

1 MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING  
2 APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION  
3 BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY  
4 SPRING ROADS, ON THURSDAY OCTOBER 25, 2018 AT 9:00 A.M., NOTICE  
5 HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH OCTOBER  
6 8, 2018 AND OCTOBER 12, 2018.

7  
Members Present: Helen E. Harris, Chairman  
Gentry Bell, Vice Chairman  
Terone B. Green  
Walter L. Johnson, Jr.  
James W. Reid

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

8  
9 Ms. Harris - Good morning, and welcome to the October 25, 2018  
10 meeting of the Board of Zoning Appeals. All those who are able, please stand for  
11 our pledge of allegiance.

12  
13 [recitation of the pledge of allegiance]

14  
15 Ms. Harris - At this time Mr. Blankinship, our secretary, will read the  
16 rules that govern this meeting.

17  
18 Mr. Blankinship - Good morning madam chair, members of the board,  
19 ladies and gentlemen. The rules for this meeting are as follows: acting as  
20 secretary, I will announce each case, and at that time we will ask everyone who  
21 intends to speak to that case to stand and be sworn in. Then either a representative  
22 of the County Attorney's Office or a member of the Planning staff will give a brief  
23 introduction to the case. After that, either the appellant in the appeals cases will  
24 speak next, or in other cases the applicant will have the opportunity to present their  
25 application. After the appellant or applicant has spoken, then anyone else who  
26 wishes to speak to that case will be given the opportunity. After everyone has  
27 spoken, the applicant and only the applicant will have an opportunity for rebuttal.  
28 After everyone has had a chance to speak, the Board will close that public hearing  
29 and proceed to the next public hearing. They will hear all of the cases first, and  
30 then they will go back through the agenda and render all of their decisions. So if  
31 you wish to hear their decision on a specific case, you can either stay until the end  
32 of the meeting, or you can check the Planning Department website (we usually get  
33 it updated within an hour of the end of the meeting), or you can call the Planning  
34 Department this afternoon.

36 This meeting is being recorded, so we will ask everyone who speaks to speak  
37 directly into the microphone on the lectern, state your name, and please spell your  
38 last name so we get it correctly in the record.

39  
40 Madam chair, we do have one request for deferral this morning, it was included in  
41 your package.

42  
43 **APL2018-00003**                    **RICHMOND HOTEL MANAGEMENT, LLC** appeals a  
44 decision of the director of planning pursuant to Section 24-116(a) of the County  
45 Code regarding the property at 6531 W Broad St (Parcel 767-743-7902) zoned  
46 Business District (B-3), Business District (B-2) and General Residential District (R-  
47 6) (Tuckahoe).

48  
49 The attorney representing at least one of the parties in that case has requested a  
50 continuance until the December meeting, because he also is conflicted on the  
51 November meeting. A representative of the County Attorney's Office is hear to  
52 speak to you on that.

53  
54 Mr. Gilbody -                    Thank you madam Chairman, members of the Board.  
55 My Nme is John Gilbody in the County Attorney's Office, and I am here on behalf  
56 of the Department of Community Revitalization. We are opposing the request for  
57 deferral of this matter for a number of reasons. There are two general areas,  
58 procedural and substantive. The procedural issue is in the letter that I sent to the  
59 members of the Board. It indicates that there is a bit of confusion as to the deferral,  
60 who it's by and who it's for. The notice of violation in question was issued on July  
61 5, 2018. Mr. Neal Patel timely perfected an appeal for himself on August 3, but it  
62 is the position of the County that his appeal for the other four members, that would  
63 be the three corporate entities as well as I believe his wife, Toral Patel, that that  
64 was ineffective. He is not an attorney licensed to practice in the Commonwealth of  
65 Virginia, and he has no power to appeal before a tribunal such as the BZA. So it  
66 would seem to me, and it is the position of the County, that as it relates to those  
67 four parties, this is a matter decided: they have not appealed within 30 days, and  
68 they have therefore no option to appeal. And I think that might be an important  
69 question as you are considering deferral, because then the question becomes, is  
70 it a deferral of one case, or is it a deferral of five cases? So that is sort of a threshold  
71 type of question, in my mind at least.

72  
73 Secondly, as it relates to Mr. Patel, if it's only his appeal, and I don't see Mr. Patel  
74 here, I don't believe, he or his counsel, another problem becomes, in the email that  
75 was sent by Mr. Jackson to Mr. Blankinship, Mr. Jackson indicates he represents,  
76 I think in his email he says, "the party listed above." And the party listed above is  
77 SN Holdings, LLC. So as far as I know, Mr. Jackson has never indicated that he  
78 actually represents Mr. Patel. So I'm a little confused then, not knowing, and there  
79 being nothing in the record to say, that I know of, and if I'm wrong please correct  
80 me, but there is nothing in the record that suggests, or to state, that Mr. Jackson  
81 is representing Mr. Patel, then Mr. Jackson's request for a deferral would not apply

82 to Mr. Patel. In which case there would be no deferral request, and Mr. Patel is not  
83 here, apparently.

84  
85 Those are the procedural reasons. The substantive reasons, you will have to bear  
86 with me. [switching presentations on the computer] The hotel in question, formerly  
87 flagged "Grand Magnusen," now has a number of names, so I will refer to it as  
88 6531 W Broad Street. It is a 288-room hotel with two primary structures, one five-  
89 story structure and another seven-story structure. It is very large. It's also in a  
90 rather state of disrepair, and the pictures that I'm going to be showing you, if they  
91 indeed show up, are of a recent inspection. And I have members of Building  
92 Inspections as well as Fire here today to talk about it, because I brought people  
93 here in anticipation of this case. But they show the disrepair and they also, there  
94 have been, since March 2018 there have been 19 false alarms at this hotel. And  
95 why that's important is if people are staying in this hotel on a long-term basis and  
96 it's creating a health and safety type issue, then the pictures would show that.  
97 Because what has occurred is people are quite often apparently cooking in their  
98 rooms, which is in violation of the building code. And they're also disabling the  
99 alarms that are in the rooms so the smoke detector doesn't catch the smoke from  
100 the cooking. And they also have a great number of materials, you know, stuff in  
101 the rooms because it is all their worldly possessions. So what the Fire Marshall's  
102 office refers to as the "fire load," which is another way of saying clothing and things  
103 that are flammable, are all in there. And what's also notable is, at this most recent  
104 October 15, this instance where people from Fire had to go to the hotel, apparently  
105 people weren't evacuating the hotel, because the false alarms go off so often, that  
106 they are accustomed to it, and they don't even leave when it goes off. And then,  
107 someone from the hotel turned off the alarm before he even discovered what was  
108 going on. So all of that is a long way of saying you've got hundreds of people living  
109 in a hotel with what we consider to be very unsafe conditions and we would oppose  
110 deferring action on this two months because these are people who are citizens of  
111 the County and we feel that this an unsafe condition and we would like to have this  
112 matter heard as quickly as possible so that we can take action to enforce what  
113 seem to be very clear violations of law that are not disputed by the appellant.

114  
115 Mr. Blankinship - John, your photos are on the desktop now, the last  
116 shortcut on the left-hand side, "10-15 pictures"

117  
118 Mr. Gilbody - I apologize, madam Chair, this is made for right-  
119 handed people apparently. You see the pictures, and I can just run through these  
120 pictures. You can see this is a room, and the haze is not from the camera as I  
121 understand it, there was smoke in the room. There was smoke in the room, and  
122 this gives you some sense of how the room is disheveled. That's another picture  
123 of the room. I think that this picture aptly demonstrates not only the fact that this is  
124 being used on a long-term basis. If you look at the picture, you can see, for  
125 instance, right here, under this lamp, there seems to be a spice rack. There is food  
126 strewn throughout along with a number of things. You look in the bottom-left corner  
127 you can see a scratching post, presumably for a cat. Here's another picture from

128 a slightly different angle, you can see the hood, against the bed there, you can see  
129 the hood of the A/C unit. Then you can see here toward the TV they moved the  
130 bed apparently to make more space. And I don't know why there's an empty  
131 aquarium, presumably they were considering fish or some other type of animal.  
132 This is an electric grill, which I think the thinking here is that that was the cause of  
133 the smoke. You can see, it's not a great picture, but it's good enough you can sort  
134 of see it doesn't look particularly clean. And here in this picture you can see the  
135 entire heater and A/C unit has been pulled away. The point of all this, members of  
136 the Board, is that's what's there now, and we believe that to be an unsafe situation  
137 for human habitation. There are families, there are children who live there, as you  
138 have seen in the packets there are people who are registered on the offender  
139 registry. This is not a good situation from a health and safety point of view. People  
140 shouldn't be... This hotel is not designed for long-term habitation, and we would  
141 like to be heard on this, and we would like a decision from this BZA as soon as  
142 possible so we can take what other legal means necessary to try to rectify the  
143 situation. And with an eye toward also dealing with the underlying issues  
144 associated with the people who are living there with an eye toward helping them  
145 find and procuring proper long-term housing. And I don't know how the Chair would  
146 like to move forward on the County's request.

147  
148 Ms. Harris - Do we have questions from the Board?  
149

150 Mr. Green - Yes. Who requested the deferral?  
151

152 Mr. Gilbody - Mr. Brent Jackson. He is counsel for at least for SN  
153 Holdings, LLC. I know that in the past he has represented Mr. Patel in other  
154 matters, so he may be operating under the belief that we understand him to be  
155 representing all five parties. Which very well may be his intention, that's just not  
156 been made clear on paper.

157  
158 Mr. Green - So you are asking us not to grant the deferral and hear  
159 the case today.

160  
161 Mr. Gilbody - Yes, sir, that is what I am asking.  
162

163 Mr. Green - Alright, I move we ...  
164

165 Ms. Harris - Just a second, we need to hear the other side before  
166 we make this motion. Are you Mr. ?  
167

168 Mr. Gilbody - My name is Mr. Gilbody.  
169

170 Ms. Harris - I see your letter, thank you. What we probably need to  
171 do is find out if the appellant has any counsel here before we make a decision.  
172 Thank you. Any questions of Mr. Gilbody?  
173

174 Mr. Bell - Is this the only time this particular use has requested  
175 a deferral, isn't it?

176  
177 Mr. Gilbody - I have not had a matter before this body, before this  
178 Board, with this individual, with any of these parties.

179  
180 Mr. Blankinship - Let me answer that, Mr. Bell. We received the original  
181 appeal from Mr. Patel in time for your, I believe July hearing. But it was not signed,  
182 so we sent it back. We tabled it for a month or two waiting to get a an appeal signed  
183 by the owner of the property or someone competent to represent them. And at that  
184 point we did get the appeal from Mr. Jackson who represents one of the parties,  
185 but not the same party who filed within 30 days. So it's really unclear whether the  
186 appeal is even timely filed. But this has been drawn out already for two months.

187  
188 Mr. Gilbody - Yes, the original notice of violation was on July 5, and  
189 the appeal was originally filed, as I understand it, signed or not signed, on August  
190 3, so it was timely, with some other issues. But also I think that bears on the request  
191 because they're not willing to go forward until December 20, which means five  
192 months that this situation has to linger, and that's quite a bit of time.

193  
194 Ms. Harris - Any more questions of Mr. Gilbody?

195  
196 Mr. Johnson - Is this facility still operating?

197  
198 Mr. Gilbody - Yes it is . There was an inspection earlier this week that  
199 was performed, and further violations were noted by the Fire Marshall's office. So  
200 yes, it is operating right now, and as I understand it, there are hundreds of occupied  
201 rooms in the hotel. And it is, as I indicated, a 288-room facility.

202  
203 Ms. Harris - Any more questions of Mr. Gilbody? Thank you so very  
204 much. Is the appellant's attorney here?

205  
206 Mr. Blankinship - Is there anyone here representing 6531 W Broad  
207 Street?

208  
209 Ms. Harris - We need to make a decision.

210  
211 Mr. Green - I move we don't defer it. I think we need to hear the  
212 case. I think that, just because someone asks for deferral, the still need to show  
213 up to see if we are going to grant the deferral. I don't think that it should be assumed  
214 that it's going to happen. The County is here to represent and go forward with the  
215 case. I think we need to deal with this, dispose of it, and move on. So I make a  
216 motion that we hear the case.

217  
218 Mr. Blankinship - Someone did just rise, madam Chair, I don't know...

219

220 Ms. Harris - We are looking for the attorney for the appellant, or the  
221 representative. Please sir, give your name and spell your last name.  
222  
223 Mr. Patel - Sure, it's Anil Patel, P-a-t-e-l.  
224  
225 Ms. Harris - There has been a request for a continuance, I believe  
226 by you, Mr. Patel. But we've heard the County Attorney and they do not wish to  
227 defer the case any longer, since we have been going on with this since July and  
228 we have many rooms, many lives being involved here. So we would like to hear  
229 from you why you wish continuance or why you wish to defer.  
230  
231 Ms. Moore - And Ms. Harris, if I could, can we get your first name  
232 as well?  
233  
234 Mr. Patel - Sure, it's Anil.  
235  
236 Mr. Green - And please note that I have a motion on the floor.  
237 Before the individual identified himself, when you asked folks to stand up, no one  
238 stood up, I made a motion, so a motion is on the floor.  
239  
240 Ms. Harris - I think your motion is lost because you don't have a  
241 second.  
242  
243 Mr. Green - Is there a second? [Silence.]  
244  
245 Ms. Harris - Alright, Mr. Patel?  
246  
247 Mr. Patel - I'm simply here to reiterate Attorney Brent Jackson's  
248 humble request to defer it. He's been involved in some major cases, he had one  
249 come up today, and unfortunately he didn't get enough notice to change his plans.  
250 That's simply the reason he has asked me to come here to address this. The  
251 facility, we try very hard to keep it clean, and provide accommodation to needy  
252 people, and we operate under the same rules as any other hotel.  
253  
254 Ms. Harris - Any questions for Mr. Patel? Thank you so very much.  
255 Okay, now a motion is in order to either continue this case or not.  
256  
257 Mr. Green - I make the motion that we do not defer.  
258  
259 Mr. Reid - Second.  
260  
261 Ms. Harris - It has been moved and properly seconded that we not  
262 defer this case. Are there any questions on the motion? All in favor of not deferring  
263 the case say "aye." [All five members voted "aye"] The ayes have it, so we will hear  
264 it.  
265



266 Mr. Blankinship -                    Alright, would everyone who intends to hear this case,  
 267 APL2018-00003, please stand and be sworn in. Do you swear the testimony you  
 268 are about to give is the truth, the whole truth, and nothing but the truth, so help you  
 269 God?

270

271 Ms. Harris -                            Mr. Gilbody, can I remind you not to repeat what you've  
 272 already said? Thank you so much, because we have many cases before us today,  
 273 and we want to get out of here before lunchtime.

274

275 Mr. Gilbody -                         I will move along as quickly as I can, madam Chair,  
 276 once I find my presentation.

277

278 Mr. Blankinship -                    Fred, if you could bring that up, it would save us a little  
 279 time. The one right above "10-15 Pictures." Two down from there.

280

281 Ms. Harris -                         Excuse me, Mr. Gilbody, is this the same presentation  
 282 you used a few minutes ago?

283

284 Mr. Gilbody -                         No ma'am, just the same first page. I had two  
 285 presentations and I didn't want to have to make the pretty front page again. So I'm  
 286 going to walk through this very quickly. I've already talked about the hotel, and  
 287 what the issue is: the issue is long-term stays. The hotel has not, in the appeal that  
 288 was filed, there has been no question about the legal aspect of it. The only issue  
 289 here is whether they or not they are allowing long-term stays. It is primarily a factual  
 290 issue.

291

292 Just by way of background, as I indicated, it's 6531 W Broad, formerly flagged as  
 293 the Richmond Grand Magnusen Hotel and Conference Center. Subsequently it  
 294 has now been re-flagged, and now has three names on the marquee: Hotel I-64,  
 295 Kazaa, and Specko. Here is a picture so you get some idea what the facility is. The  
 296 center of the picture is the five-story structure. Toward the rear of the hotel, which  
 297 is on the left, is the taller structure. The parties: SN Holdings LLC is the owner.  
 298 GRM Management LLC operated the hotel until September of 2017, at which point  
 299 Richmond Hotel Management LLC began operations as we understand it. There  
 300 is no difference in management between the two corporate entities as far as we  
 301 know. Mr. Patel, who was just before you, has served as general manager since  
 302 2012, and his wife is also listed as a manager in the corporate papers for SN  
 303 Holdings.

304

305 There are five identical notices of violation that were issued to the five entities, they  
 306 are all exactly the same just one to each of the five entities. I've laid out here a  
 307 quick summary of what the issues are, and they are going to be separate slides,  
 308 so I will just go through those, in the packet you have.

309

310 We undertook a review of police records—William Moffett, who is with the Henrico  
 311 Police Division, did that—that show 295 contacts with 197 unique individuals, all



312 of whom had interactions with Henrico Police, and listed the hotel as their home,  
313 their residence. Now keep in mind, of course, that not everyone who lives at the  
314 hotel would necessarily have any contact with the police. In fact, I would expect it  
315 to be otherwise. So we can, I think, safely assume that the in-fact number would  
316 be higher than that. But I don't have evidence of that, obviously. That's an  
317 assumption.

318  
319 Under the sex offender registry, offenders are required to register their residence.  
320 We have, I have found, there are three in the packet, last night as I was at my desk  
321 I found a new registrant, so that number is now at least four separate offender  
322 registrants who have listed the hotel as their residence since January 1, 2017.

323  
324 Now we get into the advertisements, and this is all in your packet. This is what the  
325 hotel is saying, not me. They're saying, and I pulled this little picture out of one of  
326 the documents: "Affordable long-term rates as low as \$199.99 per week, with a  
327 \$50 move-in fee." Now, most people who go to hotels don't pay move-in fees.  
328 That's a matter of common experience. You pay a move-in fee at a place where  
329 you plan on residing. That's their nature. And this was advertised on  
330 apartments.com. That's where you look for housing, that is not where you go for a  
331 hotel. There is a Craigslist ad, it had the same language about affordable, long-  
332 term rates.

333  
334 You've seen this picture before. The picture here speaks volumes in terms of long-  
335 term occupancy. I don't think that there can be any serious dispute this person has  
336 been living there for some time. The other facts I relayed. The one thing I would  
337 point out, when I indicated that the residents disregarded the fire alarm, I would  
338 point out that my understanding is, the reason they did that is that they're so  
339 accustomed to it. There is only one way to become accustomed to false fire  
340 alarms: if you've lived there a long time. So again, evidence of long-term stays.

341  
342 Again, more pictures. The hotel does not argue that having long term residents are  
343 allowed. They claim that they lease to transient guests on a daily or weekly contract  
344 basis only. But if you read their appeal, they don't deny that residents stay there  
345 for long periods of time. And that's why we have the forms that are the final part of  
346 your packet. The hotel has people sign these documents saying, "I hereby declare  
347 that this is not my permanent address." Now there is only one reason in the world  
348 to ask someone to sign a document saying that this is not your permanent address.  
349 And that is: if it's your permanent address. You're trying to change reality with the  
350 stroke of a pen. A form created by the hotel cannot alter the legal definition of what  
351 a "stay" is or what "transient" means under the Henrico County Code. The other  
352 form, the "Weekly Stay Policy Addendum to Guest Folio," indicates that what is  
353 going on is, they just have a weekly re-registration. That's how they do it: they say,  
354 if you go back to what they said earlier, they said, "we only rent on daily or weekly  
355 contracts." Well that's true: because apparently what they do is, each week they  
356 require residents to renew their contracts. And in doing so, they think that  
357 somehow makes them transients as opposed to non-transients.

358

359 Now the standard of review here: a notice of violation was issued by the  
360 Department of Community Revitalization. The appellants have the burden of proof  
361 to rebut the presumption of correctness. It seems that we're not going to be hearing  
362 any evidence today to rebut that presumption. The controlling law is quite clear.  
363 Henrico County Code Section 24-3 defines hotel and it says, "intended primarily  
364 for rental or lease to transients by the day or week." Now "transients," in normal  
365 parlance we all sort of know what that means. But a hotel operator should certainly  
366 know what that means, because there is a Transient Occupancy Tax in our code,  
367 in the County Code, and in the County Code, it defines what "transient" means.  
368 "Transient means the same person who, for a period of less than 30 consecutive  
369 days" stays at a hotel. The point is, they know exactly what the term means: if they  
370 stay for more than 30 days, they are not a transient. People are clearly staying at  
371 that hotel for longer than 30 days, in violation of the controlling law.

372

373 In conclusion, the hotel rents rooms to residents for longer than 30 consecutive  
374 days. The documents that have been provided to you indicate quite clearly the  
375 nature of the sort of work-around that the hotel is trying to do. And it is ineffective,  
376 an ineffective ruse, I think. The term "transient" is very clear, it's defined in the  
377 Code, and a hotel operator who has to pay Transient Occupancy Tax certainly  
378 should know what that means. The NOV issued by DCR, the Department of  
379 Community Revitalization, should be upheld and the appeal dismissed. Thank you,  
380 and I would be happy to answer any questions anyone has.

381

382 Ms. Harris - Are there any questions for Mr. Gilbody? Thank you. Is  
383 there anyone else who wishes to speak to this case? I think we did swear in a few  
384 other people, I guess they have decided not to speak?

385

386 Mr. Blankinship - They are County employees who have been on the  
387 property as part of the inspections.

388

389 Mr. Gilbody - And if you have any questions for any members—we  
390 have someone from Fire and Building Inspections and Community Revitalization—  
391 if you have any questions for anyone, they would be happy to answer. Given the  
392 fact that there is apparently not going to be any other testimony, and given your  
393 earlier admonition, madam Chair, about...

394

395 Ms. Harris - Redundancy, yes.

396

397 Mr. Gilbody - And your time, I understand there are a number of  
398 cases.

399

400 Ms. Harris - Thank you so very much. I would like to say the  
401 paperwork we have received, the research is outstanding. Showing us just who  
402 were residents of the hotel, and who had signed the agreement that they weren't  
403 residents, but were residents in fact, long-term resident, they gave that as their

404 address. But nevertheless, if there is no one else to speak to this issue, do we  
405 have anyone who may have come in since we swore in others, who wants to  
406 dispute this particular case?

407  
408 Mr. Blankinship - This is APL2018-00003, regarding 6531 W Broad  
409 Street.

410  
411 Ms. Harris - If not, that closes this case.

412  
413 **[After the conclusion of the public hearings, the Board discussed the case**  
414 **and made its decision. This portion of the transcript is included here for**  
415 **convenience of reference.]**

416  
417 Ms. Harris - This is the hotel. What is the pleasure of the Board?

418  
419 Mr. Reid - I move that we deny the extension of APL2019-00003,  
420 as well as deny the appeal, for the reasons that Mr. Gilbody outlined in his remarks.  
421 There are safety concerns. It appears that people are living there on a long-term  
422 basis as evidenced by comments and remarks from people who are living there.  
423 And also, I think the fact that they require a \$50 move-in fee. That would indicate  
424 to me they are going to be staying there a while.

425  
426 Ms. Harris - So you want to support the decision, right, of the  
427 director of planning?

428  
429 Mr. Reid - Yes, ma'am.

430  
431 Ms. Harris - Is there a second?

432  
433 Mr. Bell - Second.

434  
435 Ms. Harris - It's been moved and properly seconded that we  
436 support the decision of the director of planning in this case. Are there any questions  
437 on the motion? All in favor of this motion say "aye." Those opposed, say "no." The  
438 ayes have it, and so ordered.

439  
440 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
441 Negative: 0  
442 Absent: 0

443  
444 **[At this point, the transcript continues with the public hearing on the next**  
445 **case.]**

446  
447 Mr. Blankinship - We will now return to the regular order of the agenda,  
448 which is ...

449

450 **APL2018-00002** **WALTER R. YARBROUGH, III AND CARMEN D.**  
451 **YARBROUGH** appeal a decision of the director of planning pursuant to Section  
452 24-116(a) of the County Code regarding the property at 8500 Woodman Rd (Parcel  
453 776-755-3788) zoned One-Family Residential District (R-3) (Brookland).

454  
455 Mr. Blankinship - Would everyone who intends to speak to this case  
456 please stand and be sworn in. Raise your right hands, please. Do you swear the  
457 testimony you're about to give is the truth, the whole truth, and nothing but the truth  
458 so help you God? Thank you. Mr. Newby, if you would begin.

459  
460 Mr. Newby - Thank you, Ms. Blankinship, Madam Chair, members  
461 of the Board of Zoning Appeals. My name is Andrew Newby. I'm assistant County  
462 attorney, and I represent Joe Emerson, the director of Planning, in this Appeal of  
463 Carmen and Walter Yarbrough.

464  
465 By way of overview, the Yarbroughs appeal the director of Planning's interpretation  
466 of the Zoning Ordinance as it applies to certain horses and a stable at 8500  
467 Woodman Road. You see here a picture of the property, very picturesque, beautiful  
468 house, beautiful lot. We'll actually be focusing not so much on what's going on  
469 here in the front yard, but what's going on in the rear of the property.

470  
471 By way of background, the County received a complaint about the horses, the  
472 stable, and some riding lessons that were thought to be occurring at the property  
473 on a commercial basis. The Department of Community Revitalization conducted  
474 an investigation into the complaint. While that investigation was pending, the  
475 Yarbroughs requested the director of Planning's interpretation of the Zoning  
476 Ordinance as it applies to their property. And he provided by letter—this was the  
477 first and only known written guidance for the horses and stable on the property.  
478 You may have seen in your materials that there were some comments on perhaps  
479 oral discussion over the years about the property. But this is, to my knowledge, the  
480 first written determination by a director of Planning.

481  
482 I'm going to discuss in my presentation the facts that the director of Planning relied  
483 on in coming to his interpretation. There are many people here today. There may  
484 be other facts that we haven't heard before that come forward. We'll consider them  
485 as they come forward. There may be new legal arguments. I would be surprised if  
486 we didn't hear something new today. But I'm going to constrain my presentation to  
487 what the director had at the time and how he came to his conclusion.

488  
489 The key facts in the director's mind were as follows: The property is zoned R-3.  
490 That's a great foundational block for any zoning case, and it contains 8.343 acres,  
491 which as you can imagine is a very large property in an otherwise densely  
492 residential neighborhood. There are at least four horses kept on the property. I  
493 understand there may be more now. A stable behind the house is located within  
494 400 feet of multiple dwellings in the neighborhood. This map illustrates that point,  
495 and it also gives you a sense for the neighborhood if you haven't been out there

496 recently. If you look directly in the middle of this picture, you'll see a green rooftop  
497 that I will tell you is the stable building. Extending from that stable building 400 feet  
498 in any direction you have a circle with a 400-foot radius encompassing multiple  
499 other houses in the neighborhood which are all zoned R-3 as well.

500

501 So there were the key facts for the director. What's the key law? We have pretty  
502 clear guidance from the Zoning Ordinance. It has rules especially for horses in  
503 residential neighborhoods—and stables. And we are told by the Zoning Ordinance  
504 that stables absolutely are a permitted accessory use to a dwelling in an R-3  
505 District. But they must comply with these, what I'm terming, "horse rules." They  
506 aren't labeled that in the Zoning Ordinance, but they're clearly rules for horses. I'll  
507 simply quote the whole thing because it's so fundamental to this case.

508

509 Any private stable or enclosure for the keeping of not more than three  
510 horses and/or ponies for personal enjoyment and not as a business  
511 shall be distant at least 400 feet from any dwelling in any residence  
512 district; provided further that there shall be no more than one horse  
513 and/or pony permitted on the premises for each acre of enclosed  
514 land.

515

516 There's a fair amount to unpack in there. First you see that a stable or enclosure  
517 is permitted, that it shall be for the keeping of a maximum of three horses and/or  
518 ponies, a limit you see in other areas of the Zoning Ordinance whether for cats or  
519 dogs or the like. You have another limit for three horses. There's also this caveat  
520 that they can't be used for business purposes. You have to use your horses for  
521 your own private enjoyment. This isn't a commercial district. It's not even an  
522 agricultural district. It's designed to be a dense residential district. Then there's the  
523 distance requirement that says a stable has to be set back 400 feet from a dwelling.  
524 And finally, if you're going to have those three horses, make sure you have an acre  
525 of enclosed land for each horse. That's the last caveat provided by these rules.

526

527 From there the director's interpretation became simple for three points, and a  
528 fourth will take up the majority of our time today. I think we would all agree that the  
529 current Zoning Ordinance limits the number of horses on the property to three or  
530 less and that the current Zoning Ordinance would prohibit four or more. I think we  
531 can all agree that the current Zoning Ordinance prohibits the stable on the property  
532 from being that close to other dwellings because it's within 400 feet of other  
533 dwellings. I also think that we can agree that the Zoning Ordinance does not allow  
534 the property to be used as what the Zoning Ordinance terms a riding academy,  
535 which is a term allowed in the agricultural district for private lessons. And that the  
536 horses may only be used for personal enjoyment and not as a business.

537

538 I think those three points are pretty well settled. The real key to this case—and  
539 what's going to lead me to take you through a multi-step analysis in just a  
540 moment—is that the Yarbroughs claim that the keeping of these horses and the

541 location of the stable are lawful nonconforming uses. And that's a term or art in the  
542 zoning context that deserves some explication. So here it is.

543  
544 The law allows nonconforming uses to be continued despite their noncompliance  
545 with the Zoning Ordinance if certain conditions are met. And to quote again a  
546 crucial law:

547  
548 Any lawful use, building or structure existing at the time of the  
549 adoption of the Zoning Ordinance or any amendment to the Zoning  
550 Ordinance may be continued even though such use, building, or  
551 structure may not conform with the provisions of the current  
552 ordinance for the district in which it is located.

553  
554 And once you start a nonconforming use, if it's discontinued for more than two  
555 years it can't be restarted. And it's the owner's burden to show that nonconforming  
556 use.

557  
558 Now the director in this case kind of took the opposite approach, and took the  
559 evidence he had, and showed why he believed it wasn't a nonconforming use. But  
560 ultimately it's up to the property owner to show that it is. And because this is a  
561 jumble of legalize, I'll try to explicate a little further what is really a commonsense  
562 kind of law. A continuation of nonconforming use is very much just a fairness thing.  
563 It's the idea that if I own a property that's zoned—let's say on day 1 it's zoned for  
564 grocery stores. And I own a property and I have a grocery store. If on day 2 the  
565 laws change and say no more grocery stores in that zoning district, on day 3 I can  
566 continue my grocery store just as a matter of fairness. It was a change of law that  
567 made my use nonconforming, so I'm allowed to continue it. But as soon as I stop  
568 for two years it's gone. I can't do it again.

569  
570 So take the opposite approach. Let's say I'm in a district that can have grocery  
571 stores, but I have a gas station, which is also allowed. Day 2 they say no more  
572 grocery stores. Day 3 I can keep doing my gas station, but I can't change to a  
573 grocery store. It's too late, a new law has gone into effect, and I wasn't a lawful  
574 grocery store on day 2 when the law changed, so on day 3, grocery stores are out  
575 for me forever, unless the law is changed again. So I hope that explanation and  
576 examples are helpful as we look at what's going on here.

577  
578 What that really means is we have to kind of get in a time machine and go back in  
579 time and look at how this property was used on two very particular dates. The first  
580 date that's important is the date of the stable law. The distance requirements for  
581 stables were first added to the Zoning Ordinance in 1960. So we'll have to go back  
582 to the property in 1960 and try to determine how the property was used at that time  
583 *vis a vis* a stable.

585 The limit on the number of horses wasn't added until 1985, so we'll have to go  
586 back in time and look at 1985 to try to figure out what was going on with the number  
587 of horses at that time.

588

589 In effect, the Yarbroughs must show two things: that there were four or more  
590 horses on the property at the time the limit went into effect in 1985. If there were,  
591 it's a lawful nonconforming use and they can be continued so long as it isn't  
592 enlarged or discontinued, etcetera, since that time. Same thing for the stable. Was  
593 there a building on the property at the time that was used as a horse stable at the  
594 time the distance requirements went into effect in 1960? We'll have to answer that  
595 question as well, with a few other twists, unfortunately, that we'll get to in a minute.

596

597 Let's take the horse issue first because I think that's the easiest. Here is the  
598 evidence the director had. The Yarbroughs did an amazing job. Carrying the  
599 burden of a nonconforming use is an astounding thing to do, particularly when you  
600 have to look back multiple decades. The Yarbroughs went and collected all sorts  
601 of accounts from neighbors on the property who remember horses on the property,  
602 loved the horses on the property, and can recall going back to the 1950s. They  
603 found these people—they're in your packet—dozens, I think, of accounts. And  
604 what they uniformly recall, the director determined, was that there was a pony at a  
605 time on the property and an older horse at time on the property before the  
606 Yarbroughs owned it. And there were never more than two. Some people recall a pony;  
607 some people recall a horse; some people recall both. But never more than that.

608

609 Secondly, the Yarbroughs say in their appeal that when they first purchased the  
610 property in 1987, they originally brought two horses on the property. And it was  
611 only in the summer of 1988 that four horses were on the property. That's where  
612 we came to—that's where we had to conclude—and here's the Yarbroughs'  
613 account from their appeal showing horses in 1988, four horses on the property for  
614 the first time. That's where we had to conclude that four horses were not a lawful  
615 nonconforming use because the evidence we had said from 1955 until 1987 there  
616 were, at most, two horses on the property. We're not sure if there were always two  
617 horses or whether at some times there were less. But let's take the evidence at its  
618 most extreme. There were two horses on the property. That means that in 1985  
619 there weren't four or more. So in 1985 when the law changed, it wasn't a  
620 nonconforming use; it was a compliant use because the law capped it at three, and  
621 they had two. So a lawful nonconforming use couldn't be established at that time.

622

623 In 1988 when four horses were brought on the property, as my slide says, it was  
624 too late; the cap already applied. It's kind of like my example of changing from a  
625 gas station to a grocery store. You can't do it; it's too late. You could have had  
626 more than four horses before 1985, but there weren't, at least according to the  
627 evidence we had when we made our determination. I would be surprised if we  
628 didn't hear other evidence today that maybe adds to that total.

629

630 Let's change to the stable because that's frankly the harder issue, and it's going to  
631 take the remainder of my slides. So here you have it as it currently stands today.  
632 A beautiful structure. I have highlighted this brick section, and that's important.  
633 That's the old section. There was a utility shed on this property before there was a  
634 stable. And it was a cinderblock shed. The old property card notes it. We're not  
635 sure exactly when it was built and how it was originally used. But that was the  
636 foundation, if you will, for this new stable that we have today. Behind the brick  
637 veneer I believe the cinderblock still remains. This brick veneer and then the  
638 addition to the stable were added in 1998 or 1999. It's been that way ever since.

639  
640 Here's the timeline as we kind of sussed it out, the director of Planning did. The  
641 original tax records show that utility shed, a 360-square-foot shed where the  
642 current stable is located. It's unclear how that building was used. I can't tell you  
643 exactly when it was built. We know that the law setting the distance requirements  
644 when into effect in 1960. They were actually more stringent back then. You had to  
645 measure the 400 feet from the lot line, which is narrower than 400 feet from other  
646 dwellings. But that was when the law first went into effect. In 1998, the Yarbroughs  
647 enlarged that shed. It may have been used as a stable at that time; I don't know.  
648 But they enlarged that structure. And it was evident and is still evident today that  
649 that enlarged structure does not comply with the distance requirements.

650  
651 Finally, this curious point at the bottom: 2009 was the first time we picked up that  
652 enlarged shed for taxation. That becomes important for a provision of state law  
653 that I'll get to in a moment.

654  
655 What's the effect of enlarging a nonconforming use? Let's assume for a second  
656 that the Yarbroughs can come forward today with evidence to show that there was  
657 a stable in 1960 and it's been used ever since. Let's say they establish that. And  
658 they may be able to do that. The question is, what does that enlargement do? And  
659 the director found that that enlargement washed away any nonconforming use. We  
660 have a very particular provision in the Zoning Ordinance, which is authorized by  
661 state law, that says if you enlarge a nonconforming use, that enlargement has to  
662 comply with the distance requirements. And of course this enlargement doesn't,  
663 and so the director's determination was it lost any nonconforming use status. I  
664 should note that in 1998 this law was actually different. It didn't say you had to  
665 comply with the distance requirements; it said to more nearly comply. But I would  
666 contend to this Board that it doesn't make any difference because, of course, the  
667 enlarged shed didn't more nearly comply, it less nearly complied. It became close  
668 to other dwellings.

669  
670 A couple maps from GIS or I guess photos not maps. This is 1998, actually the  
671 earliest overhead photo we had. Just in time, if you will. You can see the old stable  
672 or shed there, however it was used. That's the little gray thing right in the middle  
673 was the old cinderblock structure. And there you can see neighbors' houses.

674

675 And then if you look in 2002, there it is. There's your new, enlarged stable situated  
676 on the property at approximately the same location. But obviously at least a little  
677 bit closer to neighbors' homes. So the conclusion was quite simple. The director  
678 of Planning has to be consistent in his application of the law. And the law says if  
679 you enlarge a nonconforming use, you lose the status unless you comply with the  
680 distance requirements.

681

682 Okay. But then you might say, what about a building permit? What about taxes?  
683 In fact, the Yarbroughs make this argument, and they should. State law says that  
684 a building may not be deemed illegal and subject to removal if one or two things  
685 are true—or maybe both things. First, if there was a building permit for construction  
686 and then a Certificate of Occupancy or use permit was issued after construction.  
687 That would trigger this law. Or if taxes were paid on the structure for a period of  
688 more than the previous fifteen years that would also trigger this law. But I would  
689 make one initial point to you before we look at the facts of whether there was a  
690 building permit or taxation. The director isn't asking for the structure to be removed.  
691 The director isn't even asking for the structure itself to be deemed illegal. The  
692 director is simply saying if it's going to be used as a stable it's got to meet the  
693 distance requirement. It's the use, not the structure, that the director of Planning is  
694 concerned about. The structure is fine. As far as we can tell it's well built. There is  
695 not a problem with the structure.

696

697 The building permit factually is a difficult issue because County records going back  
698 to the late '90s aren't that good. So I don't have before you definite proof one way  
699 or another whether there was a building permit. I don't. Late 90's was a time when  
700 Building Inspections was transitioning from paper to an electronic system. Some  
701 things got carried over well; other things we just don't have. Mr. Yarbrough, for his  
702 part, has stated quite affirmatively—and I have no reason to disbelieve him—that  
703 he got a building permit when he had the stable enlarged. So let's take him at his  
704 word. And again, I don't have proof to the contrary. In fact we have this, which was  
705 an electrical permit. It's not a permit for the construction. But it certainly shows that  
706 there was some work done to the "barn" in 1999. So that's entirely consistent with  
707 Mr. Yarbrough's statement that he did get a building permit.

708

709 Now what we don't have, of course, is an application, what was it for, was it for a  
710 stable, was it just called a shed? We don't know. I can't say one way or the other.  
711 And we don't have a Certificate of Occupancy or use permit. Not that one would  
712 really be necessary for a barn. I don't know that either.

713

714 So I can't tell you today factually one way or the other if whether this condition was  
715 met, that a building permit was issued, and a certificate of occupancy or use permit  
716 was issued after construction. Frankly, it's not my burden to tell you; it's the  
717 Yarbroughs' burden to establish that. But I would contend to you again that even  
718 if they do establish that, the statute doesn't give them the relief they want because  
719 we're not asking to remove the structure, and we're not saying that the structure is  
720 illegal.

721

722 The same would go for the taxes but, I'll note, a question you're probably thinking  
723 is, "if it was enlarged in 1999, why wasn't the tax assessor Johnny-on-the-spot  
724 assessing the new outbuilding?" The frank answer is we weren't out there  
725 assessing new taxes on the stable in 1999. That's not surprising either. We don't  
726 go out and reassess properties every time a new shed is built, necessarily. We  
727 don't always know that new sheds have been built.

728

729 So why did we pick it up in 2009? Well that's when the Yarbroughs did a nice  
730 addition to their home. And certainly the tax assessors ran out and assessed the  
731 new home. And at that time you'll see from this highlighted document that they  
732 discovered the enlarged stable, the nice building, and added it to the property card.  
733 What that means is it wasn't taxed for fifteen years; it's been taxed for ten.

734

735 So to bring us to a swift conclusion, the number of horses and stable building do  
736 not meet the requirements of the current Zoning Ordinance. And certainly  
737 commercial riding lessons are not allowed. I don't think the Yarbroughs dispute  
738 that commercial riding lessons conclusion. I think they'll say they just don't do any,  
739 and obviously that's fine. It's important to note that we haven't issued a Notice of  
740 Violation. We haven't taken anybody to court. This was a request for an  
741 interpretation, and an interpretation was given. There has been no enforcement  
742 action taken to this point.

743

744 It's the Yarbroughs' burden under the law to prove a lawful nonconforming use. We  
745 took the evidence we had at the time and decided they didn't. But that's what public  
746 hearings are for. Maybe they come forward with something today, and we ought  
747 to listen what they have to say. Unless something new comes up, though, I would  
748 contend that the BZA should affirm the director's decision. It's in accordance with  
749 law unless there is new evidence. Thank you very much.

750

751 Ms. Harris - Are there any questions of Mr. Newby?

752

753 Mr. Green - You said something about the director didn't have a  
754 problem with the new structure, but the new structure is not 400 feet from the  
755 house. So what are you saying? He's fine with it being less than 400 feet from the  
756 house?

757

758 Mr. Newby - No sir. I regret. I'm drawing a very fine line. Let me try.  
759 The actual building itself just as a building is A-okay. If it was just a building that  
760 wasn't used as a horse stable, it would be fine. There's no violation.

761

762 Mr. Blankinship - If they parked a car in it or just used it for household  
763 storage.

764

765 Mr. Newby - Or kept bales of hay in it. The question is once you use  
766 it as a horse stable, that's where the distance requirements come in. So I'm

767 drawing this fine distinction—maybe you agree with it and maybe you don't—that  
768 the actual building's okay. It's its use as a stable that causes it to violate the Zoning  
769 Ordinance. There is a scenario under this case—and I don't think it's something  
770 the Yarbroughs want—where horses aren't kept in that building but the building  
771 can remain. They can use it for some other purpose.

772

773 Mr. Green - The other question I have, in the pictures I didn't see a  
774 fence. Is there a fence around that protects the horses from going into the other  
775 neighbors' properties?

776

777 Mr. Newby - I don't have the modern-day photo, but yes there are.  
778 In fact there are—and the Yarbroughs can tell you better. But I think there are three  
779 pens for horses, a riding circle, and another fenced area in that pasture area right  
780 behind the stable. And so in short yes, there are fences that would protect horses  
781 from going into neighbors' yards in the rear portion of the property.

782

783 You may recall from historical documents that we presented to the BZA that it used  
784 to be that the pony was actually kept in the front yard near the pond. The former  
785 owners had an electric fence going around that front yard where that pony would  
786 stay and graze and sleep under a tree. There are pictures in the RTD that have  
787 been submitted to you from the '80s and the '70s showing a pony taking a nap in  
788 the front yard on a hot day.

789

790 But to your point, yes, there is definitely fencing.

791

792 Mr. Blankinship - There are some photographs in your packet that show  
793 the fence.

794

795 Mr. Green - Could you bring them up?

796

797 Mr. Newby - Miguel, can you help me with that since they're your  
798 photos?

799

800 Mr. Newby - There you can see faintly in the shadows behind  
801 another shed that's not relevant to this case some fencing. And there's what I was  
802 calling—I think that's the riding ring, which is certainly fenced. And there you see  
803 a lovely horse in an enclosure on the—I think that's the western side of the  
804 property. There are three enclosures there it looks like. And that's on the eastern  
805 side of the property. There's ample fencing. We tried to add it up using GIS maps  
806 and came to a conclusion that it was maybe two acres, maybe a little less. But I  
807 can't give you a hard number today on exactly how much is enclosed. There is  
808 certainly eight acres on the property. So if it comes down to deciding is there  
809 enough enclosed acreage for horses there's an opportunity at least that there could  
810 be.

811

812 Mr. Bell - The stables, how far are they off the 400-foot  
813 requirement?

814  
815 Mr. Newby - My term would be "well off." Unfortunately, I don't relish  
816 saying that. But I can go back to my—

817  
818 Mr. Bell - That would be fine. If they're well off, does that mean  
819 they don't have the opportunity, if they would desire, to remodel the stables to  
820 make it fit for one or two horses?

821  
822 Mr. Newby - This is exactly the question I was anticipating. If you  
823 follow the director's analysis it comes to a tough conclusion that no, there's unlikely  
824 to be a spot on the property where a stable would meet the current distance  
825 requirement, sir.

826  
827 Mr. Bell - Thank you.

828  
829 Mr. Newby - Yes sir.

830  
831 Ms. Harris - Mr. Johnson?

832  
833 Mr. Johnson - Yes. The zoning, was there a change in the zoning  
834 from 1960 to current?

835  
836 Mr. Newby - No, that's a great question. In fact, I have a map on  
837 that, which I didn't put in the main presentation, I kept it at the end just in case you  
838 were interested. Here's the 1959 zoning map. So we know since at least 1959—  
839 the property's down here—that this has been thought of as R-3. It's always been  
840 thought of it would be developed as densely residential. And for the most part it  
841 has, except for this jewel of a property that the Yarbroughs have kept, a really nice  
842 piece that they've kept the way it is. But if you look around it, and this is a great  
843 map here too, as long as we're getting into maps, this shows when the houses  
844 around the Yarbroughs' property were built, and this thing has ... dense, dense,  
845 dense; beginning in the 50s and into the 70s and the 90s and just as recently as  
846 last year. I mean if you look right here, these were built just last year. So it's been  
847 doing exactly what the Board of Supervisors designed it to do when they decided  
848 this was going to be R-3. It's been becoming dense. You'll see that around the  
849 area there is some industrial, there's some business, there's even some  
850 agricultural. But for reasons probably related to the location on Woodman Road,  
851 this was thought of as this will be a dense residential corridor, and that's how it's  
852 been developed.

853  
854 Mr. Johnson - the only other thing, do they have a grandfather clause  
855 since that was—

856

857 Mr. Newby - That's a good distinction to make. I'll try to be precise  
858 here. There is a difference between a lawful nonconforming use and a  
859 grandfathering. My understanding—I'll give you the best of my understanding, and  
860 someone on the Planning staff can correct me if I'm wrong—is that a  
861 grandfathering clause is an expressed statement in the Zoning Ordinance that  
862 certain properties or uses may continue. And they're lawful. They're not  
863 nonconforming; they're lawful because they're grandfathered expressly in the  
864 Zoning Ordinance. A nonconforming use, by contrast, is kind of a catchall. It just  
865 says that if we sweep you into some zoning changes, you can keep going. But the  
866 moment you stop, it's over.

867  
868 Mr. Johnson - Okay.

869  
870 Ms. Harris - Mr. Newby, we heard about the restrictions that the  
871 Yarbroughs would have to follow as far as putting the barn closer or not so close  
872 to a subdivision. But when the subdivision was constructed—or those subdivisions;  
873 I understand there are two—did they have similar restrictions that they could not  
874 build closer than so many feet to a barn or to a stable?

875  
876 Mr. Newby - The answer is no, actually they don't. I'm not aware of  
877 any provision in the Zoning Ordinance that would keep houses from creeping  
878 closer to a stable. What's interesting in this case is that it wouldn't matter in a  
879 sense. I know as a matter of fairness it seems odd that them moving closer would  
880 affect their use. But the 1960 law actually measured from a lot line. It didn't care  
881 about the presence of a dwelling. And in 1960, it was certainly within 400 feet of  
882 the lot lines for the R-3 District. It's a question that struck me as counterintuitive  
883 when I was first looking at this cause. I just showed you that map. These houses  
884 came in the '70s. What business did they have to make it a lawful or non-lawful  
885 conforming use.

886  
887 Mr. Blankinship - That's exactly why the use that was on the ground  
888 when those houses were built is allowed to continue. The problem is that the use  
889 that was put there in 1988 came after those houses were built.

890  
891 Mr. Newby - Mr. Blankinship says it better than I did. That's correct.

892  
893 Ms. Harris - Thank you. In looking at the argument from the  
894 Yarbroughs, they spoke of not changing the original footprint. There was a barn.  
895 So all they did was to go up. Would that have anything to do with the ruling?

896  
897 Mr. Newby - That's another good question. What they're saying, if I  
898 understand it correctly, is if you look at the 1998 photo, here's the shed. They say  
899 there was already a footing poured, that there was a foundation there. And so their  
900 argument goes, "we really didn't do anything but finish what was already there. We  
901 kind of adjusted it." Maybe that's compelling to the Board. I would say that just  
902 doing a strict analysis that would still count as enlarging it because just as a matter

903 of common sense it was enlarged when it was actually built out the way it was. But  
904 maybe the Board will come to a different conclusion on that point.

905  
906 Ms. Harris - Okay. Any more questions? Thank you, Mr. Newby.

907  
908 Mr. Newby - You're welcome.

909  
910 Ms. Harris - Is there anyone who wishes to speak to this case?  
911 You're speaking for?

912  
913 Mr. Bayliss - Yes ma'am. My name is Bill Bayliss. I'm a lawyer at  
914 Williams Mullen. I have known the Yarbroughs for thirty-five years probably.

915  
916 Ms. Harris - Excuse me. Can you spell your last name, please?

917  
918 Mr. Bayliss - It's B-a-y-l-i-s-s.

919  
920 Ms. Harris - Are you speaking for the appellant?

921  
922 Mr. Bayliss - Yes ma'am.

923  
924 Ms. Harris - Okay. I was asking is there anyone who wanted to  
925 speak for the County, really, for the director of Planning first.

926  
927 Mr. Bayliss - Oh, I'm sorry.

928  
929 Ms. Harris - Is there anyone?

930  
931 Mr. Blankinship - No, I think we're done.

932  
933 Ms. Harris - Okay. Mr. Bayliss, go ahead, please.

934  
935 Mr. Bayliss - Okay. I'm sorry. What I've given you, and it's in reverse  
936 order, I'll identify it, and then you'll hear me refer to it. There's a reason for this. I'll  
937 tell you the reason. These documents are in reverse order: if you start at the rear  
938 of the packet, you'll see a deed and an affidavit—a deed from the Stinson Family  
939 LLC to Walter Yarbrough and Carmen Yarbrough and an affidavit from William  
940 Stinson, who is a representative of the Stinson family. They're in there for a reason,  
941 and the reason is—what I'd like to say also, I think Mr. Newby said in the beginning  
942 that this is a case about just using your common sense here. I don't think this is a  
943 case where lawyers can give you competing analysis of what the law is. The  
944 operative ordinance that we refer to is 24-07. Mr. Newby talked about it. And that's  
945 the lawful nonconforming use statute. What we'll get into as far as that's concerned  
946 and what, again, I hope that at the end of our presentation—and Mr. Yarbrough is  
947 here and is going to testify as well—that you will come to the same conclusion  
948 that—and I've got something in this package that's the third exhibit that I think is

949 perhaps more telling than anything about this. And that's an article in the *Richmond*  
950 *Times-Dispatch*, Sunday, July 5, 1987. It says "couple sees Talley place as dream  
951 come true." A two-page article, and on the second page you will see Randy and  
952 Carmen when they were a heck of a lot younger, 35 years ago. It was a dream  
953 come true in 1987 when they bought the property; it's a nightmare today. There's  
954 no article in the paper about it today, but that dream come true in 1987 has turned  
955 into something else today. That's why I put that article in there

956

957 This case—and if you look at the zoning determination letter—and I will correct Mr.  
958 Newby on this. This case arose not as a result of the County doing any  
959 investigation, not as a result of the Yarbroughs coming in and asking the County  
960 to make a determination. This case arose solely because of those first two  
961 documents I gave you. And that's when the Stinson family gifted to Carmen and  
962 Randy Yarbrough a sliver of property next to the Puccinelli's property. The  
963 Puccinellis are neighbors of the Yarbroughs. That was done in 2017. What you  
964 see from the package that you've gotten and what you will hear from Mrs.  
965 Yarbrough is that there has never been any issue for thirty-one years as it relates  
966 to the use of this property. Not one single time except in 2014 when Mr. Atkins  
967 called Randy and Carmen Yarbrough and told them somebody had made a  
968 complaint about the chickens or whatever and the horses on the property. And  
969 then later called them after the County had completed their investigation in 2014  
970 and told them that they were not going to go any further with it because it was a  
971 legal nonconforming use. And that's what you'll hear from Mrs. Yarbrough. It's  
972 already part of the package we've given you. You will hear no evidence to the  
973 contrary there.

974

975 So this was not something asked for. The letter that starts this whole thing off on  
976 May 29, 2018: "Dear Mr. and Ms. Yarbrough, you have asked whether the private  
977 stable..." They never asked that. They never asked for this determination. This was  
978 solely the result of a complaint issued by the Puccinelli family in retaliation for the  
979 fact that the Stinson family had given and gifted Mr. and Ms. Yarbrough this sliver  
980 of land that's contiguous to the Puccinelli family.

981

982 And today, this very day, after this complaint was filed, the Puccinellis filed a  
983 lawsuit in Henrico County Circuit Court. That lawsuit is to seek adverse possession  
984 of this property lawfully gifted—and all you have to do is read the Stinson affidavit.  
985 Mr. Stinson, who is a representative of the Stinson family, will tell you exactly what  
986 happened. There's no adverse possession. The Puccinellis are upset that the  
987 Stinsons didn't give the property to them. And this is the only way they can get  
988 back at them. So this is what this is about. It's not something about Carmen and  
989 Randy asking for it. You've got in your package—and you've had this summary  
990 given to you by the Yarbroughs. So I want to focus on the issues, now that you  
991 know the basis for why we're here today.

992

993 On the issues that have been raised by the County, if you look at the County's  
994 letter—I'm sorry; Mr. Newby's letter. I think it's on page 3. He's done it with the

995 slides, the analysis. The director asks the BZA to uphold the following conclusions  
996 from his interpretation letter. Again, I want to really highlight that I don't think this  
997 is a case about lawyers interpreting or trying to expand upon what the law is. The  
998 law is quite clear. We as people that buy property and rely on uses and things like  
999 that, 24-7 was put in for a reason, to protect just what is happening here as far as  
1000 being grandfathered in this. That is the use of this property has always been for  
1001 horses, and it doesn't talk about one horse, two horses, three horses or four  
1002 horses, and I'll get to that.

1003  
1004 But if you look at the analysis that they've said, and you go back—and we've done  
1005 this in the papers that you have before you. You start in 1955, sixty-three years  
1006 ago. You'll probably see fifteen or twenty emails that are part of this file from  
1007 neighbors. And you'll probably hear from some today. But since 1955, this property  
1008 has been used for horses. Nobody knows whether it's one, two, three, four or five.  
1009 It's just been used for horses. That's the use. This isn't a problem that just started  
1010 yesterday or this year. This use has been consistent since 1955. The Talleys  
1011 bought the property in 1953 and built a one-story ranch home that was enlarged  
1012 by the Yarbrough family later. The point I'm making there is that the use has been  
1013 consistent for sixty-three years now.

1014  
1015 Even though I said—and I'll get into the factual part of it after I finish this—even  
1016 though I said I don't really think that this is a situation where the lawyers don't—  
1017 the lawyers don't agree; I can tell you that. And I'm going to show you one reason  
1018 why real quickly on what the law is. I think that this boils down to using your own  
1019 common sense and figuring out what was intended in 24-7. That statute protects  
1020 people like the Yarbroughs from being attacked thirty-one years after they've used  
1021 this property for the same very thing.

1022  
1023 So you start out with this analysis on page 3 of the report that's part of the package  
1024 you got. And he says the director's asked the BZA to uphold the following  
1025 conclusions from his interpretation letter. The very first one is that the Yarbroughs  
1026 may not use the horses kept on their property for commercial purposes. Then he  
1027 goes on to say since the parties agree that the horses may be not be kept on the  
1028 property for business purposes and cannot be used for a riding academy—there's  
1029 no controversy on this part for the Board to resolve. I agree with that. That's not an  
1030 issue before you today.

1031  
1032 In that package I just gave you, I want to point to—you'll see two pages. And you'll  
1033 hear from Ms. Yarbrough. Melinda is her daughter. Melinda is an internationally  
1034 recognized horse person. I'm not a horse person. Although I have to say when my  
1035 daughter was Melinda's age, I had the luxury of owning a horse that I couldn't wait  
1036 to get rid of because they're very expensive. But she is pictured with a learning  
1037 disabled child and a pony and a note: Thank you for letting me ride your pony Love  
1038 [unintelligible]." That's what this property has been used for for all this time since  
1039 they bought the property. She does have people that come over that are friends of  
1040 hers or neighbors that come over and say can we see your ponies or your pony or

1041 can we ride them. That's just an example I wanted to give you of what the property  
1042 is used for today. It's not used for commercial purposes. It's not an issue, so you  
1043 don't really have to address that.

1044

1045 The second point that he raises—and I'll summarize why, again, I think the County  
1046 has just gotten it wrong. "The Yarbroughs may not keep four horses on their  
1047 property." When you saw in the slides in the presentation that it's their conclusion  
1048 they can't keep more than three horses, and then you look at 24-10. That's where  
1049 that comes from. And so you find in their letter four horses is too many for a  
1050 residential neighborhood. And then it goes down and they say: "The Yarbroughs  
1051 are not allowed to keep four horses on the property under the current Zoning  
1052 Ordinance because the law only allows three horses." This is where I say we  
1053 shouldn't be getting into a legal debate here. This is not a court of law; this is a  
1054 Board of Zoning Appeals.

1055

1056 But I do want to point out to you, because I think it's pretty evident. If you read 24-  
1057 10(b) where they talk about the issue of you can't have more than three horses, it  
1058 says: "Any private stable or enclosure for the keeping of not more than three horses  
1059 or ponies for personal enjoyment and not as a business shall be distant at least  
1060 400 feet from a dwelling." That language doesn't say you can't have more than  
1061 three horses out there. It says any structure that has a—in the words of the statute:  
1062 "Any private stable or enclosure for the keeping of not more than three horses."  
1063 That's a distance issue. It has nothing to do with the number of horses, yet the  
1064 County is trying to come up here and say that you can't have more than three  
1065 horses based on that sentence. You just can't read it that way. That's why I say  
1066 this case is really about 24-07, which is talking about the grandfather issue and the  
1067 continuation of existing uses and permits.

1068

1069 The third conclusion they come to says: "The Yarbroughs may not use the 1110-  
1070 square-foot outbuilding on their property as a horse stable." And he went through  
1071 that presentation with you. Again, I want to show you where the County has simply  
1072 gotten it wrong. I have got a couple things in here that I added to what I've given  
1073 you. The fourth... it's the fifth picture. It's a blurry picture after the article in the  
1074 newspaper. This is a picture taken in 1972. You'll see the barn, and you'll see the  
1075 Puccinelli's house. And remember, this whole thing has been originated by the  
1076 Puccinelli's complaint.

1077

1078 So in 1972, the Puccinellis built their house that close to the barn, well within 400  
1079 feet. How many years ago was that? Fifty-six? Forty-six? Fifty-six years ago. So  
1080 knowing this was a barn out there, knowing it was a stable out there, knowing there  
1081 were houses out there, built their house and have lived there since then. And  
1082 never, never had a complaint about anything until this deed went to record in 2017.  
1083 So for sixty-some years no problems at all.

1084

1085 Mr. Newby's been very fair in putting up information that was part of the package.  
1086 So let me tell you again as far as the expansion of this. One question was asked

1087 what existed. Well what existed was a footprint and an existing structure that in  
1088 1987 when the *Times-Dispatch* wrote their article about living their dream, you got  
1089 the summary from Ms. Yarbrough, and you'll hear from Ms. Yarbrough, that they  
1090 went out there, they saw what was existing: the Talleys had horses out there, the  
1091 Talleys had chickens out there, the Talleys had a barn out there, the Talleys had  
1092 a stable out there. And that stable was the enclosure that he showed you. Not the  
1093 wooden part of it, but the enclosure he showed you. And I have the same picture  
1094 that you have of the barn that was expanded. The answer to the question the  
1095 footings and the foundation were there. There's no testimony to contradict that.  
1096 Ms. Yarbrough has already told you that in what she's filed, number one. So when  
1097 they bought the property, that's what existed.

1098  
1099 You'll hear from Ms. Yarbrough. Before they bought the property, they asked the  
1100 County whether they would be grandfathered because they wanted horses.  
1101 They're horse people and were sure they would be. And so they bought the  
1102 property. And what they did back then—and you saw that beautiful, beautiful home  
1103 that sat out there for thirty-one years, since 1987—is they got a permit, and they  
1104 took the rancher and then expanded up and turned it into a two-story house, and  
1105 they built a pool. And that was the work that was done back then. It wasn't until  
1106 1998 that they applied for a building permit. And as Mr. Newby said, the County  
1107 doesn't keep those records any longer.

1108  
1109 We met with Mr. Newby, and you saw the affidavit from Mr. Yarbrough that was in  
1110 the package that we gave you. We didn't think that would be an issue after we  
1111 gave that affidavit. But Mr. Yarbrough, he's in the construction business. He knows  
1112 when permits are needed. And a permit was applied for in 1987 and was granted.  
1113 Nobody has that permit thirty-one years ago. I don't think many people keep those  
1114 things after thirty-one years. So the County doesn't have it; we don't have it. But  
1115 what we do have is evidence that there were inspections. And I think everybody  
1116 knows there wouldn't be inspections if there wasn't a permit issued for it. So he put  
1117 the proper statutes up to show you.

1118  
1119 So the County issued a building permit and now wants to shut it down. The  
1120 Yarbroughs innocently went forward, and what they did was take the foundation  
1121 that was there. They didn't increase the foundation. They didn't expand the  
1122 foundation. They simply built up and enclosed it. And they did it in a very, very  
1123 artful way. You have a beautiful structure out there that they showed you.

1124  
1125 You heard Mr. Newby talk about it wasn't until 2009 that they recognized it. Well  
1126 the very top exhibit I gave you, you see 1999, the improvements are listed at 233.  
1127 And in 2000, the improvements are listed 238. They went up five thousand dollars.  
1128 Somebody recognized something. And so they want you to ignore that. They don't  
1129 tell you anything about that. But the assessment did go up. And so the County is  
1130 simply wrong when they say on page 5 it's too close. This is a good example of  
1131 the legal nonconforming use.

1132

1133 When you go back to 1955, that structure was built. The footings were there to be  
1134 expanded. And for... '55 to '87... thirty-two years, it wasn't expanded. The  
1135 Yarbroughs bought it in 1987. It was used for horses. There is no evidence as to  
1136 whether there's—we know that based on the affidavits, I'm sorry the emails, there  
1137 were at least two horses that the Talleys had, and it was 1988 that the Yarbroughs  
1138 brought four horses out there.

1139

1140 The bottom line is that the expansion of the stables was done. It was done with the  
1141 County's issuance of a building permit. The assessment was increased the very  
1142 same year it was done. The Yarbroughs have paid their taxes. And it's a legal  
1143 nonconforming use. The use that's a legal nonconforming use, it's used for horses.  
1144 And yes there are fences out there.

1145

1146 Those are the three determinations that is kind of a lawyer's side of it. And so I  
1147 want to summarize for you the structure and the use. When you try to comprehend  
1148 the length of time, you'll recognize why this is such an emotional issue for the  
1149 Yarbrough family. It's been a very, very tough time over the past six months for  
1150 them to deal with this. It's unfortunate that this is a neighborhood issue. I hate to  
1151 be here talking about neighbors not getting along. It's not good, but it's something  
1152 they have to live with. And the courts are where those issues should be worked  
1153 out, not by filing a complaint here and asking the government to get involved and  
1154 take away rights that have existed since 1955. For sixty-three years the use has  
1155 not changed.

1156

1157 So I've explained the Talley use. I've explained the Yarbrough use. There's been  
1158 no discontinuation of that use at any time whatsoever. I've talked to you about the  
1159 structure, the expansion of the structure. There's no evidence whatsoever that will  
1160 contradict it. I've given you all of the evidence. The building permit was issued. It  
1161 was built per the building permit. The inspections were done. The inspections  
1162 passed. The increase occurred that same year. Taxes have been paid since then.  
1163 Well over fifteen years.

1164

1165 They are true facts that you have before you. Carmen Yarbrough is here. She put  
1166 together this package that is your package. We edited it for her. This has been  
1167 expensive for her. I'm a friend of Carmen's, so I'm less than objective about this.  
1168 But they've been a client of mine for a long time.

1169

1170 What she tried to depict in a summary, and what she's here to tell you about  
1171 today—and I wrote down eight or nine bullet points. The use of the property by the  
1172 Talley family—and all the emails reflect that for the thirty-two years that they had  
1173 it. The purchase by the Yarbroughs and the conversation with the County about  
1174 being grandfathered, "living your dream," the article. And how many times do you  
1175 see an article like that in the Richmond newspaper that thirty-one years ago—two  
1176 pages on this. This is a very unique piece of property located in a highly developed  
1177 subdivision, but developed a long time ago, a long time ago.

1178

1179 The use of the property hasn't changed. It's been used for horses. Whether it's  
1180 one, two, three, or four, it's been used for horses for sixty years. The barn that  
1181 existed in 1955 has been there since 1955 and went up in 1998 under the guidance  
1182 of the County of Henrico. The expansion of the barn I just talked to you about had  
1183 the right permits, the tax records, etcetera, before you. The use has never  
1184 changed.

1185

1186 There are no issues with anyone. And I think this is very, very important. And you  
1187 will not hear any evidence to contradict this. For all those years they lived in  
1188 harmony out there. And you have neighbors here that are coming in and tell you  
1189 about that or Carmen will tell you about that. And they loved it there. The Stinsons  
1190 developed the Rocky Bridge behind there. There was this open area there that's  
1191 between the Puccinellis and the Yarbroughs that the Stinsons gifted to them. It  
1192 was a beautiful place in a beautiful neighborhood, and it was a beautiful time for  
1193 thirty-one years until the Stinsons gave the Yarbroughs that sliver of property.

1194

1195 But what I was telling you before is there was an issue in 2014. And I issued an  
1196 FOI request to try to get this file, but it was not given to me. And Ms. Yarbrough  
1197 will tell you about it herself when she reads her statement to you. She did get a  
1198 call from the County in 2014, four years ago. And Mr. Atkins of the County advised  
1199 her that an inquiry had been made and they were going to investigate. The only  
1200 thing she every heard from that was a phone call from Mr. Atkins in 2014 saying  
1201 not an issue, we're not going any further with this, this is a legal nonconforming  
1202 use. It was in 2014, so why are we here today? One reason: the Puccinellis are  
1203 upset.

1204

1205 I'll close. I've talked long enough. Again, I want to reiterate that the Yarbroughs  
1206 never asked for this, even though that's what the letter says. I've summarized the  
1207 evidence that's before you. I'm going to ask Ms. Yarbrough to stand up and read  
1208 you a summary of her thoughts relating to what we're dealing with today. And more  
1209 importantly, she's here to answer any and all questions about the use of the  
1210 property, how it was done, to support what I've summarized for you and what the  
1211 packets that we've given you and exhibits we've given you reflect.

1212

1213 Ms. Harris - Excuse me, Attorney Bayliss, before you leave the mic,  
1214 we may have questions from the Board. Okay. Mr. Bell and then Mr. Green.

1215

1216 Mr. Bell - You keep referring to use of horses. That code is not  
1217 just for horses. You cannot have three cats at your house. You cannot have three  
1218 dogs. You cannot have three of anything. That's the maximum amount of animals  
1219 you can have in certain districts unless you get a conditional use permit or  
1220 variance. So it's not just for horses.

1221

1222 Mr. Bayliss - I understand that. "Livestock" I think is the word used  
1223 in the statute.

1224

1225 Mr. Bell - Well there are several areas of the statute that do cover  
1226 that. I just wanted to point that out.

1227  
1228 In terms of the property, it's beautiful. If you've lived here all your life like I have,  
1229 whenever I get over there and cross Parham Road, my next vision slowed down a  
1230 little bit going down that hill to look over at the Talley's pond. At times there would  
1231 be a horse and a pony out there on the right side as you go by. I think anybody  
1232 that's lived here for a long time, it's a beautiful piece of property. But the issue is  
1233 over time, like laws, codes change. And we're confronted with addressing those  
1234 codes. And those codes don't always take into consideration thirty-one years and  
1235 sixty-one years. Your information added to what we have will give us a good  
1236 chance to make a decision. So I want to thank you for that.

1237  
1238 Ms. Harris - Mr. Green?

1239  
1240 Mr. Green - You keep referencing stuff should be handled in a court  
1241 of law. What do you perceive our role to be?

1242  
1243 Mr. Bayliss - Right. Your role is you have to decide this morning.

1244  
1245 Mr. Green - Because the sense I'm getting is that you don't think  
1246 this should be before us, that it should be in the court system.

1247  
1248 Mr. Bayliss - The point I wanted to make to you—if you read the  
1249 letter, the May 29th letter signed by Mr. Emerson, it says: "Dear Mr. and Mrs.  
1250 Yarbrough, you have asked whether the private stable...." That's not what  
1251 happened here. They didn't ask the County. They would have no reason to ask the  
1252 County; they knew they could use it. So the point I'm making is this is not  
1253 something that they asked for. This is something initiated by a complaint, and the  
1254 only way he can now get back at them in retaliation is he filed this complaint after  
1255 living next door to them for thirty-one years and never saying a word.

1256  
1257 I point that out—that the reason I said there's another venue or forum where that  
1258 should be addressed, they filed a lawsuit as well. And that lawsuit's pending in the  
1259 Henrico County Circuit court, and it seeks to have title vested in the Puccinelli  
1260 family by way of adverse possession. That's why I gave you the deed. That's why  
1261 gave you the Stinson affidavit to show that it's unfounded, it's simply unfounded.

1262  
1263 So it's peripheral to the issue. You guys have to make your decision that's before  
1264 you; I can't stop that. But I did want to highlight to you the Yarbroughs—I didn't  
1265 want you to think that all of a sudden they thought they were doing something  
1266 wrong and came and asked for a zoning determination. That didn't happen. That's  
1267 the reason I brought that up. I hope that answers your question.

1268  
1269 Mr. Green - One other question. Are neighbors complaining all  
1270 around that subdivision? Any complaints coming from folks?

1271

1272 Mr. Bayliss - Did you see any in your file? You didn't see a single  
1273 one. Maybe you'll hear from some today; I don't know. We know there are people  
1274 out here that probably want to speak to tell you that they're so happy with the  
1275 Yarbroughs and what's been out there. But I can't tell you that there might not be  
1276 somebody out here. I've not seen it. I don't think you guys have seen it. So this  
1277 one person that is vociferously complaining, and that is the Puccinelli family. For  
1278 the last three months I get these calls. They're out here taking more pictures, more  
1279 pictures, more pictures. And it's not a happy situation. But that happens. That's not  
1280 your problem; that's a problem between the Puccinellis and the Yarbroughs. And  
1281 they will ultimately work it out because life does have to go on. But I don't think  
1282 you're going to hear any complaints from other neighbors today.

1283

1284 Mr. Green - Thank you.

1285

1286 Ms. Harris - Any other questions?

1287

1288 Ms. Moore - Just real quick. I'm not certain it's really germane to the  
1289 use issue we're talking about. But you keep referring to the sliver of land. Can you  
1290 use the cursor and just point out what you're referring to?

1291

1292 Mr. Bayliss - The land that was gifted?

1293

1294 Ms. Moore - Yes.

1295

1296 Mr. Bayliss - Yes I can. Hold on a minute.

1297

1298 Ms. Moore - And again to the Board. I don't know if it's totally  
1299 germane, but since he mentioned it I was just curious.

1300

1301 Mr. Green - I was curious about that too.

1302

1303 Mr. Bayliss - [Indicating on map] Just so you know the origin of that.  
1304 When that subdivision was developed—and Stinson says it in his affidavit that you  
1305 have, and you haven't had a chance probably to read it. When he developed it,  
1306 that was a piece of land that was left over. And on three or four different occasions  
1307 the Stinson family approached the Yarbrough family and asked them to joint  
1308 venture a development. And believe me, that would've been the worst thing the  
1309 neighbors wanted to see is five more lots out there as opposed to that beautiful  
1310 thing out there. And the Yarbroughs consistently didn't take advantage of an  
1311 opportunity to make a bunch of money and said we're not going to do it, every time  
1312 he came to them. And finally Mr. Stinson said okay, we give up, we know you're  
1313 not going to do it, we're going to give you the property. That's what precipitated all  
1314 this.

1315

1316 Mr. Reid - Is that the Puccinelli house right next to that vacant—

1317  
1318 Mr. Bayliss - It is, right.  
1319  
1320 Ms. Harris - How much acreage are we dealing with here? Do you  
1321 know the dimensions of that?  
1322  
1323 Mr. Bayliss - That little sliver?  
1324  
1325 Ms. Harris - Yes.  
1326  
1327 Mr. Bayliss - How many, Carmen? Less than an acre? There's 50  
1328 feet of frontage you can see on the curve there. And it comes back 150 feet. And  
1329 it obviously gets narrower and narrower as it goes back. It's not very big. That's  
1330 why I called it a sliver of land.  
1331  
1332 Mr. Blankinship - Our map shows it as 3,800 square feet, so less than a  
1333 tenth of an acre.  
1334  
1335 Ms. Harris - Okay. Thank you so much.  
1336  
1337 Mr. Green - So the whole argument is that the Puccinellis are upset  
1338 that that little sliver of land was given to—  
1339  
1340 Mr. Bayliss - Well that's what precipitated this complaint. He can  
1341 speak for himself. He's here. I'm sure you're going to hear from him.  
1342  
1343 Mr. Green - So he wanted it versus it being given—  
1344  
1345 Mr. Bayliss - He sure did. And he's now filed a lawsuit trying to seek  
1346 it by adverse possession. And that's a matter that will be decided in the Circuit  
1347 Court of Henrico County.  
1348  
1349 In answer to your question earlier about it might not be necessarily that important.  
1350 I think it's important simply to clarify for this Board—again, and I'm saying the same  
1351 thing—they don't want to be here today. They're here solely as a result of that  
1352 complaint.  
1353  
1354 Ms. Harris - Thank you. You did say that several times. Okay. Is  
1355 there anyone else who wishes to speak to this case? I think the Yarbroughs are  
1356 here. Please step to the mic, give us your name, and spell your last name, please.  
1357  
1358 Mr. Stogsdill - It's a mouthful; I apologize. Weldon Stogsdill. Last  
1359 name is S-t-o-g-s-d-i-l-l.  
1360  
1361 Ms. Harris - Okay, Mr. Stogsdill, what do you have to say?  
1362

1363 Mr. Stogsdill - I am a neighbor of both the Puccinellis and the  
1364 Yarbroughs. A much better golfer than myself could hit a golf ball into both of their  
1365 yards from my backyard. I've lived there since 2009. I've never met either of them  
1366 face to face. But I have had interfacing with Mr. Yarbrough, and I'd like to  
1367 reference that in how that went about and what my experience has been with them  
1368 as a community partner.

1369  
1370 The pond in front of his property is fed by a creek that winds all the way back  
1371 through the neighborhood and frequently floods because of everybody throwing  
1372 debris into the creek and things falling in. There have been toilets and tires and all  
1373 kinds of stuff thrown back there. Mr. Yarbrough sent out a letter to everybody  
1374 whose property abuts the creek, listing his contact information saying, "Hey, this is  
1375 what we're facing. I apologize. Can I have your help?" Did not hide behind  
1376 anonymity; put his cell phone out there. And I started contacting him saying, "Hey  
1377 what can I do to help?" And he said, "Hey, come on my property any time. Help  
1378 out any way you want to help out." And we've had a very great relationship without  
1379 ever actually having met.

1380  
1381 My children and I run and bike and ride through there frequently. We bought our  
1382 property in large part because of this setting, the feeling that we have. Our property  
1383 values we feel would be diminished by this little bit of nature being taken away  
1384 from us.

1385  
1386 And if there was a riding academy there, I promise you that little girl would be riding  
1387 out there, and she's never been on that property to ride a horse. My family comes  
1388 from a ranching background in Texas. And if that existed as available as a  
1389 commercial entity, we would have taken advantage of it. It has never been  
1390 marketed, never been available, never been said. In my conversations with Mr.  
1391 Yarbrough talking about my children, he's never offered saying, "Hey, we have a  
1392 riding academy. Why don't you come and join it." As a businessman, that would  
1393 be one of the first things I did once I found that there was a potential client. That  
1394 has never occurred. We've never seen people coming and going and taking riding  
1395 lessons there in the many, many, many times we've been back there. The poor  
1396 horses probably think they have different names because my children have named  
1397 all of them and been out there close to them.

1398  
1399 We have had a tremendous experience in that neighborhood, and it has been that  
1400 way consistently. I've never heard any of my neighbors complain. I know of many  
1401 other young families in the neighborhood who have a similar experience to mine.  
1402 And we would be sad to see this change. People talk about our little Garden of  
1403 Eden that we have in that neighborhood and the relationships that we have, in  
1404 large part to people like the Yarbroughs.

1405  
1406 I've never met the Puccinellis. I can't say anything negative to them, as I've never  
1407 met them, had interface with them. But I will attest to their character and good  
1408 experience. Do you want to make a comment?

1409  
1410 Ms. Harris - Any questions?  
1411  
1412 Mr. Stogsdill - Can my daughter address the court as well?  
1413  
1414 Ms. Harris - Yes. All we need is her name and spell again your last  
1415 name.  
1416  
1417 Ms. Stogsdill - My name is Gracie Stogsdill. S-t-o-g-s-d-i-l-l. I like to  
1418 think that I'm representing most of the kids in the neighborhood because they all  
1419 feel the same way as I do about the Yarbroughs. I think all of us would be very  
1420 disappointed if the Yarbroughs had to diminish their property and anything at all.  
1421 That's it.  
1422  
1423 Ms. Harris - Thank you. How old are you?  
1424  
1425 Ms. Stogsdill - I'm eleven.  
1426  
1427 Ms. Harris - Thank you. Thank you for appearing. Okay. Now  
1428 Ms. Yarbrough, I believe you had a statement.  
1429  
1430 Ms. Yarbrough - I'm going to try to stay composed. It's difficult. My name  
1431 is Carmen Yarbrough, and I am speaking on behalf of my family today.  
1432  
1433 My husband and I have been residents of Henrico County all of our lives, and  
1434 Henrico County was where we chose to raise our two children, Randy IV and  
1435 Melinda. We have worked very hard to have what we have today at Talley's Pond.  
1436 We still do. And for the last eight months we have lived with the horrific anxiety of  
1437 not knowing what the future holds for us with regards to our family residence. Never  
1438 in a million years did we ever think that we could be faced today with a serious  
1439 financial loss on a unique residential property that we have owned, we have  
1440 improved, we have loved for thirty-one years should this Board find us in violation  
1441 of the reported zoning codes in the letter of determination written by Mr. Emerson  
1442 that don't apply to our property.  
1443  
1444 Talley's Pond has been a landmark in Henrico County and Lakeside for a total of  
1445 sixty-three years, as it was established in 1955 by John and Lenore Talley. We  
1446 purchased Talley's Pond in May of 1987 as a legal nonconforming property. And  
1447 we are in hopes today that the BZA will agree that our property is still  
1448 nonconforming. What is troubling to us is that we don't even know why we are  
1449 faced with this BZA hearing today other than the retaliation of Ralph Puccinelli with  
1450 regards to a small piece of property we own that he wants us to give him, not  
1451 related to the concerns of health, safety or welfare. This is an issue that is a  
1452 neighborhood matter and is not an issue that should ever have reached this Board  
1453 as the use of our property today is and has been the same since 1955 when the

1454 Talley's built their home and had their horses and livestock on the property. Since  
1455 that time nothing has changed in sixty-three years.

1456  
1457 The code enacted in 1960 are exactly why we're fighting so hard today to prove  
1458 our property in Henrico is to this day a legal nonconforming property. You see, we  
1459 have located ten acres in Henrico County that is zoned R-3 that is for sale.  
1460 However, according to Section 24-10(a) and (b), even if we purchased the ten  
1461 acres for our private stable, the codes enacted in 1960 and amended in 1985 may  
1462 prevent us from having more than three horses and/or ponies for personal  
1463 enjoyment on ten acres. Does that make sense?

1464  
1465 There are some interesting points I would like to address with regards to how this  
1466 letter of determination of reported violations of zoning codes has been handled.

1467  
1468 In 1987, prior to purchasing 8500 Woodman Road, we were told by Henrico  
1469 Planning, Zoning, and Permitting that 8500 Woodman Road as grandfathered.  
1470 What they call it today I guess is legal nonconforming property, and that we could  
1471 have livestock, chickens, swans, etcetera, with no restrictions on the property.  
1472 Although we were zoned R-3, we had the same uses as A-1 zoning. Then and only  
1473 then did we proceed to contract to purchase 8500 Woodman Road and begin  
1474 building what we have today. I at the time was a top listing and sales agent for  
1475 what was called Bowers Nelms & Fonville. I knew that we had to check the property  
1476 out before we purchased it.

1477  
1478 You have seen the July 5, 1987, newspaper article, and we have been living this  
1479 dream for thirty-one years. When we were notified in early March of this year that  
1480 there was an investigation on our property with regards to zoning violations, the  
1481 very first thing the zoning inspector Mr. Key asked of us was, "Do you have  
1482 anything in writing that shows your property is legal nonconforming?" And the  
1483 answer was simply no. Additionally, when asking the County and Zoning what  
1484 homeowners in Henrico County have been issued in writing with regards to their  
1485 property being legal nonconforming, they could not provide me with one. There are  
1486 apparently no such records or writings.

1487  
1488 Zoning codes that the letter of determination dated May 29 and written by  
1489 Mr. Emerson are referring to codes that were enacted on January 1, 1960, five  
1490 years after the property on 8500 Woodman Road was established by the Talleys.  
1491 Those codes are not applicable to our property nor are the amendments thereafter,  
1492 as the use of our property as been the same for sixty-three years.

1493  
1494 Enforcing zoning codes only when someone complains, by our example, has  
1495 proven to be a very troubling policy and policing of Henrico County zoning codes  
1496 or violations. If someone gets upset with us, or with anyone else for that matter, all  
1497 they have to do is file a complaint with County Planning and Zoning and we or they  
1498 end up spending \$20,000 in legal fees to defend our or their property. It costs  
1499 Ralph Puccinelli nothing.

1500

1501 Example: in December 2014, we received a letter from Mr. Jeff Atkinson,  
1502 Community Maintenance manager, with regards to a complaint or an inquiry on  
1503 our property referencing our horses and our chickens. We were very concerned  
1504 about the complaint inquiry. We had no idea why someone would do this. Weeks  
1505 later, Mr. Atkinson called me on the phone and told me that the investigation was  
1506 complete and closed and that he found us to be legal nonconforming property  
1507 without a doubt. We discovered later through the years by other neighbors that it  
1508 was a neighbor that filed a complaint because they were angry with us that we  
1509 asked them to stop trespassing on our property, cutting down our trees for  
1510 firewood, and to remove their fencing and sheds from our property. In thirty-one  
1511 years of living at Talley's Pond, that has been the only complaint we have ever  
1512 been made aware of. Now once again we're attacked in the same manner by Ralph  
1513 Puccinelli. We were found to be legal nonconforming in 2014, and nothing has  
1514 changed since then. In asking for the investigation report for that complaint via the  
1515 Freedom of Information Act, we were denied that information.

1516

1517 When does it all end? We're hoping it ends today when the BZA finds us legal  
1518 nonconforming property, just as Mr. Atkinson investigated in 2014, and what we  
1519 were told by the Planning, Zoning, and Permitting in 1987. Then and only then can  
1520 the integrity of Talley's Pond be preserved forever, as we'll finally have something  
1521 in writing, and we will be protected in the future from others like Ralph Puccinelli.

1522

1523 I've done a lot of research in the last eight months. And because the County  
1524 refused to give us any information relating to other hearings similar to ours through  
1525 the Freedom of Information Act, I went through every BZA hearing meeting  
1526 minutes posted on your website until I came across one. And that was Mr. Duncan  
1527 McPherson on Greenwood Road. And I'm happy to see Ms. Harris is here today  
1528 because she was chairman during that hearing. And I hope she can remember  
1529 what was stated at that hearing.

1530

1531 Mr. McPherson's neighbor—just like Mr. Puccinelli—purchased their property  
1532 knowing that Mr. McPherson had livestock on his property. He could because he  
1533 was legal nonconforming. And the codes enacted in 1960 and amended thereafter  
1534 did not apply to his property. I read the minutes to that BZA hearing, and I hope  
1535 that Ms. Harris and whoever else might have been on there will recall the  
1536 comments made by Mr. Thorpe, the then assistant County attorney, and  
1537 Mr. Wright, and Mr. Witte, who were also at that hearing.

1538

1539 The BZA members that day found Mr. McPherson to not be in violation of zoning  
1540 codes enacted in 1960 or amendments thereafter because his property on  
1541 Greenwood Road had the same use as it was prior to the 1960 codes being  
1542 enacted, a legal nonconforming property. And he was the third owner of that  
1543 property and that property had been maintained and legal nonconforming from the  
1544 1930s.

1545

1546 Lastly, and I reiterate, with reference to Mr. Emerson's letter of determination of  
1547 the purported violations on our property, there are four horses on the property. The  
1548 use of the property prior to 1960 codes and amendments in 1985 was we could  
1549 have livestock, including horses, chickens, etc. Whether it is one, three, five, or six  
1550 does not apply and is not in violation. That code was enacted on January 1, 1960.  
1551 In addition, our property was legal nonconforming prior to the amendment code in  
1552 1985 referencing number of horses on the property.

1553

1554 In Mr. Newby's letter to the Board, he mentions that there is no need to have to  
1555 rule on the issue of a riding academy or a business being run on the property. That  
1556 accusation when it was made that we were using the property for anything but  
1557 personal enjoyment is totally ridiculous. Where did the County get this information?  
1558 We continue to stress there is no business being run on the property. There is no  
1559 riding academy on the property, code or no code. The horses are used for personal  
1560 enjoyment.

1561

1562 Melinda can certainly have friends, neighbors, and other family members come  
1563 ride her horses if she desires. And her friends can bring their horses over to ride if  
1564 they want. That is her personal enjoyment of horses. Melinda has a job. She works.  
1565 These horses are her life. I wonder if any of y'all happened to see the article of her  
1566 in the Richmond newspapers. This appeared in the newspaper July 17, 2018.  
1567 "Lifelong love for horses. Their racing drives twenty-seven-year-old Henrico  
1568 woman. Why do you do it? It's like telling someone to stop breathing." That's her  
1569 love. This is why I'm fighting so hard today.

1570

1571 The stable is less than 400 feet from the nearest building. That code was enacted  
1572 on January 1, 1960, and does not apply to our property. 8500 Woodman Road was  
1573 established in 1955. When you look at the enlarged stable, it was there. Okay?  
1574 Even if we had not put that addition on it would have not made the distance  
1575 requirements. Putting that other part of the finishing off the foundation didn't make  
1576 it any more distance problem. It was those subdivisions that caused the problem  
1577 with the distance situation.

1578

1579 More than one horse is kept on the property for each acre of enclosed land. That  
1580 amendment was also put into place in 1985. That amendment, the property was  
1581 already grandfathered against future amendments, so it doesn't apply. Horses kept  
1582 on our property are performance athletes and are not allowed to pasture. They are  
1583 kept on strict diets of high-quality grain, supplements, and alfalfa hay, and must be  
1584 kept in separate paddocks to prevent injury to one another as required by  
1585 Melinda's equine insurance carrier, the Lloyds of London. These aren't pasture  
1586 horses. These aren't pets. These are athletes that have carried her to the MBHA  
1587 world finalist five times. She is recognized by her peers.

1588

1589 Our stable is still nonconforming and has been since January 1, 1960. We were  
1590 issued a building permit to complete the existing portion of the barn in 1998 where  
1591 the footing and foundation were already in place. The stable—or as we call it, the

1592 barn—is protected under the Virginia Code 15.2-2307(d)(i) and (ii). There were  
1593 framing and electrical inspections, and we have paid all our assessed taxes each  
1594 year.

1595  
1596 Today we appeal to the BZA with all the evidence that we have provided this day  
1597 in hopes that the honorable BZA agrees and finds that we are not in violation of  
1598 any of the claims in the letter of determination dated May 29, that the codes in  
1599 1960 and amended thereafter do not apply to 8500 Woodman Road, and that our  
1600 property is past and present a legal nonconforming property so that we can  
1601 continue living our dream-come-true property and continue the legacy of Talley's  
1602 Pond since 1955.

1603  
1604 I also can say on behalf of my family that we do believe in God. We have always  
1605 strived to be law-abiding citizens, be good neighbors, and have no reason not to  
1606 believe and have trust in our local county government that they will do the right  
1607 thing by us today. Please, I urge you, if you have any questions, please ask. I will  
1608 answer anything, clarify anything.

1609  
1610 We have a lot of memories of this place. My father's last Christmas was there. My  
1611 son was married there. My daughter was born there. Melinda's first pony, Patches,  
1612 is buried there. Her first dog was named Talley.

1613  
1614 What can I do to answer any questions?

1615  
1616 Ms. Harris - Okay. Are there any questions of Ms. Yarbrough?  
1617 Mr. Green.

1618  
1619 Mr. Green - I appreciate you're under oath clarifying that it is not  
1620 used as a commercial facility. Because you are under oath. So I really appreciate  
1621 you doing that under oath. Thank you.

1622  
1623 Mr. Bell - Do you have anything—I know you talked about people  
1624 telling you. You talked about before you bought the property people tell you that it  
1625 was nonconforming. Do you have any other documents that could confirm that or  
1626 the names of some of the people who told you that?

1627  
1628 Ms. Yarbrough - No. We asked the County if they could go back on their  
1629 employee records so that we could interview, but they wouldn't provide us with that  
1630 either.

1631  
1632 Mr. Bell - Thank you.

1633  
1634 Mr. Green - I would also ask that of the County. To me the County  
1635 has a responsibility to maintain records. In my job, I have to maintain records for  
1636 fifty years. For a County not to be able to find records and maintain records,  
1637 something else needs to be done. So when individuals buy property or have issues



1638 like this at least the municipal government would have some records to be  
 1639 supportive for or against the individual. So I don't place all of the responsibility on  
 1640 persons who buy property. I also place a lot of responsibility on the County  
 1641 government to maintain accurate records.

1642

1643 Ms. Harris - Mr. Blankinship, in the history of this particular case,  
 1644 have they ever been cited for not conforming to code?

1645

1646 Mr. Blankinship - I'm not aware of any other complaints other than the  
 1647 2014 complaint that was mentioned. As for 1987, that was twelve years before I  
 1648 came to the County. I don't know which of our employees was here in 1987.

1649

1650 Ms. Harris - Thank you. Your horses, you never ride them on public  
 1651 streets, right?

1652

1653 Ms. Yarbrough - Melinda does occasionally during the summer before  
 1654 big races. They call it *breezing*. She'll walk the horses out of the pasture gate,  
 1655 down Lydell Drive, and onto our property, which is by the pond up top. And she  
 1656 races the horses up the hill and down the hill to build up their breathing capabilities  
 1657 so that they can work harder. But that's as far as she goes. And she could go  
 1658 through the backyard if she wanted to.

1659



1660 Ms. Harris - Thank you. Any more questions? Thank you so very  
 1661 much. Is there anyone else who wished to speak in favor of this property being  
 1662 maintained as it is? Okay, now we can hear the con.

1663

1664 Mr. Blankinship - There is one person in the rear as well.

1665

1666 Ms. Harris - Oh. One person who wishes to speak for the  
 1667 Yarbroughs. We need to say that we received many letters, I guess as many as  
 1668 thirty letters in support of the Yarbroughs. I guess you need to know that. From  
 1669 neighbors and former neighbors. Come forward, sir. Please give us your name and  
 1670 spell your last name.

1671

1672 Mr. Goodman - I did not raise my hand earlier but—

1673

1674 Ms. Harris - You have to be sworn in.

1675

1676 Mr. Goodman - Yes. My name is Scott Goodman. Last name G-o-o-d-  
 1677 m-a-n.

1678

1679 Ms. Harris - Have you been sworn in?

1680

1681 Mr. Blankinship - He just—

1682



1683 Mr. Goodman - I swear to tell the truth.

1684  
1685 Ms. Harris - Okay, thank you.  
1686  
1687 Mr. Goodman - Okay. I'll try to keep it short. I live over in Ballentine  
1688 Hills. I'm right across the street from the pond. These folks I've never met. I've  
1689 seen them cutting grass. I've seen the horses. They live on "the house on the hill."  
1690 I live on "the little house on the other side of the hill," the old Ballentine home.  
1691  
1692 I've been in Ballentine Hills since 1964, so I've been there quite a while. The  
1693 Talley's Pond is a really unique, neat place. I also know the Puccinellis. Played ball  
1694 with their boys in the '70s. So I'm not here to get into the dispute between who's  
1695 right and who's wrong and all the legal. What I can tell you is that the Talley place  
1696 had deteriorated some when the Talleys got older. These folks bought that home,  
1697 came in, put a beautiful house up there, cleaned the pond up. I didn't even know  
1698 those stables were back there. I knew they had horses. And I haven't seen any  
1699 traffic coming through there like a business or anything would be run. They've been  
1700 great neighbors keeping it up. The place is beautiful. That is my view when I wake  
1701 up in the morning. That's what I see.  
1702  
1703 This is just in my head. Unless there's something about the horses being abused,  
1704 there's an odor, there's a lot of noise, they're trespassing—I'm just kind of at a loss  
1705 with the whole thing, to be quite honest. I'm just at a complete loss. I understand  
1706 we have to have rules in the County to govern use of property because not  
1707 everybody's a responsible neighbor, which I'm assuming these folks are. But it's  
1708 just kind of . . . I'm not so sure we're really dealing with a legal issue here. This  
1709 sounds like a neighborhood personal—if something's going on here, I don't know  
1710 what it is. But I'd like to say that I would love to have these folks as my neighbor.  
1711 They'd make my house look awful.  
1712  
1713 I hope they can keep doing what they're doing. And the horses, I've never heard  
1714 them. I hear the train over on Hermitage Road two or three times a day and at  
1715 night. And I've never heard those horses; I've never heard anything.  
1716  
1717 So again, I'm not picking sides between the Puccinellis and their disagreement  
1718 with these folks. I'm just telling you what I've seen being in that neighborhood for  
1719 fifty-some years. It's Talley's Pond. It's still referred to as Talley's Pond. Sorry folks.  
1720 It's a great place. So I hope you guys can work this out, whatever the problem is.  
1721  
1722 Ms. Harris - Thank you. Any questions from Board members?  
1723 Okay. I think we're ready to move now to hear the other side. There's a hand back  
1724 over here. She was sworn in, I believe.  
1725  
1726 Mr. Blankinship - Yes.  
1727  
1728 Ms. Harris - Please come forward. If you could just hold off for a  
1729 moment. We need you to give us your name and spell your last name.

1730

1731 Ms. Khan - My name is Sarah, and my last name is Khan. K-h-a-  
1732 n. Melinda, I discovered her online—[unintelligible]. But I was looking for somebody  
1733 for my granddaughter. She loves horses. And she was here to visit me from  
1734 California for just two weeks, and I wanted to give her a little something special for  
1735 her visit. And I was looking online for someone to just give her a ride. I contacted  
1736 several people, but nobody was willing to take her. And then I remembered the  
1737 news article that came about Melinda, which I had saved for my granddaughter  
1738 because she likes to collect horse pictures.

1739

1740 And I got in touch with her over Facebook. I found her on Facebook. And she was  
1741 like, "Sure, just bring her over." I asked if there were any charges and she was like  
1742 no. Of course I don't want to be a freeloader, so I still persisted. And she kept  
1743 saying, "No, just bring her over. Because I remember when I was small how I felt  
1744 about horses. So please bring her over." And she gave her a good one-hour time  
1745 where she introduced her to her horses, she helped her with how to handle horses  
1746 and things like that, and she gave her a ride, and she charged me nothing for it.  
1747 And I just think she's a beautiful person. She has such a good heart. And that's  
1748 why I'm here for her today.

1749

1750 Ms. Harris - Thank you, Ms. Khan. Okay. We have another citizen  
1751 who wishes to speak. Please come forward. And you were sworn in, were you not?  
1752 You need to be sworn in. Mr. Blankinship.

1753

1754 Mr. Blankinship - Raise your right hands, please. Do you swear the  
1755 testimony you're about to give is the truth, the whole truth, and nothing but the truth  
1756 so help you God?

1757

1758 Ms. Bailey - I do.

1759

1760 Mr. Blankinship - Thank you.

1761

1762 Ms. Bailey - I have lived—

1763

1764 Mr. Blankinship - Your name, please.

1765

1766 Ms. Bailey - Gloria Bailey. B-a-i-l-e-y. I have lived on Woodman  
1767 Road right next door to the Talley house and now the Yarbrough house for forty-  
1768 one years. There have never been any problems there. The Talley's had horses,  
1769 and the Yarbroughs had horses. And I have commented to Carmen many times  
1770 that it was nice to be a city girl and go and sit out on my back deck and hear a  
1771 horse nay or a rooster crow. It's just a pleasant situation. And I don't understand  
1772 why a problem has to be made of it.

1773

1774 I agree with the gentleman that just spoke. I quite often tell my friends that I live  
1775 next door to "the big house on the hill." I'm "the little house on the hill next door."  
1776 So I understand what he's saying.

1777  
1778 It's just a nice place to be when you're living on a busy road like Woodman. You  
1779 don't feel like you're in the city; you feel like you're a part of a community. And they  
1780 are part of the community. It all works together. So that's all I have to say.

1781  
1782 Ms. Harris - Any questions of Ms. Bailey? Thank you so very much.  
1783 Is there anyone else who would like to speak to this particular case? All right, we  
1784 need to move down to the other side.

1785  
1786 Mr. Rothermel - Madam Chair, members of the Board, my name is Mike  
1787 Rothermel. I'm with the law firm of Spotts Fain.

1788  
1789 Ms. Harris - Can you spell your last name please?

1790  
1791 Mr. Rothermel - R-o-t-h-e-r-m-e-l. My law firm represents the Puccinelli  
1792 family. I'm going to agree with Mr. Bayliss on one point. Any time you have a  
1793 situation involving neighbors, especially neighbors who have been such for thirty  
1794 or more years, it's unfortunate and difficult when disagreements arise.

1795  
1796 I will tell you that my clients are not technically a part of this proceeding. They did  
1797 file an inquiry or complaint with the County, but we're not technically a part of this  
1798 proceeding. But yet we have been made the central part of this proceeding, in my  
1799 opinion. And I do need to take issue with sort of the overarching narrative that the  
1800 Puccinellis are the villains in this case.

1801  
1802 I wasn't going to get into the civil suit that one of my colleagues is handling against  
1803 Mr. Bayliss, but they brought it up. So I feel the need to clarify and characterize  
1804 that case a little bit differently. It does involve the narrow triangular strip of land  
1805 between the rear of the Yarbroughs' property and the Puccinelli's house. I will tell  
1806 you I've been in private practice for twenty years. I've represented many, many  
1807 clients. These are good people too. I have no doubt that the Yarbroughs are good  
1808 people. The Puccinellis are good people too.

1809  
1810 Mr. Puccinelli and Mrs. Puccinelli built that house in 1972. They have raised their  
1811 seven kids there. They have lived there ever since. Mr. Puccinelli has a business  
1812 right down the road at the intersection of Parham and Woodman Roads that he  
1813 has had for twenty to twenty-five years. So they have been part of this community  
1814 for a very long time.

1815  
1816 The lawsuit that is currently pending, it does involve that little strip of land. The  
1817 Puccinellis took care of and maintained that strip of land for forty-six years. Nobody  
1818 else took care of that piece of property until they were contacted last year by the  
1819 Yarbroughs indicating that they had acquired ownership of it. And there is a dispute

1820 over that piece of property. Each side wants to put their own spin on it, but  
1821 obviously there are two sides to every story. That is a piece of land that the  
1822 Puccinellis maintained and took care of for forty-six years. The courts will ultimately  
1823 decide who owns that piece of property.

1824

1825 Again, that's not really part of this suit, but I felt the need to clarify what that case  
1826 was about because there are always two sides to a story. And so the suggestion—  
1827 and it was made a number of times today by both Mr. Bayliss and Ms. Yarbrough,  
1828 and it was made in the filings—that this was nothing but in retaliation. This was a  
1829 retaliatory act on the part of the Puccinellis. And I think the suggestion was also  
1830 made that we were trying to use the County.

1831

1832 Again, we're not bringing this. We made a phone call to the County—and I'm going  
1833 to get into that in a second. The County ultimately brings this case. They review  
1834 their ordinance. They enforce things. So the suggestion that we could use the  
1835 County—I wish I could use the County. I'm often in here representing developers.  
1836 I'm often adverse to the County. They oftentimes—most of the time—don't listen  
1837 to my position. So the suggestion that we could use the County for our benefit is  
1838 really absurd, and offensive to the County in my opinion.

1839

1840 Here's what happened. And Mr. Puccinelli is here and a couple of his kids are here  
1841 as well. Late last year—and he did have legal counsel at the time. So my firm  
1842 represents their family, and I do some land use and zoning work. Mr. Puccinelli  
1843 indicated to me that "we've noticed sort of an increase in the use next door. We've  
1844 started noticing more trailers coming up and down Lydell Drive." The Yarbroughs  
1845 do use Lydell Drive. They do not use their entrance, their driveway on Woodman.  
1846 They bring their trailers through Lydell Drive. And he said, "we're starting to notice  
1847 more trailers, noticing bigger trailers. We're noticing more horses on the property.  
1848 We're noticing cars being parked in Lydell Drive. There are people sort of  
1849 congregating at the fences, standing there watching.

1850

1851 I think it was one Sunday—they can clarify. He was having a discussion with his  
1852 daughter, and his daughter said that, "I saw on Facebook where she offers riding  
1853 lessons. And so I contacted her, and they're only \$45 an hour. And she said she  
1854 has lights for the evening. And so I'm thinking about doing it." And that was the first  
1855 Mr. Puccinelli realized that—it might not be a riding academy, but that they were  
1856 giving lessons or they thought they were giving lessons. And we provided that  
1857 information to the County. There were printouts of those communications that we  
1858 provided.

1859

1860 So Mr. Puccinelli asked me, he said, "are you allowed to do this?" I am usually on  
1861 the other side of this issue. I'm usually representing the person that has been cited  
1862 with a violation. So I contacted the County and simply alerted them to what the  
1863 issue was and asked them to look at it.

1864

1865 So that is how this came about. It was not simply in retaliation for something else  
1866 that was going on. He noticed a definite increase in the usage next door, and that  
1867 is what precipitated our call to the County. And from there it's the County's issue.  
1868 From there the County examined it, researched it, looking at it. We didn't have  
1869 anything else to do with it. We provided what information we could, and from there  
1870 the County took it. So this is not the Puccinelli's case. This is the County's review  
1871 of its code and enforcement of its code.

1872  
1873 These nonconforming use cases are difficult, and I've had a number of them,  
1874 including some here in Henrico. You have uses that have been going on a long  
1875 time. You want them to be able to continue. But there's a reason for the  
1876 nonconforming use law and how it's developed. You can't expand that use. You  
1877 can't enlarge the use. And so once you do that, you lose your nonconforming status  
1878 because it's a use that's no longer favored or approved for public policy reasons  
1879 or for whatever other reasons. And so once you start expanding and enlarging that  
1880 use, you've lost the status.

1881  
1882 Mr. Bayliss made a couple of comments that I'm going to take issue with. He said  
1883 at one point the property has been used for horses one, two, four, five, nobody  
1884 knows really how many since the 1950s. I can tell you who does know how many,  
1885 and that's the Puccinellis. They've lived at the property—at least since 1972. They  
1886 have lived at their house since 1972, and they can say, and they are going to briefly  
1887 get up here, I know we're running long. When the Talleys owned this—some of the  
1888 Puccinellis don't remember horses. I think a couple of the kids remember a horse  
1889 and/or a mule at one point that helped them to work the fields because the Talleys,  
1890 they will say, were big farmers. The Puccinellis will say they were great friends with  
1891 the Talleys and their kids crossed their land every day to get to Our Lady of  
1892 Lourdes school. There were never, ever more than one or two horses on that  
1893 property. If we're getting into the facts and eliciting the facts that are relevant to  
1894 [unintelligible], those are relevant facts as far as what the property has been used  
1895 for since 1960 or since 1972 since the Puccinellis owned the property.

1896  
1897 This Board has to wear many hats. Unlike some other Boards, you act in both the  
1898 judicial capacity and the legislative capacity. In this case, you're in your judicial  
1899 capacity. You need switch hats I think right after this case to go to your use permit  
1900 where you're a legislature. So the law and how the facts apply to the law is very  
1901 important. I think it was Mr. Newby who said that the director has to be consistent  
1902 in his application and enforcement of the ordinance. I will tell you the last  
1903 nonconforming case that I had in Henrico, I had some of the most sympathetic  
1904 clients there were. It was a kennel that operated for over forty years. In that case,  
1905 we had to go and get an ordinance change. We all love animals. We all love  
1906 horses. But the fact is when you have codes—Mr. Newby's point is you need to  
1907 interpret and enforce them consistently. Again, that's the County's point to make  
1908 not mine.  
1909

1910 I'll also just make a comment on the fact that a written determination, there was  
1911 never a written determination. That's an important point. The state code talks about  
1912 the effect and importance of written determinations by zoning administrators and  
1913 directors of planning. My recollection is it's code 15.2-2311. But that gives the  
1914 importance of written determinations. Once a written determination is made, you  
1915 can't change that.

1916  
1917 Again, going back to sort of the overarching themes here of was there a  
1918 determination before, consistently enforcing the code. Those are the issues this  
1919 Board has to grapple with here today. Again, acting in its judicial capacity.

1920  
1921 Again, these are difficult cases. But I would ask . . . as a court of law, which  
1922 essentially you are here today, you have to detach yourself from the emotions and  
1923 review the law, review the facts as they apply to the law.

1924  
1925 The Puccinellis are here, one or two of them may make a statement. I'm happy to  
1926 answer any questions. Mr. Newby made a good presentation. I don't feel the need  
1927 to duplicate his legal arguments. But I'm happy to answer any questions the Board  
1928 has.

1929  
1930 Ms. Harris - Are there any questions?

1931  
1932 Mr. Green - Yes. While I appreciate you giving us the facts of the  
1933 law, I guess my question is what is the purpose of us being here if we can't make  
1934 certain determinations? If it was so matter-of-factly then there would be no need  
1935 for the Board to be here to make certain determinations. It's 11:23; I've been here  
1936 since 9:00. As I understand it, I have the ability to make certain determinations,  
1937 exceptions, vote on it, and hope others can. I'm a little frustrated with folks telling  
1938 me matter-of-factly how it's supposed to be because if it's matter-of-factly, then I  
1939 don't need to be here. Also, matter-of-factly, if we rule then there's an appeal  
1940 process that folks can go through as in a court of law. And matter-of-factly, since  
1941 you're an attorney, in a court of law you see motions arise all the time. And so I  
1942 would appreciate folks recognizing that we do—I understand what my role is here,  
1943 and I understand what the rules are. But I also understand that we have the ability  
1944 to make and grant exceptions to various rules and do certain things. If it was that  
1945 matter-of-factly, then I don't need to be here. So is that what you're telling me?

1946  
1947 Mr. Rothermel - Mr. Green I—

1948  
1949 Mr. Green - Is that what you're telling me?

1950  
1951 Mr. Rothermel - I am telling you—my opinion is that you're acting as a  
1952 court of law today. That's my opinion. I agree with that. And I think the role here is  
1953 to take the facts that have been presented to you and to apply the law. So I agree  
1954 with that. I don't know if I characterized your statement as well, but yes.

1955

1956 Mr. Green - And just as a point of clarification. Who owns that  
1957 property that you said your client was cutting the grass and maintaining it for how  
1958 many years?

1959  
1960 Mr. Rothermel - Forty-six.  
1961

1962 Mr. Green - Okay. My mother-in-law lives in Hanover. And for about  
1963 fifty years there's been a piece of property that was next to her that we've  
1964 maintained, and then they sold it. Whoever owned it sold it. We maintained it  
1965 because we didn't want the grass to get high. So yes I would go out there and cut  
1966 grass in the hot sun. It was a couple of acres of land, and I would never ask for a  
1967 dime. It's just a matter of who owns it not who maintains it.

1968  
1969 Mr. Rothermel - As I said, who actually owns it is going to be  
1970 determined by the court.

1971  
1972 Ms. Harris - I think we're going to have to stop here for a recess for  
1973 about five minutes, unless there's another question you'd like to ask the attorney.  
1974 Okay, good. We're going to recess five minutes.

1975  
1976 [Recess]

1977  
1978 [BEGINNING OF SECOND SECTION: BZA\_102518\_2.wma]

1979  
1980 Ms. Harris - We're going to continue, please. We had just heard the  
1981 attorney for Mr. Puccinelli, and we would like to hear other people who would like  
1982 to speak to this particular case. I think Mr. Puccinelli is one. Or is there some other  
1983 attorney?

1984  
1985 Mr. Puccinelli - Hi, my name is John Puccinelli. I grew up at the  
1986 property at 2403 Lydell Drive. I was six when we moved in, in 1972. I currently own  
1987 the property at 8204 Lydell Drive, which is the other side of the property about ten  
1988 houses down from that property now.

1989  
1990 I just wanted to maybe make sure everybody here understands the property. I sat  
1991 here today and thought that I grew up next to a horse farm, based on what I heard  
1992 this morning, and wanted to reiterate that when Mr. Talley owned the property, the  
1993 whole rear of that property was open, unfenced property. He was a gardener. He  
1994 had a large garden in the rear of the property that separated where Lydell Drive  
1995 dead ends on both sides of the property. We walked around his garden but through  
1996 Lydell, came out on the other side of Lydell, walked up the hill, went to Our Lady  
1997 of Lourdes school for eight years. During the summer times, we walked or rode  
1998 our bicycles to Lakeside Swim & Racquet Club, which is off of Swartwout on the  
1999 other side of Lourdes Road.

2000

2001 The property never had horses in the rear of the property. It was a garden. Y'all  
2002 referenced and there was a lot of discussion about the earlier barn that was on the  
2003 property. That structure was a tool shed. There were no horses. There was not a  
2004 horse, there was not a pony in that structure. It was a tool shed. I delivered papers  
2005 to the Talleys. I delivered papers through Valentine Hills. We cut through, we  
2006 walked through. When I was young, at that time I thought the Talleys were old. But  
2007 they were old. They were not able to take care of the property. They weren't able  
2008 to take care of anything. The garden just kind of died out by the early eighties  
2009 because he was no longer able to take care of it. I just want to make sure you  
2010 understand that that was not a horse farm back in the seventies and the early  
2011 eighties when I was resident of the property adjacent to that property, and I wanted  
2012 to make sure everybody understood the use of that property back at that  
2013 timeframe. And any questions?

2014  
2015 Ms. Harris - Any questions from the board members?

2016  
2017 Mr. Green - Yeah, I have a question. So even if it is used under the  
2018 rules to house the three horses, is that a problem?

2019  
2020 Mr. Puccinelli - The problem is—and we go back to my parents. There  
2021 were lots of celebrations, lots of weekends. There was an article in the paper about  
2022 my mom and her Sunday dinners. Okay. So you go to the property. You are  
2023 outside, you are standing at the grill, and the odor coming from the field of horses  
2024 will almost make you nauseated. It is repulsive, it is offensive, and it is unbearable.  
2025 To sit there, to be grilling your dinner, and you have this odor from all of this horse  
2026 stuff wafting across to our property. That's why it's an issue. It has nothing to do  
2027 with the pleasure of horses or who likes horses or any of that stuff. It's just not what  
2028 I want when I'm having a celebration or grilling or cooking or enjoying the privacy  
2029 of my property.

2030  
2031 Mr. Green - And I have one other question.

2032  
2033 Mr. Puccinelli - Yes, sir.

2034  
2035 Mr. Green - Your attorney stipulated that there was a lot of traffic  
2036 coming in and out—a lot of trailers coming in and out. Is there any tangible  
2037 evidence, pictures that anyone has taken? Because before, typically, we've seen  
2038 pictures where folks can demonstrate. Not just what someone says, but what  
2039 someone can prove.

2040  
2041 Mr. Puccinelli - Pictures of the trailers, or?

2042  
2043 Mr. Green - He said that you're complaining that the traffic volume  
2044 was high.

2045

2046 Mr. Puccinelli - I personally don't have the pictures with me. I'm not  
2047 sure if anyone else has the pictures with them this morning.  
2048

2049 Mr. Rothermel - We did present a number of pictures to the county.  
2050 Because a reference was made I think by Mr. Dallas or someone, complaining  
2051 about Mr. Puccinelli taking pictures. He was out there just taking pictures of some  
2052 of the trailers, and I think we provided those.  
2053

2054 Mr. Blankinship - Were those provided to Community Maintenance or do  
2055 we have them in the appeal?  
2056

2057 Mr. Newby - I don't believe they're a part of the appeal record. I did  
2058 see pictures of trailers at some point. I don't know who in the County maintains  
2059 those. But it's true. There are pictures of trailers. I don't know how many, but there  
2060 are pictures.  
2061

2062 Mr. Green - Until I see them, I don't . . .  
2063

2064 Mr. Reid - Mr. Puccinelli, you said there were never any horses  
2065 on the property. I thought everything—  
2066

2067 Mr. Puccinelli - I didn't say that. I said in the rear of the property where  
2068 the current barn is and the current stables and the current corral is. There were  
2069 never horses back in that part of the property when I was growing up.  
2070

2071 Mr. Reid - Well I thought—  
2072

2073 Mr. Puccinelli - I do remember the horse that they talked about  
2074 sleeping under the tree, but that's all in the front on the hill overlooking the pond.  
2075 This is the rear of the property, which is adjacent to our property.  
2076

2077 Mr. Reid - Well where was the horse and the pony that—  
2078

2079 Mr. Puccinelli - It was in the front because that was where—  
2080

2081 Mr. Reid - —was on the property back when the Talleys owned  
2082 it?  
2083

2084 Mr. Puccinelli - Back in the time, it was in the front. Because that's  
2085 where the barbed wire fence was. It was in the front of the property. There was no  
2086 fencing in the rear of the property.  
2087

2088 Mr. Blankinship - So between the house and the lake.  
2089

2090 Mr. Puccinelli - Correct. That's my recollection. And, again, I don't  
2091 remember a horse being there in the late seventies or in the eighties, because the  
2092 Talleys couldn't take care of anything anymore.  
2093  
2094 Ms. Harris - If you had horses, Mr. Puccinelli, on the property  
2095 since—well I guess since early—why is there now—okay, I know you said that the  
2096 smell from the stables was really offensive. But why is it just showing itself now?  
2097 Has the smell intensified like over the last few years?  
2098  
2099 Mr. Puccinelli - Because the activity has intensified in the last three to  
2100 four years.  
2101  
2102 Ms. Harris - Are you observing more horses?  
2103  
2104 Mr. Puccinelli - Yes. I mean, they've built out more pens, corrals. I  
2105 mean, that's evidence. I mean, you've got all the pictures up there. There were  
2106 no—none of those corrals or anything was up there ten years ago.  
2107  
2108 Ms. Harris - Okay. Do you know how many horses you've seen?  
2109  
2110 Mr. Puccinelli - They've got three to four to five, depending on what  
2111 day you walk by.  
2112  
2113 Ms. Harris - Mmm-hmm. I know we have four.  
2114  
2115 Mr. Puccinelli - And I live in the neighborhood. I walk that property  
2116 every morning. I walk from my house around there to that dead end at their house  
2117 and I turn around and I go back. And there's three horses in there all the time.  
2118  
2119 Ms. Harris - Yeah. They don't deny that there are four.  
2120  
2121 Mr. Puccinelli - Yeah, I mean, but have you seen the trailer? I mean,  
2122 how many horses can you put in that trailer?  
2123  
2124 Ms. Harris - But I was wondering if this has been a problem all  
2125 these—  
2126  
2127 Mr. Puccinelli - The problem has magnified in the last several years.  
2128  
2129 Ms. Harris - Thank you.  
2130  
2131 Mr. Green - Could I ask a question?  
2132  
2133 Ms. Harris - Sure.  
2134

2135 Mr. Green - What's illegal about that picture? Is anything illegal  
2136 about that picture?  
2137

2138 Mr. Blankinship - I think that's what we're here to decide this morning,  
2139 Mr. Green.  
2140

2141 Mr. Green - I mean, if it's their property and they've got those  
2142 trailers on their property, is that illegal?  
2143

2144 Mr. Blankinship - The trailers in and of themselves, as long as they're  
2145 stored in the rear—well, you could have one boat, travel, or utility trailer. So I see  
2146 two there, so that would be in excess of what's allowed.  
2147

2148 Mr. Green - Okay. Those are the facts I'm trying to get at.  
2149

2150 Ms. Harris - Any other questions of Mr. Puccinelli? Thank you, so  
2151 very much.  
2152

2153 Mr. Puccinelli - Thank you.  
2154

2155 Ms. Harris - Okay, is there anyone else who wishes to speak to this  
2156 case? Please come forth and give us your name and spell your last name.  
2157

2158 Mrs. Loving - Good afternoon. I'm Mary Loving. I live on Jewett Drive.  
2159 Jewett is around the corner from Lydell. So I'm speaking today not Puccinelli  
2160 versus Yarbrough. My concern is as a neighbor in Rocky Branch Farm, the safety  
2161 not where they're parking these trailers, that I've got two small kids (six and eight),  
2162 and we ride our bikes, walk the neighborhood a lot.  
2163

2164 These trailers are exiting from this property of the Yarbroughs on and off of Lydell  
2165 Drive. So I'm on Jewett. We're riding out bikes, walking the neighborhood. There  
2166 are only three streets in Rocky Branch: Forge, Jewett, Mundy, and Lydell. And it  
2167 is not fair, due to safety concerns, I'm limiting my kids from even bringing our bikes  
2168 onto Lydell a lot, because of these trailers entering and exiting. When you've got  
2169 small kids walking and riding your bike, this concerns me. They're not taking their  
2170 trailers out of their driveway, exiting onto Woodman. This is coming through a  
2171 residentially zoned neighborhood, Rocky Branch Farms.  
2172

2173 I grew up in this neighborhood as well. My maiden name is Puccinelli. So growing  
2174 up, it was great. Beautiful, brick house on the hill. They had swans. They had  
2175 ducks. I would take my nieces and nephews all the time, feeding the ducks. Then  
2176 there was a situation, I think, due to safety. A swan or a goose snapped at a child.  
2177 So a lot has changed. I know we've seen a lot with the zoning has changed since  
2178 1955 with the original ownership of the Talleys. A lot has just changed in this  
2179 neighborhood.  
2180



2181 When my husband and I bought in the neighborhood four years ago, I was very  
 2182 excited. I grew up in the neighborhood. I knew it was a quiet residential  
 2183 neighborhood. My kids attend Our Lady of Lourdes. Well then I saw on the  
 2184 neighborhood Facebook page that Melinda was offering horse riding lessons and  
 2185 charging \$45 an hour. Well that concerns me, not because I wanted her to offer  
 2186 my kids free lessons like some of maybe the other neighbors were getting. But I  
 2187 knew with lessons—I'm a parent. I have to drive my kids to soccer, to basketball. I  
 2188 knew I would start seeing more cars.

2189  
 2190 So I'm over at the Puccinellis, my parents. Every Sunday they have family dinner.  
 2191 It's twenty-one grandkids. We play in the front yard. Parked cars now, you will see  
 2192 at that end of Lydell. And we can see their riding lessons. So in addition to the  
 2193 traffic of the trailers entering and exiting off of Lydell, now we've got people coming  
 2194 into the neighborhood, parking their car at the end of Lydell, and it has just  
 2195 increased a lot more traffic in the past few years.

2196  
 2197 That's the concern here: the safety of the kids in our neighborhood. The safety of  
 2198 the adults walking and riding our bikes through this quiet neighborhood. So I just  
 2199 wanted to speak on behalf of that as, again, a safety concern.

2200  
 2201 I know that the Yarbroughs referenced the nice *Richmond Times-Dispatch* article  
 2202 on their daughter and the one when they first moved into the neighborhood. One  
 2203 thing, after reading that article myself recently, they did, they were living the dream.  
 2204 It's a beautiful property, a beautiful house. I know they did a lot of work to keep the  
 2205 grounds kept up. But there's also some messaging that has changed. I think at  
 2206 one time, the Yarbroughs wanted to embrace the kids over to the horses. This  
 2207 property is surrounded by "No Trespassing" signs. "You're under surveillance." It  
 2208 is not a friendly, warm let's put a blanket down and have a picnic on the hill.



2209  
 2210 I have a lot of fond memories with my brothers and sisters. We skated on Talley's  
 2211 Pond. We went down the hill in the snow. Again, feeding the ducks. We would go  
 2212 over and pet when there used to be one horse. A lot has changed, and the  
 2213 neighborhood is not the same. And so I just want you all to hear the concern. Again  
 2214 a parent, a neighbor, off of Lydell on Jewett Drive. Is this what we want in a  
 2215 residentially zoned neighborhood?

2216  
 2217 Ms. Harris - Okay, Ms. Loving, right?

2218  
 2219 Mrs. Loving - Yes. Mrs. Loving, yes.

2220  
 2221 Ms. Harris - What would you like to see done there?

2222  
 2223 Mrs. Loving - Well I saw the lessons being offered on Facebook. If  
 2224 she's not running a commercial, licensed business . . . my concern is are these  
 2225 licensed lessons that people are getting in the neighborhood? Is she licensed to  
 2226 give lessons? That's my big concern. And I would like to see the trailers—they



2227 cannot keep entering and exiting off of Lydell. A lot of times the trailer has to be  
2228 attached to her truck. And that will stop up Lydell while she's changing and opening  
2229 the gates. How can we expect the kids to remain safe in Rocky Branch Farms  
2230 when this large, enormous trailer is entering and exiting so much? This is on a  
2231 weekly basis. This is not once a quarter.

2232  
2233 Ms. Harris - You know, I don't see this as a zoning case. I really  
2234 don't. Maybe you all are seeing something different. If the trailers are a violation to  
2235 code, you know, something needs to be done about the trailers. That doesn't affect  
2236 zoning. And if the odor is a problem, that's not zoning. That's something they can  
2237 get addressed not through the zoning code, but just through the right to safety and  
2238 the enjoyment of one's neighborhood.

2239  
2240 I don't know. This seems kind of extreme. If those are the concerns, it seems kind  
2241 of extreme that we are here discussing this as a zoning issue. But nevertheless,  
2242 it's here and we must make a decision, and we thank you for coming in.

2243  
2244 Mrs. Loving - Thank you.

2245  
2246 Ms. Harris - Any other questions of board members? Mr. Johnson?

2247  
2248 Mr. Johnson - Yes, one more question. You mentioned about the  
2249 safety when you are biking. Are there just the two trailers that's causing the  
2250 problem, the reason why didn't want to go—

2251  
2252 Mrs. Loving - Correct.

2253  
2254 Mr. Johnson - Just those two trailers?

2255  
2256 Mrs. Loving - Just safety with the kids. A lot of times the gate to the  
2257 horse property from Lydell is left open. I assume it's left open because they've  
2258 taken the horses somewhere. But I keep a pretty good, close—you know, when  
2259 we're on walks and bike rides. But what if a child got up there and the gate's open?  
2260 Again, it's just safety for the kids in the neighborhood.

2261  
2262 Ms. Harris - Okay. Any other questions?

2263  
2264 Mr. Johnson - No.

2265  
2266 Ms. Harris - Thank you so much, Mrs. Loving, for coming in.

2267  
2268 Mrs. Loving - Thank you.

2269  
2270 Ms. Harris - Is there anyone else who wishes to speak to this case?  
2271 Okay, come forward, please. Give us your name, spelling your last name.

2272

2273 Mr. Puccinelli - I guess I'm the villain. Ralph Puccinelli. P as in Paul, u-  
2274 c-c-i-n-e-l-l-i. I appreciate the opportunity to be here before the board, Madam  
2275 Chairman, and all the board members. I think Mr. Newby did a very thorough job  
2276 in his investigation, and as Mike, my attorney, has said, this is not a Puccinelli  
2277 versus Yarbrough situation. They're trying to make you think that's what it is. Mr.  
2278 Bayliss is an outstanding attorney trying to get you to make a "common-sense"  
2279 decision, not based on law. I can't quite understand that coming from an attorney.

2280  
2281 But in any event, I'm going to give you a common-sense response to what  
2282 happened since 1972. I lived it. I was there; my wife was there. We moved in in  
2283 May of 1972. We had five children, and that has grown, as my daughter said. We  
2284 have seven children altogether. We had one born in '73, one born in '78. Twenty-  
2285 one grandchildren. We have a full house on weekends in the backyard. I put in a  
2286 thirty-thousand-dollar swimming pool back in the mid-nineties thinking that we  
2287 could have a lot of enjoyment out of this backyard swimming pool. And come to  
2288 find out, as John mentioned (my son), there's just a terrible odor, aroma, however  
2289 you want to classify it, with the horse manure.

2290  
2291 Again, the horses don't have a latrine. They do it wherever they want to do it. And  
2292 if they do it on their side of the fence—the fence that the Yarbroughs put in in 1987  
2293 and '88—as John mentioned, there was no fence there when we moved in, in '72.  
2294 It was wide open. Mr. Talley was a prince of a man. He had a garden five times as  
2295 big as this room here, and that was his baby. He would do a heck of a job working  
2296 his garden. To my recollection, I don't remember a pony. All I remember is he had  
2297 an old horse—very old. I'm going to say a plow horse. And the horse would work  
2298 maybe two weeks a year, and then he would just kind of sleep under the tree, and  
2299 that's why he lived to be so old I guess.

2300  
2301 But in any event, Mr. Talley would let the kids go through his property to go to  
2302 school, and they would give us vegetables (tomatoes, corn, and all), and it was  
2303 just a great relationship. It was a neighborhood we wanted to live in. When we  
2304 were looking for houses to move to, knowing that we had five children and maybe  
2305 a few more coming, we wanted to have a quiet, residential setting and  
2306 environment. And we wanted a dead end. There's a dead end right in front of our  
2307 house to the left, and Lydell is a very nice street. And it comes off of Woodman  
2308 Road, which has gotten more traffic, as all streets have, over the years.

2309  
2310 But it's been very quiet there, except for about a year ago in November of '17 we  
2311 noticed a tremendous increase in activity. It concerned me that we were seeing  
2312 more cars, more trailers. They actually have three trailers. There's two big thirty-  
2313 foot trailers. We don't have this picture up there now. But then you have a small  
2314 eight- or nine-foot trailers. That eight or nine we assume carried maybe one or two  
2315 horses. I would say the big trailers could carry five or six horses. And I have seen  
2316 as many as five or six horses there. Mostly I saw it at the beginning of last  
2317 November there was more activity. And maybe that had something to do with what

2318 my daughter saw as far as that advertisement. That they were getting more people  
2319 coming by to ride the horses or whatever.

2320  
2321 But in any event, it's been a good experience for us over the years. Mr. Yarbrough  
2322 and I, we would speak maybe once or twice every five or six years. We had a very  
2323 quiet relationship. Some neighbors just do that. We've got relationships with other  
2324 neighbors on our street where we intermingle with them quite a bit and we do a lot  
2325 of going to dinner with them and those types of activities.

2326  
2327 But I think what we've got to understand here from a common-sense standpoint:  
2328 when I'm out there on a Sunday afternoon and I've got this aroma coming with a  
2329 southerly wind to the point where we have had to go in the house. We've got  
2330 twenty-one grandkids and we have all these other children and in-laws and what  
2331 have you. We would have to go in the house to get out of some of the problems.  
2332 Not just the horse aroma, but with the flies. The horses must bring hundreds of  
2333 flies out in the summertime, and it's just very difficult to enjoy your entertainment,  
2334 whether it's family or friends of what have you.

2335  
2336 So the common-sense approach to this is—and Mary and I would invite each one  
2337 of you to come over on Sunday afternoon and see for yourself what we have  
2338 experienced. As John mentioned, it's very aggravating at times when you have  
2339 those situations present themselves. The answer to some extent would be like  
2340 what Mary Kathleen said. As far as the traffic—there has been a tremendous  
2341 increase in traffic going up and down Lydell Drive. They have a driveway right off  
2342 Woodman Road. Why can't they take the horse trailers up and down the driveway  
2343 and go to the back of the property where the horse barn is now? And, again, there  
2344 was no barn in 1972. That was a shed, just like John said. They had a shed where  
2345 Mr. Talley kept his lawnmower, his various farming equipment, gardening  
2346 equipment, and that's about all he had was just a—in the old days, it wasn't Lowes.  
2347 It was one of those hardware store—you know, those types of sheds. That's all he  
2348 had.

2349  
2350 So I don't know what kind of horse farm they had back in the sixties or seventies.  
2351 I never saw it. Again, we moved in in '72, and we've been there ever since, and  
2352 we've been there forty-six years. We've seen the Talleys during their years. We've  
2353 been there with the Yarbroughs. We've been there with one of our neighbors next  
2354 to us on the right—they've been there forty years with us, and we've lived in perfect  
2355 harmony.

2356  
2357 But, again, due to this increase in activity that we noticed about a year ago—as  
2358 Mike Rothermel stated, we felt we needed to get an answer from Henrico County  
2359 as to whether they were within their bounds of the zoning laws. Again, the zoning  
2360 laws for me are very necessary, and to some extent you have the zoning laws on  
2361 the books to keep neighbors from having problems with smells and traffic problems  
2362 and what have you, for the safety of not just the children, but the adults.

2363

2364 So in your deliberations—and you've got a very responsible decision to make in  
2365 this case, as you do with all your cases. But you need to think of the neighbors not  
2366 being the villains that we have been depicted as being. Again, when they first  
2367 moved in, in '87, they had one maybe two horses at the most, and in the last five  
2368 or six months I've seen as many as five or six horses over there on the property.  
2369 And we're at the tip of their backyard. We're maybe twenty yards from the fence,  
2370 and the horses come up to the fence. And the horses come up there and they take  
2371 care of their business, whatever that might be. That's where some of the major  
2372 problems lie as far as the aroma, the smell that attaches to that.

2373  
2374 So you've got to bear the situation in mind. There are seventeen neighbors, as I  
2375 understand it, who are affected by that 400-foot restriction that Mr. Newby very  
2376 thoroughly analyzed for you. And, again, I think there are good reasons why you  
2377 are evaluating this, because you are the zoning board, and it's those requirements  
2378 that we feel are in violation here, and they have been cited by Henrico County.

2379  
2380 I certainly would be happy to answer any questions that you might have in any  
2381 regard.

2382

2383 Ms. Harris - Mr. Green?

2384

2385 Mr. Green - I certainly don't perceive you or your family as villains.  
2386 I just perceive you all as concerned—

2387

2388 Mr. Puccinelli - Thank you.

2389

2390 Mr. Green - —citizens. So please don't think that. I don't think any  
2391 of us will perceive you as villains in this issue. I think you've raised a legitimate  
2392 concern. You want an answer, and we're here to deliberate that.

2393

2394 Mr. Puccinelli - Well, thank you.

2395

2396 Mr. Green - But please don't think that—I'm going to be as  
2397 objective looking at you as I am them.

2398

2399 Mr. Puccinelli - That's all I can ask for.

2400

2401 Mr. Green - I hope you can trust that.

2402

2403 Mr. Puccinelli - All right. Thank you, sir. Anything else? Yes, sir?

2404

2405 Mr. Johnson - Yes. You mentioned about the traffic increase. I know  
2406 this has been mentioned a couple of times. When you're referring to a traffic  
2407 increase, are you referring to those trailers going in and out more often, or more  
2408 vehicles are coming in and out?

2409

2410 Mr. Puccinelli - Yes, that's a good question. The traffic increase I  
2411 started seeing about a year ago had to do with both: the trailers and then the  
2412 automobiles coming up to watch the children riding the horses. But the worry to  
2413 me is as a father, grandfather—not just for my grandchildren, but for all the children  
2414 in the neighborhood. We've got these thirty-five-foot trailers, and there are two of  
2415 them. And I can get pictures for you if you need them, and they made a nice little  
2416 comment about how many pictures I take. And the reason I take pictures is if I feel  
2417 there's some harm in the neighborhood to any citizens—seniors, children,  
2418 whatever—I feel I have a responsibility there.

2419  
2420 But there are two thirty-five-foot trailers, and then there's that one small little one  
2421 that you saw in the picture a little while ago. I'd say it's an eight- or ten-foot trailer.  
2422 And the activity of those trailers—where it used to be, to my knowledge and my  
2423 recollection, once or twice a week. In the recent five or six months, it seems like  
2424 it's five or six times a week that they're coming or going. And I have no idea what  
2425 they're doing, but that's for them to figure out, you know, explain. But there's been  
2426 an increase in the trailer.

2427  
2428 And, again, a big trailer like that going twenty-five or thirty miles an hour on a  
2429 residential street, to me, is a tremendous risk for the county of Henrico, as far as  
2430 any accidents or any incidents or anything happening in that regard.

2431  
2432 Ms. Harris - Mr. Puccinelli, since the law allows three horses, would  
2433 you be okay if the horses were reduced to three?

2434  
2435 Mr. Puccinelli - Again, I don't know ... that's going to cut down on the  
2436 smell factor, but I don't know if that's going to cut down on the use of the trailers.  
2437 To me, one of the big issues here for the county of Henrico, is all this activity by  
2438 these big, I'm going to say commercial-type vehicles in a residential neighborhood.

2439  
2440 Ms. Harris - Yes. When it comes to trailers, in all neighbors all  
2441 across the country (city too), if we have problems with trailers in our neighborhood,  
2442 you don't come before the zoning board to resolve that problem.

2443  
2444 Mr. Puccinelli - I understand, I understand.

2445  
2446 Ms. Harris - Okay. Another question. I think the Yarbroughs have  
2447 already said that they are not going to use the horses for commercial purposes. If  
2448 they honored that, would you be satisfied with that?

2449  
2450 Mr. Puccinelli - I would be satisfied if I saw a reduction in the activity of  
2451 the trailers and a reduction in the—either they take care of the horse manure and  
2452 take it somewhere to the back of the property, but take it off the land that's maybe  
2453 twenty yards away from where I sit outside when I'm in my backyard. To me, that's  
2454 offensive. And if we could have a reduction to the volume of the trailer activity and  
2455 the reduction in the horses, it would cut down naturally on the manure situation.



2456 I'm not going to be very acceptable to anything at this point because I think the  
 2457 County—as my attorney has mentioned, it's not really Puccinelli. It's Henrico  
 2458 County versus the Yarbroughs. I have no say in this thing one way or the other,  
 2459 other than to bring it to the attention of the County, and the County did a very  
 2460 thorough investigation. It would seem to me that the County is the one that has to  
 2461 make that determination.

2462  
 2463 Ms. Harris - Yes. Any more questions? Thank you so very much.

2464  
 2465 Mr. Puccinelli - Thank you.

2466  
 2467 Mr. Green - Thank you.

2468  
 2469 Ms. Harris - Is there anyone else who wishes to speak to this case?  
 2470 Please come forward and state your name. We have two more people? I did  
 2471 recognize . . .

2472  
 2473 Ms. Colbert - Hi, I'm Laurie Colbert. I didn't plan to speak today, so I  
 2474 didn't swear in earlier, if you'd like to do it.

2475  
 2476 Mr. Blankinship - Do you swear the testimony you're about to give is the  
 2477 truth, the whole truth, and nothing but the truth, so help you God?



2478  
 2479 Ms. Colbert - Yes, I do. I'd like to say that my daughter Belle races  
 2480 with Melinda. She's been a huge influence to her. I'm sorry, I'm emotional about  
 2481 this, because it seems like a personal attack. The horse trailers, I have to say as  
 2482 a person who can tell you, there are two shows in the winter. So I'm not sure about  
 2483 the heavy activity from November. I know personally from talking to Melinda, she  
 2484 doesn't go in and out during the winter. We give our athletes off, just like any athlete  
 2485 has to have off. Pretty much there's a show in November and a show in December.  
 2486 We're mostly gone I would say from May until about now every weekend. So I'm  
 2487 not sure about the high activity on the weekend when they would have their Sunday  
 2488 dinners. She should probably be coming in around midnight. I wouldn't think  
 2489 grandkids would still be at somebody's house at midnight, but it's possible.

2490  
 2491 I just wanted to tell you. And I've been over there several times. My daughter Joy  
 2492 is going to ride over there. She looks up to Melinda. We have once taken a horse  
 2493 over there. That's it. Or she will come to our facility. We are not paying to go there.  
 2494 We have never paid to go there. I have tipped her when she comes to my house,  
 2495 to pay for the gas. But it's just somebody that has a very positive influence on  
 2496 young people, and I would be honored to have them as neighbors because they  
 2497 keep their property up so nice.

2498  
 2499 I've been to horse facilities where it's really bad. I have never once smelled manure  
 2500 at their house. I don't even know where they dump it. I have been there in the dead  
 2501 of summer. So I would invite you to go out in August on a hot, muggy day, and you



2502 would see for yourself there's no smell of manure there. I don't know how they do  
2503 it, but I've never experienced it.  
2504  
2505 Ms. Harris - Miss Colbert, you were speaking on behalf of the  
2506 Yarbroughs, right?  
2507  
2508 Ms. Colbert - Yes, ma'am.  
2509  
2510 Ms. Harris - Okay, we had not completed the discussion for the—  
2511 well, the reverse side. But nevertheless, we've heard you.  
2512  
2513 Ms. Colbert - Okay.  
2514  
2515 Ms. Harris - Any questions? Okay, thank you so much.  
2516  
2517 Ms. Colbert - Thank you.  
2518  
2519 Ms. Harris - We will have a rebuttal. The County attorney will give  
2520 the rebuttal. So maybe you'll hear the points that you would make. Okay, I think  
2521 we're ready to hear the rebuttal now, are we not?  
2522  
2523 Mr. Blankinship - Do you have anything else to offer?  
2524  
2525 Mr. Newby - Madam Chair and Mr. Secretary, is it the County  
2526 attorney who gives the rebuttal? I thought the Yarbroughs had an opportunity. I'm  
2527 more than happy to speak—  
2528  
2529 Mr. Blankinship - Appeals are a little different from other applications.  
2530  
2531 Ms. Harris - If there's a point that the Yarbroughs would like to make  
2532 to rebut what has been said, whoever is in good stead enough to bring forth that,  
2533 that's what we need to hear.  
2534  
2535 Male - Yes, ma'am, and I'd be happy to answer any questions,  
2536 but I do believe Mr. Bayliss gets a word.  
2537  
2538 Ms. Harris - Okay, Attorney Bayliss.  
2539  
2540 Mr. Bayliss - I think this was read in the beginning. There's only one  
2541 rebuttal, and you guys have been here a long time, and I don't want to make but  
2542 two or three points in our rebuttal.  
2543  
2544 Mr. Bayliss - I think this was read in the beginning. There's only one  
2545 rebuttal, and you guys have been here a long time, and I don't want to make but  
2546 two or three points in our rebuttal.  
2547

2548 First of all, let there be no mistake. The Yarbroughs understand, and the way Mr.  
2549 Newby has presented this, I think we're all in agreement, the Yarbroughs are not  
2550 allowed to use this for commercial purposes. So that's not an issue. And if they are  
2551 using it for commercial purposes, which I don't think there's any evidence that they  
2552 are, then they shouldn't be. So as a point of rebuttal, they understand they  
2553 shouldn't. I don't believe there's any evidence that they are. And that is not an  
2554 issue as far as I'm concerned. That's the first point I want to make.

2555  
2556 The second point I want to make—and I don't mean to—villain is the wrong word.  
2557 I think it was Mr. Puccinelli that said, "I'm the villain." The only point I'm making as  
2558 far as that, and it's unfortunate. I wouldn't have a job if everybody got along. So, I  
2559 mean, there's a problem in the neighborhood, and that's not good. But I'm not  
2560 saying he's a villain. He's got a right to file whatever actions he's filed, and he's got  
2561 a right to complain if he wants to complain. And the action that he's filed that deals  
2562 with the properties in the circuit court of Henrico County. But you didn't hear  
2563 anything from anybody—and Mr. Puccinelli said it. So the second point I want to  
2564 make: I have read the record. I've talked to the Yarbroughs. This is the first time  
2565 I've ever heard anything about excess traffic. It's the first time I've ever heard  
2566 anything about a problem with the trailers. It's the first time I've ever heard anything  
2567 about manure and smell. And the County sent notice out to seventeen different  
2568 property owners, and the only person you've heard from—somebody asked are  
2569 there a number of complaints, and you heard me say I don't believe there are any  
2570 in the file. And I don't know if we'll hear any today. The only complainants you've  
2571 heard from are the Puccinellis. Seventeen different property owners. Sixteen of  
2572 them didn't show up and complain. So that's the second point I want to make.

2573  
2574 The third point I want to make is a legal issue, and there are really two legal issues  
2575 here. And I'll address both of them quickly. Again, I think there's a misread of the  
2576 horse ordinance, 20-10(b). There's been a fixation on you can't have more than  
2577 three horses. Let me read this sentence to you again so we all understand. I don't  
2578 agree with Mr. Newby on this.

2579  
2580 "Any private stable or enclosure for the keeping of not more than three horses  
2581 and/or ponies for personal enjoyment, and not as a business, shall be distant at  
2582 least four hundred feet from any dwelling in any residence district, and two hundred  
2583 feet from any other dwelling."

2584  
2585 That doesn't limit the number of horses. That's a distance restriction. And what it  
2586 says—if there is a structure of not more than three horses, it can't be any closer  
2587 than what it says. That doesn't create a legal conclusion that you can only have  
2588 three horses out there. So that's the third point I want to make.

2589  
2590 And the last point I want to make, and it's somewhat in response to your question,  
2591 Mr. Green, that you've asked, and the statement you made regarding the BZA and  
2592 what's their purpose. This isn't a court of law, but I'll tell you what. If it was a court  
2593 of law, this case would be over a long time ago. You heard evidence from Mrs.

2594 Yarbrough that in 2014, Mr. Atkins called and told them about an investigation  
2595 about this very same issue. And you heard them say that Mr. Atkins then called  
2596 and said there is not going to be any problem; we have determined you are a legal  
2597 nonconforming use. In a court of law that's *res judicata*. It's over. The County  
2598 determined the same issue in dealing with the same issue, and you've heard no  
2599 testimony to contradict that. That it was a legal nonconforming use in 2014. Well if  
2600 it was in 2014, it certainly is in 2018. And that's the last point I'll make.

2601

2602 Mr. Green - A question on that. Typically when counties and folks  
2603 send out information, they do it in writing so they can have documentation of what  
2604 they've done. And just to say someone made a phone call, that could be interpreted  
2605 any way. I'm looking for the letter, the evidence, the facts, on the first thing.

2606

2607 And the second thing. While you may have multiple horses, as you say, on a piece  
2608 of property. I remember a case we heard several months ago. There was an  
2609 abundance of cats, and the waste from the cats (as little as a cat is) caused a  
2610 problem. And, you know, I have no reason to not believe Mr. Puccinelli. I am  
2611 concerned that horses, cats, dogs—you know, do their business where they do  
2612 their business. And for his enjoyment of his backyard, since it's so close, can you  
2613 address how is that waste handled so they don't have to deal with it? You can have  
2614 ten horses, but if ten horses decide that they're going to go within a hundred yards  
2615 of where he lives, then that could be problematic and create a smell for his side,  
2616 but it may not be for somebody else's side.

2617

2618 And I go back to the point of, if in fact the County made that determination, then  
2619 where's the evidence?

2620

2621 Mr. Bayliss - Okay. Let me answer the first one. I'll let Ms. Yarbrough  
2622 answer how she deals with the manure out there. We asked the County to produce  
2623 everything relating to the 2014 investigation pursuant to the Freedom of  
2624 Information Act, and Mr. Newby indicated that that is privileged and they would not  
2625 produce it to me. So I don't know. I asked for it. All I know is what—and I didn't feel  
2626 it was appropriate for me to call Mr. Atkins myself, because he was represented  
2627 by the County Attorney's office. I was told by Mrs. Yarbrough what she said, that  
2628 he told her. And I haven't heard anything to contradict it. It was in our papers that  
2629 we filed in the beginning, so this doesn't come as a surprise to the County, but I  
2630 don't have those papers.

2631

2632 [Mr. Green left the dais]

2633

2634 Ms. Harris - Okay, we apologize for the delay. It should be over  
2635 shortly. Do you remember the point you were trying to make? Do you remember  
2636 the point?

2637

2638 Mr. Green - Excuse me. That was my father who's been in the  
2639 hospital, so I had to take that call.

2640

2641 Mr. Bayliss - I'm sorry. I thought you were mad at me. No, the only  
2642 point I want to make is—while you were out. There was a letter from Mr. Atkins  
2643 indicated to Mr. and Mrs. Yarbrough that there was going to be an investigation.  
2644 And then there was a call where he advised her that we're not going any further;  
2645 we've determined there's a legal nonconforming use. So that's all I know about  
2646 that. You've heard what I've asked the County to give me. And there are good  
2647 reasons Mr. Newby has for not giving it, as far as it being privileged and whatever.  
2648 But I haven't seen the files. And I would like Mrs. Yarbrough to answer your  
2649 question as it relates to the disposition of the manure.

2650

2651 Mrs. Yarbrough - Every day the manure is picked up in the fields and  
2652 paddocks. Every day it is put in a big container. It's called a manure spreader. And  
2653 my daughter takes twenty-five-pound bags of lime, and she puts it in with the  
2654 manure and the shavings or anything that we pick up from the horses, and it is  
2655 taken out to a compost pile on our property. Once it cures—and there's no smell  
2656 once it cures—we use it for fertilizer. We use it back on our property, front and  
2657 back, for fertilizer. And any of the property—and I don't know how to show you  
2658 here. ... Okay, all right. I got you. Okay. Here is the property line right here. There  
2659 is a paddock here like this, and that's where Melinda's horse trailers are. There are  
2660 no horses in there. You don't put horses in the trailers, okay? The paddocks are  
2661 over here on this side of the property. Here is Mr. Puccinelli's house. And there's  
2662 only one horse, maybe for the afternoon, because she alternates. One horse is in  
2663 the—she can stretch out and walk around, maybe a couple of times, three times a  
2664 day. It's picked up. It's always picked up. There has never been a problem with  
2665 odor.

2666

2667 As far as the flies, this has been the most horrific summer for wetness and flies in  
2668 the history of Henrico County. It's not caused by poop from our horses. Here is his  
2669 grill in the backyard right there. There's no way he could have any odor. Judge  
2670 Harris lives right here. He's never complained. The Halls live right here. They've  
2671 never complained. You've got the Zachariases, the Pattersons, the Carters, all  
2672 these people. They are closer to it than Mr. Puccinelli's house is, and they've never  
2673 had a complaint.

2674

2675 And if he did have a problem with it, why didn't he come to us? Why didn't he come  
2676 to us and say, "Hey, Carmen, Randy. We're smelling something; what's going on?"  
2677 Or, "Carmen, Randy—"

2678

2679 Mr. Blankinship - You've answered the question.

2680

2681 Ms. Harris - Mrs. Yarbrough, where is the compost?

2682

2683 Mrs. Yarbrough - The compost pile is right here.

2684

2685 Ms. Harris - Okay. And why do you have so many trailers?

2686

2687 Mrs. Yarbrough - She has a six-horse trailer because she goes on—like  
2688 the world championships is ten days. So she's got living quarters in that one. Her  
2689 girlfriend Danni drives over to the house with her two horses. She loads her horses  
2690 onto the six-horse trailer that Melinda has, and that's six horses. They share the  
2691 expense for travel and camping for ten days. Danni leaves her trailer—her smaller  
2692 trailer—at our place when they're gone. And this happens maybe twice a year. It's  
2693 going to happen again on the week after next when they go to Asheville for the big  
2694 finals in Asheville, North Carolina.

2695

2696 Ms. Harris - Okay, I hate to interrupt. But what I want to find out is  
2697 can you see where that might be safety hazard if someone is riding a bike down  
2698 that street?

2699

2700 Mrs. Yarbrough - No, because it's a dead-end street. Right, here's the  
2701 gate.

2702

2703 Ms. Harris - Okay, that's okay. You said no. I think we'll accept that.  
2704 Okay. Any other questions. Thank you so very much. And I believe that concludes  
2705 that particular case. Next case.

2706

2707 **[After the conclusion of the public hearings, the Board discussed the case**  
2708 **and made its decision. This portion of the transcript is included here for**  
2709 **convenience of reference.]**

2710

2711 Ms. Harris - The first appeal was 00002. What is the pleasure of the  
2712 Board? Move to either support or disaffirm the decision from the director...

2713

2714 Mr. Bell - Madam Chair, I respectfully move that we do not  
2715 uphold the interpretation of the county director on this particular one because we  
2716 had a description from 1955 up to the present. So basically two owners owning  
2717 this establishment. And from them, dates and information was received. But  
2718 anything backing up those dates and information was shady. Then we got what  
2719 the County told us what changed each time there was a sale of the property, which  
2720 was only two. And some of that we had questions about. The land was well kept  
2721 and apparently has been well kept during that whole period, from what they say. I  
2722 can't say I'm familiar with the area other than just riding by it and going down  
2723 Woodman Road from Parham to Lakeside. During the summer time, and the winter  
2724 time ice skating and what not, it seems to be used when the Talleys had it.  
2725 Therefore, I think it's a special piece of property for the area and we should keep  
2726 it.

2727

2728 Mr. Johnson - Second.

2729

2730 Ms. Harris - It's been moved and properly seconded that we will not  
2731 withhold the decision from the director. Is there any discussion on this motion?

2732 Okay. All in favor of not withholding the decision—or disaffirming. Let’s say  
2733 disaffirming the decision of the director please say aye. Those opposed say no.  
2734 Okay, this motion is carried. We disaffirmed that decision.

2735  
2736 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
2737 Negative: 0  
2738 Absent: 0

2739  
2740 **[At this point, the transcript continues with the public hearing on the next**  
2741 **case.]**

2742  
2743 **APL2018-00005 ROBERT AND GAIL SHORT** appeal a decision of the  
2744 director of planning pursuant to Section 24-116(a) of the County Code regarding  
2745 the property at 2313 New Berne Rd (BRYAN PARKWAY) (Parcel 780-744-4455)  
2746 zoned One-Family Residential District (R-4) (Brookland).

2747  
2748 Mr. Blankinship - Would everyone who intends to speak to case number  
2749 5, the New Berne case, please stand and raise your right hand? Do you swear the  
2750 testimony you are about to give is the truth, the whole truth, and nothing but the  
2751 truth, so help you God?

2752  
2753 Mr. Newby - Thank you very much madam Chair, members of the  
2754 Board. It has been a long morning, pardon me. This is a quick presentation on the  
2755 appeal of Gail and Robert Short. Again, I am Andrew Newby, Assistant County  
2756 Attorney, and I represent the director of Planning.

2757  
2758 In this case we received a complaint about short-term rentals at the Shorts’  
2759 property. The zoning inspector investigated the complaint and issued a notice of  
2760 violation because short-term rentals are not allowed in the R-4 district. The legal  
2761 question presented by the this case: the zoning inspector is correct, they are not  
2762 allowed in the R-4 district. I have to point out from the get-go this is an identical  
2763 question to the question asked in the appeal of Michelle Slapshak, decided by the  
2764 Board of Zoning Appeals on January 25, 2018, when this Board determined that  
2765 short-term rentals are not allowed in the R-4 district. So this will sound very familiar  
2766 to those on the Board at that time. The key facts, in fact, are exactly the same as  
2767 in the previous case. The property is zoned R-4 and includes a one-family dwelling.  
2768 It is uncontested that it has been rented on a short-term basis in exchange for  
2769 money. I believe the platform is Airbnb.

2770  
2771 Key Virginia law here is 15.2-983, that’s the law that went into effect in 2017. It  
2772 specifically said localities can regulate short-term rentals through zoning. It then  
2773 defined “short-term rental.” That’s the definition that is key here, it’s a very simple  
2774 definition. Renting of a room or a house for 30 days or less in exchange for  
2775 compensation is a short-term rental, and that absolutely may be regulated under  
2776 zoning in Virginia as of July 1, 2017. Short-term rental in the statute is distinguished  
2777 from other uses like bed and breakfasts, which are different.

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What is the key Henrico law? The basic premise is this: 24-6 says you can use your property as allowed in a certain district, and not for any other purpose. So when we decide what is allowed in the R-4 district all we have to do look at the uses that are expressly allowed in 24-11, 24-12, 24-12.1, and 24-13. If short-term rental is allowed, then they can do it. If it's not allowed there, then because of 24-6, it cannot be done.

So, what are the principal uses allowed in the R-4 district? One-family dwellings, there's a picture of the house, that's a one-family dwelling. That's the principal use. There is no provision as a principal use for short-term rental businesses in the R-4 district.

Conditional uses, same thing. I just went through, I looked at every conditional use that can be allowed in that district, short-term rental business is not listed. Take a step back and that should not be surprising: these are fairly new businesses, this is a fairly new 2017 law. You'll hear at the very end of my presentation but I will get to it now, the Planning Commission has before it a proposed ordinance that would allow short-term rentals subject to regulations and going through a public hearing process. But the *status quo* right now is they are not allowed in Henrico County.

So going again after conditional uses to provisional uses, there you see that you can go to the Board of Supervisors and operate a bed and breakfast home. That's different from a short-term rental under state law and local law. There is no provisional use for short-term rental businesses.

It is also an accessory use, potentially. We would have to look to see if it was customarily incidental. There we see a list of examples of what is an accessory use to a one-family dwelling: parking garages, parking areas, stables as we just heard in the last case, is an accessory use. Guesthouses for nonpaying guests, the keeping of roomers or boarders, those are allowed, but there is no provision for short-term rental businesses. And I should point out, as I did the last time I presented this, that roomers and boarders are specifically defined in the County ordinance, and it is not the same as a short-term rental business.

So the legal conclusion is very straightforward: it is not allowed right now. On the next slide, I would want to point out that the attorney for the Shorts has raised two cases from the Virginia Supreme Court. And he is right to raise them, but I don't think they apply. *Scott v. Walker* is not a zoning case, that's the first case he cited. It's actually a case about a private restrictive covenant forbidding any uses other than residential uses in a community. We don't need to look through the law of private restrictive covenants. We are dealing with the zoning ordinance, we have a specific state law and specific county law on point, and we don't need to reach to this other case. If this were the board of a homeowner's association it would be very relevant, but this is not, this is a zoning case.

2824 The other case mentioned is also a very interesting case, but again, it is not a  
2825 zoning case. It is very recent, it was actually just earlier this month, October 4. It  
2826 involved a slip-and-fall at a one-week rental in Virginia Beach, you know, when you  
2827 get a beach home for the summer. But again the court wasn't looking at zoning  
2828 law, there is no mention of the statutes at issue here. It's a case about a slip-and-  
2829 fall and the proper relationship between a renter and guest there, so very different  
2830 area of the law.

2831  
2832 Neither case is applicable here, all you need to do is look at state and local  
2833 ordinance to decide this case. And, I should argue, your previous decision in the  
2834 Slapshak case, while not binding, should be very persuasive that we've already  
2835 looked at this and decided this earlier this year.

2836  
2837 So what does the future hold? Again, the Planning Commission continues to study  
2838 proposed amendments to the zoning ordinance to allow and regulate short-term  
2839 rentals. I can tell you that public reaction has been mixed so far. Some people just  
2840 say no, never, don't do it. Some people think it could be done and regulated. We  
2841 will let the legislative process play out. The next public hearing for those interested  
2842 is January 10, 2019. That concludes my presentation.

2843  
2844 Ms. Harris - Questions for the attorney? Do you think once the  
2845 Planning Commission makes a decision, that these cases will be retroactive?

2846  
2847 Mr. Newby - Once the new law goes into effect... the Planning  
2848 Commission would make a decision and recommend to the Board of Supervisors.  
2849 If the Board of Supervisors were then to adopt an ordinance allowing short-term  
2850 rentals, yes, anyone could go and operate a short-term rental. I believe that  
2851 answers your question.

2852  
2853 Ms. Harris - Even if the case had been decided otherwise.

2854  
2855 Mr. Newby - Correct. This would not foreclose a future use if a new  
2856 law allows it.

2857  
2858 Ms. Moore - Under the provisions of that new law. They may add  
2859 conditions to those.

2860  
2861 Ms. Harris - Yes. Other questions of Mr. Newby? Thank you so very  
2862 much.

2863  
2864 Mr. Blankinship - Madam Chair, let me just point out we received several  
2865 emails last night after close of business which I have printed out and distributed to  
2866 you, all from neighbors in the area who are in opposition to this use.

2867  
2868 Ms. Harris - Anyone else speaking to this case? Let us have your  
2869 name, please, sir.

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Mr. Foster - Good afternoon, Scott Foster, I'm an attorney with Tarley Robinson in Williamsburg. I'll do my best to be brief. With respect, I represent Robert and Gail Short. Mr. and Mrs. Short do operate a short-term rental at the home at 2313 New Berne Road. The violation issued by Henrico County to Mr. Short stated that "allowing short-term rentals to paying guests is not a permitted use within the R-4 district." I submit to the Board that the planning director is mistaken in his determination that the occupants of Mr. Short's home are in fact guest. The correct classification is instead that the occupants are tenants and the Shorts are landlords. The Virginia Supreme Court supports this classification having found on several occasions that short-term rentals are governed by residential leasing principles. I think we can all agree that residential leasing of a one-family dwelling is a permitted use within the R-4 district.

In *Scott v Walker*, the Virginia Supreme Court found that short-term rental did not run afoul of a private covenant within a community association that limited the use of a home to residential purposes. Which, said another way, means short-term rental is residential use, not a commercial use.

Supplementing that analysis, is *Haynes-Garrett v Dunn*, which was decided since the state law changed on short-term rentals. That case found based on a variety of factors that the nature of a short-term rental agreement between the owner of the residence and the occupants is that of a landlord and tenant, not of an innkeeper and guest. The characteristics of that rental agreement are almost identical to the situation at hand: the landlord provides no maid service, food service, or room service; the landlord screens all applicants, renting to no one under the age of 25; the landlord specifically states that there are to be no parties; and most important to the analysis in *Haynes-Garrett*, the tenants are entitled to exclusive possession and control of the property during the time they are in the house.

I have a copy of the document Mr. Short uses when leasing the property to submit for inclusion in the record. If you will review it, you will find that the various provisions I've outlined, and others that parallel the *Haynes-Garrett* case.

In conclusion, the Supreme Court makes it clear that the Shorts are simply landlords, and the occupants of 2313 New Berne Road are tenants. The rental of this property on a short-term basis is consistent with the use of property, leasing as a one-family dwelling, in the R-4 zoning district.

If you don't mind if I respond to the County Attorney now? To respond that the state has empowered localities to regulate short-term rentals, absolutely no contest to that. But based on the language of your existing code today, you do not effectively distinguish short-term rentals. I'll point out the definition of a one-family dwelling. Excuse me: those uses permitted in R-4, Section 24-11(a), "One family dwellings, to include assisted living facilities and group homes when located in

2916 one-family dwellings.” The definition of one-family dwelling: “a detached dwelling  
2917 or occupied by one family when situated on a lot or premises, serving as the  
2918 principal use of that lot or premises.” According to the language of the definition of  
2919 a one-family dwelling, that is exactly what Mr. Short has on that property. I will be  
2920 happy to take any questions you all have.

2921

2922 Ms. Harris - Any questions for Attorney Foster? Do we have anyone  
2923 who want to speak to this particular case?

2924

2925 Mr. Lowry - Thank you for the privilege of speaking to this illustrious  
2926 group. This is my first shot. I’m just a plain ol’ country boy. My name is Collis Lowry,  
2927 L-o-w-r-y. I live at 2310 New Berne Road, in Bryan Parkway. I’ve been living there  
2928 since 1951, bought the house there in 1951, been there every year since, paid all  
2929 my taxes and paid all my bills. I usually had one of your cohorts, Dick Glover, did  
2930 my speaking for me. If there was anything I was concerned about in my  
2931 neighborhood I could call up Dick, and I could rest assured it was taken care of.

2932

2933 Bryan Parkway, as some of you may know, or all of you may know, that was the  
2934 crown jewel at one point, when it first started. We’ve had some ups and downs,  
2935 but it’s still an excellent place to raise a family, to raise children. And it’s coming  
2936 back. It’s coming back, not because of anything I’ve done, but it is. We’ve got a lot  
2937 of young families in that neighborhood now. With little children, a lot of them still in  
2938 their carriages, rolling in their baby carriages. My wife and our neighbors drove  
2939 their babies in carriages up through that section when we were first married, June  
2940 12, 1948. We lived where Franco’s store is. I know all of you know where Franco’s  
2941 Clothier is, on Lakeside Avenue. We lived right there. And they came along and  
2942 built a Safeway store right beside us. And the rest is history – that didn’t last very  
2943 long either. But they came back and bought out where we were living, so we moved  
2944 over to New Berne, just a block and a half away, and we have been there ever  
2945 since.

2946

2947 I don’t like what we see in Lakeside right now. Lakeside Avenue is on a come-  
2948 back. It’s a great community, and we’ve got some great business operators up and  
2949 down Lakeside Avenue. And it’s a place that we can be proud, as a resident and  
2950 as a County. I wasn’t at home this past week. I will tell you this, not for your  
2951 sympathy, but to tell you why I’m here. Like I said, I was a country boy, up in  
2952 Hanover County, up on the North Anna River. That was what we called the  
2953 “boondocks.” Well, I fell off a turnip truck on Lakeside Avenue. Couldn’t find my  
2954 way back home. But anyway, what happened was, I had five sets of aunts and  
2955 uncles living in Lakeside when I was a kid growing up in the 30s. So I had kinfolk  
2956 all over Lakeside. And I loved it. Got married and lived there ever since, got married  
2957 on June 12, 1948. My wife and I celebrated our 70<sup>th</sup> anniversary.

2958

2959 Ms. Harris - Mr. Lowry, congratulations on that point, but are you  
2960 against or for this?

2961

2962 Mr. Lowry - I'm against, I'm totally against operating a business for  
2963 profit in a residential neighborhood.

2964 Mr. Blankinship - How has it affected you, sir?

2966 Mr. Lowry - It has affected me in not knowing what's going in the  
2967 house across the street from me night and day. Multiple cars... at one point we  
2968 had about seven cars, out of state, different places: West Virginia, Maryland, New  
2969 York. Everybody was jockeying for a place to park. Most of the time I park my car  
2970 in the driveway, and I'm wondering if I'm going to be able to get out when I get  
2971 going to get in it.

2972  
2973  
2974 Mr. Blankinship - Are there houses on that street that are rented?

2975  
2976 Mr. Lowry - There are several rental homes on that street, and this  
2977 house that we're speaking about now, I knew the original owners of that property,  
2978 and it has changed several times. It was rented by the first owners, the gentleman  
2979 passed away, and his wife rented it. And then it's been rented a number of times.

2980  
2981 Mr. Blankinship - If a family rented a house and lived in it a year, or two  
2982 years, or three years, is that similar in your mind to this situation? How is it  
2983 different?

2984  
2985 Mr. Lowry - No, absolutely not. Those people had roots there, if  
2986 they were renting it, and had children going to school and all. They were rooted in  
2987 that neighborhood, whether they bought the house or whether they just paid the  
2988 rent.

2989  
2990 Mr. Blankinship - And how is this different?

2991  
2992 Mr. Lowry - This is different because they are in and out, and there  
2993 is so much activity going on. I wasn't at home this past weekend, but I've been told  
2994 by several sources that Henrico County's finest – the police department – were  
2995 called there three times in a row over this past weekend. I'm totally against it, and  
2996 some of the neighbors I've talked with... Like I said I'm not used to coming up here  
2997 and talking to you folks. I envy the opportunity today of being here, but I appreciate  
2998 the fact that you will hear my side of the story.

2999  
3000 Ms. Harris - Thank you so much. Anyone else who wishes to  
3001 speak? Please give us your name.

3002  
3003 Ms. Beamon - Him my name is Gail Beamon, B-e-a-m-o-n. I live at  
3004 2402 New Berne. I was not there this past weekend so I also saw the Facebook  
3005 posts. But I'm speaking from another side: I have another home in an area that is  
3006 heavily inundated with bed and breakfasts, I mean Airbnb. And it's different: people  
3007 have a conception if they rent an Airbnb, they think about how they go, and how

3008 they behave in an Airbnb. But I'm hear to tell you as someone who lives next to an  
3009 Airbnb, it's a whole different ball of wax. And I have suffered from noise, excessive  
3010 parking, drinking, live bands... None of this is permitted. The county comes or the  
3011 city comes out, the police come out, and there are supposed to be six people in  
3012 the home, and there are 15, there are 20, they roll up with their suitcases, all the  
3013 neighbors see them. And yet they lie to the police department. Unless the police  
3014 are willing to stay there and see who's coming, who's going, who's leaving in the  
3015 morning, then it's a farce. And it's hard. And that's why the city, which is Savannah,  
3016 Georgia ... I don't know your supreme court case, but they have really totally  
3017 redesigned their... They let it get away from them. They didn't pay attention. They  
3018 realized they couldn't track it. And it got out of control. So now they have developed  
3019 districts which eliminate ... You have to have a permit to have an Airbnb, and if  
3020 your house doesn't have a permit, if you sell your house, you can't use it as an  
3021 investment property. So from the neighbor's standpoint it is completely different.

3022  
3023 And I had a conversation with the planning board this morning, he said "I rent  
3024 Airbnbs and I pay my luggage fee and enjoy ..." And I said, "maybe you're not the  
3025 hoodlum that I've experienced." And this is for ten years, and I finally raised my  
3026 hand and white flag and we sold, because we couldn't take it anymore. And the  
3027 city did what they could, but it got out of control and now they're trying to get it  
3028 under control. But once that cat's out of the bag, it's really hard to get back in. And  
3029 there are multiple cities where you can look at evidence of how the explosions  
3030 have occurred and people find out... And this is not like somebody renting a  
3031 bedroom in the back. This is now, this has turned into investments for people. So  
3032 it should be viewed as commercial. My question is, are they actually setting up  
3033 proper smoke alarms, and all the things a bed and breakfast and an apartment  
3034 has. Are these people being inspected? And then it truly is a business, and it  
3035 should be a business. And it should be treated that way. And that is not what we  
3036 want for our neighborhood.

3037  
3038 Ms. Harris - Any questions? Thank you. Anyone else to speak to  
3039 this case? Were you sworn in? Come forward, please. Sir, do you wish to speak,  
3040 too? Were you sworn in?

3041  
3042 Ms. Lineberry - Good afternoon, I'm Katrina Lineberry, L-i-n-e-b-e-r-r-  
3043 y. I live at 2314 New Berne Road. Thursday night, my husband was on call, and  
3044 when he came home about 2:45 in the morning, and there was considerable  
3045 activity outside our house. He told me to look out the window and there were cars  
3046 coming and going, looked like they were dropping people off. I saw people walking  
3047 on both sides of the street, up and down the street, and I couldn't figure out what  
3048 was going on. There is a tree kind of blocking my view from the front yard. But he  
3049 was in the car, and he saw people, either they had flashlights looking around in the  
3050 yard, or they had their phone lights, looking around in the yard. We couldn't figure  
3051 out what was going on. But at 3:00 in the morning, nothing good is happening. So  
3052 he called the police. And I would say about ten minutes later the police showed up.  
3053 And he was at this time on the porch in the dark, and I was like, "don't let them see

3054 you, because if it gets out of hand, something may happen." Ten minutes later the  
3055 cops showed up, two cars showed up, and they went into the house, and we heard  
3056 curse words and said it was time to come in, and I came in around the back. The  
3057 cops left, the activity slowed a little bit, it didn't immediately stop. But in the  
3058 commotion my husband had forgot his wallet his wallet in the car. And I didn't want  
3059 him to go out immediately because I was so upset. So I watched the activity for  
3060 about 30 minutes and I said to him after that, "I think it's safe for you to go out and  
3061 get your wallet now." Like I said he was on call, he was tired and fell sleep. He  
3062 woke back up about 4:00 and he wasn't thinking, he went straight out to the car.  
3063 He noticed that one of the lead cars at what we later found out was a party, was  
3064 sitting beside our car, with the headlights shining. And as soon as he started to  
3065 approach our car, that car took off. That's concerning, it's a safety issue.

3066  
3067 We called the police back the next day, and the officer called me back, called us  
3068 back, and said that it was the beginning of the party. The person who had rented  
3069 the house had not even gotten fully into the residence to turn on the lights. He said  
3070 that this is a budding issue on the northside of Richmond, that people are doing  
3071 the Airbnb parties. He said you don't want it in your neighborhood: it will become  
3072 an issue and we will be back out here again. That's why I'm here today, it's a safety  
3073 issue, 3:00 in the morning, a party is starting. You don't know who's around you,  
3074 you don't know if they're around your property or not. I didn't feel it was safe for  
3075 him to be out there, but he was on call, he has to go out at random times in the  
3076 night for medical reasons.

3077  
3078 That was Thursday night. We saw the same--not a party, I want to be truthful, not  
3079 a party starting up--Thursday and Friday around the same time, 2:30, 2:45 in the  
3080 morning, cars coming and going. Not the same level of activity, but still, what's  
3081 going on? As another neighbor mentioned before, a lot of these did have out-of-  
3082 state tags. Every one of them. So what's going on? This is the first time I've seen  
3083 this type of activity on our street like this. I've had to call the police before one other  
3084 time, and that was a little boy a block down was stepping outside and throwing  
3085 water balloons at the cars that went by, again another safety issue.

3086  
3087 So I'm really concerned about safety. I don't want to see my community or  
3088 anybody's else's community go down. It can happen anyway, these houses can  
3089 drop in on anybody at any point, so I want to have my piece heard on this going  
3090 forth.

3091  
3092 Ms. Harris - So Ms. Lineberry, you are opposed to Airbnb?

3093  
3094 Ms. Lineberry - For sure.

3095  
3096 Ms. Harris - And if you heard the attorney say this issue is coming  
3097 before the Planning Commission. You might find out when it's coming before the  
3098 Planning Commission and attend that public hearing too. The other gentleman who  
3099 was coming forward?

3100

3101 Mr. Rea - Thank you for taking the time to speak with me. My  
3102 name is Chris Rea, I reside at 2312 New Berne Road, my last name is spelled R-  
3103 e-a...

3104

3105 Ms. Harris - We have a letter from you I believe.

3106

3107 Mr. Rea - Yes. I'm here to express my opposition to the appeal. I  
3108 have heard the events, the police records are in place, I'm sure. I have never met  
3109 the owners, I have never met the renters, I have met the most recent guests. The  
3110 most recent guests, if that's the sign of the future, I do not want to see it any longer.  
3111 I am strictly opposed. Thank you for your time.

3112

3113 Ms. Harris - Thank you Mr. Rea. Is there anyone else who wishes  
3114 to speak? Do you have any rebuttal?

3115

3116 Mr. Gidley - Madam chair, the appellant has some information he  
3117 has provided that he wants handed out and I've been instructed to hand it out  
3118 before the hearing ends, so I'm going to do that.

3119

3120 Mr. Foster - That is a copy of the lease that Mr. Short uses. I just  
3121 received these emails about the conduct that went on. Mr. Short is good at this, he  
3122 wants to make this work in this neighborhood. Like I said, this is the first I've heard  
3123 of this, and I guarantee you that he wants to hear from the community, and doesn't  
3124 want this type of disturbance to continue. This will be taken care of and his internal  
3125 process adjusted as necessary to best prevent it in the future. You note in the lease  
3126 the provision for the number of vehicles, the license plates on the vehicles, the  
3127 names of the people in the home, specifically a "no party" provision, they have to  
3128 be above 25 years of age. The people were clearly in violation of the lease.

3129

3130 Second, I wanted to point out the extensive renovation Mr. Short did to this  
3131 property. He put a significant amount of money into this to fix it up. The photos are  
3132 actually on homeaway, you are welcome to look at those. It's a nice place. Again,  
3133 if you have any other follow-up questions.

3134

3135 Ms. Harris - Thank you so very much. I think that conclude this  
3136 case, and we will go on to the next.

3137

3138 **[After the conclusion of the public hearings, the Board discussed the case**  
3139 **and made its decision. This portion of the transcript is included here for**  
3140 **convenience of reference.]**

3141

3142 Ms. Harris - The next appellate case is number 5. What is the  
3143 decision? This is the short-term rental, or as we say, the Airbnb.

3144

3145 Mr. Bell - I move that we deny it, how do we say that?

3146  
3147 Ms. Harris - Uphold the notice of violation?  
3148  
3149 Mr. Bell - Yes, that's a tough word to remember. Yes, uphold it  
3150 because I believe there are possibly safety problems, when it comes to situations  
3151 like this, and also I believe we will affect the welfare of people in this particular  
3152 establishment.  
3153  
3154 Ms. Moore - Did I hear that you are opposing the violation?  
3155  
3156 Mr. Bell - No, upholding.  
3157  
3158 Ms. Harris - Is there a second?  
3159  
3160 Mr. Johnson - I second it.  
3161  
3162 Ms. Harris - It's been moved and properly seconded that we uphold  
3163 the notice of violation. Is there any discussion on this particular motion? We know  
3164 that the County Planning Commission and the Board of Supervisors will be looking  
3165 into Airbnbs, but truly they have problems that need to be resolved before we  
3166 approve them for our communities. Any more discussion? All in favor of upholding  
3167 the notice of violation say "aye." Those who are opposed, say "no." The ayes have  
3168 it, and we uphold the notice of violation by the director of planning.  
3169  
3170 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
3171 Negative: 0  
3172 Absent: 0  
3173  
3174 **[At this point, the transcript continues with the public hearing on the next**  
3175 **case.]**  
3176  
3177 Mr. Blankinship - That's all for the appeals this morning, and we have  
3178 one CUP request.  
3179  
3180 **CUP2018-00034 CURLES NECK PROPERTIES, LLC** continuation of a  
3181 conditional use permit pursuant to Sections 24-52(d) and 24-103 of the County  
3182 Code to extract materials from the earth at 4721 Curles Neck Rd (Parcels 833-  
3183 666-1289 and 834-666-2189) zoned Agricultural District (A-1) (Varina).  
3184  
3185 Mr. Blankinship - This is a very unusual hearing, members of the Board.  
3186 This is an application that was approved two years ago but with a condition that  
3187 every two years we would hold a hearing to give the neighbors the opportunity to  
3188 express any concerns. We have not received any concerns from the neighbors,  
3189 and I see that Monte Lewis is here to present the request. Do you swear the  
3190 testimony you are about to give is the truth, the whole truth, and nothing but the  
3191 truth, so help you God?

3192

3193 Mr. Lewis - I do. Good news: no horses, no hotels. As Ben said,  
3194 we got approval two years ago, and it's good for ten years, until 2026. And we  
3195 have secured our wetlands permit and the permits from the State and Public  
3196 Works. So all our permits are in order, we posted our bond with the County, we  
3197 are just here for another reapproval, and if you have any questions I would be glad  
3198 to answer. By the way my name is Monte Lewis, I'm with Lewis and Associates,  
3199 the civil engineer on this job.

3200

3201 Ms. Harris - This site, will there be any height involved, elevation? I  
3202 know that the depth goes down to 60-some feet,

3203

3204 Mr. Lewis - Height?

3205

3206 Mr. Blankinship - At restoration, will it be brought back up to ...

3207

3208 Mr. Lewis - Oh, yes, it's going to be restored. It won't be up to the  
3209 same elevation, because once you take the material out of the ground you don't  
3210 fill it back in. But at the end of the day, it won't be any higher than it is now.

3211

3212 Ms. Harris - Other questions from Board members?

3213

3214 Mr. Johnson - In addition to that, at the final stage, would the elevation  
3215 be brought back to the level as it is?

3216

3217 Mr. Lewis - No, because you're taking material out of the ground.  
3218 There is an overburden of material that is not used, let's say it's 30 feet. They  
3219 move that off to the side to get to the sand. Take the sand out, it's shipped down-  
3220 river. Then the overburden is put back in the hole. So it's always lower than it is  
3221 now. If you drive by there you can see the big, looks like ponds with no outlet. And  
3222 that's what has happened: they've taken material out, and now it's just a lower  
3223 elevation. All those ponds you see are man-made. So that's old mining sites, like  
3224 what you see on the part that's left.

3225

3226 Mr. Johnson - So at the end it will be probably another pond?

3227

3228 Mr. Lewis - That's right. And the plans were approved by the  
3229 County two years ago, and we're just here for renewal, this is a mechanism so if  
3230 there was operation on it and there were any complaints, noise, dust or whatever,  
3231 the Board could address them and take corrective actions. Nothing has happened  
3232 there since two years ago, we just got our permits, the process is not the fastest in  
3233 the world. But it is there.

3234

3235 Mr. Johnson - So the hauling: would everything be done on site?  
3236 Would they have to use public facilities?

3237

3238 Mr. Lewis - Nothing goes out to Route 5. Everything would go out  
3239 to barges on the river, as the previous Vulcan operation was. But it's not the same  
3240 places, the Vulcan operation is down south of this site, just a little bit, on the same  
3241 piece of property. But no trucks on Route 5.

3242  
3243 Mr. Johnson - One other question: there was some activity out there,  
3244 factors that were beyond the applicant's control, that they didn't address  
3245 previously? It says that there were some things that weren't completed?  
3246

3247 Mr. Blankinship - From 2016 to 2017?  
3248

3249 Mr. Lewis - Yes, two years ago there were things that hadn't been  
3250 completed. We didn't have a wetlands permit Corps of Engineers permit, DEQ  
3251 permit. Those have now been secured.  
3252

3253 Ms. Harris - Mr. Lewis, does Curles Neck Properties have mines in  
3254 any other place in Virginia? I was looking at the last sentence of the report, and it  
3255 said "Curles Neck Properties LLC has not had a mine permit revoked in Virginia."  
3256 Has it been revoked anywhere else?  
3257

3258 Mr. Lewis - No, ma'am.  
3259

3260 Ms. Harris - Question about ... We are dealing with 68 acres, but  
3261 the sentence says the area subject to this conditional use permit is approximately  
3262 25.7 acres. So that's the area for ...?  
3263

3264 Mr. Lewis - If you can bring up our plans, Mr. Blankinship? The  
3265 property outlined in yellow is the entire property. As you see we have buffers and  
3266 areas that we're not mining. Where the mansion is, to the left on the screen, we're  
3267 not mining. All those areas that you see kind of like ... they're called cells, they're  
3268 like parallel lines? That's the area of mining. There's an old mine to the south that  
3269 you see that's pond that is not going to be mined because it has already been  
3270 mined. So that's why it is smaller, but the disturbed area is 68 acres.  
3271

3272 Ms. Harris - Any other questions from Board members? Thank you,  
3273 Mr. Lewis. Does anyone else wish to speak to this case? Please call the next case.  
3274

3275 **[After the conclusion of the public hearings, the Board discussed the case**  
3276 **and made its decision. This portion of the transcript is included here for**  
3277 **convenience of reference.]**  
3278

3279 Ms. Harris - CUP2018-00034, Curles Neck Properties. What is the  
3280 pleasure of the Board?  
3281

3282 Mr. Johnson - I motion that we approve the permit. Also the proposal  
3283 is consistent with the purpose of the comprehensive plan and the zoning  
3284 ordinances, and will not have any detrimental impact on surrounding property.

3285  
3286 Ms. Harris - Is there a second?

3287  
3288 Mr. Green - Second.

3289  
3290 Ms. Harris - It's been moved and properly seconded that we  
3291 approve the Curles Neck property conditional use permit. Any discussion?

3292  
3293 Mr. Johnson - Make sure we put in the conditions.

3294  
3295 Mr. Blankinship - The conditions from the previous approval.

3296  
3297 Ms. Harris - Can we add that to the motion?

3298  
3299 Mr. Green - Yes.

3300  
3301 Ms. Harris - It's been moved and properly seconded that we  
3302 approve this conditional use permit. Any further discussion? All in favor of  
3303 approving it say "aye." Those who are opposed, say "no." This conditional use  
3304 permit is approved.

3305  
3306 After an advertised public hearing and on a motion by Mr. Johnson, seconded by  
3307 Mr. Green, the Board approved application CUP2018-00034 CURLES NECK  
3308 PROPERTIES, LLC continuation of a conditional use permit pursuant to Sections  
3309 24-52(d) and 24-103 of the County Code to extract materials from the earth at 4721  
3310 Curles Neck Rd (Parcels 833-666-1289 and 834-666-2189) zoned Agricultural  
3311 District (A-1) (Varina). The Board approved the request subject to the following  
3312 conditions:

3313  
3314 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24  
3315 of the County Code.

3316  
3317 2. Within 180 days of approval, the applicant shall post a financial guaranty in an  
3318 amount of \$216,000, guaranteeing that the land will be restored to a reasonably  
3319 level and drainable condition, consistent with the elevation of the land prior to the  
3320 beginning of excavation. In the event of termination of that financial guaranty, this  
3321 permit shall be void, and excavation shall cease. Within 180 days of termination,  
3322 the applicant shall restore the land as provided for under the conditions of this use  
3323 permit. Termination of such financial guaranty shall not relieve the applicant from  
3324 its obligation to indemnify the County of Henrico for any breach of the conditions  
3325 of this use permit.

3326

- 3327 3. Within 180 days of approval, the applicant shall submit environmental  
3328 compliance plan to the Department of Public Works (DPW) for review and  
3329 approval. The applicant shall continuously satisfy DPW that erosion control  
3330 measures are in accordance with the approved plan and are properly maintained.  
3331 As site conditions change, updated plans and bonds may be required as  
3332 determined by DPW.  
3333
- 3334 4. Within 180 days of approval, the applicant shall obtain a mine license from the  
3335 Virginia Department of Mines, Minerals and Energy.  
3336
- 3337 5. Within 180 days of approval, the areas approved for mining under this permit  
3338 shall be delineated on the ground by five-foot-high metal posts at least five inches  
3339 in diameter and painted in alternate one foot stripes of red and white. These posts  
3340 shall be so located as to clearly define the area in which the mining is permitted.  
3341
- 3342 6. Throughout the life of this permit, the applicant shall comply with the  
3343 Chesapeake Bay Preservation Act and all state and local regulations administered  
3344 under such act applicable to the property, and shall furnish to the Planning  
3345 Department copies of all reports required by such act or regulations.  
3346
- 3347 7. Hours of operation shall be Monday through Friday, 6:00 a.m. to 6:00 p.m. when  
3348 Daylight Saving Time is in effect, and 7:00 a.m. to 5:00 p.m. at all other times.  
3349
- 3350 8. No operations of any kind are to be conducted at the site on Saturdays,  
3351 Sundays, or national holidays.  
3352
- 3353 9. All access to the property shall be from the established entrance onto New  
3354 Market Road or by barge from the James River.  
3355
- 3356 10. The applicant shall maintain gates at the entrance to the property. These gates  
3357 shall be locked at all times, except when authorized representatives of the  
3358 applicant are on the property.  
3359
- 3360 11. The applicant shall post and maintain a sign at the entrance to the mining site  
3361 stating the name of the operator, the use permit number, the mine license number,  
3362 and the telephone number of the operator. The sign shall be 12 square feet in area  
3363 and the letters shall be three inches high.  
3364
- 3365 12. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
3366 along the perimeter of the property. The letters shall be three inches high. The  
3367 applicant shall furnish the Chief of Police a letter authorizing the Division of Police  
3368 to enforce the "No Trespassing" regulations, and agreeing to send a representative  
3369 to testify in court as required or requested by the Division of Police.  
3370

3371 13. All material excavated from the property shall be moved by barge on the James  
3372 River. No trucks hauling material excavated from the property shall travel on New  
3373 Market Road.

3374  
3375 14. All roads used in connection with this use permit shall be effectively treated  
3376 with calcium chloride or other wetting agents to eliminate any dust nuisance.

3377  
3378 15. The applicant shall maintain the property, fences, and roads in a safe and  
3379 secure condition indefinitely, or convert the property to some other safe use.

3380  
3381 16. Within 180 days of approval, and before beginning any work on the site, each  
3382 structure to be demolished shall be documented with an architectural survey and  
3383 photographed, and an archeological survey shall be performed for the 125-acre  
3384 site. The applicant shall provide copies of the resulting documents to the  
3385 Department of Recreation and Parks. If, during excavation, the applicant discovers  
3386 evidence of cultural or historical resources, or an endangered species, or a  
3387 significant habitat, it shall notify appropriate authorities and provide them with an  
3388 opportunity to investigate the site.

3389  
3390 17. If water wells located on surrounding properties are adversely affected, and  
3391 the extraction operations on this site are suspected as the cause, the effected  
3392 property owners may present to the Board evidence that the extraction operation  
3393 is a contributing factor. After a hearing by the Board, this use permit may be  
3394 revoked or suspended, and the operator may be required to correct the problem.

3395  
3396 18. Open and vertical excavations having a depth of 10 feet or more, for a period  
3397 of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect  
3398 the public safety.

3399  
3400 19. Topsoil shall not be removed from any part of the property outside of the area  
3401 in which mining is authorized. Topsoil shall be stockpiled within the authorized  
3402 mining area and provided with adequate erosion control protection. Sufficient  
3403 topsoil shall be stockpiled on the property for respreading in a layer five inches  
3404 deep. If the site does not yield sufficient topsoil, additional topsoil shall be brought  
3405 to the site to provide the required five-inch layer of cover. All topsoil shall be treated  
3406 with a mixture of seed, fertilizer, and lime as recommended by the County after  
3407 soil tests have been provided to the County.

3408  
3409 20. The reclamation of the property shall take place simultaneously with the mining  
3410 process. The final grading of the site shall be consistent with the elevation of the  
3411 land prior to the beginning of excavation as shown on the approved reclamation  
3412 plan. Reclamation shall not be considered completed until the mined area is  
3413 covered completely with permanent vegetation.

3414

3415 21. If it is necessary to bring topsoil or fill material to the site for reclamation, such  
3416 material shall be brought in by barge on the James River. No trucks hauling topsoil  
3417 or fill material to be placed on the property shall travel on New Market Road.  
3418

3419 22. The operator shall submit a quarterly report stating the origin, nature, and  
3420 quantity of any off-site generated material deposited on the site, certifying that no  
3421 hazardous material was included. The material to be deposited on the site shall be  
3422 limited to imperishable materials such as stone, bricks, tile, sand, gravel, soil,  
3423 asphalt, concrete and like materials, and shall not include any hazardous materials  
3424 as defined by the Virginia Hazardous Waste Management Regulations.  
3425

3426 23. A superintendent, who shall be personally familiar with all the terms and  
3427 conditions of Section 24-103 of the County Code, and this use permit, shall be  
3428 present at the beginning and conclusion of operations each work day to see that  
3429 all the conditions of the Code and this use permit are observed.  
3430

3431 24. A progress report shall be submitted to the Board every year on or about  
3432 October 31. This progress report shall include how much land has been mined to  
3433 date of the report, how much land is left to be mined, how much reclamation has  
3434 been performed, when and how the remaining amount of land will be reclaimed,  
3435 and any other pertinent information about the operation that would be helpful to  
3436 the Board.  
3437

3438 25. This permit shall expire October 31, 2026. On or about October 25, 2018;  
3439 October 22, 2020; October 27, 2022; and October 24, 2024; the Board will hold a  
3440 public hearing to consider renewal of this use permit. The permit will be renewed  
3441 in two-year increments unless the Board finds that the applicant is in violation of  
3442 any of these conditions, or that the operation has had a substantial detrimental  
3443 impact on nearby property. Examples of detrimental impacts may include  
3444 excessive noise, excessive traffic, or environmental impacts such as water or air  
3445 pollution.  
3446

3447 26. Reclamation of the property shall be completed within one year of either the  
3448 termination of this permit, or the final cessation of excavation at the property,  
3449 whichever occurs sooner.  
3450

3451 27. Failure to comply with any of the foregoing conditions shall automatically void  
3452 this permit. The Board may revoke this use permit at any time if it finds, after a  
3453 public hearing, that the operator is in violation of any of these conditions, or that  
3454 the operation has had a substantial detrimental impact on nearby property. In the  
3455 event the Board revokes this use permit, the applicant agrees to immediately stop  
3456 all excavation at the property until the Board has issued a notice to resume  
3457 excavation. If the applicant appeals such revocation of this use permit, the  
3458 applicant agrees that all excavation work at the property shall remain stopped until  
3459 such appeal is finally resolved or the Board has issued a notice to resume  
3460 excavation.

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

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

Mr. Blankinship - That is the only conditional use permit. There are four variances on the agenda.

**VAR2018-00017** RVA LAND COMPANY, LLC requests a variance from Section 24-95(b)(8) of the County Code to build a one-family dwelling at 5489 Darbytown Rd (Parcel 844-688-9203) zoned Agricultural District (A-1) (Varina). The lot width requirement is not met. The applicant proposes 80 feet lot width, where the Code requires 150 feet lot width. The applicant requests a variance of 70 feet lot width.

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

Mr. Gidley - Thank you, Mr. Secretary. Good afternoon, members of the Board. The subject property is a 2-acre parcel located off of Darbytown Road. It was divided off a larger, 9-acre parcel back in 1959. A previous dwelling on the property was deemed uninhabitable by the building inspections department. It was subsequently demolished back in 1997. The lot has been vacant since this time. The applicant today would like to construct a dwelling on the property. It has only 85 feet of lot width, rather than the 150 feet. As a result they do need a variance.

In evaluating this request, one of the two key questions, is the property unreasonably restricted. The property complies with the lot area and public street frontage requirements but lacks lot width. It has been in this shape 59 years, and absent the variance would have no reasonable beneficial use, which could constitute an unreasonable restriction. So one of the two tests you need to meet is met.

As far as the five subtests that are in your staff report, staff believes all five are met. Just going briefly over the detrimental impact, as seen here, the adjacent parcels are wooded and each contains an existing dwelling, so a dwelling on this site would be consistent with the surrounding use. Staff has no reason to believe it would be detrimental.

3506 So in conclusion, the property has been in this shape since 1959, and absent a  
3507 variance it has no reasonable beneficial use. The five subtests are also met,  
3508 including the lack of any detrimental impact on adjacent properties. As a result staff  
3509 recommends approval subject to the conditions found in your staff report. If you  
3510 have any questions I will be happy to answer those for you. Thank you.

3511

3512 Ms. Harris - Are there any questions from Board members? Would  
3513 the front yard setback be the same as the property next to it?

3514

3515 Mr. Gidley - You can see the two homes here, ma'am, and the  
3516 proposed plot plan. This shows the home being setback 60 feet, whereas this here  
3517 you're probably looking at, I'm guessing, 300 feet. So the home is going to be much  
3518 more up here, which is in line with the home right here.

3519

3520 Ms. Harris - What is that address, do you know?

3521

3522 Mr. Gidley - Right here?

3523

3524 Mr. Bell - 5489?

3525

3526 Ms. Harris - What about 5515?

3527

3528 Mr. Gidley - The home is here and the proposed home here would  
3529 be similar to where this home is.

3530

3531 Ms. Harris - That was my question. Thank you.

3532

3533 Mr. Johnson - I was out there, and I was noticing the distance 5519,  
3534 the distance that that was back and I was wondering was it going to be the same  
3535 distance. And also across the street you have a development coming in, it's a new  
3536 development, in the \$300,000, a nice development. Would this property ... It  
3537 seems like the water kind of drains down into that. Is there drainage into that area?  
3538 Right in front of it?

3539

3540 Mr. Blankinship - There is kind of a low point, I'm looking at the contours  
3541 now, back behind where this house would be, yes sir. There is a little bit of a draw  
3542 there.

3543

3544 Mr. Gidley - It does slope down as you go back.

3545

3546 Mr. Blankinship - That would be behind where the house is going to go.

3547

3548 Mr. Johnson - That's what I was concerned about.

3549

3550 Ms. Harris - Any other questions? Thank you Mr. Gidley. Do we  
3551 have anyone who wishes to speak to this case?

3552

Mr. Rempe - Good afternoon, Madam Chair, Board members, and staff. My name is Mark Rempe, R-e-m-p-e. We support the staff's recommendation for approval. We appreciate the staff, they did a really nice job reviewing the case and the all tests here. We agree to the conditions set forth, and we are going to build a nice, beautiful house that will fit in with the neighborhood. And we would like to recommend approval from the Board.

3559

Ms. Harris - Any questions for Mr. Rempe? Thank you for appearing. Anyone else who wishes to speak to this case?

3562

Ms. Richardson - Good afternoon. My name is Carolyn Talley Richardson, R-i-c-h-a-r-d-s-o-n.

3565

Mr. Richardson - And my name is Steve Richardson.

3567

Ms. Richardson - My father first purchased nine acres back in 1949, and built an all-brick home, which is at 5515 Darbytown Road (yeah, right there). He built an all-brick home, hardwood floors, and he believed in being stewards of the land, saving the land for his family. So he gave his brother Albert the two acres, outlined there. And his brother lost it. And at this point the homestead only has 1.23 acres, and he gave us the land behind him, we have about 5-plus acres. And the only thing is that, I don't mind someone building there, but we want to maintain all the acreage that we now have, because if we plan to subdivide for family, we would like to have all of that intact. So we would just like for you to consider that.

3577

Mr. Richardson - Also, you asked about the water? There is a serious water drainage problem there. And we are sitting back almost 300 feet back off the main road, as you see it, 5521 Darbytown. We were going to build closer to the road, because we didn't want to be so far back. But the County made us move back, and I'm glad they did, because my road floods. That water runs over. It's really bad. So they are going to have to build really close to the road. We couldn't even find a place where the land would really perc, we had to really fight to get it to perc, and we finally found a perc site on there. Uncle Jack, her uncle, they built that house, that was pulled down. It is really tough to build there. That land is really marsh land.

3588

Mr. Blankinship - Yes, you can see there are two houses up by the road, and two houses 300 feet back, and that's why. You can't build anywhere in between.

3592

Mr. Richardson - This last storm that we had, you know, I've done extra work to build up my road to try to keep my road from being washed out. So we don't mind anyone building there, but they will have to come back to where we are, and that's not enough land for them to even put a house. It's not big enough, as

3596

3597 you can see there, wide enough to even put a home. So I would say I'm totally  
3598 against them taking any land from us.  
3599

3600 Mr. Green - So the house is going to have problems, but if they  
3601 come back some...

3602

3603 Mr. Richardson - Sir, if they come back some, there's not enough land  
3604 back there.  
3605

3606 Mr. Blankinship - They can't come back. They are OK up where they are.  
3607

3608 Mr. Green - But they stop where those arrows are, right? that's  
3609 where the land ends.  
3610

3611 Mr. Blankinship - That is about the lowest point.  
3612

3613 Mr. Richardson - If they come back any further they will be washed  
3614 away.  
3615

3616 Ms. Richardson - We don't want them to take any of our land in order to  
3617 maintain that frontage, our frontage...  
3618

3619 Mr. Blankinship - Nobody is taking anybody's land. This Board does not  
3620 have the authority to take anyone's land. There is a requirement in the Code, and  
3621 he has applied to build on a piece of land smaller than the Code requires.  
3622

3623 Mr. Richardson - That's why we are here, because we didn't know what  
3624 they plan on doing. We are just trying to find out what's going on with our property.  
3625 We are not giving up any land.  
3626

3627 Ms. Harris - Do you also own 5515?  
3628

3629 Mr. Richardson - That's my mom's.  
3630

3631 Mr. Green - So all that land in the back, where the arrow is, whose  
3632 is that?  
3633

3634 Mr. Blankinship - Well the narrow strip that's outlined in red is all the RVA  
3635 land company, and the property to the east, to the right on this photograph, is  
3636 theirs.  
3637

3638 Ms. Harris - So you have a private road that goes back?  
3639

3640 Mr. Richardson - Yes, we had to come back off Darbytown and come  
3641 way back.  
3642

3643 Mr. Green - So could they do the same thing and build additional  
3644 houses?  
3645  
3646 Mr. Blankinship - They would have to apply for additional variances.  
3647  
3648 Ms. Harris - Right now, they could only build one house.  
3649  
3650 Mr. Johnson - There was one other... about the entrance into that lot,  
3651 like you said, it's already narrow. I was checking to see was there a way to get  
3652 around from the back into it. Because when I was out there I noticed the entrances.  
3653  
3654 Mr. Richardson - It's narrow, it's really narrow.  
3655  
3656 Mr. Green - So Darbytown floods?  
3657  
3658 Mr. Richardson - Oh definitely, yes. See that new subdivision came, I'm  
3659 taking all that water from across the street, and it's coming this way, flowing across  
3660 Darbytown, and across my land. And you can't stop it because it's a natural course.  
3661 So I can't do anything to stop it. So I have built my road up, put rocks, bricks,  
3662 whatever it is, to keep my road from washing out. So what the water does, once  
3663 my culvert gets full, the wash comes over my road, so I'm fighting to keep my road.  
3664 So I can imagine what it would be like if they tried to build back where I am. They  
3665 would have to build closer to Darbytown.  
3666  
3667 Mr. Johnson - And also, because they are doing the development on  
3668 the other side, which is basically almost directly across from you, a lot of that water  
3669 is coming in this road  
3670  
3671 Mr. Richardson - Yes, my drive is there where that pole is. That's where  
3672 my drive is. And I'm further back.  
3673  
3674 Mr. Blankinship - And that's your mother's house?  
3675  
3676 Ms. Richardson - Yes, that's where I grew up.  
3677  
3678 Ms. Harris - Any other questions? Thank you, Mr. Richardson, Ms.  
3679 Richardson, for coming in.  
3680  
3681 Mr. Blankinship - Do you have anything you want to add, Mark?  
3682  
3683 Mr. Rempe - We are going to survey our property and make sure  
3684 that the property that's listed here is the property we are going to use. We are not  
3685 going to interfere with your property at all.  
3686  
3687 Mr. Green - What about the water problem?  
3688

3689 Mr. Rempe - We will have to go through a permit process, so we will  
3690 still work with Public Works to make sure the drainage works out there. So we just  
3691 want to make sure the zoning is straight first.

3692  
3693 **[After the conclusion of the public hearings, the Board discussed the case**  
3694 **and made its decision. This portion of the transcript is included here for**  
3695 **convenience of reference.]**

3696  
3697 Ms. Harris - The next variance case is 17, RVA Land Company,  
3698 property on Darbytown Road. What is the pleasure of the Board?  
3699

3700 Mr. Johnson - I would recommend approval of this request, subject to  
3701 the attached conditions. It would alleviate a hardship, and also the property would  
3702 not be any good if you didn't have a variance, so it would unreasonably restrict the  
3703 use of the property. And also meets the other five factors.  
3704

3705 Ms. Harris - Is there a second to this motion?  
3706

3707 Mr. Bell - Second.  
3708

3709 Ms. Harris - It's been moved and properly seconded that we will say  
3710 yes to this request for a variance. Any discussion on the motion? All in favor of the  
3711 motion say "aye." Those opposed, say "no." The "ayes" have it, so ordered.  
3712

3713 After an advertised public hearing and on a motion by Mr. Johnson, seconded by  
3714 Mr. Bell, the Board approved application VAR2018-00017 RVA LAND  
3715 COMPANY, LLC requests a variance from Section 24-95(b)(8) of the County  
3716 Code to build a one-family dwelling at 5489 Darbytown Rd (Parcel 844-688-  
3717 9203) zoned Agricultural District (A-1) (Varina). The lot width requirement is not  
3718 met. The applicant proposes 80 feet lot width, where the Code requires 150 feet  
3719 lot width. The applicant requests a variance of 70 feet lot width. The Board  
3720 approved the request subject to the following conditions:  
3721

3722 1. This variance applies only to the lot width requirement for one dwelling only. All  
3723 other applicable regulations of the County Code shall remain in force.

3724 2. Only the improvements shown on the plot plan and building design filed with  
3725 the application may be constructed pursuant to this approval. Any additional  
3726 improvements shall comply with the applicable regulations of the County Code.  
3727 Any substantial changes or additions to the design or location of the  
3728 improvements will require a new variance.  
3729

3730 3. Approval of this request does not imply that a building permit will be issued.  
3731 Building permit approval is contingent on Health Department requirements,  
3732 including, but not limited to, soil evaluation for a septic drainfield and reserve  
3733 area, and approval of a well location.  
3734

3735 4. Clearing, grading, or other land disturbing activity shall not begin until the  
3736 applicant has submitted, and the Department of Public Works has approved, an  
3737 environmental compliance plan.

3738  
3739 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
3740 Negative: 0  
3741 Absent: 0

3742  
3743 **[At this point, the transcript continues with the public hearing on the next**  
3744 **case.]**

3745  
3746 Ms. Harris - Thank you very much. That concludes the case, so we  
3747 move on to...

3748  
3749 **VAR2018-00018 MARTHA R. CHILDRESS** requests a variance from  
3750 Section 24-94 of the County Code to build a one-family dwelling at 5782 White  
3751 Oak Rd (Parcel 856-710-9103) zoned Agricultural District (A-1) (Varina). The lot  
3752 width requirement is not met. The applicant proposes 126 feet lot width, where the  
3753 Code requires 150 feet lot width. The applicant requests a variance of 24 feet lot  
3754 width.

3755  
3756 Mr. Blankinship - Would everyone who intends to speak to this case  
3757 please stand and be sworn in? Do you swear the testimony you're about to give is  
3758 the truth the whole truth and nothing but the truth, so help you God? Thank you.  
3759 Mr. Madrigal

3760  
3761 Mr. Madrigal - Mr. Secretary, Madam Chair, members of the Board,  
3762 good afternoon. Before you is a request to build a one-family dwelling in an  
3763 Agricultural district. The subject property has been in the applicant's family since  
3764 1919. It was originally part of a 3.44-acre tract of land that was split in 1973. That  
3765 split resulted in two roughly 1-1/2 acre properties and they can be seen here on  
3766 the screen. This northern part is the subject land. Parcel A on the north side of the  
3767 lot is 1.54 acre in size and was improved with a one-family residence. Parcel B  
3768 which is the subject property is 1.64 acres in size and was improved with a one-  
3769 family dwelling and a sizeable chicken coop. Both structures have been removed  
3770 some time after 1996.

3771  
3772 The subject property is currently vacant, heavily wooded, and slopes down from  
3773 back to front toward White Oak Road. The surrounding area is semi-rural in  
3774 character but is gradually converting to a more suburban setting as a result of  
3775 residential subdivision and other development. The properties along White Oak  
3776 Road are primarily zoned Agricultural and are improved with one-family dwellings.  
3777 The applicant acquired sole ownership of the property from her brother in 1994.  
3778 She intends to construct a 2,100-square-foot residence with an attached two-car  
3779 garage and transfer it to her nephew.

3780

3781 With respect to the threshold question, from the time that the property was split to  
3782 October of 1987 the County Code would have allowed the property to be improved  
3783 with a single-family dwelling because the lot width was measured at the actual front  
3784 building line versus the minimum front setback. After October, 1987 the definition  
3785 of lot width was changed and the new definition required lot width to be measured  
3786 at the minimum front setback. As a result the property requires the approval of a  
3787 variance due to the nonconforming lot width. Other than the slight lack of lot width  
3788 the property is suitable for a one-family dwelling. It would be unreasonable to  
3789 prohibit the only practical use of the property.

3790  
3791 With respect to the subtests, #1 good faith purchase, it appears that the applicant  
3792 acquired the property in good faith and did not cause the hardship situation. Item  
3793 #2, substantial detriment, the prevailing land use pattern along White Oak Road  
3794 consists of one-family dwelling on lots ranging in size from one to ten acres in size.  
3795 The proposed dwelling would continue the established development pattern as it is  
3796 located between two developed lots, and should not have any substantial  
3797 detrimental impact on adjacent or nearby property. Item #3, general or recurring  
3798 nature, the Board considered four lot width variance requests in the Varina  
3799 Magisterial District last year. It has already heard six this year and there are already  
3800 an addition three requests for today's hearing. In 2011 the Board of Supervisors  
3801 amended the subdivision ordinance to address family subdivisions. At that time  
3802 they could have addressed this issue by amending the zoning ordinance but chose  
3803 not to and instead chose to allow the Board of Zoning Appeals to consider these  
3804 requests on a case-by-case basis. Thus, while this request is of a general or  
3805 recurring nature, it will not be addressed by a zoning ordinance amendment. Items  
3806 4 and 5 have been addressed as outlined in the staff report.

3807  
3808 In conclusion the proposed use is consistent with the zoning and comprehensive  
3809 plan designations of the property. The subject lot has been in the applicant's family  
3810 since 1919 and is a good candidate for development other than a slight lack of lot  
3811 width. Absent a variance there is no other reasonable use for the property under  
3812 the Agricultural standards. Finally, the proposed dwelling will be consistent with  
3813 the established development pattern and will not have a detrimental impact on  
3814 adjacent or nearby property. Based on the facts of the case, staff recommends  
3815 approval subject to conditions. That concludes my staff report.

3816  
3817 Ms. Harris - Thank you. Are there any questions of Mr. Madrigal?

3818  
3819 Mr. Johnson - In addition, I have noticed that the road is very narrow  
3820 and sloping. The road in front of the property, coming down, is narrow and also  
3821 steep as well, and 35 miles per hour. One of the things I was looking at. And also  
3822 I have one other question: the width. In one location it says 17 feet and in another  
3823 it says 24 feet.

3824

3825 Mr. Madrigal - On the application? Right, initially when we got the  
3826 request they had a drawing, it wasn't an actual survey. Since then they got a  
3827 survey, so that's why we amended those distances.  
3828

3829 Mr. Johnson - So it went from 24 to 17?  
3830

3831 Mr. Madrigal - Right. Here you can see on their survey they have  
3832 133.4 feet of lot width, and the Code requires 150 feet, so the difference would be  
3833 17 feet.  
3834

3835 Ms. Harris - Any other questions from Mr. Madrigal? Thank you so  
3836 very much. Is the applicant here? Please come forward. Thank you for being so  
3837 patient with us. We were talking during the break about how lengthy this session  
3838 has been. So we appreciate your patience.  
3839

3840 Mr. Childress - Thank you for getting us in here. My name is Steve  
3841 Childress, C-h-i-l-d-r-e-s-s, and this is Martha Childress, she's the applicant, my  
3842 mother. This has been family property since, what did you say, 1919? And before  
3843 that, it's when the Danish people who settled the eastern area down there, this is  
3844 one of the original families from then. What I'm trying to do is put one of the original  
3845 family members back on it. It's been held by us since 96 when we tore down the  
3846 house. At that time it was ok to build on the property, when my grandfather split it  
3847 to let my uncle build on the hill beside him. I'm trying to put his son back there. And  
3848 I hope you'll let us do it.  
3849

3850 I still have to go through the process of perking the property, and so forth. I've been  
3851 hesitant to spend a pile of money until I hear from you, because I still have to get  
3852 plans drawn up and the perc test done.  
3853

3854 Ms. Harris - And you didn't give us the plans for the proposed  
3855 home, either.  
3856

3857 Mr. Childress - No, because I'm still trying to work that out. But my  
3858 nephew decided on a set of plans, my Mom's nephew. And we've got the idea  
3859 down, but we have to go back to the drawing board and change a couple of things  
3860 around. He didn't like the layout completely. It's a 2,000 to 2,100-square-foot house  
3861 with an attached two-car garage.  
3862

3863 Ms. Harris - Are there any questions for the applicant?  
3864

3865 Mr. Johnson - The location of the property, is there another facility, a  
3866 house behind that where you plan on building?  
3867

3868 Mr. Childress - The house behind that is in the subdivision behind it.  
3869 This property goes from White Oak Road back to a subdivision. There is a house  
3870 up the street from it where the lot bends around it. That's the one my uncle built,

3871 and the shape of the lot line I think was due to his perking it. That was done many  
3872 years ago, it was in the 70s.

3873  
3874 Ms. Harris - And you read the conditions, did you not? The  
3875 conditions that were in the report? You read those? Any other questions from  
3876 Board members?

3877  
3878 Mr. Johnson - The only other thing I noticed across the street,  
3879 because of the slope, how one of the houses across the street to the left, the slope,  
3880 how they had to put part of the garage underground, well not really underground...

3881  
3882 Mr. Childress - That was the house on the other side of the road where  
3883 they put the garage in the basement. Unfortunately that's the lay of the land and  
3884 there is a hillside there we're working with. So there may be a little drainage,  
3885 grading issue I will have to deal with. But that's not a problem, I can work it out with  
3886 Public Works.

3887  
3888 Ms. Harris - Questions? Thank you so very much for coming in. And  
3889 waiting. And waiting. Anyone else who wants to speak to this case? Mr.  
3890 Blankinship, the next case.

3891  
3892 **[After the conclusion of the public hearings, the Board discussed the case**  
3893 **and made its decision. This portion of the transcript is included here for**  
3894 **convenience of reference.]**

3895  
3896 Ms. Harris - Variance 18, Martha Childress, White Oak Road. RVA  
3897 What is the pleasure of the Board?

3898  
3899 Mr. Johnson - I motion that we approve it. It meets the criteria for the  
3900 zoning ordinance as well. And that is subject to the conditions.

3901  
3902 Ms. Harris - Is there a second?

3903  
3904 Mr. Reid - Second.

3905  
3906 Ms. Harris - It's been moved and properly seconded that we will  
3907 approve this request for a variance. Is there any discussion on the motion? All in  
3908 favor say "aye." Those opposed, say "no." The "ayes" have it, so ordered.

3909  
3910 After an advertised public hearing and on a motion by Mr. Johnson, seconded by  
3911 Mr. Reid, the Board approved application VAR2018-00018 MARTHA R.  
3912 CHILDRESS requests a variance from Section 24-94 of the County Code to build  
3913 a one-family dwelling at 5782 White Oak Rd (Parcel 856-710-9103) zoned  
3914 Agricultural District (A-1) (Varina). The lot width requirement is not met. The  
3915 applicant proposes 126 feet lot width, where the Code requires 150 feet lot width.

3916 The applicant requests a variance of 24 feet lot width. The Board approved the  
3917 request subject to the following conditions:

3918  
3919 1. This variance applies only to the lot width requirement for a one-family dwelling.  
3920 All other applicable regulations of the County Code shall remain in force.

3921  
3922 2. Only the improvements shown on the plot plan filed with the application may be  
3923 constructed pursuant to this approval. Any additional improvements shall comply  
3924 with the applicable regulations of the County Code. Any substantial changes or  
3925 additions to the location of the improvements will require a new variance.

3926  
3927 3. Approval of this request does not imply that a building permit will be issued.  
3928 Building permit approval is contingent on Health Department requirements,  
3929 including, but not limited to, soil evaluation for a septic drainfield and reserve area,  
3930 and approval of a well location.

3931  
3932 4. Clearing, grading, or other land disturbing activity shall not begin until the  
3933 applicant has submitted, and the Department of Public Works has approved, an  
3934 environmental compliance plan.

3935  
3936 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
3937 Negative: 0  
3938 Absent: 0

3939  
3940 **[At this point, the transcript continues with the public hearing on the next**  
3941 **case.]**

3942  
3943 **VAR2018-00022 LIBERTY HOMES, INC.** requests a variance from  
3944 Section 24-9 of the County Code to build a one-family dwelling at 2140 New Market  
3945 Rd (Parcel 811-691-4222) zoned Agricultural District (A-1) (Varina). The public  
3946 street frontage requirement is not met. The applicant proposes 0 feet public street  
3947 frontage, where the Code requires 50 feet public street frontage. The applicant  
3948 requests a variance of 50 feet public street frontage.

3949  
3950 Mr. Blankinship - Would everyone who intends to speak to this case  
3951 please stand and be sworn in? Mark, you are still under oath. Sir, do you swear  
3952 the testimony you are about to give is the truth, the whole truth, and nothing but  
3953 the truth, so help you God? Thank you.

3954  
3955 Mr. Madrigal - Thank you, Mr. Secretary, Madam Chair, members of  
3956 the Board: before you is a request to build a one-family dwelling in an agricultural  
3957 district. Subject property is a landlocked parcel that is over four acres in area, is  
3958 undeveloped, and is heavily wooded. It sits behind a two-acre parcel that fronts on  
3959 New Market Road, which was just recently split into two 1-acre lots. Access to the  
3960 subject property will be by way of a private drive along a 50-foot-wide access

3961 easement between the two front lots. The driveway will cross the Capitol Trail,  
3962 which runs along the front of the properties.

3963

3964 The applicant purchased all three lots in March of this year and intends to improve  
3965 the landlocked parcel with a two-story, 1,600-square-foot home. Because the  
3966 subject property does not have any public street frontage as required by Code, the  
3967 applicant is requesting a variance to develop the subject lot.

3968

3969 With respect to the threshold question, from 1891, when the subject lot was  
3970 created, up to the adoption of the 1960 code, the property could have been  
3971 improved with a single-family dwelling. After 1960, Code required lots to have a  
3972 minimum of 50 feet of public street frontage to construct a one-family dwelling.  
3973 Other than the lack of street frontage, the property is suitable for a one-family  
3974 dwelling. It would be unreasonable to prohibit the only practical use for the subject  
3975 lot.

3976

3977 With respect to the five subtests: Item #1, good faith purchase: it would appear  
3978 that the applicant acquired the property in good faith, knowing that a variance was  
3979 required for its development. Item #2, substantial detriment: with the exception of  
3980 the commercial node at the intersection of New Market and Willson Roads, the  
3981 immediate area is zoned A-1 and is semi-rural in character. The prevailing land  
3982 use pattern in the immediate vicinity consists of one-family dwellings on lots of  
3983 varying acreage and large tracts of land used for farming. If the variance is  
3984 approved, the proposed home should not pose any detrimental impacts to adjacent  
3985 or nearby property. Staff's primary concern is the access drive from the street to  
3986 the three properties, which will cross the Capitol Trail. The applicant will have to  
3987 coordinate with VDOT to provide a sufficiently sized access drive to serve all three  
3988 lots, maintain drainage, and a seamless asphalt surface that blends in with the  
3989 bicycle trail. And here you can see the bicycle trail. Staff has included specific  
3990 conditions of approval for the Board's consideration.

3991

3992 Item #3, general and recurring nature: as in the previous case, the Board of  
3993 Supervisors has chosen not to amend the zoning ordinance as it pertains to  
3994 existing lots, but to allow the Board of Zoning Appeals to consider these variance  
3995 requests on a case-by-case basis. Items #4 and #5 are addressed as outlined in  
3996 the staff report.

3997

3998 In conclusion the proposed use is consistent with the zoning and comprehensive  
3999 plan designations on the property. The subject lot is well suited for development  
4000 with exception to the lack of public street frontage and legal access. There is no  
4001 other reasonable use of the property considering the residential development  
4002 pattern in the immediate area. And the proposed home should not pose any  
4003 detrimental impacts on adjacent or nearby property. Staff's primary concern is  
4004 limiting the number of access drives along New Market Road and the Capitol Trail  
4005 as a matter of public safety. Based on the facts of the case, staff recommends

4006 approval of the variance, subject to the attached conditions. That concludes my  
4007 presentation.

4008  
4009 Ms. Harris - Thank you. Mr. Madrigal, where is New Market Road  
4010 in this photo?

4011  
4012 Mr. Madrigal - It is over here, to the right.

4013  
4014 Ms. Harris - Would you point it out with the cursor?

4015  
4016 Mr. Madrigal - You can actually see a little piece of it right here. There  
4017 I'm across the street taking a picture of the property here. So there is New Market  
4018 Road and then the Capitol Trail is right beyond.

4019  
4020 Ms. Harris - I'm interested in condition #5, or #4: "Any dwelling on  
4021 the property shall be served by public water." Why are we doing this for this  
4022 property? Don't we sometimes use well water?

4023  
4024 Mr. Madrigal - Primarily, just because I don't know what the nature of  
4025 the soil is, so if it doesn't perc, and since we do have water service in the street,  
4026 these folks place their septic systems on the lots to avoid any kind of contamination  
4027 or any issues with respect to where the wells would be versus the septic systems.  
4028 So it's just a matter of public safety and convenience, essentially.

4029  
4030 Ms. Harris - Any questions from Board members?

4031  
4032 Mr. Johnson - Yes. Noticing that the facility is right at the Capitol Trail,  
4033 which is, I noticed a lot of bikers are on that trail now. That and I've been on the  
4034 bike trail, and also next to it, to the right of it there is a facility there that has sand,  
4035 where you come to buy sand, and also mulch, and all this right next to it?

4036  
4037 Mr. Madrigal - Yes sir, that would be right here.

4038  
4039 Mr. Johnson - Yes. You also mentioned that they have to get  
4040 regulations for the bike trail coming through... Would that be for every homeowner  
4041 that crosses the Capitol Trail?

4042  
4043 Mr. Madrigal - Essentially what we're trying to do is we're trying to limit  
4044 the number of driveways that would cut across the Capitol Trail, the bike trail. So  
4045 one way to do that would be just to limit one driveway to serve all three lots. And  
4046 they've already kind of come up with that design with that 50-foot access  
4047 easement. So they would have to coordinate with VDOT to get what they call a  
4048 land use permit to put in that driveway going from New Market, across the Capitol  
4049 Trail, to the properties. They would also have to maintain the drainage that's  
4050 occurring at the front of the properties in the public right-of-way. So there's going  
4051 to be some substantial coordination they're going to have to do with VDOT to put

4052 that in. Again, we're just trying to keep the number of driveways leading from the  
4053 street to the properties. You've already got one next door for the sand and gravel,  
4054 and you've got one here, for the adjacent property. So as opposed to having three  
4055 separate driveways for these three particular lots, we would rather see one  
4056 driveway serving all three lots.

4057  
4058 Mr. Green - Can you show the driveway for that sand one? Do you  
4059 have it?

4060  
4061 Mr. Madrigal - Let me see if it shows up. You kind of see it right over  
4062 here. That goes right across the Capitol Trail.

4063  
4064 Mr. Blankinship - And again, that's the trail in the foreground, not the  
4065 street. The street is right behind it.

4066  
4067 Mr. Madrigal - And if you do notice, they try to keep that trail pretty  
4068 pristine, and the surface pretty level. I was noticing the other driveways, it's all a  
4069 level surface. So they're going to have to try to maintain that, to make it seamless  
4070 as much as possible.

4071  
4072 Mr. Johnson - So are they acquiring the property from the owners to  
4073 make this 50-foot easement?

4074  
4075 Mr. Madrigal - They own all three lots. They own this property, which  
4076 is the subject of the variance today, and they also own these two front lots. That's  
4077 why they are proposing creating this access easement and then putting in that  
4078 private drive. All we're saying is not to have three driveways, one for each lot. Just  
4079 having one driveway serving all three properties.

4080  
4081 Ms. Harris - Ok, any other questions? Will the applicant or the  
4082 applicant's representative please come forth?

4083  
4084 Mr. Rempe - Hello, Mark Rempe again. We support staff's  
4085 recommendation for approval. We appreciate staff's time, they did a really good  
4086 job proving all the tests to get the tests to get the case approved. We agree to the  
4087 conditions. And we would like the Board to move forward with approval.

4088  
4089 Ms. Harris - Does Liberty Homes own all these parcels?

4090  
4091 Mr. Rempe - Yes, ma'am.

4092  
4093 Ms. Harris - Any questions from Board members? Thank you so  
4094 very much. Next case.

4095  
4096 Mr. Blankinship - I just realized, Madam Chair, the gentleman who was  
4097 sworn in did not have an opportunity to speak.

4098

Ms. Harris - I'm so sorry, we need to back up.

4100

Mr. Blankinship - Sir, did wish to address the Board? You stood up before and were sworn in as if you wanted to speak. We did not mean to skip you, we're just a little out of sorts this morning.

4104

Mr. Holmes - Randall Holmes, I live next to the property you're looking at. H-o-l-m-e-s. You've already answered my question. I didn't know where the variance was coming from, I got this letter, and I didn't know what it was. I just told the gentleman, I'm good to go now.

4109

Ms. Harris - Thank you for coming.

4111

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

4115

Ms. Harris - Variance 22, Liberty Homes.

4117

Mr. Johnson - On this variance I note we have the Capitol Trail involved, and also property next door to it. I motion that we approve the variance, subject to the conditions. Also, without the variance, it would substantially impact the property.

4122

Mr. Green - Second.

4124

Ms. Harris - It's been moved and properly seconded that we will approve the request for variance on this case. Is there any discussion on the motion? All in favor of this motion say "aye." Those opposed, say "no." The "ayes" have it, so ordered.

4129

After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr. Green, the Board approved application VAR2018-00022 LIBERTY HOMES, INC. requests a variance from Section 24-9 of the County Code to build a one-family dwelling at 2140 New Market Rd (Parcel 811-691-4222) zoned Agricultural District (A-1) (Varina). The public street frontage requirement is not met. The applicant proposes 0 feet public street frontage, where the Code requires 50 feet public street frontage. The applicant requests a variance of 50 feet public street frontage. The Board approved the request subject to the following conditions:

4138

1. This variance applies only to the public street frontage requirement for one dwelling only. All other applicable regulations of the County Code shall remain in force.

4142

4143 2. Only the improvements shown on the plot plan and building design filed with the  
4144 application may be constructed pursuant to this approval. Any additional  
4145 improvements shall comply with the applicable regulations of the County Code.  
4146 Any substantial changes or additions to the design or location of the improvements  
4147 will require a new variance.

4148  
4149 3. Approval of this request does not imply that a building permit will be issued.  
4150 Building permit approval is contingent on Health Department requirements,  
4151 including, but not limited to, soil evaluation for a septic drainfield and reserve area.  
4152

4153 4. Any dwelling on the property shall be served by public water.  
4154

4155 5. Clearing, grading, or other land disturbing activity shall not begin until the  
4156 applicant has submitted, and the Department of Public Works has approved, an  
4157 environmental compliance plan.  
4158

4159 6. The proposed access drive shall serve all three lots. The applicant shall present  
4160 proof with the building permit application that a legal access to the property has  
4161 been obtained.  
4162

4163 7. The portion of the proposed private drive within the New Market Road and  
4164 Capitol Trail right-of-way shall be improved to the standards required by the  
4165 Virginia Department of Transportation (VDOT). The applicant shall obtain  
4166 necessary permits from VDOT for the proposed access drive and shall submit a  
4167 copy with the building permit application.  
4168

4169 8. The portion of the proposed private drive on private property shall be improved  
4170 with a durable asphalt or compacted gravel surface at least 10 feet wide with 12  
4171 feet of horizontal clearance and 14 feet of overhead clearance to provide access  
4172 for police, fire, emergency medical services, and other vehicles. The applicant shall  
4173 establish a maintenance agreement to include the two front lots for the long-term  
4174 maintenance of the private roadway.  
4175

4176 Affirmative:	Bell, Green, Harris, Johnson, Reid	5
4177 Negative:		0
4178 Absent:		0

4179  
4180 **[At this point, the transcript continues with the public hearing on the next**  
4181 **case.]**  
4182

4183 **VAR2018-00023**                      **JOHN R. COCKE, JR.** requests a variance from  
4184 Section 24-94 of the County Code to build a one-family dwelling at 1440  
4185 Chatsworth Rd (Parcel 804-701-2921) zoned Agricultural District (A-1) (Varina).  
4186 The lot width requirement and total lot area requirement are not met. The applicant  
4187 proposes 0.922 acre total lot area and 90 feet lot width, where the Code requires

4188 1.0 acre total lot area and 150 feet lot width. The applicant requests a variance of  
4189 0.078 acre total lot area and 60 feet lot width.

4190  
4191 Mr. Blankinship - Would everyone who intends to speak to this case  
4192 please stand and be sworn in? Do you swear the testimony you are about to give  
4193 is the truth, the whole truth, and nothing but the truth, so help you God? Thank  
4194 you. Mr. Gidley?

4195  
4196 Mr. Gidley - Thank you, Mr. Secretary, members of the Board. The  
4197 subject property is located just southeast of the intersection of New Market and  
4198 Midview Roads. It was divided from the adjacent parcel to the south back in 1975.  
4199 When it was divided off it was initially believed to contain the required one acre of  
4200 land. However, following right-of-way acquisition in 1995 and a more recent  
4201 survey, the property was found to contain 0.964 of an acre. In addition if one takes  
4202 the southern property line as the front lot line it has 90 feet of lot width rather than  
4203 the required 150 feet of lot width. So they have applied for a variance for both lot  
4204 area and lot width.

4205  
4206 In the evaluation, other than the right-of-way acquisition, the property has been in  
4207 this configuration for 43 years. Absent a variance for a home to be constructed,  
4208 the property really would have no beneficial use, which would be an unreasonable  
4209 restriction on the use of the property. As noted in the staff report, all five of the  
4210 subtests are met in staff's opinion. Briefly again, the detrimental impact, as you  
4211 can see the surrounding area is small farms, homes, and across the road is the  
4212 historic Chatworth School, right here. The proposed use of a home on the property  
4213 would be consistent with the surrounding uses, so staff would not anticipate a  
4214 detrimental impact.

4215  
4216 In conclusion, this is the property right here. The property, as you can see, consists  
4217 of an open field, which is generally level. It also contains public street frontage,  
4218 making it a desirable lot to build a home on. However, due to the right-of-way  
4219 acquisition, it is just shy of the required one acre of land. It also lacks the required  
4220 lot width. Absent a variance, though, it would have no reasonable beneficial use.  
4221 The five subtests are also met. So staff can recommend approval of this request  
4222 subject to the conditions that are in your staff report. If you have any questions I  
4223 would be happy to answer them. Thank you.

4224  
4225 Ms. Harris - Is the Chatsworth School operational at this time?

4226  
4227 Mr. Gidley - No ma'am.

4228  
4229 Ms. Harris - And do you have plans for the proposed construction  
4230 of the new house?

4231  
4232 Mr. Gidley - No ma'am, they did not submit details on the house,  
4233 other than the plot plan. They're showing the home going back here. My

4234 understanding is they are related to the people who own the home right here. So  
4235 they put the home adjacent to that. But as far as the home design, I don't have any  
4236 information regarding that, so maybe they can provide that for you.

4237  
4238 Ms. Harris - Any questions for Mr. Gidley?

4239  
4240 Mr. Johnson - It seems that all the houses back there are one level  
4241 homes. But one question is that, right in the curve there is a school or something  
4242 there, and the corner of it is about three feet, four feet from the road. Is that  
4243 historical?

4244  
4245 Mr. Gidley - Yes sir, it is. It was initially founded by an organization  
4246 that raised money and built schools for African-American children back in earlier  
4247 eras. And this is one of the schools that educated children of that era. But obviously  
4248 when laws changed the need for it went away and everyone attended the same  
4249 public schools, as it should be.

4250  
4251 Mr. Johnson - And the new facility, I noticed you have ... is that where  
4252 they plan on putting it, on the other screen that you had?

4253  
4254 Mr. Gidley - This is the property here. Again my understanding is  
4255 they are related to these people here, so they wanted to put the home back in this  
4256 area. Again, this is the proposal right here.

4257  
4258 Mr. Johnson - Ok, I noticed the land is fairly flat, so they shouldn't  
4259 have too much of a drainage problem. From that point on, would that be the same  
4260 property, from the entrance to Route 5? There is another building, another facility  
4261 before you get there.

4262  
4263 Mr. Gidley - Yes, sir, the lot in front of it was originally part of that  
4264 lot, and then it was divided off.

4265  
4266 Mr. Johnson - That's what I was concerned with, where is the back of  
4267 the next one. Also, I noticed when I was out there, the tree line, where the property  
4268 that we're looking at does not go back to the tree line. They had just cut the grass  
4269 and all, and they cut it all the way back to the tree line, and when I was looking I  
4270 thought they would take that whole section.

4271  
4272 Mr. Gidley - It's basically back to the midpoint.

4273  
4274 Ms. Harris - Thank you, Mr. Gidley. We will ask the applicant to  
4275 please come forward, state your name, and spell your last name.

4276  
4277 Mr. Cocke - John Cocke, C-o-c-k-e, I'm representing the owner,  
4278 and they want to build a house beside their mother. I guess her mother is probably  
4279 in her 80s, and she gifted the property to her daughter, Eva Harrell, and they



4280 wanted to build a ranch beside her mother. Just to keep the family close. The  
 4281 restrictions that the County proposed we had agreed to. We propose no  
 4282 detrimental effect from what they want to build.

4283  
 4284 Mr. Blankinship - You don't have house plans?  
 4285

4286 Mr. Cocke - No, because without the variance you would be  
 4287 wasting of money. Without a variance you can't build on that lot. I have a rough  
 4288 sketch of what they want, but you can't go forward without the variance approval.  
 4289

4290 Ms. Harris - You are the builder?  
 4291

4292 Mr. Cocke - Yes, ma'am.  
 4293

4294 Ms. Harris - Any questions?  
 4295

4296 Mr. Johnson - One other question. On that location I noticed there's a  
 4297 church right at the corner. I can't remember the name of it right now.  
 4298

4299 Mr. Cocke - Shiloh?  
 4300

4301 Ms. Harris - Antioch.  
 4302



4303 Mr. Johnson - Antioch, yes. Have you noticed during Sundays, or  
 4304 during weekdays, if you have many vehicles crossing the street there?  
 4305

4306 Mr. Cocke - I can't really address to that, but I know they've got a  
 4307 huge parking lot beside the church, behind the church. But we are dealing with a  
 4308 couple that is probably ... This is their retirement home, they've got no children, so  
 4309 I don't think parking is a real problem.  
 4310

4311 Mr. Johnson - I was just ... for the church, I was just curious about  
 4312 that. Nice church over there, too. That's it.  
 4313

4314 Ms. Harris - Any more questions? That concludes our last case and  
 4315 we're ready to vote. If there is no one else to speak to these cases, we are ready  
 4316 to go back and vote.  
 4317

4318 **[After the conclusion of the public hearings, the Board discussed the case**  
 4319 **and made its decision. This portion of the transcript is included here for**  
 4320 **convenience of reference.]**  
 4321

4322 Ms. Harris - The last variance, variance 23. Property on  
 4323 Chatsworth.  
 4324



4325 Mr. Johnson - Again, based on the factors that were presented today,  
4326 I recommend approval of this, subject to the attached conditions. And this case as  
4327 well, would not be suitable unless we have a variance to alleviate the hardship,  
4328 and also it substantially restricts the use of the property, they can't use it.

4329  
4330 Ms. Harris - Is there a second?

4331  
4332 Mr. Green - Second.

4333  
4334 Ms. Harris - It's been moved and properly seconded that we will  
4335 approve the request for variance on this case. Is there any discussion on the  
4336 motion? All in favor say "aye." Those opposed, say "no." The "ayes" have it, so  
4337 ordered.

4338  
4339 After an advertised public hearing and on a motion by Mr. Johnson, seconded by  
4340 Mr. Green, the Board approved application VAR2018-00023 JOHN R. COCKE,  
4341 JR. requests a variance from Section 24-94 of the County Code to build a one-  
4342 family dwelling at 1440 Chatsworth Rd (Parcel 804-701-2921) zoned Agricultural  
4343 District (A-1) (Varina). The lot width requirement and total lot area requirement are  
4344 not met. The applicant proposes 0.922 acre total lot area and 90 feet lot width,  
4345 where the Code requires 1.0 acre total lot area and 150 feet lot width. The applicant  
4346 requests a variance of 0.078 acre total lot area and 60 feet lot width. The Board  
4347 approved the request subject to the following conditions:

4348  
4349 1. This variance applies only to the minimum lot area and minimum lot width  
4350 requirements for one dwelling only. All other applicable regulations of the County  
4351 Code shall remain in force.

4352  
4353 2. Only the improvements shown on the plot plan filed with the application may be  
4354 constructed pursuant to this approval. Any additional improvements shall comply  
4355 with the applicable regulations of the County Code. Any substantial changes or  
4356 additions to the design or location of the improvements will require a new variance.

4357  
4358 3. Approval of this request does not imply that a building permit will be issued.  
4359 Building permit approval is contingent on Health Department requirements,  
4360 including, but not limited to, soil evaluation for a septic drainfield and reserve area,  
4361 and approval of a well location.

4362  
4363 4. Clearing, grading, or other land disturbing activity shall not begin until the  
4364 applicant has submitted, and the Department of Public Works has approved, an  
4365 environmental compliance plan.

4366  
4367 Affirmative: Bell, Green, Harris, Johnson, Reid 5  
4368 Negative: 0  
4369 Absent: 0  
4370

4371 [At this point, the transcript continues with the public hearing on the next  
4372 case.]

4373  
4374 Ms. Harris - As far as the approval of the minutes, we are going to  
4375 defer that until the November 15 meeting, because we did not receive those in our  
4376 packet.

4377  
4378 Mr. Blankinship - May I suggest you do the same with the report?

4379  
4380 Ms. Harris - Yes, sir, you read my mail. On the reclamation of  
4381 mining sites, we do want to thank Mr. Blankinship for this information.

4382  
4383 Mr. Blankinship - I have stuff to show you, but it can wait.

4384  
4385 Ms. Harris - If we defer that to the next meeting, is that alright with  
4386 everyone? Do we need a motion to that effect, or can we all agree? There is a lot  
4387 of good information in here. We will talk about it at our next meeting. If there is no  
4388 other business before us, the meeting stands adjourned.

*Helen E. Harris, Chair*

*Helen E. Harris*

*B.W. Blankinship*

*B.W. Blankinship, Secretary*