

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**  
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE GOVERNMENT CENTER AT PARHAM**  
4 **AND HUNGARY SPRING ROADS, ON THURSDAY NOVEMBER 16, 2017 AT**  
5 **9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**  
6 **DISPATCH OCTOBER 30, 2017 AND NOVEMBER 6, 2017.**  
7

Members Present: William M. Mackey, Jr., Chair  
Helen E. Harris, Vice Chair  
Gentry Bell  
Terone B. Green  
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

8  
9 Mr. Mackey - Welcome to the November 16, 2017 meeting of the  
10 Henrico County Board of Zoning Appeals. For all those who are able, will you  
11 please stand and join us in the Pledge of Allegiance.

12  
13 Thank you. Now we'll have Mr. Ben Blankinship please read the rules of our  
14 meeting.

15  
16 Mr. Blankinship - Good morning, Mr. Chair, members of the Board,  
17 ladies and gentleman, the rules for this meeting are as follows: Acting as  
18 secretary, I will call each case. And at that time, we will ask everyone who  
19 intends to speak to that case to stand and be sworn in. Then a member of the  
20 staff will give a brief introduction to the case. Then the applicant will have their  
21 opportunity to present their case. After the applicant has spoken, anyone else  
22 who wishes to speak will be given the opportunity. After everyone has had a  
23 chance to speak, the applicant, and only the applicant, will have an opportunity  
24 for rebuttal.

25  
26 When the Board has heard all the public statements on that case, they will close  
27 that public hearing and proceed to the next public hearing. They will go back  
28 through the agenda at the end of the meeting and render all of their decisions.  
29 So, if you wish to hear their decision on a specific case, you can stay until the  
30 end of the hearings, or you can check the Planning Department website—we  
31 usually get it updated within an hour of when the meeting ends—or you can call  
32 the Planning Department this afternoon.  
33

34 This meeting is being recorded, so we'll ask everyone who speaks to speak  
35 directly into the microphone on the podium, state your name, and please spell  
36 your last name so we get it correctly in the record.

37  
38 Mr. Chair, we do have two withdrawals this morning.

39  
40 Mr. Bell - I have one question for you real quickly.

41  
42 Mr. Blankinship - Yes sir.

43  
44 Mr. Bell - I just found it. On the cover sheet of paper for  
45 variance 22, it's a small thing, but it says that the property acreage is .307 acres.  
46 And I think 1-1/2 acres. Will that make a big difference? This is just a cover  
47 sheet.

48  
49 Mr. Blankinship - I would think on that case that is the correct area.  
50 That's a very small lot. So that would be almost a third of an acre.

51  
52 Mr. Bell - Okay.

53  
54 Mr. Blankinship - I think that is correct.

55  
56 Mr. Bell - I must be thinking about something else. Thank you.

57  
58 Mr. Blankinship - All right. We have the two cases that were deferred  
59 from a previous meeting that have now been withdrawn. Those are APL2017-  
60 00007, The East End Landfill, LLC and CUP2013-00014, the request to revoke  
61 the use permit for The East End Landfill.

62  
63 **APL2017-00007 THE EAST END LANDFILL, LLC** appeals a decision  
64 of the director of planning pursuant to Section 24-116(a) of the County Code  
65 regarding the property at 1820 Darbytown Road (Parcels 808-706-6679, 808-  
66 707-7024, 808-708-0513 and 809-707-1585) zoned General Industrial District  
67 (M-2) (Varina).

68  
69 **CUP2013-00014 THE EAST END LANDFILL:** the director of planning  
70 requests revocation of a conditional use permit to expand an existing landfill at  
71 1820 Darbytown Road (Parcels 808-706-6679, 808-707-7024 and 809-707-1585)  
72 zoned Business District (B-3) and General Industrial District (M-2) (Varina).

73  
74 Mr. Blankinship - The substance of these matters is still coming  
75 forward, but there has been some additional information received from the  
76 Virginia Department of Environmental Quality. As a result, the attorneys for both  
77 sides—the County attorney and the applicant's attorney—have discussed  
78 withdrawing these two matters and filing a new petition. So that is expected to  
79 come before you in January. So, there will not be a hearing this morning on The

80 East End Landfill, but the matter is not resolved. It should be coming back in  
81 January.

82  
83 At the request of the applicant, cases **APL2017-00007, THE EAST END**  
84 **LANDFILL, LLC, and CUP2013-00014, THE EAST END LANDFILL**, have been  
85 **withdrawn**.

86  
87 Mr. Blankinship - We also have one deferral, Mr. Chair, and that is  
88 VAR2017-00023, Chris Rogers.

89  
90 **VAR2017-00023** **CHRIS ROGERS** requests a variance from Section  
91 24-95(i)(2)b. of the County Code to build an accessory structure at 509 Walsing  
92 Drive (MOORELAND LANDING) (Parcel 743-732-5147) zoned One-Family  
93 Residence District (R-1) (Tuckahoe). The accessory structure setback  
94 requirement is not met. The applicant proposes 3 feet accessory structure  
95 setback, where the Code requires 10 feet accessory structure setback. The  
96 applicant requests a variance of 7 feet accessory structure setback.

97  
98 Mr. Blankinship - Is there anyone here this morning expecting to speak  
99 to that case? Okay. Mr. Chair, we discovered as we processed the application  
100 that the application was not complete. We didn't discover that until after the  
101 advertisement had run, so it can't really be heard this morning. It needs to be  
102 deferred to your December 21st meeting.

103  
104 Mr. Mackey - Okay. All right. Do we have a motion to defer  
105 VAR2017-00023 to our December 21st meeting?

106  
107 Mr. Reid - So moved.

108  
109 Ms. Harris - Second.

110  
111 Mr. Mackey - It's been properly moved and seconded. All in favor  
112 say aye. Those opposed say no. There is no opposition; that motion passes. The  
113 case will be moved to the December 21st meeting.

114  
115 After an advertised public hearing and on a motion by Mr. Reid, seconded by  
116 Ms. Harris, **VAR2017-00023, CHRIS ROGERS**, has been deferred until the  
117 December 21, 2017 meeting.

118  
119  
120 Affirmative: Bell, Green, Harris, Mackey, Reid 5  
121 Negative: 0  
122 Absent: 0

123  
124

125 Mr. Mackey - All right, Mr. Blankinship, we'll let you call our next  
126 case.

127  
128 **CUP2017-00035 JEWISH COMMUNITY CENTER** requests a  
129 conditional use permit pursuant to Sections 24-12(b) and 24-52(a) of the County  
130 Code to expand a noncommercial recreation facility at 5403 Monument Avenue  
131 (Parcel 770-736-3957) zoned Agricultural District (A-1) (Brookland).

132  
133 Mr. Blankinship - Would everyone who intends to speak to this case  
134 please stand and be sworn in. Raise your right hands, please. Do you swear the  
135 testimony you're about to give is the truth, the whole truth, and nothing but the  
136 truth so help you God? Thank you. Everyone else can be seated. Mr. Gidley, you  
137 may begin.

138  
139 Mr. Gidley - Thank you, Mr. Secretary. Good morning,  
140 Mr. Chairman, members of the Board.

141  
142 First off, you should have some revised conditions before you. From the staff  
143 report condition #14 has changed. There was a fence in the old conditions from  
144 1972 that is not there. Instead, you have a landscaping along the terminus of  
145 Monumental Avenue, not to be confused with Monument Avenue. So condition  
146 14 has been brought forward from that 1972 case and reflects the existing  
147 conditions out there.

148  
149 Mr. Green - I have a question.

150  
151 Mr. Mackey - Yes, Mr. Green.

152  
153 Mr. Green - Since we had individuals stand who are going to be  
154 opposed to this, are they aware of these or seen these changes? If not, shouldn't  
155 they be given an opportunity to have copies in the event that could impact their  
156 rebuttal or decision?

157  
158 Mr. Blankinship - Very good point. Thank you, Mr. Green. I'll just note  
159 that I did provide the applicant with a copy this morning just before the meeting.

160  
161 Mr. Gidley - Thank you. This is a request to expand the parking lot  
162 at the Jewish Community Center. It's located off Monument Avenue just east of  
163 Libbie. Here's a picture of it. This JCC facility was established back in 1958 with  
164 the opening of a gymnasium and an indoor pool on the site. Since this time, there  
165 have been a number of improvements authorized, and today the site has roughly  
166 100,000 square feet of floor area.

167  
168 This growth has led to increased demand for parking. To address this, the JCC is  
169 proposing an expansion of the parking lot by a total of 55 parking spaces. As you  
170 see here, Monument Avenue would be up towards the north. The neighborhood

171 behind it is right here, the existing parking lot, and then the new parking would be  
172 right here with 55 total spaces.

173

174 In evaluating the request, the property is zoned A-1 Agricultural District, and it is  
175 designated as Semi-Public on the 2026 Land Use Plan. Private non-commercial  
176 recreation facilities are permitted by conditional use permit in the A-1 District, and  
177 they are consistent with the Semi-Public designation on the Comprehensive Plan  
178 as well.

179

180 Dealing with any substantial detrimental impact, the JCC is right here. It does  
181 back up onto the city's Westhampton Heights neighborhood, which is located  
182 right here in this area. As you can see, when the parking lot gets expanded  
183 westward, there would be a total of four homes in this area that would potentially  
184 be impacted by that. One of those homes at 1005 Glenburnie, which is located  
185 right here, would be just over 40 feet from the proposed parking lot. And again,  
186 this is the parking lot, and here is the home right here. It is just over 40 feet  
187 distance right there.

188

189 A week and a half ago, the applicant held a meeting with neighbors where  
190 concerns were expressed over lighting and privacy issues. To mitigate these  
191 impacts, staff has suggested expanding the existing landscape buffer along the  
192 rear of the parking lot westward between the new parking lot and the existing  
193 residences. So over here, where the existing parking is, you have a landscape  
194 buffer. Our recommendation is to extend that westward to place it between the  
195 residences here and the parking lot right here. Here are a couple of pictures of  
196 the buffer. The applicant has agreed to this request, and I believe he has a  
197 rendering today that shows the extension of this buffer.

198

199 In addition to that, he has shown some trees being added to it as well. Staff is  
200 also recommending that any lighting be limited to 20 feet in height and be from a  
201 concealed source. This would prevent the light from being exposed and spilling  
202 out in all directions, including into the neighborhood.

203

204 In conclusion, since its opening in 1958, the JCC has experienced steady growth.  
205 The proposed parking lot would enable it to better accommodate its membership.  
206 This request is consistent with the Comprehensive Plan and the Zoning  
207 Ordinance. The suggested conditions of approval include several items designed  
208 to protect the adjacent neighborhood. As a result, staff can recommend approval  
209 of this request subject to the conditions found in your staff report.

210

211 This concludes my presentation, and I'll be happy to answer any questions you  
212 may have.

213

214 Mr. Mackey - All right, thank you, Mr. Gidley. Does anyone from the  
215 Board or staff have any questions for Mr. Gidley?

216

217 Ms. Harris - Mr. Gidley, have you had any complaints from the  
218 neighbors about this expansion?

219  
220 Mr. Gidley - Yes ma'am. There was a neighborhood meeting held  
221 at the city's I believe it's Westhampton branch library off Patterson Avenue.  
222 During the meeting several neighbors showed up. Their concerns were  
223 predominantly twofold, dealing with lighting potentially spilling over and also the  
224 impact of having a parking lot behind their houses, which is not insignificant.

225  
226 There was also mention of people cutting through the neighborhood. I guess  
227 pedestrians or people coming and parking at a church there. When I asked if  
228 they knew who the people were, where they were going, I was told they did not.  
229 So that's more of, I guess you would say, a private matter for the property owner  
230 to address with the people who are trespassing. But that was mentioned as well.

231  
232 My conditions were designed to address the items that the JCC has more direct  
233 control over, which would be the lighting and the parking lot and its screening.

234  
235 At the meeting, some of the residents suggested—if I could show you here. If  
236 they still feel this way, they can bring it up. There was a suggestion that rather  
237 than extending the lot over here this way that a row be added this way parallel to  
238 the existing parking lot out there. That would tend to keep it more away from  
239 neighbors right here. That was something that was brought up at the meeting.  
240 The two sides discussed, but didn't reach any agreement on that as such.

241  
242 Ms. Harris - No complaints about noise?

243  
244 Mr. Gidley - I don't recall any about noise per se, other than the  
245 fact that there is going to be a parking lot going in behind some of the houses if  
246 this is approved. More of a privacy concern. I guess you could put noise in there  
247 if you wanted to.

248  
249 Ms. Harris - Okay. I wanted to ask about the last parking lot  
250 expansion. Can you point that out on this map? Where was the last expansion?

251  
252 Mr. Gidley - Initially, the parking lot was right behind the center. I  
253 know I looked at some photos from the 1980s, and it showed it kind of cutting off  
254 right here. Then over time, it was expanded out this way towards the rear  
255 property line. So I believe the last expansion would have been in this area right  
256 here.

257  
258 Ms. Harris - Okay. Thank you.

259  
260 Mr. Gidley - Yes ma'am.

261  
262 Mr. Mackey - Are there any other questions from Mr. Gidley?

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Mr. Green - Yes. With all that open space, why wouldn't they agree to move it back further away from those houses—there's a lot of space—and go with that first cut-through that you talked about it? Is it related to expense or what? I could see folks not wanting stuff that close to their houses, especially when you have that much mass of land. Then does that mean that the rest of that land is going to be used, they're going to come back and want to use it for additional parking at a future period of time?

Mr. Gidley - I'll address the discussion on the parking first. The JCC indicated—and the engineer I suspect can get into more detail on this when he speaks. If they put a row right here, they indicated an issue related to the entryway coming in right here. They would have to obviously make some new arrangements with this entryway in this area. And I believe they have a playground over in through here, and that would obviously have to be moved elsewhere.

Obviously from their perspective, this area out here is really not being used at the present time and it's going to simpler to use it. From the neighborhood's perspective, as you noted, if you move the parking lot down through here, it would have less of an impact on the neighborhood. So to a certain extent, I guess there are differing perspectives from who's going to have to make the most changes and the most adjustments to accommodate this. So really it could go in either place. It's a situation where, like I said, the JCC probably felt since this space was unused it made more sense to put it there. And obviously the neighbors felt differently. I didn't really get involved in that debate at the meeting. I just took notes and listened to the two sides.

Mr. Green - What's the distance between the farthest point next to the neighbor's house to the building? That's the other thing I would be concerned about if I'm having to walk. If I'm parking there and I'm having to walk, how much walking am I doing?

Mr. Gidley - The closest home is right here, which is located real close to the property line for whatever reason. The distance, as you can see, is just over 40 feet from the edge of the parking lot to the property line. To this house I'm thinking is maybe another two feet or so. So that would be around 42 feet.

Mr. Green - No. The question was the parking lot to the JCC building.

Mr. Gidley - Oh, I'm sorry. Exactly. I'm sorry.

Mr. Green - That looked like a huge distance.

309 Mr. Gidley - This would be the most distant portion of the property,  
310 yes sir. To just be straight about, it could go in either location. I guess it's a  
311 matter of how many hoops the JCC wants to go through when it comes to placing  
312 the parking lot.

313  
314 Mr. Mackey - All right. Any other questions?

315  
316 Mr. Bell - This is not really a question. Riding out there at  
317 nighttime—pull up there where you showed that house.

318  
319 Mr. Gidley - The site plan?

320  
321 Mr. Bell - Just 42 feet from the corner of the lot. The whole  
322 street from the house on down has four large poles of lights already. At nighttime,  
323 every house in there is—that's not shown straight through them. This house is  
324 probably the closest, but the other differences aren't that much. Like I said, if you  
325 live in the city, the lights that are there right now are already streetlights, even  
326 though they're across the way.

327  
328 Mr. Gidley - You're speaking of the street lights on the road in  
329 front of the houses.

330  
331 Mr. Bell - Yes, in front of the house.

332  
333 Mr. Gidley - Yes sir.

334  
335 Mr. Bell - If you go down to where the second choice could be,  
336 if they put it back there, what would it create in terms of lighting for the closest  
337 houses?

338  
339 Mr. Gidley - At the present time, as I said, staff is recommending  
340 the light be from concealed sources to direct it down. So we don't think there is  
341 going to be significant spillover impact in general. But obviously from the  
342 neighbors' perspective—and this was mentioned at the meeting—a parking lot is  
343 getting placed behind their houses under this proposal, and concern was  
344 expressed about the lighting.

345  
346 Again, I guess it's going to be less of an impact visually, and probably sound-  
347 wise, if it's moved down here. From staff's perspective, our conditions were  
348 designed to mitigate that by requiring concealed source lenses on the lights to  
349 limit the spillover. I suspect if you live here, if the lights are more down this way, if  
350 nothing else it will have less of a visual impact.

351  
352 Mr. Bell - Thank you.

353

354 Mr. Mackey - Thank you, Paul. If there are no other questions, we  
355 can hear from the applicant.

356  
357 Mr. Gidley - Thank you.

358  
359 Mr. Lewis - Good morning. My name is Monte Lewis, Lewis &  
360 Associates. We're the civil engineers on the project. L-e-w-i-s. If I can put this on  
361 your projector.

362  
363 Just to address a couple of the comments that have come out. It's not about  
364 money, because actually it costs more to put it back in the corner because we  
365 have to run storm sewer all the way up to the next corner. Right now the field that  
366 you see—it's kind of hard to see it, but that's a playground for the kids. They  
367 have a preschool program. They have 160 kids right now. It's fenced in. I'll point  
368 out the play area.

369  
370 Right now the play area is along here and it goes into our parking lot. It comes  
371 over like this, and it's a fence that connects all the way back up. The kids come  
372 out of this building. We built a crossover here, and we have a crossover built  
373 here. It's a raised crossover for safety. We put that in maybe eight or ten years  
374 ago. It's twofold—to slow people down for safety and to have a designated  
375 crossing for the kids. The entrance to all of this play area is right here. There is  
376 no other entrance. It's all fenced in for safety reasons.

377  
378 The reason we didn't want to turn it 90 degrees is because then it would take out  
379 that crossing where all the kids come in. You want them in that area because that  
380 drive makes a real hard 90-degree turn, and it's a safety issue of people coming  
381 around that corner. We've also installed rumble strips, two sets, to slow the  
382 people down. And it's mainly the moms who have come to drop their kids off. To  
383 slow them down because of safety concerns of them crossing at that point.

384  
385 That and this area, like Paul said, is really somewhat unused at this point. Part of  
386 the playground is in there. They have a garden area that they use for education  
387 of the kids. That's being moved into the area that's to the—if north was straight  
388 up, to the north of the parking lot, that's going to be moved and reused. Right  
389 now, the existing buffer is right here. That was put in when this expansion was  
390 done in 2002. That buffer has worked real well because as far as we know, these  
391 people back here haven't had any complaints about noise, lights, people walking  
392 through. This is very thick as you can see from the pictures.

393  
394 The lights for this parking lot are right here. The lights that we're proposing, there  
395 are probably just going to be three of them, and they're going to be on this side.  
396 We just got the lighting plan from the consultants two days ago, and we're going  
397 with LED lights, which you can really adjust the angle, and you can shield each  
398 individual light so you cannot see it from the adjacent property. And also their  
399 analysis shows that we're only going to have 0.3 foot candle at the property line.

400 The County minimum requirement is half, 0.5. That's one of the reasons why we  
401 had the lights over on that side.

402  
403 Somebody had asked the question about the distance to walking. This parking lot  
404 is mainly for employees. It's employees and buses. The first layout we sent to the  
405 County had large buses at the end so the parking lot actually came closer to that  
406 house that's like a foot off of the property line. At the County's request, we took  
407 that out. So the large buses, which are school bus size, they will stay in the big  
408 lot. They take up two spaces, but they'll stay there. We have some small mini  
409 buses that will be parked back here. Then the rest of the parking, they want the  
410 employees to park back there so it frees up their spaces. They have—what do  
411 you have, over 100 employees now? So with these 55 spaces, at least it'll take a  
412 lot of that burden off of that lot because it does get crowded.

413  
414 The landscape buffer that we're putting in there is going to be very similar to what  
415 we have against the other lots that are in the city. The existing is about 25 feet  
416 from the property line to the parking lot. We're starting at 25 and making it wider  
417 so it's 40 feet at the other end. That gives a little more buffer. There is an  
418 overhead line in there that we can't plant big trees under. But as you can see, the  
419 buffer that we have planted, the same overhead line goes through it. So there are  
420 plantings that you can do, just keep them low so—Dominion Power does still  
421 allow those.

422  
423 All of our stormwater goes into our site and goes out to Monument Avenue.  
424 Actually, we're talking stormwater from these lots. Some of it drains over onto us,  
425 so we're capturing that and taking it out.

426  
427 The question about the old condition, do the people know about it. That condition  
428 was put in when, in the '70s? What they do is each time a use permit comes up,  
429 they keep track of all the conditions so you don't have to look back over the years  
430 to see what all the conditions are on this site. When we went out there, we found  
431 out the fence was never put up in the '70s. And probably the reason was  
432 because there's a utility easement. A sanitary sewer goes there, and the utility  
433 department doesn't allow a fence right on top of their line. It is a good buffer  
434 that's hard to see through to the other side. There is a fence on the playground  
435 across our drive, but that wasn't because of a condition. That was just because  
436 of child safety.

437  
438 Like you said, there's lighting on Stokes now—we call them cobra heads—that  
439 Dominion Power puts up that isn't shielded at all. Ours will be completely  
440 shielded. In fact, the existing lights are shielded so that there's no light that  
441 comes over onto the properties to the south. The new lights we're going to be  
442 putting up are a whole lot better. Their more energy efficient. Everybody is going  
443 to LED lights. They're overall plan is to change out all the other parking lots to go  
444 to LED at some time in the future.

445

446 Mr. Mackey - Mr. Lewis, what's the height on your lights?  
447  
448 Mr. Lewis - Twenty feet. That's one of the conditions also. That's  
449 what we were putting up before they even told us what the condition was.  
450  
451 Mr. Mackey - All right. Are there any questions from the Board or  
452 from staff for Mr. Lewis?  
453  
454 Ms. Harris - Mr. Lewis, before this application was completed,  
455 have you had any complaints about the lighting from the neighbors?  
456  
457 Mr. Lewis - Not that I'm aware of. Have you all had any  
458 complaints?  
459  
460 JCC official: [Off microphone] No.  
461  
462 Mr. Lewis - Not that we know of, no ma'am.  
463  
464 Ms. Harris - I know we had all of these conditional use permits.  
465 But when they approved the original footprint of the parcel, were they out of  
466 compliance when they constructed this facility, this parcel so close to the  
467 residents, especially the one house that's 42 feet away?  
468  
469 Mr. Lewis - Were the neighbors in compliance?  
470  
471 Ms. Harris - No.  
472  
473 Mr. Lewis - Was the JCC in compliance?  
474  
475 Ms. Harris - Yes.  
476  
477 Mr. Lewis - The property line was already there. That was  
478 established. For some reason—I don't know what the setbacks are in the City of  
479 Richmond for that type of development, but it's like this close to the property line.  
480 It's right up on it.  
481  
482 Ms. Harris - Okay. Mr. Blankinship, are there requirements for  
483 parking on parcels like this from residential communities?  
484  
485 Mr. Blankinship - The setback from parking?  
486  
487 Ms. Harris - Yes.  
488  
489 Mr. Blankinship - Yes ma'am. We require ten feet of parking lot  
490 setback.  
491

492 Mr. Lewis - Our setbacks are going from 25 feet where we tie into  
493 the existing to 40 feet on the other end.

494  
495 Ms. Harris - Thank you.

496  
497 Mr. Mackey - Are there any questions for Mr. Lewis?

498  
499 Mr. Lewis - Just to let you know, the rest of that field to our north,  
500 all of it is used by the kids in the preschool.

501  
502 Mr. Mackey - Thank you, Mr. Lewis. Is there anyone here who  
503 would like to speak in support of the application? Is there anyone who would like  
504 to speak in opposition? Come forward, please. For the record, would you please  
505 state and spell your name?

506  
507 Ms. Rose - Certainly. My name is Tammy Fields Rose. T-a-m-m-  
508 y, F (as in Frank)-i-el-d-s, Rose, just like a flower, R-o-s-e.

509  
510 Mr. Mackey - All right. Thank you, Ms. Rose.

511  
512 Ms. Rose - Good morning. I live at 5414 Stokes Lane, which  
513 would actually be the . . . so while we figure that out. But we are directly behind  
514 the proposed parking. March 2016 is when the JCC had their surveyors come  
515 out. At that time, they were putting stakes up, and they were putting it right up  
516 against our property, as well as our neighbor's property at 1005 Glenburnie  
517 Road. Now Glenburnie is a dead end at that point. So our lots are connected,  
518 they're touching. So 1005 Glenburnie is up against what would be 5416. There is  
519 a blind and then our property.

520  
521 If you're looking at this—I don't know how to do this, so I'm going to try my best.  
522 This house right here is my house. This space right here is the church parking  
523 lot, Westwood Baptist Church. I do want to make one clarification. This is not the  
524 Westhampton Heights neighborhood. This is the Westwood neighborhood, the  
525 original Westwood, not on the other side of Monument. This is the original  
526 Westwood neighborhood.

527  
528 Ms. Francis Jones, who is with us today, that's her property, 1005. So the house  
529 next to ours, the people could not be here today. We were the only ones to  
530 receive notice of this meeting today. Ms. Francis Jones didn't receive anything  
531 from the JCC, nor did the owners of 5412 Stokes Lane. And that would be  
532 Yolanda Fields Witherspoon.

533  
534 If you notice, the playground area, there is a small portion where the playground  
535 actually is. The playground, the slides and everything, are right here. So this  
536 space, all of this space, and all of this space here is vacant. There is nothing  
537 there. They aren't playing that much there. How do I know? I used to work at the

538 JCC, so I walked that. Also, I look out that window every day. So there is not a lot  
539 of activity during the summer months.

540  
541 And I know even with the garden there, there is not a lot of activity. There is  
542 someone who comes out and they will do whatever they need to do to prune or  
543 whatever in the garden. But there is no activity. The children may come out  
544 during the day, but most of the activity from those kids that are there in the  
545 preschool, and even in the day camp, is over here.

546  
547 This space going into the JCC, there is a walkway. Our complaints and we  
548 voiced at the meeting was the noise. We did also talk about the maintenance.  
549 And I know that they talked about how they've put brush up against the houses  
550 down on this side. But that brush is not kept up. It's not maintained properly.

551  
552 The spaces here? They say 55 spaces would be their daily use. But when the  
553 person spoke with my father, he said that it would be overflow only on those  
554 times when there is an overflow. During the daily day of the JCC, even if they  
555 had 100 people working in that building, there's enough space, so there's no  
556 need for additional parking specifically for their employees. There is enough  
557 space. And there are always quite a few spaces that are vacant during the  
558 workday.

559  
560 What I suggested is that they do increase these spaces. Here, it's approximately  
561 23 to 25 spaces already. So add in another 25 spaces right here would not  
562 impede much on any of the property. The kids would still have quite a bit of  
563 space to play and to grow.

564  
565 In March 2016, I asked what were their plans, were they planning on doing  
566 anything. They said no, they were only going to be doing a little construction in  
567 the playground area. But there were—they did not say that they were planning  
568 anything in the future or at that time. So for them to come back a year later and  
569 then have this, it's kind of disheartening.

570  
571 My mother worked at the JCC, so it's nothing against the JCC. I worked at the  
572 JCC. My sisters and brothers went to Camp Hilbert. And so I our neighborhood  
573 has had a really good relationship with them. And even if we have complaints,  
574 normally we try to adhere and not go too far with it.

575  
576 On this spot right here, there used to be a baseball field. And it was away, the  
577 gate was away. So that's why they added this extra parking. When they  
578 revamped this area. This used to be where the pool was, the indoor pool. And  
579 they used to have a patio, and then they removed that patio and added some  
580 other little things.

581  
582 So we've been there. I'm 55, and I've been there in this neighborhood for I would  
583 say 50 years when my parents moved in that spot. One of the things that I do

584 know is that this part, what they had said was that they were planning on putting  
585 in a handicap something in there, and they did not. At the meeting, they said that  
586 they did not want to have to reconstruct that, which I thought was really not nice  
587 because they hadn't done it yet, and it hasn't been done. So it just means that  
588 they just need to adjust a little bit. But there is enough space for the kids, even  
589 right through here, to come.

590

591 I asked if they could move the gate down just a little bit so that it would feed into  
592 the playground area and still have those [unintelligible]. Again, if they put it this  
593 way, it would be easier for anyone who is coming for the overflow. Their  
594 overflows are usually done on holidays, with —, which is in March, which is a  
595 festival, and then they have an eatery. Most of their parking spaces right now can  
596 accommodate any size that they have. And again, there are a few things that  
597 they have that may, that they say they have an overflow.

598

599 As far as the lighting on Stokes Lane, there is a pole right here, then there's  
600 probably a pole somewhere right here. Those poles on Stokes Lane, the light is  
601 away from our house. So even though the light's shining, that light pretty much is  
602 shining on the other side of the street.

603

604 In regards to noise, even with them having activities, we still hear noise. So there  
605 is always noise. But the parking spot where they're suggesting now would  
606 increase the noise level directly on our property. Their easement between the  
607 City and the Henrico line is—Dominion Power said that easement on both sides  
608 is 15 feet. So it's a 30-foot easement. What they were suggesting in the last  
609 picture was showing some brush right up against our line, which would also be  
610 that City piece. And I don't have anything. I wish I had known, I could have—but  
611 that line is the City, so there is City and there is Henrico.

612

613 The brush that he was showing on his showed brush up against our line. And  
614 that is unacceptable to us. And for Ms. Jones, being that she's by herself, and  
615 that is a corner, they are not planning on putting another out for that parking lot,  
616 so they're suggesting that anyone parking in that new spot would have to do a U-  
617 turn in the parking area, which then causes people to maybe hit someone. They'll  
618 probably an increase of hit-and-runs because somebody's going to hit somebody  
619 in the parking lot and . . . what are you going to do? To have no other exit from  
620 that spot can pose other impacts on our neighborhood.

621

622 We do right now have people coming from the JCC during the day, and they're  
623 walking through our neighborhood going to the store. Some are employees of the  
624 JCC and some are not. We can't always distinguish between who's a new  
625 employee and who's not. We have had some people coming in our neighborhood  
626 and parking. That's what we're trying to eliminate, more people being able to  
627 access our neighborhood.

628

629 I think that's it.

630

631 Mr. Mackey -  
632 Ms. Rose?

Thank you, Ms. Rose. Did anyone have a question for

633

634 Ms. Harris -

635 neighborhood, trespassing. Are they on your property?

636

637 Ms. Rose -

638 Yes. Yes ma'am, they are trespassing. Either on our  
639 property or the property next to us, which is actually my sister's property. Even  
640 cutting through the back of Ms. Jones' property and the other properties there.  
641 There is one spot right here that is I believe owned by the JCC. We very rarely  
642 get people walking through there because they've kind of closed it up. But there  
643 is space for people to walk through.

644 Ms. Harris -

645 The extension of the buffer that we were told would  
646 take place, how do you feel about that?

647 Ms. Rose -

648 The extension rides up on our property. What I would  
649 prefer, and my parents as well as my neighbor, is that the buffer stay on the other  
650 side of the easement and that it does not cross the easement that is there.  
651 Dominion Power is there in that easement. What they're talking about is having  
652 all of that brush right up against the line, which means that they are crossing the  
653 easement. It would be better if it was on that side. That would make it easier and  
654 more accessible, because then the employees that work at the preschool could  
655 actually park here because the preschool is here.

656 Ms. Harris -

Thank you.

657

658 Mr. Mackey -

Are there any other questions?

659

660 Mr. Green -

661 My question has always been whenever I hear about  
662 these buffers that individuals want to put up, I can always see it benefiting one  
663 side, in terms of cutting it and keeping it pruned. I can see you're doing it on your  
664 side. So if they put a buffer as close as they're talking about, that means you all  
665 would be responsible for cutting it or has some arrangement been made with the  
666 JCC that they would come over onto your property and cut the trees or bushes  
667 that are there.

668 Ms. Rose -

No.

669

670 Mr. Green -

That's always been a concern. How is that handled?

671

672 Mr. Blankinship -

673 It would be the JCC's responsibility to maintain it. I  
674 would think they would leave enough room. You only need a couple of feet to  
675 walk between the property line and the bushes in order to maintain them. I would  
think they would leave enough room so that they could stand on their own

676 property. They would technically be trespassing if they came onto Ms. Rose's  
677 property in order to maintain their bushes.

678  
679 Mr. Green - But typically what I noticed is people will clear what  
680 they see. They would clear what they see on their side.

681  
682 Mr. Blankinship - There is a tendency to take better care of your side.

683  
684 Mr. Green - Right. And nobody ever goes on the other side. I  
685 notice even with the buffers that I have in my neighborhood, I clear it on my side,  
686 but my neighbor doesn't necessarily clear what's behind him. So how is the JCC  
687 going to handle this? And has there been some arrangement that that will be a  
688 quarterly or annual pruning/maintenance, or is it just going to be overgrown? And  
689 then what kind of bushes and brush are you talking about putting out there? Is it  
690 going to be aesthetically beautiful that would meet the conditions of the  
691 neighborhood? Especially that one house where it's so close.

692  
693 Mr. Blankinship - The actual choice of the species and the exact  
694 locations would be shown on a plan. One of the conditions is that they would be  
695 required to submit a plan for review and approval. So we would have a look at  
696 that before that decision is final. The condition here is that they would more or  
697 less match what is already there on the other portion of the buffer. So if this were  
698 approved with those conditions, we would expect to see a landscaping plan that  
699 would show us what's there now and show more or less a continuation of that  
700 same pattern. Of course if the Board wants something different then—

701  
702 Mr. Green - When you say "we," are you talking about "we" the  
703 staff or "we" the Board?

704  
705 Mr. Blankinship - Staff, yes. Normally it would be the staff.

706  
707 Mr. Mackey - All right. Any other questions for Ms. Rose?

708  
709 Mr. Bell - Real quickly. Where your house is placed, is the front  
710 on Stokes and the back facing the parking lot? Is that the way it is?

711  
712 Ms. Rose - Yes. Our backyard faces the JCC. You could say that  
713 the backyards bump up to each other. In regards to your question, Mr. Green, I  
714 don't believe the JCC has ever had anything in place. Further down where they  
715 say they already have it, it is unkempt on our side.

716  
717 The other impact that this would have—and even before this my parents had a  
718 garden. In their garden, they had watermelon. Several years that they had their  
719 garden—they don't have their garden anymore, but several years that they had  
720 their garden, we would be missing watermelon. We knew that they had—the JCC  
721 had people to do their landscaping. Usually once the landscaping was done, we

722 didn't see the watermelon. I don't know if that was them, but I can say that that  
723 was part of the issue and challenge.

724

725 One of the questions that was raised just a moment ago was what would be the  
726 plans later on for the JCC, and that wasn't answered. One of the problems that I  
727 have is that while I was working at the JCC, one of the things that they had talked  
728 about was them moving to Goochland for more space. They evidently decided to  
729 just stay where they are. So if you're staying where you are that must mean—  
730 they're going to have to grow somewhere if they're planning any expansions. And  
731 those expansions will continue to affect and impact our neighborhood and our  
732 homes as well. As close as they are right now is a really big impact on the  
733 neighborhood. And not only on our direct neighborhood, but the neighborhoods  
734 adjacent to us.

735

736 Mr. Mackey - All right. Thank you, Ms. Rose.

737

738 Mr. Green - Mr. Chairman, just a point of clarification. When  
739 Ms. Rose was talking about theft of her watermelon, I didn't appreciate someone  
740 in the audience laughing at something that she felt to be very serious. I would  
741 hope that individuals in this audience are more cognizant and respectful of  
742 individuals when they're talking about things that are important to them. To look  
743 out there and see somebody turn around and laugh not only insults her but  
744 insults me to see that.

745

746 Mr. Mackey - Yes, understood. So noted. Okay, thank you,  
747 Ms. Rose. Is there anyone else who would like to speak in opposition? Okay.  
748 Mr. Lewis, would you like to rebut?

749

750 Mr. Lewis - Yes. As far as the landscaping, they have a contractor  
751 who regularly comes out and trims up and maintains all their landscaping. If we  
752 can go back to show the existing buffer. It's a really great buffer. I was surprised  
753 how well it did.

754

755 Mr. Mackey - Mr. Lewis, I have quick question. Your trees and  
756 shrubs, do they impose onto the neighbor's property?

757

758 Mr. Lewis - No sir, not at all.

759

760 Mr. Mackey - Okay. All right.

761

762 Mr. Lewis - There's the existing landscape that's there now. And  
763 that's a light that you can see that's shielded. That curb that you see is 25 feet  
764 away from the property line behind it. And you can't even see through the thing.  
765 It's a great hedge. We are going to extend that along our new parking lot. If I can  
766 go to the overhead, Paul. This green line right here is our property line. Right  
767 here is the overhead power line, about ten feet into our property. Our landscape

768 is going right here. It's 25 feet from the property line to the parking lot. It's 40 feet  
769 here. Keep in mind this is where we did have the parking pushed out further for  
770 our buses. We pushed that back into our lot some 20 feet to give this lady some  
771 more room here that built right against the property line. Our buffer is over here.  
772 Here's our property line here; here's out buffer. So we don't have to go on  
773 anybody's property to maintain our own landscape.

774  
775 As far as I know, there's no future expansion that we have on the books right  
776 now. This is what they wanted just because you can see from the other Google  
777 Earth picture—I don't know when it was taken, but there were a lot of cars in  
778 there at that time. I know it wasn't on a Sunday, because the church wasn't filled  
779 up. On another Google Earth, you'll see where the church lot was filled up across  
780 the way.

781  
782 As far as people walking through, we don't know of anybody who works there  
783 who walks through there to get to work. Maybe it's people just passing through to  
784 get to Monument to catch the bus, because I think the bus route does go down  
785 Monument. I'm not sure if it comes up in Stokes or not. They're one-way roads. I  
786 don't know who they are. We can't control those people. There are some people  
787 on the back where the existing buffer is, they have some chain link fence up, but  
788 that's their fence, not ours. As far as I know, we haven't heard people saying,  
789 "Hey, your bushes or your shrubbery or trees are coming over on our property."  
790 We'd be glad to trim their side up if they want. Most people want more trees and  
791 more buffer so they won't have to see it.

792  
793 On the noise issue, I don't see this being a noisy parking lot. I think you'd have  
794 more noise from the kids. And the kids do use that garden area. When I was out  
795 there, every kid on the lot was in the garden area. We have a condition of a  
796 decibel limit—isn't that correct?—on the whole property

797  
798 Mr. Blankinship - Yes.

799  
800 Mr. Lewis - That we can't exceed. I don't know what the number  
801 is. What is it?

802  
803 Mr. Blankinship - Sixty.

804  
805 Mr. Lewis - Sixty? I can't tell you what 60 decibels sounds like.  
806 But it's rarely that I even see that condition on any of my site plans that come  
807 before the Planning Commission. But that is a condition that hey, if they get too  
808 noisy, you don't have to worry about a noise ordinance; they already have a  
809 condition in there you cannot exceed that.

810  
811 We have no access off of this property except to Monument, and I think that was  
812 something that the neighborhood wanted years ago. We're still honoring that. We  
813 don't—we have roads coming in from every different direction, which would have

814 been nicer for us as far as access and getting people in and out, but the  
815 neighborhoods didn't want all those people going through their neighborhoods. In  
816 fact, that's why one of the conditions on the east side was to build—they built a  
817 fence all along that line probably for that reason. Because the roads on papers  
818 did go through this property years ago, probably before they even bought it.  
819

820 Mr. Mackey - All right. Thank you, Mr. Lewis.

821  
822 Mr. Lewis - If you have questions, I'll be glad to answer them.  
823

824 Ms. Harris - Mr. Lewis, I realize that the community center has a  
825 comprehensive program and that you probably need to expand the parking lot.  
826 But to be a good neighbor, can you relocate your parking lot?  
827

828 Mr. Lewis - I think 160 kids are more important to us than this  
829 quiet parking lot in the back that is mainly employee and overflow. I think this  
830 better serves . . . the JCC is better served, the community, as far as the people  
831 who are using it with the configuration.  
832

833 Ms. Harris - I'm not talking about taking away the play area. I'm  
834 talking about the area that the lady point out.  
835

836 Mr. Lewis - Right. What you have to keep in mind is it's not just  
837 adding parking spaces over there. You have a drive aisle too. You're looking at  
838 60 feet of that playground that would be taken away going this way. I just don't  
839 think that's a good use for the parcel. The County requires us to be 10 feet away  
840 from it; we're 25 feet and 40 feet away from it. So I think we're doing a real good  
841 job. And a buffer on top of that.  
842

843 Ms. Harris - Thank you.  
844

845 Mr. Mackey - All right. Any other questions? All right. Thank you,  
846 Mr. Lewis.  
847

848 Mr. Lewis - Yes sir.  
849

850 Ms. Rose - Can I address?  
851

852 Mr. Mackey - Unfortunately, we can't.  
853

854 Ms. Harris - It's too late.  
855

856 Mr. Mackey - I'm sorry.  
857

858 Mr. Blankinship - The next case?  
859

860 Mr. Mackey - Yes sir.

861

862 **[After the conclusion of the public hearings, the Board discussed the case**  
863 **and made its decision. This portion of the transcript is included here for**  
864 **convenience of reference.]**

865

866 Mr. Mackey - What is the pleasure of the Board?

867

868 Mr. Bell - I move that we approve the variance.

869

870 Mr. Mackey - It's been moved. Is there a second?

871

872 Mr. Reid - Second.

873

874 Mr. Bell - I was going to say the reason is it's a center much like  
875 the YMCA. You're going to have noise at those centers. When I was listening to  
876 the evidence, I was listening and I didn't hear anything related to what additional  
877 noise would be had if we added 55 new spaces. I didn't really hear that. I realize  
878 that you're going to have a little bit more, but that in and of itself did not cause me  
879 to vote against it because they were going to put in LED lights and keep it on  
880 their side of the fence. They were going to add buffering. That satisfied me.  
881 Therefore, I didn't see any safety or welfare problems with approving it, so  
882 therefore I motion that we approve.

883

884 Mr. Mackey - Okay. It's been moved by Mr. Bell, and seconded by  
885 Mr. Reid. Is there any more discussion?

886

887 Ms. Harris - Yes. I do want to say that when it comes to the  
888 welfare of the community, I think that they have expressed that this is a problem  
889 [distorted audio; unintelligible] activities that the sponsor, I think it's completely an  
890 asset. But when it comes to this parking lot, I feel that it should be relocated. I  
891 think that's the least they can do when you're dealing with a community that is so  
892 close to the actual facility. I think they need to relocate the parking lot. Just revisit  
893 the plans and relocate the parking lot. Still give the kids the playground. But, I  
894 think it can be done. That's my concern.

895

896 Mr. Mackey - Okay.

897

898 Mr. Green - I have to agree with Ms. Harris. I, too, think that an  
899 easy concession would be to relocate the parking lot to accommodate the needs  
900 of the neighbors. I always pay close attention to when folks take their time to  
901 come out and express concerns. If they're going to take their time to come out  
902 and express their concerns in the way that they did, we need to take that into  
903 consideration. And also folks need to recognize that that is a very historical  
904 African-American neighborhood. And it appears that they may feel that they're  
905 being encroached upon when there could be other alternatives. So I am not

906 going to support personally the expansion. I think that relocating the parking lot  
907 would accommodate and make everybody happy. It might cost some money, but  
908 we have to pay attention to neighbors.

909

910 Mr. Mackey - All right. Is there any other discussion. All right, the  
911 motion before the Board is to approve this CUP2017-00035. All in favor say aye.  
912 Those opposed say no. Mr. Reid, what was your vote?

913

914 Mr. Reid - Aye.

915

916 Mr. Mackey - Okay. The ayes have it three to two, so the motion is  
917 carried.

918

919 After an advertised public hearing and on a motion by Mr. Bell, seconded by  
920 Mr. Reid, the Board **approved** application **CUP2017-00035, JEWISH**  
921 **COMMUNITY CENTER's** request for a conditional use permit pursuant to  
922 Sections 24-12(b) and 24-52(a) of the County Code to expand a noncommercial  
923 recreation facility at 5403 Monument Avenue (Parcel 770-736-3957) zoned  
924 Agricultural District (A-1) (Brookland). The Board approved the conditional use  
925 permit subject to the following conditions:

926

927 1. Only the improvements shown on the plans filed with the application may be  
928 constructed pursuant to this approval. Any additional improvements shall comply  
929 with the applicable regulations of the County Code. Any substantial changes or  
930 additions to the design or location of the improvements shall require a new  
931 conditional use permit.

932

933 2. Before beginning any clearing, grading, or other land disturbing activity, the  
934 applicant shall obtain approval of an environmental compliance plan from the  
935 Department of Public Works.

936

937 3. The parking lot, driveways, and loading areas shall be subject to the  
938 requirements of Section 24-98 of Chapter 24 of the County Code.

939

940 4. Before beginning any clearing, grading, or other land disturbing activity, the  
941 applicant shall submit a detailed landscaping and lighting plan to the Planning  
942 Department for administrative review and approval. This shall include new  
943 landscaping between the proposed parking lot and the rear (southern) property  
944 line that is substantially similar to the landscaping at the rear of the existing  
945 parking lot.

946

947 5. All landscaping shall be maintained in a healthy condition at all times. Dead  
948 plant materials shall be removed within a reasonable time and replaced during  
949 the normal planting season.

950

951 6. All exterior lighting shall be shielded to direct light away from adjacent property  
952 and streets. Exterior lighting shall not exceed 20 feet in height.

953  
954 7. The recreation center shall be operated on a nonprofit basis and be open only  
955 to members and their guests.

956  
957 8. Fire lanes shall be marked and maintained in accordance with the Fire  
958 Prevention Code.

959  
960 9. All traffic control signs shall be fabricated as shown in the Virginia Manual of  
961 Uniform Traffic Control Devices for Streets and Highways.

962  
963 10. All trash shall be in closed containers with regular pickups. The containers  
964 shall be located only as shown on the approved plan and shall be properly  
965 screened. The area shall be kept clean.

966  
967 11. The only access to and from the property shall be to and from the existing  
968 access point on Monument Avenue.

969  
970 12. Noise at the property line shall not exceed 60 decibels.

971  
972 13. An opaque wood privacy fence 7 feet tall shall be maintained along the  
973 eastern property line, from the end of the existing fence near Monument Avenue,  
974 to the property corner near Wythe Avenue. There shall be no gates or other  
975 openings in the fence.

976  
977 14. The existing buffer strip across the end of Monumental Avenue shall be  
978 retained and any openings shall be filled with new plants.

979  
980  
981 Affirmative: Bell, Mackey, Reid 3  
982 Negative: Green, Harris 2  
983 Absent: 0

984  
985  
986 **[At this point, the transcript continues with the public hearing on the next**  
987 **case.]**

988  
989 **CUP2017-00036 WEST END ASSEMBLY OF GOD** requests a  
990 conditional use permit pursuant to Section 24-116(d)(1) of the County Code to  
991 allow a tent at 401 N Parham Road (Parcel 753-736-0655) zoned One-Family  
992 Residence District (R-1)  
993 (Tuckahoe).

994  
995 Mr. Blankinship - Would everyone who intends to speak to this case  
996 please stand and be sworn in. Raise your right hands, please. Do you swear the

997 testimony you're about to give is the truth, the whole truth, and nothing but the  
998 truth so help you God? Thank you. Mr. Madrigal?

999

1000 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the  
1001 Board, good morning.

1002

1003 Before you is a request to allow the installation of a temporary tent with lighting at  
1004 an existing place of worship. West End Assembly of God produces two major  
1005 theatrical performances each year to celebrate Easter and Christmas. Since  
1006 2005, the on-site preparations for these productions have included the  
1007 installation of a 900-square-foot temporary tent at the rear of the church used to  
1008 store set pieces and equipment. The tent is placed adjacent to a building and  
1009 loading and unloading area, which temporarily displaces approximately four  
1010 parking stalls per production. Here you can see the tent, and the parking goes  
1011 along here.

1012

1013 Because of the temporary displacement of parking and duration of the use, a  
1014 CUP is required. The most recent approval in 2016 allowed the installation of a  
1015 temporary tent for two consecutive years, but also prohibited exterior lighting as a  
1016 condition of approval. With this request, the applicant would like to extend his  
1017 approval and also be allowed to install lighting within the tent.

1018

1019 The site is zoned R-1 and is designated as semi-public on the 2026 future land  
1020 use map. A place of worship is a principally permitted use in the R-1 District. The  
1021 proposed tent is considered an accessory use of the church. As such, it is  
1022 consistent with the existing church use, the Zoning Ordinance, and the  
1023 Comprehensive Plan. The proposed tent will not significantly be in conflict with  
1024 the on-site parking or circulation, and it is not visible from the public right of way.

1025

1026 The proposed tent will be visible by the adjacent neighbor to the rear of the  
1027 church, in the Countryside Glen subdivision. Although visibility is partially  
1028 obscured by an existing seven-foot-tall privacy fence and the trees along the  
1029 shared property line, the tent and lighting will be visible from the second floor of  
1030 the adjacent homes.

1031

1032 Because the tent is a temporary use and visibility is partially obscured by existing  
1033 fencing and landscaping, staff is confident that the proposed use will not cause  
1034 any lasting detrimental impacts. Also, staff is not aware of any complaints  
1035 regarding the tent from previous years and has developed specific conditions of  
1036 approval to help mitigate its impacts.

1037

1038 In conclusion, the proposed tent is consistent with both the Zoning and  
1039 Comprehensive Plan designations of the property. Because of the tent's  
1040 placement behind the church, it will not be visible from the public right of way and  
1041 should not significantly impede on-site parking or traffic circulation. No

1042 substantial detrimental impacts are anticipated from the temporary tent and  
1043 lighting. Based on these facts, staff recommends approval subject to conditions.  
1044  
1045 This concludes my presentation. I will attempt to answer any questions you may  
1046 have.  
1047  
1048 Mr. Mackey - Thank you, Miguel. Do we have any questions from  
1049 the Board or staff?  
1050  
1051 Ms. Harris - Yes. Mr. Madrigal, you will have interior and exterior  
1052 lighting?  
1053  
1054 Mr. Madrigal - No. This is just for interior lighting of the tent.  
1055  
1056 Ms. Harris - So there will still be exterior lighting that we've had in  
1057 the past?  
1058  
1059 Mr. Madrigal - No. There will be no exterior lighting.  
1060  
1061 Mr. Blankinship - Well it's exterior to the building; it's inside the tent.  
1062  
1063 Ms. Harris - I understand.  
1064  
1065 Mr. Blankinship - So it's visible to the neighbors.  
1066  
1067 Mr. Madrigal - Right. Basically what will end up happening is there  
1068 will be a glow to the tent at night.  
1069  
1070 Mr. Blankinship - Right, exactly.  
1071  
1072 Ms. Harris - Yes, I can understand. Now the picture that we saw of  
1073 the tent a few minutes ago on the screen, this is not the tent we're discussing.  
1074  
1075 Mr. Madrigal - This is the tent we are discussing, yes ma'am.  
1076  
1077 Ms. Harris - So it's already been constructed?  
1078  
1079 Mr. Madrigal - Yes it's there.  
1080  
1081 Ms. Harris - All right. And how close to the neighbors is the buffer?  
1082  
1083 Mr. Madrigal - Let's see here. It's quite a ways. They put the tent  
1084 here where the cursor is, so it's probably a good maybe 20, 40, 60—maybe 80  
1085 feet, roughly.  
1086  
1087 Ms. Harris - Okay.

1088  
1089 Mr. Madrigal - From the property line back here.  
1090  
1091 Ms. Harris - The property itself from the houses, how far apart?  
1092 What's the distance between there? I'm just comparing it to the case we just had.  
1093 I'm asking how close to the community, to the residential community is the  
1094 property for West End Assembly of God?  
1095  
1096 Mr. Madrigal - If you're looking at the parking lot, you can see the  
1097 parking lot here. There is a landscaping strip between the parking stalls and the  
1098 property line. I'm not sure what that distance is.  
1099  
1100 Ms. Harris - Okay. Thank you.  
1101  
1102 Mr. Blankinship - I would call it 140 feet from the nearest dwelling to the  
1103 tent, if that's helpful.  
1104  
1105 Ms. Harris - Okay, thank you.  
1106  
1107 Mr. Mackey - All right. Are there any other questions for  
1108 Mr. Madrigal?  
1109  
1110 Mr. Green - Just a point of clarification since I'm new. A lot of  
1111 these will come up every year during Christmas and other times.  
1112  
1113 Mr. Madrigal - The productions? Yes, they do this every year for  
1114 Christmas and Easter.  
1115  
1116 Mr. Green - And every year all of the groups have to come back  
1117 and go through this process.  
1118  
1119 Mr. Blankinship - The issue here is the tent is so large that it requires a  
1120 building permit, and the tent is not shown on their plan of development. So they  
1121 could have gone through the plan of development process, amended that, and  
1122 shown the tent there. And they could do that permanently. The upside to  
1123 reviewing it every year or two—and actually these approvals are usually good for  
1124 two years. They came back in between this year because of the lighting issue.  
1125  
1126 Mr. Green - Okay.  
1127  
1128 Mr. Blankinship - The advantage to the County in reviewing them every  
1129 two years is that if a problem crops up, it could be revoked or additional  
1130 conditions could be imposed. When they started doing this, there weren't any  
1131 homes directly behind them. Those homes were built over the last five or ten  
1132 years. So it has been helpful to us to be able to review it. But they could show it

1133 on their plan of development, and then they would not need to come here every  
1134 year or two.

1135  
1136 Mr. Green - So when we do these, they two have years, and then  
1137 they have to come back.

1138  
1139 Mr. Blankinship - Yes sir. You'll see in the conditions this year we have  
1140 four specific periods of time, two Christmases and two Easters that this would  
1141 apply to.

1142  
1143 Mr. Green - Thank you.

1144  
1145 Mr. Mackey - If there are no other questions, can we hear from the  
1146 applicant? Thank you, Mr. Madrigal.

1147  
1148 Mr. Madrigal - Thank you.

1149  
1150 Mr. Bragg - Good morning. Pat Bragg. P-a-t, B-r-a-g-g.

1151  
1152 We are essentially doing the same thing that we've done in all prior  
1153 circumstances with both our Easter and Christmas productions, with the  
1154 exception of—earlier on there wasn't, I believe, a restriction against the exterior  
1155 lighting. That's a more recent event that was added to the conditions. So we're  
1156 here to have us be allowed to do that. As we're doing our production, there's an  
1157 overhead door that is at the rear of the building near the tent. During the  
1158 production, we'll wheel some set pieces in when they're needed in the  
1159 production, and others out under the tent. Once it gets dark, it's more difficult to  
1160 do that safely. That's the reason for us requesting to have a light inside the tent.  
1161 We would place one light at the very tip of the tent. And has been expressed  
1162 before, there would be a possibility to see the glow of that light from the  
1163 neighbors to the rear.

1164  
1165 But I would also say that we partially block an existing exterior building light that  
1166 is attached to the side of the building. So probably there would be less light  
1167 getting to the property line under these circumstances.

1168  
1169 Mr. Mackey - Thank you, Mr. Bragg. Are there any questions for  
1170 Mr. Bragg? All right, thank you, Mr. Bragg. Is there anyone here who would like  
1171 to speak in support of the application? Anyone who would like to speak in  
1172 opposition? Okay, thank you. Can we move forward, please?

1173  
1174 **[After the conclusion of the public hearings, the Board discussed the case  
1175 and made its decision. This portion of the transcript is included here for  
1176 convenience of reference.]**

1177  
1178 Mr. Mackey - What is the pleasure of the Board?

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Mr. Reid - I recommend that we approve CUP2017-00036 to allow the West End Assembly of God to have their tent at 401 North Parham Road subject to the conditions outlined by the staff.

Mr. Green - Second.

Mr. Mackey - All right. It's been moved that we approve and seconded by Mr. Green. Discussion?

Ms. Harris - Yes. I think West Assembly of God needs to be commended on what they do every year at Christmastime and as Easter time. They are very considerate of the neighbors. I think that they are good neighbors because they are considerate of their neighbors.

Mr. Mackey - Okay. Thank you, Ms. Harris. The motion is that we approve this CUP2017-00036. All in favor say aye. Those opposed say no. The ayes have it 5 to 0.

After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Green, the Board **approved** application **CUP2017-00036, WEST END ASSEMBLY OF GOD** requests a conditional use permit pursuant to Section 24-116(d)(1) of the County Code to allow a tent at 401 N Parham Road (Parcel 753-736-0655) zoned One-Family Residence District (R-1) (Tuckahoe). The Board approved the conditional use permit subject to the following conditions:

1. One 900-square-foot tent, as shown on the plot plan filed with the application, may be installed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements shall require a new conditional use permit.
2. The tent shall be installed no earlier, and removed no later, than the following dates: October 1, 2017 to January 31, 2018; February 19, 2018 to April 6, 2018; October 1, 2018 to January 31, 2019; and March 11, 2019 to April 26, 2019.
3. The applicant shall obtain all necessary building permits prior to the installation of the tent on the property.
4. The only exterior lighting authorized by this approval shall be inside the tent. Any lighting inside the tent shall be turned off no later than 11:00 pm.
5. The tent opening shall be oriented southwest (towards the building) to avoid light glare onto adjacent homes.

1224 6. Fire lanes shall be marked and maintained in accordance with the Fire  
1225 Prevention Code.

1226

1227

1228 Affirmative: Bell, Green, Harris, Mackey, Reid 5

1229 Negative: 0

1230 Absent: 0

1231

1232

1233 **[At this point, the transcript continues with the public hearing on the next**  
1234 **case.]**

1235

1236 Mr. Blankinship - That concludes the conditional use permit portion of  
1237 this morning's agenda. We also have five variances on the agenda. The first is  
1238 VAR2017-00020, Wayne and Rebecca Pase.

1239

1240 **VAR2017-00020 WAYNE AND REBECCA PASE** request a variance  
1241 from Section 24-94 of the County Code to build a one-family dwelling at 5739  
1242 Pouncey Tract Road (Parcel 735-777-2917) zoned Agricultural District (A-1)  
1243 (Three Chopt). The lot width requirement is not met. The applicants propose 80  
1244 feet lot width, where the Code requires 150 feet lot width. The applicants request  
1245 a variance of 70 feet lot width.

1246

1247 Mr. Blankinship - Mr. Chair, I do have a revised condition that I will pass  
1248 out to you as Mr. Gidley gives his introduction.

1249

1250 Mr. Mackey - Thank you, Mr. Blankinship.

1251

1252 [Swearing-in was done later in the meeting right before the opposition spoke.]

1253

1254 Mr. Gidley - Thank you, Mr. Secretary, members of the Board.  
1255 Good morning again.

1256

1257 The subject property is a 1-1/2-acre parcel located off Pouncey Tract Road, as  
1258 you can see right here. It is a residual piece of land that was left following  
1259 subdivision of a 71-acre parcel in 1988 that created the Granville Estates  
1260 subdivision, which you can see up here to the north.

1261

1262 The applicants acquired the property in 1991. They would like to sell the property  
1263 as a buildable lot. However, due to its shape, it does not meet the lot width  
1264 requirement, which is 150 feet of lot width due to its A-1 zoning designation.

1265

1266 As you can see on the plat of the property, there is roughly 82 feet of lot width up  
1267 on Pouncey Tract Road. This segment extends back 288 feet to where it  
1268 becomes roughly 230 feet in width along this point. Because the property has  
1269 only 82 feet of lot width at its 50-foot front yard setback, it does not meet the A-1

1270 requirement of 150 feet. It must be measured per code, at the front yard setback,  
1271 which is in the definition of lot width. So, as a result of that this is where it's  
1272 measured, rather than back here where they have additional width. Because of  
1273 this, they need a variance for lot width in order to make it a buildable lot.  
1274

1275 When we go to the evaluation for a variance, one of the two questions that must  
1276 be met for a variance is, is the property unreasonably restricted by the Zoning  
1277 Ordinance. In other words, is there a reasonable use for that property. As you  
1278 can see, it's currently wooded. At 1-1/2 acres, timbering is not really a  
1279 reasonable option or reasonable use for this property. The granting of a variance,  
1280 however, would allow for a home to be built on the site. And that in turn would  
1281 provide a reasonable use for the property and meet the first test for a variance.  
1282 Because one of these two main tests is met, we're able to then move on to the  
1283 five subtests, all of which must be met for a variance to be granted.  
1284

1285 The first is was the property acquired in good faith by the owners. Yes, and they  
1286 did not create the hardship as the condition existed prior to their purchase of the  
1287 property.  
1288

1289 The second subtest is the granting of a variance will not be a substantial  
1290 detriment to adjacent or nearby property. I'm going to go into this in some detail.  
1291 As I said, there were concerns raised by several of the neighbors to the rear of  
1292 the property.  
1293

1294 The existing development pattern in the area consists of one-family dwellings.  
1295 However, there is a wide variety in dwelling size and type. The two adjacent  
1296 properties are each one acre in size, and each contains a 600-square-foot home  
1297 that was constructed in 1962. This is the house on the left. If you're looking  
1298 across Pouncey Tract, the house on the right is here.  
1299

1300 To the rear of the property is a residential subdivision known as Hardwick at  
1301 Wyndham. The homes in this development that abut the property were all built in  
1302 the mid 1990s, and they range in size from roughly 2,600 square feet to 3,400  
1303 square feet. These are pictures of a couple of the homes behind the property.  
1304

1305 As I said, the property owner would like to sell their property as a buildable lot.  
1306 Any future home would likely be built towards the rear of the property. The  
1307 reason for that is in the A-1 District, your two side yard setbacks added up would  
1308 come to 50 feet. So at 82 feet of lot width here, that would only leave you 32 feet  
1309 of width to place a 32-foot-wide home here. So we would expect the home to be  
1310 built back here. As a result of that, any home should be reasonably compatible  
1311 with the adjacent homes in Wyndham. We decided to do this by saying that they  
1312 should at least met the proffered minimum square footage for the home, which is  
1313 1,700 square feet, along with the requirement for a brick, stone, or Dryvit  
1314 foundation on the building.  
1315

1316 As I mentioned, drainage concerns have been raised by two residents to the rear  
1317 of the property who live right here. The soils on this property requesting the  
1318 variance up here in this area are partially hydric, which according to Public Works  
1319 means they're poorly drained and subject to frequent flooding. Staff from the  
1320 Department of Public Works subsequently met with the neighbors here in  
1321 Wyndham and looked into the drainage issue. After your staff report was sent  
1322 out, Public Works suggested the undisturbed buffer that was being  
1323 recommended along the rear property line be increased to 40 feet. So that's your  
1324 revised condition that you have today.

1325  
1326 Mr. Mackey - Yes. For the record, that would be condition #5?  
1327

1328 Mr. Gidley - Yes sir, that's correct.  
1329

1330 Mr. Mackey - Okay, thank you.  
1331

1332 Mr. Gidley - The reason they recommended that was to address  
1333 the drainage concerns of the neighbors and to provide more of a natural area to  
1334 limit any impact on the neighbors.  
1335

1336 The third subtest of a general or reoccurring nature, because the property was a  
1337 remnant from an earlier subdivision, amending the ordinance to address this is  
1338 not really practical.  
1339

1340 As far as the use, a single-family home is an allowed use in the A-1 District, so  
1341 this is not a use variance.  
1342

1343 And finally, a special exception or modification is not an option in this case.  
1344

1345 In conclusion, the property is left over from the creation of the Granville Estates  
1346 subdivision back in 1988. It is generally level, has public street frontage, and  
1347 contains sufficient area to construct a dwelling. However, because the lot width is  
1348 not met at the front setback line, there is no reasonable and beneficial use for  
1349 this property absent a variance. Because of this, the first test is met.  
1350

1351 The adoption of the recommended conditions, including the recommended 40-  
1352 foot undisturbed buffer along the rear of the property line, would allow the five  
1353 subtests—required also for a variance—to be met. As a result, staff can  
1354 recommend approval of this request subject to the proposed conditions.  
1355

1356 That concludes my presentation. I'll be happy to answer any questions you have.  
1357

1358 Mr. Mackey - Thank you, Mr. Gidley. Are there any questions from  
1359 the Board or from staff?  
1360

1361 Ms. Harris - Yes. Mr. Gidley, condition #4 says that property or the  
1362 dwelling will be served by public water. And in condition #8, they talk about the  
1363 existing well on the property. So which will they be doing? Which will they be  
1364 using, public water or will they be using the well?  
1365

1366 Mr. Blankinship - Go to the plat.  
1367

1368 Mr. Gidley - There is access, Ms. Harris, to public water. So we  
1369 recommended they connect to public water for their drinking supply. Sewer is not  
1370 readily available to the property. It actually runs—I believe it's out here in the  
1371 street in Wyndham. And I was told they would need to get a significant easement  
1372 from the property owners back in through here, which likely wouldn't occur. So as  
1373 a result, they can hook up to public water without much trouble, but public sewer  
1374 is really not available, so they would need a septic system for that.  
1375

1376 Mr. Blankinship - Ms. Harris, there was a house on this property,  
1377 apparently, many, many years ago. So you see the well towards the bottom of  
1378 the screen there. There is an old existing well. We just want to make sure that  
1379 that gets capped and closed off in a safe manner at the time this new house is  
1380 constructed.  
1381

1382 Ms. Harris - Okay.  
1383

1384 Mr. Mackey - Any other questions for Mr. Gidley? All right, thank  
1385 you, sir. Can we hear from the applicant, please?  
1386

1387 Mr. Gidley - Thank you, Mr. Chairman.  
1388

1389 Mr. Burton - Good morning. I'm Sonny Burton. S-o-n-n-y, B-u-r-t-  
1390 o-n. I'm with Hometown Reality, and I'm representing Wayne and Rebecca Pase.  
1391 The reason for the variance is to be able to market and sell their property as a  
1392 buildable lot. Currently it's not acceptable based on how it's zoned. I think it's  
1393 assessed for \$130,000 as it is, which really isn't true to the property value based  
1394 on it not being a buildable lot.  
1395

1396 When the owner bought the lot, he was going to build on it. Never built on it. He  
1397 was going to give it to his children. One moved out of state, and one decided to  
1398 build someone else in the county.  
1399

1400 So basically he's just requesting the variance to allow it to be marketed and sold  
1401 as a buildable lot. The owners are okay with the conditions the Board has already  
1402 put forward, including the change from 20 feet to 40 feet in the rear of the lot.  
1403

1404 That's all I have.  
1405

1406 Mr. Mackey - Okay. Thank you, Mr. Burton. Do we have any  
1407 questions?  
1408  
1409 Ms. Harris - Mr. Blankinship, were the neighbors behind this lot  
1410 notified of this hearing?  
1411  
1412 Mr. Blankinship - Yes ma'am, they were.  
1413  
1414 Ms. Harris - Okay, thank you.  
1415  
1416 Mr. Mackey - Are there any other questions for Mr. Burton? If not,  
1417 thank you, sir.  
1418  
1419 Mr. Burton - Thank you.  
1420  
1421 Mr. Mackey - Is there anyone here who would like to speak in  
1422 support? All right. Is there anyone who would like to speak in opposition?  
1423  
1424 Mr. Blankinship - Was everybody sworn in? I didn't think so. Would  
1425 everyone who intends to speak to this case please stand and be sworn in. I'm  
1426 sorry. My oversight. Raise your right hands, please. Do you swear the testimony  
1427 you're about to give is the truth, the whole truth, and nothing but the truth so help  
1428 you God? Thank you.  
1429  
1430 Mr. Mackey - Sir in the back, you can come forward first.  
1431  
1432 Mr. Blankinship - Since we do have several speakers, let's please be  
1433 careful of our time. And if a previous speaker has already said what you need to  
1434 say, you can just acknowledge that it's already been said.  
1435  
1436 Mr. Mackey - Thank you, Mr. Blankinship.  
1437  
1438 Mr. Crone - How are you all doing today? My name is John  
1439 Crone. It's J-o-h-n, C-r-o-n-e. My only concern with the property is—  
1440  
1441 Mr. Mackey - Excuse me, Mr. Crone. Can you spell that and slow  
1442 down a little bit?  
1443  
1444 Mr. Crone - C-r-o-n-e.  
1445  
1446 Mr. Mackey - Okay, thank you.  
1447  
1448 Mr. Crone - I own a house next to the property there on the right-  
1449 hand side, facing the property from the street. When I purchased that property, I  
1450 made sure that I met all of the zoning codes. I took the time, came to the County,  
1451 and made sure. Personally, I do not like the fact that they've had the property on

1452 the market for sale at one eighty knowing that it's not a buildable lot. I don't think  
1453 that's ethical. And there is a well on the property, and the well is open. Very  
1454 unsafe for when my grandchildren were playing at my house. Hey, he would be  
1455 trespassing, but it's not—I feel like they bought the property, and now they're  
1456 trying to—I believe in everybody making money, but you bought it knowing it  
1457 wasn't buildable, and now you're trying to sell it as a buildable lot. I just don't  
1458 appreciate that. That's all I have to say.

1459  
1460 Mr. Mackey - All right.

1461  
1462 Ms. Harris - Mr. Crone, did you ever try to purchase the parcel  
1463 behind your lot?

1464  
1465 Mr. Crone - No ma'am.

1466  
1467 Ms. Harris - Okay. Thank you.

1468  
1469 Mr. Mackey - All right. Thank you, Mr. Crone. We have others who  
1470 would like to speak in opposition?

1471  
1472 Mr. Stuckey - Good morning. My name is Mike Stuckey. M-i-k-e, S-  
1473 t-u-c-k-e-y. My wife and I reside at 12304 Hardwick Court where the property—  
1474 not that one, next door. Right there. We live there. We've been there almost ten  
1475 years.

1476  
1477 We are not in favor of this variance primarily because—well, for a couple of  
1478 reasons, but mainly because, as was mentioned, the lot behind us is hydric, and  
1479 it's very prone to flooding. It's very wet. Our backyard is also very wet. We put a  
1480 French drain in, and it still remains wet. The mosquitoes in the summer are really  
1481 bad. We're investigating ways to try to ease the wetness in our yard even more,  
1482 hiring a company to come in and maybe drain it. We're really concerned that  
1483 even with the 40-foot easement that that's going to cause a lot of increased  
1484 drainage onto our property only exasperating the problem we already have.  
1485 Obviously, that could definitely adversely affect the property value of our home  
1486 by having that that lot developed that is there currently.

1487  
1488 It is nice where we are right now. It's a nice wooded space back there. A house  
1489 even just 40 feet off our property line would significantly harm our own personal  
1490 backyard and our view and adversely hurt our property value.

1491  
1492 Mr. Blankinship - Mr. Stuckey, how is the stormwater from your  
1493 property handled?

1494  
1495 Mr. Stuckey - In our yard right now?

1496  
1497 Mr. Blankinship - Yes sir.

1498  
1499 Mr. Stuckey - It's wet. We have dogs that come in and track mud  
1500 into the house. We have Virginia Green that tried to plant grass in the back.  
1501 We've had them come out seasonally and every year treat the yard. It is difficult  
1502 to grow some grass back there. It's just wet. It is grassy, but it can muddy pretty  
1503 easy. Our kids are grown and don't really run around the backyard that much.  
1504 But still even with that lack of use it still remains quite wet.  
1505  
1506 Mr. Blankinship - Am I correct in thinking that you have storm sewer  
1507 that runs along your side property line and out to the street?  
1508  
1509 Mr. Stuckey - Yes, yes. There's one in the back corner between our  
1510 house and Valli and Jim's house, kind of off the property. It's recessed down in  
1511 there. But it still does remain quite wet.  
1512  
1513 Mr. Blankinship - We have been working with the Department of Public  
1514 Works to determine the best way to handle stormwater if this property is  
1515 developed. I kind of anticipated that they were going to suggest connecting into  
1516 that storm sewer, but that's not what they suggested. They suggested the 40-foot  
1517 buffer I guess because the water wouldn't run downhill to hit your sewer.  
1518  
1519 Neither of us is a hydrology expert. But the 40-foot undisturbed buffer, how  
1520 comfortable does that make you that any stormwater created by this new  
1521 dwelling, if it's built, would not affect you?  
1522  
1523 Mr. Stuckey - It makes me very uncomfortable.  
1524  
1525 Mr. Blankinship - Okay.  
1526  
1527 Mr. Mackey - All right.  
1528  
1529 Mr. Green - Where exactly would the house be built, in that  
1530 square section? So that person would come off Pouncey Tract and have a long  
1531 drive?  
1532  
1533 Mr. Blankinship - The applicant has not given us a definite answer to  
1534 that question. We've asked it, but it's not been answered. A small house could be  
1535 built at the front of the property, up to 30 or 32 feet wide. We anticipate because  
1536 of the cost of the property they won't build a small house, which means they  
1537 would pretty much have to build it in that larger area to the rear.  
1538  
1539 Mr. Green - And we don't know what the house looks like.  
1540  
1541 Mr. Blankinship - No. This is totally speculative at this point. They want  
1542 to sell the property, and so of course the buyer would be the one to select the  
1543 exact location as well as the design. While you were on an emergency phone call

1544 there, we did mention that the conditions we have recommended on this  
1545 incorporate the same conditions that apply in the zoning of the Wyndham section  
1546 that backs up to it. So the square footage and the requirement for a brick  
1547 foundation we're taking directly from those requirements. Now the houses built  
1548 back there far exceed the proffered requirements, so we don't know what house  
1549 would be built. But we know that it would meet the requirements that were  
1550 imposed on the folks in Wyndham. Does that make sense?

1551  
1552 Mr. Green - Yes. I'd just like to know what kind of house they're  
1553 building back there because you'd like to see that. I live out in that area, and I've  
1554 noticed that some of these houses that they're building are just not consistent  
1555 with what should be out there.

1556  
1557 Mr. Blankinship - We did ask that question. And were told that that  
1558 information is not available because the property is being sold subject to this.

1559  
1560 Mr. Green - I have a real concern. You would like things to be  
1561 consistent. I'm right off Pouncey Tract, so I'll drive it, and I just see all kinds of  
1562 things. There's another house back there built off Pouncey Tract that's just  
1563 inconsistent with what should be there. At what point do we try to be consistent?

1564  
1565 Mr. Blankinship - We tried to address that, as I said, by bringing forward  
1566 the proffered requirements from Wyndham. That was the best answer we could  
1567 come up with to that question.

1568  
1569 Ms. Harris - Condition #2 kind of supports what we're proposing  
1570 here.

1571  
1572 Mr. Mackey - Yes. It has a minimum of 1,700 square feet, so we  
1573 know it couldn't be any smaller than that. That's all we really can go by. And of  
1574 course whatever they build would have to meet all the current building codes.  
1575 And like we say, they can't build it too small and it can't be too big.

1576  
1577 Mr. Green - They could put a 5,000-square-foot house back there.

1578  
1579 Mr. Mackey - That's well within the Building Code. If they could fit it  
1580 in there, then it's—

1581  
1582 Mr. Stuckey - And at \$180,000 for the lot, somebody's probably  
1583 going to want to build a really big house.

1584  
1585 Mr. Green - Yes, exactly.

1586  
1587 Mr. Mackey - We definitely take the concerns into consideration.  
1588 But as we have said in the past, if it's within the ordinance, they have the right to  
1589 build it.

1590  
1591 Mr. Stuckey - Yes. And hopefully—we're greatly concerned about  
1592 the drainage issues with the hydric soil. I'm not a person that would know  
1593 something about that, but that's really concerning for us.

1594  
1595 Mr. Mackey - Absolutely. All right. Any other questions for  
1596 Mr. Stuckey? All right, thank you, sir.

1597  
1598 Mr. Stuckey - Thank you.

1599  
1600 Mr. Mackey - Is there anyone else who would like to speak in  
1601 opposition?

1602  
1603 Ms. Laneve - Good morning to all of you. My name is Valli Laneve,  
1604 and I'll spell it for you. Valli, V-a-l-l-i, like Frankie Valli. Laneve, L-a-n-e-v-e. I live  
1605 at 12308 Hardwick Court, and I'm here to speak on behalf of myself and my  
1606 husband Jim.

1607  
1608 Originally, our lot was identified as 9A, and our house was built by Heritage  
1609 Homes, Mark Harris. We have lived in the home for 22 years. I'm probably the  
1610 oldest and the longest residing resident of any of the properties—of any of the  
1611 seven properties that surround the Pase home.

1612  
1613 Our concern is that simply granting a variance will in fact adversely impact our  
1614 property. I can speak firsthand to what I've experienced as a homeowner. I do  
1615 think that it will continue. With the development of the Pase property, with the  
1616 conditions of the soil, the elevation, it will continue to cause property—

1617  
1618 In the 22 years I've lived there, that property has never, ever, ever been dry.  
1619 There are three specific areas that are holding areas. I've never walked back  
1620 there because it's trespassing, but I can tell you the water at times is very deep.  
1621 When the water is back there, clearly mosquitoes breed. I'm allergic to mosquito  
1622 bites, so we've had mosquito companies come out, kind of not letting them look  
1623 over there. They've all said they will not spray our yard. So therefore, I generally  
1624 garden in long pants, high boots, a coat, a turtleneck, and gloves so I won't  
1625 continue to get bitten by mosquitoes.

1626  
1627 There are three properties surrounding the Pase property that have septic tank  
1628 systems. And there is a property on Pouncey Tract that currently does not have a  
1629 functioning septic tank system. So we are concerned about a septic tank being  
1630 put on the property. I can tell you that the Pase property does not significantly  
1631 affect our swale or the easement in the back of the properties. It's the properties  
1632 to the west.

1633  
1634 We also know that when builders build property—and I can speak for this, and I  
1635 know you understand this—they have a tendency to do what is the cheapest for

1636 them and the construction of the home. I concurrently say—I will tell you that I  
1637 had that experience with Jeff Soden. Our builder put in a foundation pump, a  
1638 huge one. I have pictures of it. In fact, when the grounds people came out, they  
1639 were surprised to see it. When they lifted it up, the cover actually says “sewer.”  
1640 It’s a heavy, heavy lid. And when you look down into it, it’s a significant pump.

1641  
1642 Grange Mark Harris said our property was to drain directly into the culvert. I have  
1643 not found any documentation. I have lived there for 22 years. So my property is  
1644 not—my water issues are not my backyard; it’s the easement, the eight-foot  
1645 buffer. So Jeff Soden saw the cover, and he decided that he was going to drain  
1646 the property adjacent to me into my foundation pump, which is run by electricity.  
1647 Over the 22 years, I have replaced that pump two times. I had Attorney  
1648 Cauthorne, we had S&B Surveyors come out and look at the drainage. Yes, I  
1649 understand I am at the lowest point, but it still does not give anybody the right to  
1650 intentionally drain their property, their water onto my property. So I solved the  
1651 problem by putting in a triangle garden. What was happening is the muck from  
1652 the debris was going down into the pump, and it looked like a geyser. So I do  
1653 know that when we grant and builders do things, it can cause issues with  
1654 homeowners.

1655  
1656 The problem with the swale is that we have privacy fences. Our house was  
1657 bought with a privacy fence behind it. The easement is on my side. It is  
1658 graduated down. It does go to the culvert. However, what the privacy fences  
1659 have done is flow the water into the swale. What it does is it breaks apart my  
1660 privacy fence. I’ve had to replace every single panel over the 22 years. Yes, I  
1661 understand I’m at the lowest point. Yes, I know I have to maintain it; yes I have to  
1662 do all of those things. But there is a time when you have to say—after \$15,000  
1663 the problem still exists. Plus we also put in a French drain to try to ease the water  
1664 because I had standing water. Grass does not really grow. It’s a requirement in  
1665 Wyndham that you have to have grass, so we try our best.

1666  
1667 This is not in the conditions of Wyndham, but we also built a small retaining wall.  
1668 What’s happening is, the water’s coming under the fence and pushing the dirt  
1669 out, which means it goes into the swale. And poles that are holding the fence up  
1670 become weaker and weaker and weaker. Roy Hunley, when he was alive,  
1671 decided that he was tired of the water standing on the back of his property, and I  
1672 understand that all too well. That was back into where the septic tank field was.  
1673 So what he did is dig a ditch parallel to my fence across the Pase property to the  
1674 culvert or whatever you want to call the thing, the water stop. That really caused  
1675 problems. It worked for a while, but with leaves and debris that get into it, it’s also  
1676 kind of made the water pool and still keep coming under the fence.

1677  
1678 So when other people go on vacation, I go in my backyard and reset the bricks,  
1679 put dirt back up again, clean out the swale. So I think serious consideration in  
1680 allowing a home to be built on that really is drainage. People have said that

1681 there's always been water there, but I do think it's time that something's done to  
1682 effectively drain the water off these properties.

1683

1684 Mr. Mackey - Okay. Does anything have a question for  
1685 Ms. Laneve?

1686

1687 Ms. Harris - Yes. Would you point out your property for us, please,  
1688 on this map?

1689

1690 Ms. Laneve - Oh no. I believe it is this one.

1691

1692 Mr. Blankinship - That's you, yes.

1693

1694 Ms. Harris - Okay, thank you.

1695

1696 Ms. Laneve - It's identified as 9A on the paperwork that I  
1697 purchased. But I think it said number 3 or something else up on this map.

1698

1699 Mr. Green - The problem you all are having is the drainage. So if  
1700 that issue, the water, was dealt with, would you still have a probably with the  
1701 house being built?

1702

1703 Ms. Laneve - I don't think you can definitively say that the water will  
1704 be taken care of. I remember the first time they came out. They said, "Oh, this  
1705 thing can hold 90,000 gallons of water an hour," or whatever the amount is. And  
1706 yet there is still standing water, and drainage is still a problem. Like I said, I don't  
1707 know, I'm not an engineer. They came out and talked pitch and flow and all this  
1708 other stuff. But my thing is there's still water. And you're not supposed to have  
1709 water—according to what I understand, after 48 hours it's supposed to be gone.  
1710 Therefore, we put the French drain in, but the water is still there.

1711

1712 Mr. Reid - Were you aware of all the water problems when you  
1713 bought the property, Ms. Laneve?

1714

1715 Ms. Laneve - At the time, I was relatively new to Richmond, and I  
1716 had a day to find a house. I'm not kidding you. I did not want to live in a planned  
1717 community; however, my husband and a realtor looked all summer, all the fall. I  
1718 had one day to look at a house. And clearly the other two were not right for us.  
1719 But I love our home, I love our neighbor, I love our neighborhood. It's just that I  
1720 don't want to find myself in a house that has so many problems with water that  
1721 the day comes to put the "for sale" sign up, and it doesn't sell. I think that could  
1722 be a reality with another property.

1723

1724 Ms. Harris - Ms. Laneve, is your house served by public water?

1725

1726 Ms. Laneve - Yes.

1727  
1728 Ms. Harris - Okay, thank you.  
1729  
1730 Ms. Laneve - Both by public water and sewer.  
1731  
1732 Ms. Harris - Thank you.  
1733  
1734 Mr. Mackey - All right. Are there any other questions for  
1735 Ms. Laneve? All right, thank you, ma'am.  
1736  
1737 Ms. Laneve - Thank you very much. Have a wonderful day.  
1738  
1739 Mr. Mackey - Thank you. You too. Is there anyone else who would  
1740 like to speak in opposition? All right, thank you. Can we call our next case,  
1741 please?  
1742  
1743 **[After the conclusion of the public hearings, the Board discussed the case**  
1744 **and made its decision. This portion of the transcript is included here for**  
1745 **convenience of reference.]**  
1746  
1747 Mr. Mackey - Is there a motion?  
1748  
1749 Mr. Green - You all recommended approval of this?  
1750  
1751 Mr. Blankinship - Yes, staff recommended approval with the 40-foot  
1752 undisturbed buffer to mitigate stormwater issues.  
1753  
1754 Mr. Green - This is the issue that the individuals—  
1755  
1756 Mr. Blankinship - Yes, yes. The stormwater problems. I was really  
1757 hoping for a stronger recommendation from our Department of Public Works, but  
1758 that's their professional judgment, and I feel like we have to—  
1759  
1760 Mr. Mackey - Mr. Green, for the record, I forgot to add condition 5  
1761 was amended from a 20-foot-wide area to a 40-foot-wide area buffer. We need to  
1762 put that in for the record.  
1763  
1764 Mr. Green - Since you all tend to defer to the person from that  
1765 area, and I'm Three Chopt, I would request that we deny this request.  
1766  
1767 Mr. Mackey - Is there a second? Okay. Since there is not a second,  
1768 we would need another motion. All right, I move that—  
1769  
1770 Ms. Harris - Excuse me. I'll second that motion just to get some  
1771 discussion on it.  
1772

1773 Mr. Mackey - Okay. All right. So it's been moved by Mr. Green and  
1774 seconded by Ms. Harris that we deny. Discussion?

1775  
1776 Ms. Harris - Your motion was to do what, Mr. Green?

1777  
1778 Mr. Green - To deny. The reason I would like to see it denied is  
1779 because there seems to be some fundamental problems out in that area that the  
1780 County needs to address before you even think about putting another house up  
1781 there. If folks are spending that kind of money to address water issues, the  
1782 County needs to come in and see what's really going on. If they could alleviate  
1783 that problem, then that possibly would help and not create more of an issue with  
1784 that.

1785  
1786 I understand that everybody has a right to sell a house and land. But I also  
1787 believe that when neighbors come out—and we had a number of neighbors  
1788 come out to express concerns—you have to be considerate and cognizant of  
1789 their wishes. Lord knows if I was sitting out there and took my time to do that, I  
1790 would hope that you all would listen. I don't live there; they live there. They  
1791 understand. They see those conditions. They know on a daily basis what they  
1792 have to deal with.

1793  
1794 And in Three Chopt especially I'm concerned with the proliferation of houses just  
1795 being thrown and put up everywhere without any real rhyme or reason. Every  
1796 day I drive and I see something just thrown up there. I want to make sure that if  
1797 that property is sold and a dwelling is put there, that we don't have the problem  
1798 with that property that we're seeing with other properties. Sometimes you just  
1799 need to slow down and solve one or two of the other problems first, listen to the  
1800 neighbors. One of the persons talked about their property value and the impact  
1801 that that might have. Well that's a legitimate, valid concern. And if someone has  
1802 spent \$15,000 to remediate the problem that the County hasn't helped them with,  
1803 the least we could do is be somewhat considerate of their concerns and wait.

1804  
1805 Mr. Mackey - All right. Any other discussion?

1806  
1807 Ms. Harris - Yes. I think all of the neighbors have the drainage  
1808 problem in common. The whole neighborhood has a drainage problem, and this  
1809 is not the only locality in Henrico County that has drainage problems. And  
1810 definitely we need to resolve that. But when I see a 70-foot-lot-width variance, it  
1811 concerns me. This is like a flag lot, I believe. We had rules against flag lots long  
1812 ago that seem no longer to be honored. But nevertheless, when I drove by and I  
1813 saw this little narrow strip of land in the middle of these other homes, I was  
1814 concerned before I even got to the meeting that we were going to try to stick a  
1815 house back there.

1816

1817 I think that the neighbors behind have done a very good job in establishing a  
1818 well-built, well-preserved community. I think we can at least give them neighbors  
1819 who are trying to conform to code.

1820

1821 Mr. Mackey - Okay.

1822

1823 Mr. Green - And also the other thing I'd like to say this is why we  
1824 need to be careful because these subdivisions, these areas are being built, and  
1825 then you begin to see all of these problems with drainage and other things. I think  
1826 we're just too quick to just throw houses and things up without consideration of  
1827 parking and drainage and other things.

1828

1829 I'm squarely in the middle of Three Chopt off Pump Road. Everybody knows it's  
1830 disastrous as you drive up and down Broad Street. That could have been better  
1831 planned. But because folks are so anxious to sell and make money and buy  
1832 things that it's creating all kinds of problems. I think we need to be cognizant of  
1833 that.

1834

1835 Mr. Mackey - All right. Thank you, Mr. Green. Is there any other  
1836 discussion? The motion on the floor is to deny CUP2017-00020. All in favor say  
1837 aye. Those opposed say no. The ayes have it 4 to 0.

1838

1839 Mr. Blankinship - Four to zero?

1840

1841 Mr. Mackey - Yes, I didn't vote.

1842

1843 After an advertised public hearing and on a motion by Mr. Green seconded by  
1844 Ms. Harris, the Board **denied** application **VAR2017-00020, WAYNE AND**  
1845 **REBECCA PASE's** request for a variance from Section 24-94 of the County  
1846 Code to build a one-family dwelling at 5739 Pouncey Tract Road (Parcel 735-  
1847 777-2917) zoned Agricultural District (A-1) (Three Chopt). The lot width  
1848 requirement is not met.

1849

1850 Affirmative: Bell, Green, Harris, Reid 4

1851 Negative: 0

1852 Absent: 0

1853 Abstain: Mackey 1

1854

1855 **[At this point, the transcript continues with the public hearing on the next**  
1856 **case.]**

1857

1858 **VAR2017-00021 EMERALD LAND DEVELOPMENT, LLC** requests a  
1859 variance from Section 24-95(b)(8) of the County Code to build a one-family  
1860 dwelling at 701 Beverstone Road (SILVER SPRING FARMS) (Parcel 832-725-  
1861 1389) zoned Agricultural District (A-1) (Varina). The lot width requirement is not

1862 met. The applicant proposes 129 feet lot width, where the Code requires 150 feet  
1863 lot width. The applicant requests a variance of 21 feet lot width.

1864  
1865 Mr. Blankinship - Mr. Chair, we again have a revised condition for you.  
1866 Would everyone who intends to speak to this case please stand and be sworn in.  
1867 Oh, the applicant is not here. In that case, Mr. Chairman, I recommend that  
1868 someone make a motion to defer this case to the December 21st meeting.

1869  
1870 Mr. Green - So moved.

1871  
1872 Mr. Mackey - We have a motion to defer to the December 21st  
1873 meeting. Is there a second?

1874  
1875 Ms. Harris - Second.

1876  
1877 Mr. Mackey - All in favor say aye. Those opposed say no. There is  
1878 no opposition; that motion passes.

1879  
1880 After an advertised public hearing and on a motion by Mr. Green, seconded by  
1881 Ms. Harris, **VAR2017-00021, EMERALD LAND DEVELOPMENT, LLC**, has  
1882 been deferred until the December 21, 2017 meeting.

1883  
1884  
1885 Affirmative: Bell, Green, Harris, Mackey, Reid 5  
1886 Negative: 0  
1887 Absent: 0

1888  
1889  
1890 Mr. Blankinship - All right, moving right along.

1891  
1892 **VAR2017-00022 RYAN HOMES** requests a variance from Section 24-  
1893 94 of the County Code to allow a one-family dwelling to remain at 5113  
1894 Shimmering Place (MEREDITH BRANCH ESTATES) (Parcel 758-765-8952)  
1895 zoned One-Family Residence District (R-3C) (Brookland). The front yard setback  
1896 is not met. The applicant proposes 37 feet front yard setback, where the Code  
1897 requires 40 feet front yard setback. The applicant requests a variance of 3 feet  
1898 front yard setback.

1899  
1900 Mr. Blankinship - Would everyone who intends to speak to this case  
1901 please stand and be sworn in. Raise your right hands, please. Do you swear the  
1902 testimony you're about to give is the truth, the whole truth, and nothing but the  
1903 truth so help you God? Thank you. Mr. Madrigal?

1904  
1905 Mr. Madrigal - Thank you, Mr. Secretary, Mr. Chair, members of the  
1906 Board.

1907

1908 Before you is a variance request to allow a one-family dwelling to remain in  
1909 place. The subject property is in the Meredith Branch Estates subdivision,  
1910 located across the street from Hungary Creek Middle School. The subject lot is  
1911 located at the southeast edge of a cul-de-sac and is 13,391 square feet in area.  
1912

1913 In May of this year, Ryan Homes requested a building permit to construct a  
1914 4,941-square-foot two-story residence with an attached two-car garage. In late  
1915 June, a building permit was issued for the proposed dwelling. The approved site  
1916 plan indicated a 41.3-foot front building setback to the front corner of the  
1917 attached garage. In October, a final building inspection revealed the house did  
1918 not meet the required 40-foot front yard setback. An as-built survey indicated that  
1919 a portion of the home was 37.4 feet from the front property line. The applicant  
1920 has indicated that the governing proffers associated with the subdivision are  
1921 overly restrictive, highlighting the minimum house size and garage requirement.  
1922

1923 The development site was rezoned from A-1 to R-3C in 2006. The adopted  
1924 proffers required a minimum finished house size of 3,000 square feet and a two-  
1925 car garage per residence. The interior dimensions of the garage were required to  
1926 be no smaller than 24 feet wide by 20 feet deep exclusive of interior stairs or  
1927 built-in mechanical equipment. Since the original rezoning, the proffers have  
1928 been amended twice. In July of 2015, the Board of Supervisors approved revised  
1929 proffers that required 50 percent of all homes to provide a side- or rear-load  
1930 garage. The interior dimensions remain the same. In August of 2017, the Board  
1931 again approved a second request for revised proffers that allowed 50 percent of  
1932 all homes to have a standard garage size of 20 feet by 19 feet deep. The  
1933 resulting changes required half the homes in the development to have a larger  
1934 garage size and the remaining half to have a standard garage size essentially.  
1935

1936 The applicant has indicated that the proffered garage requirements compelled  
1937 them to make several modifications to the house design, which resulted in  
1938 confusion and ultimately led to a house-siting error.  
1939

1940 After reviewing the project timeline, it appears that the home was positioned on  
1941 the lot based on a site plan with a smaller building footprint. Although the plans  
1942 were later modified to meet code and proffered requirements, the house  
1943 placement had already occurred based on an inaccurate and unapproved site  
1944 plan. The house placement was never readjusted based on the approved plans,  
1945 which resulted in a 2.7-foot front yard setback encroachment and the need for a  
1946 variance.  
1947

1948 With respect to the threshold question, state code provides that a variance shall  
1949 be granted if one of two situations arise: when strict application of the code  
1950 unreasonably restricts the utilization of the property or a variance alleviates a  
1951 hardship due to a physical condition of the property or improvements thereon at  
1952 the time of the effective date of the ordinance.  
1953

1954 Relative to the first part of the question, the applicant argues that the garage  
1955 dimension is overly burdensome or restrictive. However, the larger garage  
1956 requirement has been in effect since the adoption of the proffers in 2006.  
1957 Furthermore, the recent proffered amendments allow for more flexibility in the  
1958 design and size of the garage. In any case, the code and adopted proffers do not  
1959 unreasonably restrict the use of the property.

1960  
1961 With respect to the second part of the threshold question, the only unique  
1962 physical feature of the property is that it is located at the outer edge of a cul-de-  
1963 sac. Its location affords it a slightly deeper lot and the ability to fit a larger house  
1964 on the lot as compared to other lots in the subdivision. The applicant's argument  
1965 that the minimum house and garage size requirements contributed to the front  
1966 yard setback violation is difficult to understand, especially since they built a  
1967 5,000-square-foot home on a lot with more than adequate room for required  
1968 setbacks.

1969  
1970 The proffered garage requirements may have caused some confusion, but  
1971 ultimately the house placement occurred in error, as evidenced by contrasting  
1972 the approved site plan to the as-built plan. Based on the evidence, the physical  
1973 features of the property do not appear to contribute to the current situation faced  
1974 by the applicant.

1975  
1976 Relative to the five subtests, item one asks whether the property was acquired in  
1977 good faith and that any existing hardship is not self-imposed. The hardship  
1978 appears to be self-inflicted as demonstrated by the evidence. The approved site  
1979 plan shows a 41.3-foot front yard setback to the proposed dwelling and attached  
1980 garage. At final inspection, it was determined that the front yard setback was  
1981 actually 37.4 feet. The overall design and footprint of the home had not changed  
1982 from plan approval as evidenced by comparing the two site plans. Because the  
1983 rear yard setback increased in dimension, it is evident that the home was  
1984 incorrectly situated on the lot. Although this appears to have occurred in error,  
1985 the resulting situation is self-inflicted. Whether the error occurred deliberately or  
1986 unintentionally, case law dictates that a hardship created by the applicant or their  
1987 contractors provides no basis for granting a variance.

1988  
1989 Item two asks whether the granting of the variance will result in a substantial  
1990 detrimental impact on adjacent or nearby property. Because of the lot's location  
1991 on a cul-de-sac, the front yard encroachment may not be discernible as  
1992 compared to other homes on the cul-de-sac. From a visual perspective, there  
1993 would be no detrimental impact.

1994  
1995 Item three asks whether the request is of a general or recurring nature more  
1996 appropriately handled by a code amendment. Because principal building  
1997 setbacks are unambiguous and are determined at the onset of a residential  
1998 development, there are no legislative solutions to this situation. Absent a

1999 variance, the applicant will have to either remove the offending portion of the  
2000 building or move the entire structure back to meet setbacks.

2001  
2002 With respect to items four and five, they have been addressed as outlined in the  
2003 staff report.

2004  
2005 In conclusion, because the subject lot is of adequate size and dimensions and  
2006 has no deficiencies as compared to other lots in the subdivision, it is difficult to  
2007 find cause to grant the variance. The adoptive proffers have been in place since  
2008 2006. Although they've amended twice, each modification has resulted in less  
2009 stringent garage requirements and more design options. Comparing the  
2010 approved site plan to the as-built plan, the difference in front and rear setbacks  
2011 suggest the house was sited incorrectly. Again, whether this occurred  
2012 deliberately or unintentionally, the result is a self-inflicted hardship. As such, the  
2013 situation affords no basis for special treatment or relief from the zoning  
2014 requirements as evidenced by case law.

2015  
2016 Although no detrimental impacts are anticipated, if relief is granted it could be  
2017 construed as the granting of a special privilege and the establishment of a  
2018 negative precedent. This is especially significant since the code and adoptive  
2019 proffers do not unreasonably restrict the use of the property.

2020  
2021 Approval of the variance request comes down to a question of equity and  
2022 principle of law, especially since the home could have been built without violating  
2023 required setbacks. Based on the facts of the case, staff recommends denial.

2024  
2025 This concludes my presentation. I'll be happy to answer any questions.

2026  
2027 Mr. Mackey - Mr. Madrigal, I have one quick question just for  
2028 clarification. No one lives in this house yet.

2029  
2030 Mr. Madrigal - No. It's a brand new home, and it's constructed. They  
2031 were waiting for final inspection to get their C of O.

2032  
2033 Mr. Mackey - Okay. And I have one other kind of question to get  
2034 clarification. On the building permit, how does it get from the point to where they  
2035 laid a foundation to the final inspection, and then they realized that it doesn't  
2036 have the setback?

2037  
2038 Mr. Madrigal - Ultimately, the house placement is the responsibility  
2039 of the property owner and the contractor. They initially sited the house based on  
2040 this unapproved plan, which you can see is dated 5/31.

2041  
2042 Mr. Mackey - Okay.

2043

2044 Mr. Madrigal - My understanding is that they went off the rear  
2045 property line. I'm sure the applicant can fill you in more on that. They laid it out  
2046 based on the rear setback, not the front. Again, this was an approved site plan. In  
2047 the plan review process, they modified the site plan to meet both code and the  
2048 adopted proffers and whatever expectation the client had as well. This is the plan  
2049 that ultimately got approved. Nobody ever went back and moved the siting of the  
2050 house based on these dimensions. I think that's where the error occurred. Again,  
2051 it's up to the applicant and the contractor to verify that. When the final inspection  
2052 was requested, part of the requirement is that they conduct a final survey to  
2053 make sure that all setbacks are met and they unfortunately discovered that it did  
2054 not meet the setback.

2055  
2056 Mr. Mackey - Okay. Thank you for the explanation, Mr. Madrigal. I  
2057 know Mr. Bell has a question.

2058  
2059 Mr. Bell - On the one that was approved with the corrected  
2060 setback, when was that done? Do you know?

2061  
2062 Mr. Madrigal - The approved site plan?

2063  
2064 Mr. Bell - Yes.

2065  
2066 Mr. Madrigal - That was June 15th.

2067  
2068 Mr. Bell - And the completed building plan.

2069  
2070 Mr. Madrigal - The building plan that went with it was approved on  
2071 June 29th.

2072  
2073 Mr. Bell - So for roughly two months they would have been  
2074 working on this, and wouldn't they have been looking at this again and again?

2075  
2076 Mr. Madrigal - I'm sorry; I'm missing the point of your question.

2077  
2078 Mr. Bell - I guess my point is they had ample time in between to  
2079 look at it, didn't they?

2080  
2081 Mr. Madrigal - Yes. From our standpoint, sure.

2082  
2083 Mr. Bell - That was my point. It wasn't just two days or three  
2084 days. That condition existed for 45 to 50 days.

2085  
2086 Mr. Madrigal - Right.

2087  
2088 Mr. Bell - Okay.

2089

2090 Mr. Madrigal - Right. Because they placed the house based on this  
2091 plan, May 31st. they got approval of their site plan on June 15th. They got their  
2092 house plans—I think there were some modifications that occurred to the house  
2093 plans as a result of some trusses and a couple other issues. The building plans  
2094 actually got approved on the 29th of June. Then they got busy working on it. And  
2095 then they finished off in October, and they requested on October 6th their final  
2096 building inspection. And that's when this came up.

2097  
2098 Mr. Mackey - All right. Are there any other questions? Oh, I'm sorry.  
2099 I apologize.

2100  
2101 Mr. Bell - I have a couple more.

2102  
2103 Mr. Mackey - Excuse me.

2104  
2105 Mr. Bell - Go back to that picture of the house where you have  
2106 two garages.

2107  
2108 Mr. Madrigal - I have a better picture of the garage.

2109  
2110 Mr. Bell - All right. For my information, where on this picture—in  
2111 other words, the three-foot foundation encroachment is located where as we look  
2112 at this picture?

2113  
2114 Mr. Madrigal - Their front setback would—I mean I'm just guessing,  
2115 but it would be approximately where the cursor is.

2116  
2117 Mr. Bell - So it's off of the garage.

2118  
2119 Mr. Madrigal - Yes.

2120  
2121 Mr. Bell - Okay. So if they had to move or repair, that would  
2122 have to go out three feet.

2123  
2124 Mr. Madrigal - Come back.

2125  
2126 Mr. Bell - Come back three feet.

2127  
2128 Mr. Madrigal - Right, right. Here's a picture of the garage. This is the  
2129 front face or plane of the house, and you can see how far the garage projects,  
2130 basically a couple of feet. But at this corner, that's where it's violating the setback  
2131 requirement. You can see that is 37.4 feet there. It follows the cul-de-sac line  
2132 here. As it comes down this way, it increases in dimension. How much of that, I  
2133 really don't know; they didn't provide that information. But it would be removing a  
2134 portion of that structure to meet the code requirement.

2135

2136 Mr. Bell - All right. Thank you.  
2137  
2138 Mr. Mackey - Are there any other questions?  
2139  
2140 Mr. Green - I'm just trying to understand this. In simple English,  
2141 explain to me what is going on. They built the house.  
2142  
2143 Mr. Madrigal - Bottom line, they put the house in the wrong spot.  
2144  
2145 Mr. Green - Who did?  
2146  
2147 Mr. Madrigal - The engineer. The contractor's engineer.  
2148  
2149 Mr. Green - Okay. But then you also said the applicant—I guess  
2150 that's the person who's buying the house.  
2151  
2152 Mr. Madrigal - The property owner in this case, which is Ryan  
2153 Homes.  
2154  
2155 Mr. Green - Oh.  
2156  
2157 Mr. Blankinship - Yes. The builder is still the owner and still the  
2158 applicant.  
2159  
2160 Mr. Green - Okay. So they made the mistake.  
2161  
2162 Mr. Madrigal - Yes.  
2163  
2164 Mr. Green - So no one bought the house.  
2165  
2166 Mr. Madrigal - Well it's under contract. What they want to do is they  
2167 want to get the final certificate so that way they can go ahead and proceed with  
2168 the sale. But we can't issue a Certificate of Occupancy because there is a  
2169 setback violation because of their error.  
2170  
2171 Mr. Green - So they're going to have to knock the house down or  
2172 take out a big section of the house.  
2173  
2174 Mr. Madrigal - Well if the variance is denied, they would either have  
2175 to remove that portion of the garage that violates the setback or push the house  
2176 back.  
2177  
2178 Mr. Green - How noticeable is this? Have neighbors paid any real  
2179 attention to this? When I look at it, I can't see anything.  
2180

2181 Mr. Madrigal - Right. That was item number 2 in our findings is that it  
2182 might not be discernible from standing on the street looking at it. You can see  
2183 here you really can't tell. So from a visual perspective, there isn't a detrimental  
2184 impact. The detrimental impact really comes in in that they had a lot that exceeds  
2185 the standard-size lot, for the most part, in that subdivision, so it's bigger than  
2186 most, and it could fit the house. But even with that, they still violated the setback  
2187 because of their error.

2188  
2189 Mr. Green - I thought the County would go out periodically and  
2190 check things. So at what point should the County have gone out and noticed that  
2191 something was amiss?

2192  
2193 Mr. Madrigal - There's a whole series of inspections that occur to  
2194 make sure that the building meets minimum building code. But ultimately, the  
2195 placement of the house is not verified because it's ultimately the responsibility of  
2196 the property owner and/or contractor, who are one in the same from the  
2197 perspective of law.

2198  
2199 Mr. Green - I'm curious to see what the contractor says. They just  
2200 made a mistake or what?

2201  
2202 Mr. Madrigal - It seems like it, yes. Essentially, they based the house  
2203 placement on a site plan that had not been approved.

2204  
2205 Mr. Mackey - Okay. All right. If there are no further questions for  
2206 Mr. Madrigal, we'll hear from the applicant. Thank you, sir.

2207  
2208 Mr. Madrigal - Thank you.

2209  
2210 Mr. Kiester - Good morning. My name's Chad Kiester. C-h-a-d-, K-  
2211 i-e-s-t-e-r.

2212  
2213 Mr. Mackey - "Kiester," one more time please, sir?

2214  
2215 Mr. Kiester - K-i-e-s-t-e-r.

2216  
2217 Mr. Mackey - Thank you, sir.

2218  
2219 Mr. Kiester - I am representing Ryan Homes and our customer that  
2220 has a signed a contract on the home.

2221  
2222 As mentioned, we did submit for the building permit on May 8th. A few days later,  
2223 as it was being reviewed by Planning and Zoning, the permit was failed due to  
2224 not meeting the garage proffer. We submitted the permit originally under the  
2225 assumption of a 20-by-24 garage, not anticipating or understanding the

2226 interpretation of 24 feet wide. We had submitted other permits in the community  
2227 where we met the 20-by-24.

2228  
2229 With a front entry garage, the orientation of a front entry garage, we were able to  
2230 meet the width of 24 feet wide, 20 feet deep. With this particular home and the  
2231 options selected with the customer, which is also part of the proffered  
2232 requirement, which is 50 percent of all garages to be side-loaded. In keeping with  
2233 the proffer, we did offer a side-load garage in this situation, which was then found  
2234 to be failed by Planning and Zoning, requiring that now we need 24 feet wide  
2235 from the entrance of the garage, meaning the garage door opening.

2236  
2237 In that situation we started making plan revisions. The garage now had to be  
2238 stretched forward or towards the street to meet that. We have CAD operators,  
2239 the folks that need to draw the plans, and they needed to complete that work and  
2240 then relay that on to our engineer. Our engineer works with all of our plans, and  
2241 it's pretty straightforward. The current proffer at 19-by-20, we meet that all day  
2242 long with our products. In this case, with all of the reengineering and redesigning  
2243 with steel beams and headers and such to carry that load and to meet that  
2244 requirement, there were a few weeks of reengineering to come up with a design  
2245 that we could build.

2246  
2247 Once that was done, it was sent to the engineer. And there was a site plan on  
2248 May 31st that was completed. The error started here. The engineer took the  
2249 garage and pulled it into the house, meaning he increased the dimensions of the  
2250 garage within the house, within the structure in error. Meaning he didn't pull it  
2251 forward.

2252  
2253 I just wanted to show you, it helps explain. I just kind of highlighted the site plan  
2254 on 5/31. What should have been done is the highlighted yellow area. But he  
2255 pulled the house. The dimensions didn't change; he just pulled the garage back,  
2256 if that makes sense.

2257  
2258 Mr. Mackey - I thought the garage was too close to the road?

2259  
2260 Mr. Kiester - That's how it was built, that's correct. This site plan,  
2261 which was completed to be sent back in, was done in error, it's incorrect. He took  
2262 the garage, and instead of pulling it more towards the street, he took the  
2263 dimension and pulled it back. So it didn't move the whole house back. It was  
2264 within the house, the dimensions.

2265  
2266 In essence, our plans, our blueprints, did not match the site plan, which was  
2267 discovered. And then at that point we arrive at June 15th where the site plan was  
2268 revised once again and resubmitted. Now prior to June 15th on June 7th, our  
2269 engineer arrived on site to stake the property. We do a lot of preliminary  
2270 stakeouts. It's in anticipation of the permit being completed and moving forward.  
2271 So the home was staked out on June 7th. Of course at that point it's incorrect.

2272 You show the difference in the two site plans. I think it's 48 feet and—sorry—and  
2273 at 52 feet. I'm looking at the rear setback right here of 52 feet here. Meaning that  
2274 when they built the home, they pulled it forward over the front setback. So at that  
2275 point, our contractor is following what the engineer has laid out for him, as he  
2276 should. And it was placed in error.

2277

2278 Very difficult situation just getting through that permitting process from early May  
2279 until June 29th. Multiple revisions, multiple plans just to conform to what have  
2280 been since amended proffers. And there was obviously a lot of confusion there. I  
2281 would not deny that there are multiple errors starting with the engineer and then  
2282 follow through on his work.

2283

2284 I've looked at the home multiple times. As far as an impact on the community, the  
2285 existing homeowners, we have neighbors within that cul-de-sac, the streetscape,  
2286 I really see no impact or detriment to the community itself. Where we are now is  
2287 we have an individual family that has a signed contract that was scheduled to  
2288 close and move into their home around the middle of October. At this point, it's at  
2289 an undetermined time in regards as to when they can be placed in their home.  
2290 Unfortunately, they were not able to be available today, but I do have a signed  
2291 letter that they had written to us. I don't know if I would be able to share that  
2292 information.

2293

2294 Mr. Mackey - Sure.

2295

2296 Mr. Kiester - The homeowner's name is Tarig (T-a-r-i-g), Ahmed  
2297 (A-h-m-e-d).

2298

2299 Board members, my name is Tarig Ahmed, and I purchased a Ryan  
2300 Home at 5113 Shimmering Place, Glen Allen, Virginia, 23060. I  
2301 understand that my home is under review for rezoning. My family  
2302 and I expected to move into our home in late October. However,  
2303 due to the rezoning variance request, our move has been delayed  
2304 for an undetermined amount of time. Unfortunately, I cannot be  
2305 present at today's meeting, but wanted to present to the Board and  
2306 general public my plea for approving this variance so that we can  
2307 move into the home.

2308

2309 We are currently renting on a day-to-day basis. Our current lease  
2310 term ended yesterday. But due to the graciousness of our landlord,  
2311 they're extending it until we can determine our next step.  
2312 Meanwhile, they are currently seeking a new renter, so we could be  
2313 asked to leave at any point. We also have to pay a premium for the  
2314 short-term timeframe.

2315

2316 I have four children enrolled currently in the school zoned for  
2317 Meredith Branch, Echo Lake Elementary, Glen Allen Elementary,

2318 one in Hungary Creek Middle School, and one in Glen Allen High  
2319 School. I transport them daily at different times, from our current  
2320 rental, which is about 20 minutes one direction. I understand that  
2321 this would be something I would have to do for a couple of months  
2322 when they started school, but to extend this further also affects my  
2323 business. It usually takes me about two hours in the morning and  
2324 the afternoon to get them to and from and school. If we're able to  
2325 move into our new home, my children will be within a mile of all  
2326 their schools and able to take the bus.

2327  
2328 I have two businesses that are also currently affected by this. I  
2329 transport mentally challenged children to a day support school that I  
2330 run that is designed to help them learn to function in society and  
2331 everyday life. I also transport medically challenged individuals to  
2332 their medical facilities. I have to bring additional help with this  
2333 because of the time challenges, which is a financial burden on my  
2334 company. Mornings and afternoons are also the primary times I  
2335 have to transport these individuals.

2336  
2337 Lastly, the financing for the loan on my new home expires at the  
2338 end of the month. After discussing our current situation with the  
2339 lender, we would run the risk of not being able to close on our new  
2340 loan if it is delayed. Our interest rate is currently locked within the  
2341 current rates, and we may not qualify for financing which would  
2342 leave us with finding a place to rent for a family of six within this  
2343 school district, which is not very easy on short notice.

2344  
2345 I thank you for your time today in listening to my plea to allow us to  
2346 move into our new home. If the variance is not passed, this would  
2347 present a tremendous hardship to both my family and business. I  
2348 respectfully request your help in the matter.

2349  
2350 Signed Tarig Ahmed.

2351  
2352 Mr. Green - What's the cost of the fix?

2353  
2354 Mr. Kiester - Because of the cul-de-sac, the setback here is  
2355 running on an angle. So it would be the removal of approximately 2-1/2 feet of  
2356 the front of the garage, the roof system, the garage slab, which is a structural  
2357 slab because it is a basement home site, meaning that it's supported with grade  
2358 beams and rebar. It's tens of thousands of dollars. I'm just shooting off the hip.  
2359 Probably much greater than that. We would have to essentially tear the entire  
2360 garage down to the existing home, tear up the garage slab, which again is a  
2361 structural slab. It's not just four inches of concrete. And then move forward from  
2362 there. And it would aesthetically change the entire look of that home. And  
2363 aesthetically, I can't speak to how awkward it would be in regards to streetscape.

2364  
2365 Mr. Bell - All of us, I'm sure, have great sympathy for the buyer.

2366  
2367 Mr. Kiester - Certainly.

2368  
2369 Mr. Bell - But we do have things we have to look at, and a lot of  
2370 them we can't change. That deals with the Code of Virginia 15.2.-2309 in this  
2371 situation. What has happened throughout the whole building process addresses  
2372 a lot of these things that cause us to be very limited in our choices of what we  
2373 want to do and what we really have to do.

2374  
2375 Mr. Kiester - I completely understand. In my fourteen years  
2376 experience in this career, this is the first instance of this matter. We have many  
2377 checks in place, like I said, building our typical product. The uniqueness of  
2378 having to make all of these adjustments in our plan obviously created some  
2379 difficulties there. And the lack of a foundation check or foundation certification  
2380 required by the County or conducted in this manner certainly would have caught  
2381 it at an opportune time prior to the structure going vertical, which also plays into  
2382 this as well.

2383  
2384 Mr. Green - With all due respect, I can appreciate what the law  
2385 says. If it was that emphatic, then we would just follow the law. The fact that  
2386 we're here where we can grant an exception, I think we have to take that into  
2387 consideration. You can always cite the law and use that as the excuse. But if  
2388 that's the case, then I don't need to be here trying to make a decision if in fact  
2389 we're just going to fall back to what the law states. I think that there's an  
2390 exception to every rule. That's why we're here to hear potentially if we're going to  
2391 grant the exception. But if we're just going to follow the law, then just tell me the  
2392 law to follow and we'll just vote to reject everything. When I was put here, I was  
2393 under the impression that we would have challenges like this, and we would use  
2394 our better judgment to potentially grant situations and changes if necessary.

2395  
2396 Mr. Mackey - That point is well taken.

2397  
2398 Ms. Harris - I have a question of Mr. Kiester here. We have this  
2399 picture before us. I did drive through the neighborhood, and you're right, you  
2400 cannot tell the difference. You cannot tell that it's 2.6 feet off. Looking at this  
2401 picture, what will be scaled back? I know you said the front of the garage. But  
2402 would it affect the front of the house?

2403  
2404 Mr. Kiester - The porch is actually within the front setback. So we  
2405 would have to remove all of the garage portion, this is the three windows to the  
2406 left of the front porch, that entire foundation and roof system. So pretty much  
2407 everything from the front left corner that you're looking at near that light all the  
2408 way to the right where the porch begins. We couldn't just clip a corner, of course,  
2409 because that would look very awkward and not be usable. So we would have to

2410 take that entire section, remove the roof system. The home would have to be  
2411 reengineered, redesigned, new architecture.

2412  
2413 Ms. Harris - All right, thank you.

2414  
2415 Mr. Mackey - Are there any other questions for Mr. Kiester? If not,  
2416 is there anyone who would like to speak in support? Anyone who would like to  
2417 speak in opposition? All right. Thank you, Mr. Kiester.

2418  
2419 Mr. Kiester - Thank you.

2420  
2421 **[After the conclusion of the public hearings, the Board discussed the case**  
2422 **and made its decision. This portion of the transcript is included here for**  
2423 **convenience of reference.]**

2424  
2425 Mr. Mackey - What is the pleasure of the Board?

2426  
2427 Mr. Bell - I move that we approve this.

2428  
2429 Mr. Green - Second.

2430  
2431 Mr. Bell - I had several problems with the house, and I think  
2432 Miguel hit all the reasons. I know there is no detrimental impact or anticipated to  
2433 the adjacent properties. But if relief is granted, it could be construed as the  
2434 granting of special privilege and establishment of a negative principle.

2435  
2436 Mr. Mackey - Okay, I need to stop you. You said that you were  
2437 making a motion to approve the variance?

2438  
2439 Mr. Bell - No.

2440  
2441 Mr. Mackey - I think that's what you said.

2442  
2443 Mr. Green - Yes, you said you wanted to approve.

2444  
2445 Mr. Mackey - You said you wanted to approve the variance.

2446  
2447 Mr. Blankinship - That's what I understood as well.

2448  
2449 Mr. Bell - I'm sorry. I want to recommend that we deny it. That's  
2450 what I'm—

2451  
2452 Mr. Green - Then I withdraw my second.

2453  
2454 Mr. Mackey - You're making a motion to deny the variance?

2455

2456 Mr. Bell - Yes.

2457

2458 Mr. Mackey - Okay. Is there a second? Second. Now is there  
2459 discussion.

2460

2461 Mr. Green - Yes. I have to really look at what is happening with  
2462 the family. A family put a contract on a house. The family has stipulated that their  
2463 terms will potentially run out at the end of the month. It's going to cause a severe  
2464 hardship on that family for something that was not any fault of their own. When  
2465 you really look at the property, you're only talking about three feet. I don't really  
2466 see any problems. There is not one neighbor or one person in that subdivision  
2467 that came and complained about it. I think had it not been brought out, I don't  
2468 think anybody would have really paid any real attention.

2469

2470 So my concern is the hardship that that's going to pose on that individual family.  
2471 Now he and his family may have to go through the whole loan process again as  
2472 well as a rental situation. For three feet, it's just—where's our compassion on  
2473 granting this exception? Like I said, I understand the rules, the law says, but the  
2474 virtue of us sitting here allows us to grant that exception. We're not doing this  
2475 across the board. This is not happening. It seems to be like there was one  
2476 incident. Somebody made a mistake. Had the person not put a contract on the  
2477 house, then I would be apt to have the builder go back and do what's necessary.  
2478 But since a contract in good faith has been put on the house—you have this guy  
2479 who has kids in the school system and needs to complete the school, and have  
2480 to try to find another house, and we're coming upon Christmas and Thanksgiving,  
2481 this is just going to be a stressful time. I don't want to see those kids stressed  
2482 out.

2483

2484 Ms. Harris - I have a comment too. I am going to vote that we  
2485 approve this variance because I really believe that that's why we're here when  
2486 we're run into cases like this that don't conform to the ordinance or the code. But  
2487 there are a lot of circumstances that we need to consider. For example, the  
2488 Board of Supervisors made some changes in this case. I know we hold the  
2489 homeowner responsible for what the contractor does, but even a homeowner  
2490 could overlook a two-foot difference. You drive by there, and you see no  
2491 difference. It's a nice community, and most of the homes look alike. If they  
2492 changed this, it's going throw that neighborhood, that cul-de-sac off. So I think  
2493 you have to not only be compassionate, buy exercise a little common sense, and  
2494 realize why we're here.

2495

2496 Mr. Green - Thank you, Ms. Harris.

2497

2498 Mr. Mackey - I have a comment. I think we all are compassionate  
2499 for all the applicants. Sometimes there's very little room for us to use such  
2500 common sense. This case, in my opinion, is bound by a legal statute. I do  
2501 understand if they make a change to the house it will change it a little bit, but the

2502 garage is already sticking out three feet or so beyond the base of the house. So if  
2503 they just brought it back it would be even with the house. For that reason, I think  
2504 we need to take into the consideration the statute or the law. That's my reason  
2505 for seconding the motion to deny. Is there any other discussion?  
2506  
2507 Mr. Green - Yes. If it's so cut and dry, why are we here?  
2508  
2509 Mr. Mackey - Sometimes it is cut and dry.  
2510  
2511 Mr. Green - If it's that cut and dry, why are we here? We're here  
2512 because, as Ms. Harris clearly articulated, there are times for us to bring in other  
2513 factors.  
2514  
2515 Mr. Mackey - Sometimes there are, I agree.  
2516  
2517 Mr. Green - So if it's that cut and dry, then it never should have  
2518 been brought to us. But obviously there must be some exception there that  
2519 allows us to hear and decide on this case.  
2520  
2521 Mr. Mackey - All right, is there any discussion? The motion is to  
2522 deny the variance. All in favor of the denial say aye. All that are opposed to the  
2523 denial say aye.  
2524  
2525 Mr. Blankinship - It's two to three. So that motion has failed, which  
2526 means that the Board has taken no action at this point. At this point the Board  
2527 has taken no action. There was a motion, the motion failed, so no action has  
2528 been taken. There would need to be a new motion.  
2529  
2530 Mr. Green - I move that we grant the variance.  
2531  
2532 Ms. Harris - Second the motion.  
2533  
2534 Mr. Mackey - Discussion?  
2535  
2536 Ms. Harris - I think we've already discussed it.  
2537  
2538 Mr. Mackey - All right. All in favor? All opposed? The ayes have it,  
2539 three to two.  
2540  
2541 Ms. Harris - Thank you, Mr. Blankinship. I would have missed that  
2542 one completely.  
2543  
2544 Mr. Mackey - I don't know how we got mixed up, but we did.  
2545  
2546 Mr. Blankinship - That's my job.  
2547

2548 Ms. Harris - Yes it is.

2549

2550 Mr. Blankinship - You all have to do all the hard work.

2551

2552 After an advertised public hearing and on a motion by Mr. Green, seconded by  
2553 Ms. Harris, the Board **approved** application **VAR2017-00022, RYAN HOMES'**  
2554 request for a variance from Section 24-94 of the County Code to allow a one-  
2555 family dwelling to remain at 5113 Shimmering Place (MEREDITH BRANCH  
2556 ESTATES) (Parcel 758-765-8952) zoned One-Family Residence District (R-3C)  
2557 (Brookland). The Board approved the variance subject to the following  
2558 conditions:

2559

2560 1. This variance applies only to the front setback requirement for a one-family  
2561 dwelling only. All other applicable regulations of the County Code shall remain in  
2562 force.

2563

2564 2. Only the improvements shown on the plot plan dated October 6, 2017, and as  
2565 modified by the conditions may be constructed pursuant to this approval. Any  
2566 additional improvements shall comply with the applicable regulations of the  
2567 County Code. Any substantial changes or additions to the design or location of  
2568 the improvements will require a new variance.

2569

2570

2571 Affirmative: Bell, Green, Harris 3

2572 Negative: Mackey, Reid 2

2573 Absent:

2574

0

2575

2576 **[At this point, the transcript continues with the public hearing on the next**  
2577 **case.]**

2578

2579 Mr. Mackey - We're going to take a quick 5- to 7-minute recess.

2580

2581 [Board takes a 5- to 7-minute recess.]

2582

2583 **VAR2017-00024 SANDRA J. ROSIERE** requests a variance from  
2584 Section 24-9 of the County Code to build a one-family dwelling at 7490 Doran  
2585 Road (Parcel 822-692-3483) zoned Agricultural District (A-1) (Varina). The public  
2586 street frontage requirement is not met. The applicant proposes 0 feet public  
2587 street frontage, where the Code requires 50 feet public street frontage. The  
2588 applicant requests a variance of 50 feet public street frontage.

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2590 Mr. Blankinship - Would everyone who intends to speak to this case  
2591 please stand and be sworn in. Raise your right hands, please. Do you swear the  
2592 testimony you're about to give is the truth, the whole truth, and nothing but the  
2593 truth so help you God? Thank you. Mr. Madrigal?

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Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the Board, before you is a request to build a one-family dwelling in an agricultural district. The subject property and surrounding areas are shown on the 2026 Future Land Use Map as Suburban Residential. It's been zoned agricultural as long as the County has had zoning.

The property was originally part of a 14-acre tract purchased by the Cutright family in 1949. In 1960 when the current Zoning Ordinance was adopted, there was one dwelling on the property. In 1984, a lot was divided along Doran Road and sold to a builder who then built the dwelling at 7474 Doran Road. Since then, three additional homes have been constructed on the property, each lot created by family division, and each lot was granted a variance. The subject lot is a two-acre parcel created by family division in 1998. In 2001, a variance was granted to build a one-family dwelling, but it has since expired. The applicant acquired the property in August of this year, and she would like to build a house on the lot.

With respect to the threshold question, in 1960 when the street frontage requirement was adopted, the 14-acre tract had public street frontage. There are now five dwellings on the tract. The subject two-acre lot was created by family division in 1998. Because it was a family division, it was exempt from the subdivision requirements at the time, but did obtain a variance. The new owner cannot make a reasonable use of the property without a variance, as it is too small for any other permitted use except a dwelling. Based on the previous variance, the applicant had reasonable expectation that she would be allowed to build a dwelling on the lot.

Relative to the five subtests, item number one, the applicant acquired the property earlier this year in good faith reliance on a variance that was approved in 2001, but which expired in 2002. The applicant did not create the hardship situation because the property had already been divided before she acquired it.

Item number two, the prevailing land use pattern in the immediate area is one-family dwellings on lots of one to two acres in size. The construction of one additional dwelling should not have a detrimental impact. This will be the fourth dwelling to be served by a private drive, and the proposed home will be approximately 400 feet from Doran Road. Staff recommends the property owners served by the private road join together in establishing a formal maintenance agreement and share the maintenance costs equally.

Item number three, the Board hears an average of 16 variances from the public street frontage requirement each year. In 2015, the Board of Supervisors adopted new regulations for family divisions largely as a way of reducing variance requests. Under these new standards, a property owner who wishes to subdivide a new parcel without public street frontage would have to submit a family division for review and approval, and a variance would not be necessary.

2640 Because the subject lot was created in 1998, after the public street frontage  
2641 requirement was adopted but before the new family subdivision regulations were  
2642 in place, a variance is the only option for this lot.

2643  
2644 With respect to items four and five, those items have been addressed as outlined  
2645 in the staff report.

2646  
2647 In conclusion, the two-acre parcel cannot be used for any reasonable beneficial  
2648 use without a variance. A prior variance request was granted in 2001, and the  
2649 circumstances have not changed since that time. There should be no substantial  
2650 detrimental impacts from the proposed dwelling. For these reasons, staff  
2651 recommends approval subject to conditions.

2652  
2653 Mr. Mackey - Thank you, Mr. Madrigal. Are there any questions?

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2655 Ms. Harris - Mr. Madrigal, when was that last variance? I see the  
2656 number. When was that last variance approved?

2657  
2658 Mr. Madrigal - I believe that was 2001.

2659  
2660 Ms. Harris - 2001. But it doesn't have the same number as the  
2661 one that you have in the background. You have A-134-01. And the one in 2001  
2662 was A-042-01.

2663  
2664 Mr. Blankinship - Those were two different variances that were  
2665 approved in the same year.

2666  
2667 Ms. Harris - Two different variances in the same year. Okay.

2668  
2669 Mr. Blankinship - The 7492 Doran Road, A-042-01, that is the house  
2670 that was built the farthest west on this property. And the other was approved for  
2671 this lot, but was not built.

2672  
2673 Ms. Harris - Okay, thank you.

2674  
2675 Mr. Blankinship - Yes ma'am.

2676  
2677 Mr. Mackey - Any other questions for Mr. Madrigal? All right, thank  
2678 you, sir. Can we hear from the applicant?

2679  
2680 Ms. Rosiere - Good morning, I'm Sandra Rosiere. R-o-s-i-e-r-e.

2681  
2682 Mr. Blankinship - You pronounce that **Rose-a-re**?

2683  
2684 Ms. Rosiere - Yes.

2685

2686 Mr. Blankinship - I apologize for butchering it. I wasn't even close.  
2687  
2688 Ms. Rosiere - Most everybody does. But that's all right.  
2689  
2690 I purchased this land because it's going to be my final retirement home. I'm a  
2691 28-year Army veteran, and I work for the Department of Homeland Security now,  
2692 which is a commute from Spotsylvania up to DC every day. I'm tired of doing  
2693 that. I need a home with no stairs, and that's what I plan on putting on this  
2694 location. For me and my elderly dogs. They don't like stairs either. So this was  
2695 the perfect location, and it's nice, flat ground.  
2696  
2697 I have also gotten in contact with all the other residents on this road, introduced  
2698 myself already. Starting to get to know them. And the niece of the property owner  
2699 in front of me that is connected to Doran Road, is going to help me get in contact  
2700 with her cousin that has been maintaining the road, so that I can start to get a  
2701 covenant together for the maintenance of the road. So I am trying to be proactive  
2702 so that we can take care of the road together and everybody pay their fair share.  
2703 So I'm doing what I can to bring everybody together and work on the road.  
2704  
2705 Mr. Mackey - Are there any questions for Ms. Rosiere?  
2706  
2707 Ms. Harris - Ms. Rosiere, how did you learn about this property?  
2708 You're not related to any of the family.  
2709  
2710 Ms. Rosiere - No, I'm not related to any of the family. When I began  
2711 looking for a plot of land, I looked up in the Fredericksburg/Spotsylvania area,  
2712 and none was available. I did find a small tract, and I was requiring an easement  
2713 from somebody else, and I was negotiating that for about a month. The  
2714 gentleman said no, and so I said fine. I started looking again, and this one just  
2715 happened to come up when I put in the Richmond area. My daughter, who is 27,  
2716 had lived down here for a little while, so Henrico looked fine. This one came up at  
2717 the right time. I came and looked at it, and it was flat. I love that. I didn't have to  
2718 do a whole lot as far as improving the land. I knew that I would have to do well  
2719 and septic for it, which is not a big deal for me. I've lived in the country almost all  
2720 of my life, so I knew what it entailed, and I knew the expenses. So I'm not getting  
2721 into anything that is going to overwhelm me.  
2722  
2723 Ms. Harris - Okay, one other question. Have you seen the  
2724 conditions?  
2725  
2726 Ms. Rosiere - Yes I have.  
2727  
2728 Ms. Harris - So you noticed that condition 5 requires you to get the  
2729 permit to have legal access to the property. You knew that was required.  
2730  
2731 Ms. Rosiere - There is already access to the road, for the easement.

2732  
2733 Ms. Harris - Yes. But do you have permission to use it?  
2734  
2735 Mr. Blankinship - Yes. We received a letter from an attorney just the  
2736 other day on that subject.  
2737  
2738 Ms. Rosiere - Yes. In fact, I emailed it, but here's this.  
2739  
2740 Mr. Blankinship - That came after your packets were mailed.  
2741  
2742 Ms. Rosiere - Yes. I had my land lawyer draw up an opinion that  
2743 shows from the original division of the property there was a 50-foot easement  
2744 that goes all the way down to the furthest home. You'll see the confusion  
2745 between a 30-foot easement and a 50-foot easement. My lawyer had drawn up  
2746 the opinion that says both of those easements are still in effect, and I have rights  
2747 to that road.  
2748  
2749 Ms. Harris - Okay, thank you.  
2750  
2751 Mr. Mackey - All right. Does anyone else have any questions for  
2752 Ms. Rosiere? Thank you for your service, Ms. Rosiere.  
2753  
2754 Ms. Rosiere - Thank you.  
2755  
2756 Mr. Blankinship - And for your patience with us this morning.  
2757  
2758 Mr. Mackey - Is there anyone here who would like to speak in  
2759 support of the application? Anyone who would like to speak in opposition? Okay.  
2760  
2761 That's our last case of the day, so I guess we'll move on to our motion portion.  
2762  
2763 Mr. Blankinship - As we're going through the motions, would you please  
2764 bring up a photo of each site just to refresh the memories of which one we're  
2765 talking about? There was one change on 35, which had to do with the fence, the  
2766 very last condition. And then on variance 20, there was the change from 20 to 40  
2767 feet of undisturbed buffer. And then on 21, which was deferred, there was also a  
2768 change. But we didn't discuss it because the case was deferred.  
2769  
2770 Mr. Mackey - And 35 was the buffer?  
2771  
2772 Mr. Blankinship - Yes, the very last condition having to do with a fence  
2773 that was required in 1972 that was never built.  
2774  
2775 Mr. Mackey - Okay. All right.

2776 [After the conclusion of the public hearings, the Board discussed the case  
2777 and made its decision. This portion of the transcript is included here for  
2778 convenience of reference.]

2779  
2780 Mr. Mackey - What is the pleasure of the Board?  
2781

2782 Ms. Harris - I move that we approve this variance. Variances have  
2783 been granted on this property before, even though they were not followed  
2784 through on. I think it would enhance the community for them to build another  
2785 house. And there are only five houses on that common ground or that easement.  
2786 I believe that this would be an asset to the neighborhood.

2787  
2788 Mr. Green - Second.  
2789

2790 Mr. Mackey - It's been moved by Ms. Harris and seconded by  
2791 Mr. Green. Is there any discussion? I think this addition would be a good  
2792 improvement to that portion of the County. I think it's a good idea to go ahead  
2793 and grant this variance and allow it without the street frontage.  
2794

2795 Mr. Green - I'd like to thank her for coming to Henrico and jumping  
2796 all of those other counties.  
2797

2798 Mr. Mackey - Absolutely.  
2799

2800 Mr. Green - You could have come to Three Chopt.  
2801

2802 Mr. Mackey - She said she was a country girl. All right. The motion  
2803 is to approve VAR2017-00024. All in favor say aye. Those opposed say no.  
2804 There is no opposition; that motion passes. The ayes have it 5 to 0.  
2805

2806 After an advertised public hearing and on a motion by Ms. Harris, seconded by  
2807 Mr. Green, the Board **approved** application **VAR2017-00024, SANDRA J.**  
2808 **ROSIERE's** request for a variance from Section 24-9 of the County Code to build  
2809 a one-family dwelling at 7490 Doran Road (Parcel 822-692-3483) zoned  
2810 Agricultural District (A-1) (Varina). The Board approved the variance subject to  
2811 the following conditions:

- 2812
- 2813 1. This variance applies only to the public street frontage requirement for one  
2814 dwelling only. All other applicable regulations of the County Code shall remain in  
2815 force.  
2816
  - 2817 2. Only the improvements shown on the plot plan and building design filed with  
2818 the application may be constructed pursuant to this approval. Any additional  
2819 improvements shall comply with the applicable regulations of the County Code.  
2820 Any substantial changes or additions to the design or location of the  
2821 improvements will require a new variance.

2822  
2823 3. Approval of this request does not imply that a building permit will be issued.  
2824 Building permit approval is contingent on Health Department requirements,  
2825 including, but not limited to, soil evaluation for a septic drainfield and reserve  
2826 area, and approval of a well location.

2827  
2828 4. Before beginning any clearing, grading, or other land disturbing activity, the  
2829 applicant shall submit an environmental compliance plan to the Department of  
2830 Public Works.

2831  
2832 5. The applicant shall present proof with the building permit application that a  
2833 legal access to the property has been obtained. The driveway shall be improved  
2834 with a durable asphalt or compacted gravel surface at least 10 feet wide with 12  
2835 feet of horizontal clearance and 14 feet of overhead clearance to provide access  
2836 for police, fire, emergency medical services, and other vehicles. The owners of  
2837 the property, and their heirs or assigns, shall accept responsibility for maintaining  
2838 access to the property.

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2840  
2841 Affirmative: Bell, Green, Harris, Mackey, Reid 5  
2842 Negative: 0  
2843 Absent: 0

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2845  
2846 Mr. Mackey - Next we will have the approval of the minutes from  
2847 the October 26, 2017 meeting.

2848  
2849 Ms. Harris - I move that the minutes be approved as presented.

2850  
2851 Mr. Mackey - Is there a second?

2852  
2853 Mr. Bell - Second.

2854  
2855 Mr. Mackey - The motion that the minutes be approved as  
2856 presented has been properly moved and seconded. All in favor say aye. Those  
2857 opposed say no. The ayes have it 5 to 0.

2858  
2859 On a motion by Ms. Harris, seconded by Mr. Bell, the Board **approved as**  
2860 **submitted the Minutes of the October 26, 2017**, Henrico County Board of  
2861 Zoning Appeals meeting.

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2864 Affirmative: Bell, Green, Harris, Mackey, Reid 5  
2865 Negative: 0  
2866 Absent: 0

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Mr. Mackey -

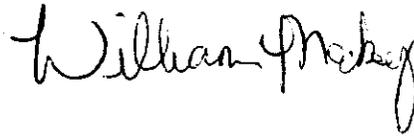
Is there any other business, Mr. Blankinship.

Mr. Blankinship -

No sir.

Mr. Mackey -  
adjourned. Thank you.

Seeing as there is no more business, this meeting is



William M. Mackey  
Chairman



Benjamin Blankinship, AICP  
Secretary