they are companion cases. They are currently one lot. They're one piece of property, and the desire is to divide it. So I'll call them together, if you like. But then we get ready to make a motion and vote, they will have to be handled separately. They are VAR2016-00020 and VAR2016-00021.

VAR2016-00020 OLIVIA V. GOIN AND R. CAROLE TARR, CO-EXECUTORS request a variance from Section 24-95(b)(5) of the County Code to build a one-family dwelling at 5507 Chamberlayne Avenue (CLUB COURT) (Parcel 785-750-7749) zoned One-Family Residence District (R-3) (Fairfield). The lot width requirement and total lot area requirement are not met. The applicants propose 6,500 square feet lot area and 50 feet lot width, where the Code requires 8,000 square feet lot area and 65 feet lot width. The applicants request a variance of 1,500 square feet lot area and 15 feet lot width.

VAR2016-00021 OLIVIA V. GOIN AND R. CAROLE TARR, CO-EXECUTORS request a variance from Section 24-95(b) of the County Code to build a one-family dwelling at 5505 Chamberlayne Avenue (CLUB COURT) (Parcel 785-750-7749) zoned One-Family Residence District (R-3) (Fairfield). The lot width requirement and total lot area requirement are not met. The applicants propose 6,500 square feet lot area and 50 feet lot width, where the Code requires 8,000 square feet lot area and 65 feet lot width. The applicants request a variance of 1,500 square feet lot area and 15 feet lot width.

356

357 Mr. Blankinship - Would everyone who intends to speak to this case
358 please state and be sworn in. All raise your right hands, please. Do you swear the
359 testimony you're about to give is the truth, the whole truth, and nothing but the truth
360 so help you God? Thank you. Mr. Gidley, you may begin.

361

362 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr.
363 Chairman, members of the Board.

364

365 As the secretary mentioned, these two variance requests concern the same
366 property off of Chamberlayne Avenue in the Club Court neighborhood.

367

368 Today's case involves the estate of Louise L. Farmer and consists of lots 19 and
369 21. The Farmers acquired lot 19 back in 1951 and by itself, lot 19 lacked adequate
370 lot width and lot area to build a home. This is one of these older neighborhoods
371 were people typically put together two lots or a lot and a half, something like that,
372 in order to meet the requirements to build a home.

373

374 What happened here is the Farmers accordingly acquired the adjacent lot, which
375 is lot 21, in 1959. Taken together, the two lots met the lot width and lot area
376 requirements, so the Farmers went ahead and constructed a home on the property
377 in 1960. The property has remained in this configuration since this time, and
378 currently complies with both the lot area and lot width requirements of the Zoning
379 Ordinance.

380

381 My understanding is the Farmers have passed away. And their heirs, rather than
382 selling the property and home as one, wish to divide the property into two separate
383 lots. As noted, however, neither lot by itself complies with the lot area and lot width
384 requirements, which is why the two were combined in the first place. Since dividing
385 the property would place both lots in violation of the Zoning Ordinance, the heirs
386 have applied for two variances today.

387

388 The Club Court subdivision was recorded in 1923, prior to the adoption of the
389 Zoning Ordinance. As a result, the initial homes built in this subdivision could be
390 built on 50-foot-wide lots. After the Board of Supervisors adopted lot width and lot
391 area requirements in 1945, more than one lot was required to build a home to meet
392 these standards. This is the case with the property today, where you see the home
393 here and the second lot down here. And it's also the case immediately next door
394 at 5501 Chamberlayne, which consists of two lots. And then you have the home
395 here and a decent size side yard right here.

396

397 The lot on the opposite side, up here at 5509 Chamberlayne, was granted a
398 variance in 1988. However, unlike today's property, this was an isolated lot. It did
399 not have additional land associated with it or the ability to acquire additional lot
400 area. If you look at it carefully, you can see why. Here's this property that received
401 the variance, and you had a home here, the applicant's home that was built in '60.

402 And this home was built in the 1930s. So they really were landlocked and had no
403 ability to make any reasonable use of the property at all. So they were a good
404 candidate for the variance that was granted.

405
406 And the evaluation. When I saw this case, it reminded me of one I worked on
407 earlier, one this Board also heard back in 2006. This was on La Von Drive, which
408 is three streets to the north of property today. I put both plats up here, today's
409 request and the one on La Von Drive because there are a lot of similarities. I would
410 note the scale is different on these two, and so all of these lots look tiny here. In
411 reality, they are actually larger than the property we are dealing with today. The
412 ones today, each lot is 6,750 square feet, whereas over here you can see each lot
413 is 7,354 square feet. So the ones on La Von are actually larger than today's lots.

414
415 The similarities are many. Like today's case, the one on La Von Drive had a
416 combination of R-3-zoned exception lots. It had a home on one side of the property
417 with a large open yard on the other side. The applicant in the La Von case
418 proposed to divide the property into two parcels. Again, one containing the existing
419 dwelling, just like today, and the other containing a buildable lot that was being
420 proposed.

421
422 In the La Von Drive case, unlike today, both lots actually met the lot width
423 requirements, but they did not meet the total lot area requirements. Therefore, they
424 came in and applied for two variances on the La Von case in which they didn't
425 meet the lot area requirements.

426
427 After a public hearing on the case, the BZA on a 3 to 2 vote granted variances for
428 both lots. What divided the Board at the time seemed to be the question of how do
429 we view this property. Is this one property with a home on it, which would be a
430 home on a third of an acre, roughly, which is a reasonable use? Or do you view
431 the part over here as its own lot, which could not be built on absent a variance?
432 And the three in the majority felt that was the approach to take.

433
434 Ultimately, the question was answered differently by the Circuit Court when these
435 variances were appealed. The judge in that case ruled it's the entire property you
436 look at, that it's been like this since 1967 and is in compliance with the Zoning
437 Ordinance. So you have to look at the entire property, not at the individual smaller
438 lots here that are being proposed.

439
440 The Court based its decision on two cases made by the Supreme Court of Virginia.
441 One was Cherrystone where a developer had a number of undersized lots, and
442 the developer wanted variances for each of these undersized lots. And the Court
443 said no, what you do is you combine these undersized lots until you meet the
444 standards of the ordinance and then you put a home on that lot.

445
446 The other case was out of Fairfax County, Virginia. You had an applicant who
447 owned a lot with an older home on it that was somewhat decrepit, who wanted to

448 divide the property. He did not have enough lot width to create a second lot. The
449 court said that is not a hardship warranting a variance. You basically meet the
450 requirements to divide the property or you don't. And if you don't, then that's not a
451 hardship, and you're not entitled to a variance.

452
453 So based on these cases, the Circuit Court here in Henrico overturned both of the
454 variances. The Court noted again the entire parcel, the whole thing taken as one
455 property complied with the Zoning Ordinance, as is the case today, and that the
456 home on the property provided a reasonable use. And because of that, there was
457 no justification for the variances to have been granted in the first place.

458
459 If you look at today's code, essentially what they were saying is the inability to
460 divide the property does not constitute a hardship, which is one of the criteria today
461 for a variance. And the second is reasonableness of the Zoning Ordinance. And
462 they said the Zoning Ordinance provided a reasonable use of the property in the
463 form of this other house here. Again, you basically had a third of an acre and you
464 had a home on it, which is a reasonable use.

465
466 As you know, even if the applicant were to meet the main criteria for a variance,
467 there are five subtests. As Mr. Tokarz noted in the training he provided to this
468 Board, all five subtests must be met for a variance to be granted. I'm going to spare
469 you from going over all five of the subtests, but I would like to touch on the first one
470 for the record.

471
472 The first one requires the property interest for which a variance is being requested
473 be acquired in good faith and any hardship is not created by the applicant. The
474 existing property, again, consists of two lots acquired in good faith by the Farmers
475 that when combined enabled a home to be built in compliance with the Zoning
476 Ordinance. The desire of the heirs today to take a legally conforming property and
477 now divide it, despite lacking adequate lot width and lot area to do so, is by
478 definition a self-imposed condition. As a result, this subtest is not met by the
479 applicant.

480
481 In conclusion, when the home was built in 1960, two lots had to be combined to
482 constitute a buildable parcel. In the similar La Von Drive case, the Henrico County
483 Circuit Court viewed the entire parcel as one property rather than the individual
484 lots. The Court noted that an existing residence was there, and that provided a
485 reasonable use, and that the inability to divide the property did not constitute a
486 hardship.

487
488 Finally, as I noted earlier, it's a self-imposed condition because the property today
489 complies with the code and it's the desire to divide that is the self-imposed
490 condition, a violation of the first subtest.

491

492 Based on the failure of the applicants to meet this subtest, along with the decision
493 of the Henrico County Circuit Court in the La Von Drive case, staff recommends a
494 denial of this request.

495
496 If you have any questions, I'll be happy to entertain those.
497

498 Mr. Berman - Any questions? I do have a question. Is there any
499 configuration for lot 21 that would allow for a home to be built?

500
501 Mr. Gidley - Let me zoom in here if I can.
502

503 Mr. Berman - As in a smaller home.
504

505 Mr. Gidley - In and of itself, you had to combine these to allow the
506 home to be built. Now interestingly enough, prior to 1960, this was zoned R-2A,
507 which required a larger lot. That meant you had to put together two lots. In 1960,
508 the Board of Supervisors came back and looked at the County as a whole,
509 including this neighborhood. The Board of Supervisors decided to zone it to a more
510 intensive designation of R-3 so instead of two lots, you could get by with a lot and
511 a half being combined.

512
513 At the time, they could have gone R-4 and legalized each lot in and of itself, but
514 they didn't do that. And I suspect the reasoning behind that was the neighborhood
515 had already been in existence since the 1930s, so there was some established
516 pattern here. And I suspect they felt if they went too dense, that could be a problem
517 for some of the existing homes and the existing pattern.

518
519 So to your question, you can do a lot and a half today, Mr. Berman. I don't have a
520 plat for them, but next door they have a lot here that's 50 feet in width. And so they
521 could take half of lot 21 and then this lot next door, assuming they have the
522 flexibility to do that next door. And again, I don't have survey for that. But if they
523 did that, then lot 19 and half of lot 21, in accordance with the R-3 zoning, would
524 provide a legal lot for the existing home. And then the half a lot here and the whole
525 lot over here—lot 23, I believe it is—would provide another lot, another building lot
526 here. If it were me, that's an option I would pursue if I were the applicants.
527

528 Mr. Berman - Is lot 23 vacant?
529

530 Mr. Gidley - Here's lot 23 here. They may have some
531 encroachment over here; I'm not sure. It's an aerial and it's not scientifically exact.
532 When we were out there, it was an open yard. I think there was a dog or two out
533 there. So the potential exists where maybe it is available. But again, absent a
534 survey, I couldn't state that definitively.
535

536 Mr. Berman - Okay. The reason why I ask is if you drive down that
537 street without knowledge of the lots, etcetera, and you look at the character of the

538 neighbors across the street, the homes are of similar size and distance from each
539 other. It looked like another home would fit nicely in an available parcel. That's why
540 I asked.

541
542 The other question is are you able to add on to the existing home?
543

544 Mr. Gidley - Yes sir. As was the case up in Fairfax, which is one of
545 the state Supreme Court decisions I noted, where the home on the property was
546 an older home, the Court did note that could be removed and a brand new home
547 and a much large home could have been constructed on that property. So in this
548 case today, given the age of the home and the size, it may be a better use of the
549 property to take down that home and build a larger one, since you have all this
550 area to do so. So that would be an option, yes.

551
552 Mr. Berman - Okay. Thank you, Mr. Gidley.

553
554 Mr. Gidley - Yes sir.

555
556 Ms. Harris - Mr. Gidley, in the report we see that this side of the
557 block contains seven homes, two of which are on a 50-foot-wide lot. And then the
558 other five houses are all built on lots that meet or exceed those lot width and the
559 lot area requirements. Can you point out on the map which houses we're talking
560 about?

561
562 Mr. Gidley - Yes ma'am. It would be these two to the north. As I
563 noted here, this one was actually built in 1937, which is prior to the requirements
564 for lot width and lot area. So they were able to build on a 50-foot-wide lot back then
565 in the pre-war period. And then the one next door is the one that received the
566 variance. And again, the reason for that is you had the home right here that was
567 built in '37, and then the home on the property today, which was built in 1960. So
568 they were landlocked. They had a lot with no reasonable use, and they had no
569 ability to acquire additional land. So a variance made sense in that case, and that
570 was granted in '08. So those are the two properties.

571
572 The other properties like the one immediately next door here contain two lots or,
573 like the one up here, they contain a lot and a half. Which again, after the Board of
574 Supervisors rezoned it to a more favorable category, you could get by with a lot
575 and a half. That's what was done up here.

576
577 Ms. Harris - How close is that La Von property to the subject
578 property?

579
580 Mr. Gidley - La Von Drive is three streets to the north and then to
581 the east. I'm not sure how exactly how far to the east.

582
583 Ms. Harris - Okay.

584
585 Mr. Gidley - But it's the same general area, same R-3 exception
586 zoning.
587
588 Ms. Harris - Thank you.
589
590 Mr. Gidley - Yes ma'am.
591
592 Mr. Berman - Any other questions for Mr. Gidley?
593
594 Mr. Mackey - Mr. Gidley, lot 23 that backs up to these other two lots?
595
596 Mr. Gidley - Yes sir, on the side?
597
598 Mr. Mackey - Yes. You say we're not aware if that is available.
599
600 Mr. Gidley - I'm not aware. I mean it's generally open now, as
601 shown on the aerial, but I'd need a survey to tell—
602
603 Mr. Mackey - Those two lots look kind of small. It could be possible
604 that they're backyards for those other two houses.
605
606 Mr. Gidley - This is a side yard here, actually.
607
608 Mr. Mackey - No, not that one. Could you go back to the aerial?
609
610 Mr. Gidley - Yes sir.
611
612 Female - [Off microphone.] There's an alley there.
613
614 Mr. Mackey - There is?
615
616 Female - [Off microphone.] Yes.
617
618 Mr. Berman - That was off mike. It was stated from the audience
619 there's an alley there.
620
621 Mr. Gidley - Here's the property today in yellow.
622
623 Mr. Mackey - That would be 23?
624
625 Mr. Gidley - Nineteen is where the house is, twenty-one is next
626 door. And then 23 is right here. And this is a side yard to this house.
627
628 Mr. Mackey - And those are two separate houses.
629

630 Mr. Blankinship - A house and a garage.
631
632 Mr. Mackey - I house and a garage? Okay.
633
634 Mr. Gidley - And this is their side yard. The front would be on
635 Chamberlayne and the back where the garage is.
636
637 Mr. Mackey - Okay. Thank you.
638
639 Mr. Gidley - And then the side yard here.
640
641 Mr. Berman - Okay, with no further questions for Mr. Gidley, thank
642 you very much, sir.
643
644 Mr. Gidley - Yes sir.
645
646 Mr. Berman - Would the applicant please approach?
647
648 Mr. Blankinship - Ma'am, come on to the podium if you would.
649
650 Mr. Berman - I'm sorry; I didn't hear what you said.
651
652 Mr. Goin - I have nothing to say.
653
654 Mr. Berman - Okay. The applicant—
655
656 Mr. Goin - It's all been said, so. I don't know that I could add
657 anything to it myself.
658
659 Mr. Berman - All right, thank you.
660
661 Mr. Mackey - I just had one question. Do you know if lot 23 available?
662
663 Mr. Goin - Lot 23 is part of—and I'm Bobby Goin, and I represent
664 the executors of the estate.
665
666 Mr. Berman - I'm sorry. Has he been sworn in?
667
668 Mr. Blankinship - Yes.
669
670 Mr. Berman - Thank you.
671
672 Mr. Goin - Of course when we filed this, it was done because it
673 wasn't a financial hardship at all. But it was a land hardship, and we don't have
674 that much land to build houses on. We thought it was doable and had no inkling of
675 something in 1945, which came into play. Nor were we aware of anything

676 concerning previous lots on La Von and having a legal transaction involved in it.
677 Otherwise, we would not have gone to the expense of surveying the property and
678 filing two variances. However, the lot next door is doable if it's available. But I
679 personally don't even know the neighbor and don't know whether they'd want to
680 sell part of it.

681
682 The lot as it is and the ones across the street have already been addressed
683 previously. With a house on the vacant lot that's the subject of what we're talking
684 about, would be very similar to the ones across the street. But it would be on a 50-
685 foot lot like the subdivision was originally cut out to be. And I'm familiar with
686 subdivisions like that; I grew up in one that had 25-foot lots. What do you build on
687 a 25-foot lot? However, what you're saying, it could be done.

688
689 I don't know what the case is going to be as far as approval or disapproval, but we
690 would ask that it be approved, of course, because we've gone to the trouble to ask
691 for it. And the other thing is the down the road if you deny this.

692
693 But this was done in good faith based on the information from the Planning and
694 the Zoning folks. I was kind of taken aback when I got the package. It all of the
695 other stuff in there about legal proceedings. I don't know that we can add anything
696 to it.

697
698 Mr. Bell - And as you probably know, that creates problems for
699 us, too, because we have to go by those legal proceedings.

700
701 Mr. Goin - Exactly. And if I was sitting up there, I would say hey,
702 we don't want to get sued. And I don't want to get sued either. We've had enough
703 expense with this estate just with the will people. With that being said, I don't really
704 see that I can advance anything that's going to help get it approved. I would like to
705 see that happen for the estate.

706
707 Mr. Berman - Mr. Goin?

708
709 Mr. Goin - Yes sir.

710
711 Mr. Berman - Can we just address you with a couple more quick
712 questions?

713
714 Mr. Goin - Sure.

715
716 Mr. Berman - Ms. Harris?

717
718 Ms. Harris - Yes. With the area that we're looking at that's on the
719 screen, Mr. Goin, you see on Hawthorne Avenue there seems to be more lots that
720 are 50 feet. Why? Can you see that? It's at the top of your screen. I'm just
721 wondering.

722

723 Mr. Goin - Are you talking about the ones to the right?

724

725 Ms. Harris - Yes, to the right.

726

727 Mr. Goin - Now what's your question?

728

729 Ms. Harris - It seems as though this is going to be a trend in this
730 neighborhood, that 50-foot lots are available. So what I'm saying is if we approve
731 this case, I think we'll have similar cases like it because you have so many 50-foot
732 lots in that area.

733

734 Mr. Goin - I'm not sure how many you've got. You've got some, it
735 looks like. But it looks like most of those may not be 50-foot lots. I'm not sure. I
736 know the ones across the street, directly, are 50-foot lots. And it's a mixed bag
737 through the whole area. It's already been said that some of them are a lot and a
738 half; some of them are a double lot. Some of them are bigger than that, like the
739 one to the right of the subject property, the subject lot. That looks bigger than some
740 of the others that are double lots. It's an issue. It would be an issue for you guys.

741

742 Mr. Berman - Thank you, Ms. Harris. Mr. Goin, is your end result
743 wanting to have two dwellings or is a larger single dwelling an option?

744

745 Mr. Goin - The idea was the value of the property is increased for
746 the estate and for the heirs. That, obviously, is one of the things the executors
747 have to be concerned about it, are they doing their due diligence to sell the property
748 at its highest value. And if it's a buildable lot, it's a lot more valuable than it is as
749 an unbuildable lot. So doing that due diligence and with the information we got
750 from the Planning area, it looked like it was probably doable. But we weren't aware
751 of all the things on La Von Avenue.

752

753 Mr. Berman - I do want you to know that the County will be able to
754 assist you if you need further information to do the lot and a half solution. They'll
755 help you with ownership information.

756

757 Mr. Goin - Thank you.

758

759 Mr. Berman - Any other questions for Mr. Goin? Thank you, sir. Is
760 there anybody else wishing to speak in favor or—please approach. Good morning.
761 If you could speak into the mike and give us your name and its spelling, please.

762

763 Ms. Hanson - Good morning. My name is Heather Hanson. H-a-n-s-
764 o-n. I live at 5501 Chamberlayne Avenue. The lot next door to it is absolutely not
765 available. It's my yard. I've worked for it; I've paid for it myself as a single woman.
766 And I really, really don't want another house crammed right up next door to me. I
767 think it would detract from the neighborhood. I've lived there all my life. It's quiet

768 and charming. There are big trees and open places for kids to play. If we build
769 every single square inch of it, it's no better than an apartment.

770
771 I really don't want somebody looking in my bedroom window simply because their
772 bedroom window is right across from it. I'm absolutely not willing to give up my side
773 yard. It had belonged to my grandparents before they passed away, and it's mine
774 now. And I'm really, really not in favor of building yet another house crammed all
775 up next to each other.

776
777 The houses on Hawthorne Avenue are much, much closer together. They're also—
778 I'm trying to think of a nice way to say it. But they're also of lesser quality than the
779 houses on the bigger lots. The people that live there, most of them are rentals. Or
780 at least some of them are rentals. They're not as well taken care of as the houses
781 where people own them and take pride in them. I think it would be a detriment to
782 the neighborhood to start cramming houses in one on top of the other.

783
784 Mr. Berman - Thank you, Ms. Hanson. Does anybody have any
785 questions? Thank you very much. Is there anybody else who wishes to speak on
786 this application? Yes, please approach. Hand it to Mr. Blankinship. If you could
787 please speak into the mike and give us your name and its spelling.

788
789 Ms. Sutherland - My name is Ann Sutherland. It's spelled S-u-t-h-e-r-l-a-
790 n-d. I moved into the house at 5607 Chamberlayne, which is in the next block up
791 when I was six months old. So now that I'm over 65, I've been there off and on for
792 a long time. And I know the neighborhood quite well.

793
794 When the Farmers sought to build their house in the 1960s, or the early '60s, my
795 father and others opposed the plans as they were given to them. And as a
796 consequence, they were able to get the Farmers to have to purchase the two lots
797 to build their house. I found out this morning that the County had changed the lot
798 size, so maybe that was part of it. But I think that was also what was available.

799
800 One of my concerns is—and I'm not sure how to function with this. To the left of
801 Hawthorne are 42 lots that are buildable. They're now set up as 50 foot lots, it
802 appears. And my concern is if you okay this what will happened to those 42.

803
804 Mr. Blankinship - Do you want to zoom out?

805
806 Mr. Berman - And when you do so, can you please show us where
807 Ms. Sutherland lives?

808
809 Ms. Sutherland - I'm in the next block up. You can see now that he's
810 brought it up on the screen all of those lots have yet to be developed. And would
811 you be setting a precedent for the future. We don't want small houses there.

812

813 One of the things that I have given to you all is this. These are houses that were
814 built on Sibley in the last couple of years. And the smallest one is 1,100 square
815 feet. Sibley intersects with Chamberlayne, so these are a block and a half from the
816 proposed building site.

817
818 One of the things I don't think anybody has mentioned this morning is that the
819 existing house at 5507 is a one-bedroom house. And I don't know about you, but
820 that's not a high-demand item. To me it makes more sense to make an addition to
821 that house of say 500 square feet and bring the house up to the level of the majority
822 of the houses in the neighborhood.

823
824 I've put together a list of the houses that are built on 50-foot lots. If you'll notice,
825 only ten have been done since 1955. On the second page, you have all the houses
826 that are less than 1,000 square feet. And again, those are all, for the most part,
827 either landlocked houses or older houses. The largest houses, I've given you a list
828 of five. Adding 500 square feet to the current house would not put it out of the
829 range of the other houses in the area.

830
831 Club Court, when the first dispute came about, there were a lot of undeveloped
832 lots. And I think the County changing to R-3 is one of the reasons why we were not
833 inundated with a lot of small houses.

834
835 I hope you will deny this request because I think it will have an adverse affect on
836 the neighborhood for now and then later on down the road, if anybody ever gets
837 all the lots together for the remaining properties in Club Court. Thank you.

838
839 Mr. Berman - Thank you, Ms. Sutherland. Does the Board or staff
840 have any further questions?

841
842 Ms. Harris - Ms. Sutherland, look at the second page of the handout
843 that shows houses less than 1,000 square feet.

844
845 Ms. Sutherland - Yes.

846
847 Ms. Harris - For example, the first one, 5422 Chamberlayne
848 Avenue. It's lot 8.

849
850 Ms. Sutherland - Lot 8. It was built in 1954.

851
852 Ms. Harris - Okay. So that would be a 50-foot lot?

853
854 Ms. Sutherland - Yes it would. It didn't change until the 1960s.

855
856 Ms. Harris - Okay. So when you say houses less than 1,000 square
857 feet, you're talking about the actual house rather than the lot size.

858

859 Ms. Sutherland - Correct.
860
861 Ms. Harris - Okay.
862
863 Ms. Sutherland - Are there any other questions?
864
865 Ms. Harris - No, thank you.
866
867 Mr. Berman - Thank you very much. Thank you for your research.
868
869 Mr. Gidley - I just wanted to allay one of Ms. Sutherland's concerns.
870 I thank you for speaking, and we share your opposition to the request. The lots to
871 the east that you pointed out have been acquired, and a development plan has
872 been submitted to the County that is currently under review. In accordance with
873 the Zoning Ordinance, the developer is being required to combine a lot and a half
874 in order to meet the requirements of the ordinance for each of the lots being
875 proposed. So I can assure Ms. Sutherland the Zoning Ordinance will be enforced
876 with that developer. Thank you for appearing today.
877
878 Mr. Berman - Thank you, Mr. Gidley. Anybody else wishing to speak
879 on this application? Hearing none, Mr. Secretary, do we go into the—we just
880 covered both of the variances.
881
882 Mr. Blankinship - Yes sir. We combined the two public hearings, but we
883 will have separate votes.
884
885 Mr. Berman - Very good. So that concludes our application session.
886 We now will move into the motion portion of today's proceedings. Going by the
887 agenda, let's start with CUP2016-00028.
888
889 **[After the conclusion of the public hearings, the Board discussed the case**
890 **and made its decision. This portion of the transcript is included here for**
891 **convenience of reference.]**
892
893 Mr. Berman - Moving on to VAR2016-00020. What is the pleasure of
894 the Board?
895
896 Ms. Harris - I move that we deny the variance for 5507
897 Chamberlayne Avenue. We do have a precedent for this case, this type of case.
898 When the case was appealed to the Circuit Court, the Court did note that the parcel
899 had an existing residence that provided a reasonable use and that the inability to
900 divide a property did not constitute a hardship. We could have a split vote right
901 here. And if the case were appealed again to the Circuit Court, we'd probably get
902 the same results. So I don't see the point of creating another case that would be
903 appealed based on the fact that we do have a precedent. This is why my motion
904 is to deny the variance.

905

906 Mr. Berman - Ms. Harris has a motion to deny. Do I hear a second?

907

908 Mr. Mackey - Second. I base my second on the same argument that
909 there had already been a case litigating this. And I think it falls right in the same
910 category. I believe it would be also overturned at the Circuit Court level if it went
911 that far.

912

913 Mr. Berman - Mr. Mackey has seconded the denial. Is there any
914 further discussion? Hearing none, all in favor say aye. Any opposed? None
915 opposed. The motion of denial carries.

916

917 After an advertised public hearing and on a motion by Ms. Harris seconded by Mr.
918 Mackey, the Board **denied** application **VAR2016-00020, OLIVIA V. GOIN AND R.**
919 **CAROLE TARR, CO-EXECUTORS** request for a variance from Section 24-
920 95(b)(5) of the County Code to build a one-family dwelling at 5507 Chamberlayne
921 Avenue (CLUB COURT) (Parcel 785-750-7749) zoned One-Family Residence
922 District (R-3) (Fairfield).

923

924

925 Affirmative: Bell, Berman, Harris, Mackey, Reid 5

926 Negative: 0

927 Absent: 0

928

929

930 Mr. Berman - Moving on to the companion case, VAR2016-00021.
931 What is the pleasure of the Board?

932

933 Ms. Harris - I also want to request that we deny this case for some
934 of the same reasons. What I didn't say before that I need to say now is we can see
935 that the trend is moving away from constructing properties in this community of 50-
936 foot lots, as we heard Mr. Gidley say. There are quite a few of them, and they are
937 going to require lots that are 50 feet and a half, in other words, 75 feet for the
938 construction of a dwelling. So we can see the trend is moving away from trying to
939 build on these 50-foot lots. I think that's a good thing, so that's my motion.

940

941 Mr. Berman - We have a motion from Ms. Harris for denial. This is for
942 5505 Chamberlayne Avenue. Do I hear a second?

943

944 Mr. Bell - I second it.

945

946 Mr. Berman - Mr. Bell has seconded the denial. Any further
947 discussion? Hearing none, all in favor of the denial signify by saying aye. Any
948 opposed say nay. None opposed. Motion to deny carries.

949

950 After an advertised public hearing and on a motion by Ms. Harris seconded by Mr.
951 Bell, the Board **denied** application **VAR2016-00021, OLIVIA V. GOIN AND R.**
952 **CAROLE TARR, CO-EXECUTORS** request for a variance from Section 24-95(b)
953 of the County Code to build a one-family dwelling at 5505 Chamberlayne Avenue
954 (CLUB COURT) (Parcel 785-750-7749) zoned One-Family Residence District (R-
955 3) (Fairfield).

956

957

958 Affirmative: Bell, Berman, Harris, Mackey, Reid 5

959 Negative: 0

960 Absent: 0

961

962

963 Mr. Berman - This concludes the motions. We are now moving on to
964 approval of the minutes. Do I hear a motion?

965

966

967 Ms. Harris - We have a few corrections. On the very first page, I
968 think Mr. Baka was presiding, not Mr. Bell, right?

969

970 Mr. Berman - Yes ma'am.

971

972 Ms. Harris - So we need to change that. And also on line 1714, I
973 think that "t" before "or" was probably a typographical error. Do you see that on line
974 1714?

975

976 Mr. Berman - Page 38?

977

978 Ms. Harris - Do you see it? I think that should be "or" rather than
979 "tor." And then also on line 2320. Do you see that?

980

981 Mr. Berman - Page 51?

982

983 Ms. Harris - I don't think Mr. Blankinship said, "I don't think it's affect
984 it at all." Mr. Blankinship, what do you think you said? Do you see that line?

985

986 Mr. Blankinship - "I don't think it would affect it at all," maybe?

987

988 Ms. Harris - Or it's affected.

989

990 Mr. Blankinship - Oh, okay. We can go back and listen to the recording
991 and get it correct.

992

993 Ms. Harris - Okay. Those are the only corrections that I see.

994

995 Mr. Berman - Any other corrections prior to the motion? Thank you,
996 Ms. Harris. Do we have a motion?

997
998 Mr. Bell - I move that we accept the minutes as corrected.
999

1000 Mr. Berman - We have a motion from Mr. Bell.
1001

1002 Mr. Mackey - Second.
1003

1004 Mr. Berman - Seconded by Mr. Mackey. Any further discussion? No
1005 further discussion. All those in favor signify by saying aye. Any opposed? None
1006 opposed. The motion carries.
1007

1008 On a motion by Mr. Bell, seconded by Mr. Mackey, the Board **approved as**
1009 **corrected** the **Minutes of the October 27, 2016**, Henrico County Board of Zoning
1010 Appeals meeting.
1011

1012
1013 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
1014 Negative: 0
1015 Absent: 0
1016

1017
1018 Mr. Berman - Onto new business, election of the officers.
1019 Mr. Blankinship?
1020

1021 Mr. Blankinship - Yes, Mr. Chair. Since we have had our chairman,
1022 Mr. Baka, resign in the last month, I went back and looked at what the Board has
1023 done in similar circumstances. The last time that happened there was a new
1024 election of officers the following month. So if you'd like to proceed in that direction,
1025 the floor is open for nominations for the office of chair.
1026

1027 Mr. Bell - I move that we continue with our vice chair as chair for
1028 the position that's open at this time.
1029

1030 Mr. Blankinship - All right. Mr. Bell has nominated Mr. Berman. Are there
1031 any further nominations? If not, a motion to close the floor to nominations would
1032 be in order.
1033

1034 Mr. Mackey - I move that we close the floor to nominations.
1035

1036 Mr. Blankinship - Is there a second?
1037

1038 Ms. Harris - Second.
1039

1040 Mr. Blankinship - All right. Mr. Mackey has made a motion, seconded by
1041 Ms. Harris to close the floor to nominations for the office of chair. All in favor say
1042 aye. All opposed say no.

1043
1044

1045	Affirmative:	Bell, Berman, Harris, Mackey, Reid	5
1046	Negative:		0
1047	Absent:		0

1048
1049

1050 Mr. Blankinship - All right, nominations are closed. And Mr. Berman,
1051 being the only candidate, you are elected by acclamation. Congratulations.

1052
1053

Mr. Berman - Thank you.

1054

1055 Mr. Blankinship - The floor is now open for nominations for the office of
1056 vice chair.

1057

1058 Ms. Harris - Mr. Blankinship, I move that we nominate Mr. Mackey.
1059 For vice chair, I think he's been on the Board long enough that he can definitely
1060 handle this.

1061

1062 Mr. Blankinship - All right. Ms. Harris has nominated Mr. Mackey. Are
1063 there any further nominations? If not, a motion to close the floor to nominations
1064 would be in order.

1065

1066 Mr. Bell - So moved.

1067

1068 Mr. Blankinship - Mr. Bell. Is there a second?

1069

1070 Mr. Berman - I second.

1071

1072 Mr. Blankinship - And seconded by Mr. Berman to close the floor to
1073 nominations for the office of vice chair. All in favor say aye. All opposed say no.

1074

1075

1076	Affirmative:	Bell, Berman, Harris, Mackey, Reid	5
1077	Negative:		0
1078	Absent:		0

1079

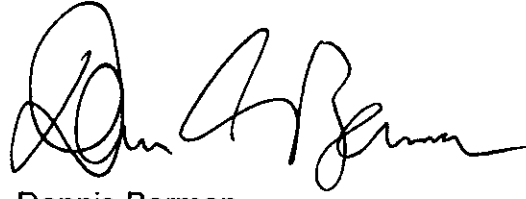
1080

1081 Mr. Blankinship - All right. Mr. Mackey, being the only candidate
1082 nominated, you have been elected vice chair by acclamation. Congratulations. Mr.
1083 Chair, I will turn the gavel back over to you.

1084

1085 Mr. Berman - Thank you everyone. We are adjourned.

1086
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1094
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1097
1098
1099



Dennis Berman
Chairman



Benjamin Blankinship, AICP
Secretary