



CITY OF RICHMOND

DEPARTMENT OF
PLANNING AND DEVELOPMENT REVIEW
BOARD OF ZONING APPEALS

BOARD OF ZONING APPEALS

MEETING MINUTES

WEDNESDAY, AUGUST 7, 2019

On Wednesday, August 7, 2019, the Board of Zoning Appeals held a public hearing in the Fifth Floor Conference Room, 900 East Broad Street, at 1:00 p.m.; display notice having been published in the Richmond Legacy Newspaper on July 24 and 31, 2019 and written notice having been sent to interested parties.

Members Present: Burt F. Pinnock, Chair
 Roger H. York, Jr.
 Rodney M. Poole
 Mary J. Hogue
 Susan Sadid

Staff Present: Roy W. Benbow, Secretary
 William C. Davidson, Zoning Administrator
 Brian P. Mercer, Planner II
 Neil R. Gibson, Assistant City Attorney

The Chairman called the meeting to order and read the Board of Zoning Appeals Introductory Statement, which explains the proceedings of the meeting. The applicant and those appearing in support of an application speak first, followed by those appearing in opposition.

BZA 34-2019

APPLICANT: Stephen C. and Janice H. Nuckolls

PREMISES: 1805 MONUMENT AVENUE and 408, 410 & 412 N. ALLEN AVENUE
(Tax Parcel Numbers W000-0861/020, W000-0861/028, and W000-0861/031)

SUBJECT: An appeal of Stephen C. and Janice H. Nuckolls that an April 19, 2018 decision of the Zoning Administrator to permit conversion of 1805 MONUMENT AVENUE and 408, 410 & 412 N. ALLEN AVENUE from a nonconforming office use to a multifamily residential apartment building under Sec. 30-800.3 of the Zoning Ordinance was in error.

APPEAL was filed with the Board on October 31, 2018, based on Section 17.20(a) of the City Charter.

APPEARANCES:

For Applicant: Joseph K. Reid III
Marian Agnew
Cindy Wofford

Against Applicant: Jennifer Mullen

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CITY OF RICHMOND

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BOARD OF ZONING APPEALS

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CASE NO. 34-2019

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900 EAST BROAD STREET - CITY HALL

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5TH FLOOR CONFERENCE ROOM

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RICHMOND, VIRGINIA 23219

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AUGUST 7, 2019

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1:00 P.M.

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22 REPORTED BY:

23 JACQUELIN O. GREGORY-LONGMIRE, RPR, LSR

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JANE K. HENSLEY - COURT REPORTERS
(804) 739-3500

APPEARANCES

Board Members:

Burchell F. Pinnock, Chairman
Rodney M. Poole
Mary J. Hogue
Roger H. York, Jr.
Susan Sadid
Roy W. Benbow, Secretary

Zoning Administrator:

William C. Davidson
Brian Mercer

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P R O C E E D I N G S

MR. PINNOCK: All right. Good afternoon, ladies and gentlemen.

This is a regular monthly meeting of the Board of Zoning Appeals of the City of Richmond. The board is comprised of five of your fellow citizens who are appointed by the Circuit Court and serve without compensation.

Three affirmative votes are required to approve any variance or grant an appeal. The board is assisted by its secretary, who has no voting power. The zoning administrator and his assistant are also present but do not vote.

The board's powers are very limited and are set forth in the Code of Virginia, the city charter, and Richmond city code. The board does not have the power to rezone property but may only grant variances from specific zoning requirements as they apply to a particular property or grant appeals from decisions of the zoning administrator or grant certain exceptions to the zoning regulations.

The board's proceedings are informal, but we do adhere to certain rules. We ask that those persons expecting to testify in each case be sworn in when the case is called.

1 The cases will be heard in the order in which
2 they appear on the docket. First we hear the
3 applicant, then others who wish to speak in favor of
4 the case and, finally, from persons in opposition.

5 In the case of a variance or special exception
6 request, the applicant, proponents, or persons
7 aggrieved under Section 15.2-2314 of the Code of
8 Virginia shall be permitted a total of six minutes
9 each to present their case.

10 The board will withhold questions until the
11 conclusion of the presentation. Rebuttal may be
12 permitted at the discretion of the board but shall be
13 limited to correction or clarification of factual
14 testimony already presented and rebuttal should not
15 exceed five minutes.

16 In the case of an appeal of the decision of the
17 zoning administrator, the zoning administrator and
18 the appellant or appellant's representative shall be
19 permitted a total of ten minutes to present their
20 case in chief and their rebuttal.

21 The zoning administrator and the appellant or
22 appellant's representative shall be required prior to
23 beginning their presentation to declare to the board
24 how many of their allotted minutes shall be devoted
25 to their case in chief and their rebuttal.

1 Following the presentations of the zoning
2 administrator and the appellant or appellant's
3 representative, other interested parties collectively
4 shall be permitted a total of ten minutes to present
5 their views.

6 What I'm saying is when it comes time for
7 members of the association and the neighborhood,
8 there's a collective ten minutes, so please decide
9 how, if, who's going to speak and all that so...

10 Interested parties are defined as property owner
11 other than the appellant whose property is the
12 subject of an appeal and the neighborhood
13 constituency consisting of neighbors and neighborhood
14 associations.

15 After all of the cases have been heard, the
16 board will decide each case. After your case is
17 heard, you are welcome to stay through the remainder
18 of the docket to hear the board's deliberations or
19 you may leave.

20 If you choose to leave, please do so quietly.
21 The secretary of the board will notify each applicant
22 in writing as to the decision of the board.

23 The first case is case number 34-2019, an appeal
24 of Stephen C. and Janice H. Nuckolls, that an
25 April 19, 2018, decision of the zoning administrator

1 to permit conversion of 1805 Monument Avenue and 408,
2 410 and 412 North Allen Avenue from a nonconforming
3 office use to a multifamily residential apartment
4 building under Section 30-800.3 of the zoning
5 ordinance was in error.

6 Okay. Is the zoning administrator first?

7 MR. POOLE: Yes.

8 MR. PINNOCK: Yes.

9 MR. POOLE: Mr. Chairman?

10 MR. PINNOCK: Yes.

11 MR. POOLE: I would suggest that as in the past
12 that we address the timeliness issue first and have
13 them address that issue before we go to the main case
14 itself.

15 MR. PINNOCK: Okay. So we're looking for the
16 zoning administrator to speak only to the timely
17 issue right now and then the appellant who will speak
18 to their issue?

19 MR. POOLE: It's determinative of the matter
20 moving forward.

21 MR. PINNOCK: Agreed.

22

23 **STATEMENT BY MR. WILLIAM DAVIDSON**

24 MR. DAVIDSON: Good afternoon, board members,
25 the public. I'm William Davidson, city zoning

1 administrator. This is an appeal of an April 19,
2 2018 letter.

3 MR. BENBOW: Excuse me one second.

4 You need to declare your time, rebuttal, and
5 your case in chief.

6 MR. DAVIDSON: I think six minutes.

7 MR. BENBOW: How many?

8 MR. DAVIDSON: Six minutes.

9 MR. BENBOW: Six minutes.

10 MR. REID: Mr. Benbow, just to clarify, is the
11 ten minutes including addressing the timeliness
12 issue, or is that a separate time limit to address --

13 MR. BENBOW: Separate time limit.

14 MR. REID: Separate time limit.

15 Thank you.

16 MR. DAVIDSON: Okay. This is an appeal of an
17 April 19, 2018, letter that was written by the zoning
18 office. That letter was appealed. That
19 determination was appealed.

20 The appellants specifically acknowledged that it
21 was a determination. And if you look at the bottom
22 of the letter, which is in your packet, there's the
23 appeal form that they filled out and the accompanying
24 document.

25 They indicated that there -- in a footnote --

1 that they were specifying their right to appeal as
2 being timely because the letter did not include a
3 statement concerning the right to appeal as specified
4 by the Virginia Code 15.2-2311.

5 I do not believe it's timely filed and the
6 reasons are that the letter was dated April 19th,
7 which would result in a 30-day time frame deadline
8 of, say, May 19th.

9 MR. POOLE: Mr. Davidson, can you speak up just
10 a little bit? I'm a little hard of hearing.

11 UNIDENTIFIED SPEAKER: We have the mike here.

12 MR. POOLE: We do?

13 UNIDENTIFIED SPEAKER: Yeah.

14 The mike is not on.

15 Can we get the mike turned on?

16 UNIDENTIFIED SPEAKER: I just have one question.
17 Could you please ask whoever is speaking to speak
18 loud because many people in the back cannot hear?

19 MR. PINNOCK: We're trying to address the mike
20 issue right now.

21 UNIDENTIFIED SPEAKER: Thank you very much.

22 MR. PINNOCK: We're going to continue, and I'm
23 going to ask Mr. Davidson to speak in his scolding
24 loud voice.

25 MR. DAVIDSON: Louder voice?

1 MR. PINNOCK: Louder voice.

2 MR. DAVIDSON: As indicated, the April 18th
3 letter would have resulted in a 30-day appeal under
4 state law of May 18th or -- I'm sorry -- May 19th.

5 The letter application attachments were then
6 even e-mailed to the appellants, Mr. and
7 Mrs. Nuckolls, after conversation with a zoning staff
8 member on June 26th. So they received that letter
9 indicating that the conversion and the reason for the
10 conversion being allowed.

11 About a month later, on August 9th, Mr. Nuckolls
12 contacted staff through e-mail and stated that he was
13 of the opinion that a conversation that he's had with
14 his wife -- and her belief was that there was a
15 120-day appeal period. I responded back indicating
16 that the Virginia law appeal period was 30 days.

17 Next week I received another e-mail from council
18 liaison asking questions in regard -- I guess there
19 was some information around the neighborhood that a
20 letter was out and people were concerned about it and
21 asking about the appeal period. I, again, indicated
22 there was a 30-day and the decision had been made.

23 The appeal was not filed until October 31st of
24 2018. That was more than six months after the date
25 of the original letter, more than four months from

1 when the appellants received the e-mail indicating
2 that -- and the letter indicating that there was a
3 30-day appeal, and more than two months after their
4 understanding that there was a 120-day appeal limit,
5 which was August 18th. And then it's almost three
6 months since others had been advised that there was a
7 30-day appeal period.

8 The second part of it is, so if there was an
9 understanding that they hadn't any idea that there
10 was an appeal period or that the letter was 30 days
11 overdue or whatever, there were several other times
12 that everybody knew about the letter and still didn't
13 appeal.

14 The appellants argue because the statement is
15 not in the letter indicating that if they could
16 appeal it as required by the code, I disagree that
17 that has to be in the letter.

18 If you read -- and I have the law. I passed out
19 what the laws say, 2311. It says that an appeal of
20 the decision of zoning administrator from an order,
21 requirement, decision or determination.

22 Then later on it says that any written notice of
23 a zoning violation or written order of the zoning
24 administrator dated after a certain date shall
25 include the statement of the right to appeal.

1 If you look at the underlying sections of what I
2 passed out, it has an order, requirement, decision,
3 determination. Then it goes further to say, written
4 order shall include the statement. It doesn't say
5 written decision, written determination. It's silent
6 on those. And for that reason, I don't believe that
7 the notice has to be in a letter to an applicant
8 asking for a zoning determination and I think it's
9 untimely filed.

10 MR. PINNOCK: Is that your clarification of the
11 timeliness issue?

12 MR. DAVIDSON: Yes, sir.

13 MR. PINNOCK: Okay. I'm going to ask
14 Mr. Davidson to hold for a minute. I'm going to ask
15 the appellant or the representative of the
16 appellant --

17 MR. POOLE: May we ask questions?

18 MR. PINNOCK: Oh, yeah. Sure.

19 MR. POOLE: Is it your position, Mr. Davidson,
20 that you made a decision in the April 18th letter
21 with respect to the conversion from nonconforming
22 office use to nonconforming multifamily use?

23 MR. DAVIDSON: Well, I would -- I would say I
24 did. I think there's some other individuals who
25 think I didn't, but that was another part of my

1 discussion that I hadn't gotten into. But the appeal
2 acknowledges -- the appellants acknowledged that I
3 made a determination and that's what we're hearing.
4 And if that acknowledgement is correct -- I don't
5 want to get into the weeds on the other part. And
6 I'm saying timeliness-wise, there were several
7 periods of time in which they could have appealed to
8 meet the 30 days and still didn't meet them.

9 MR. POOLE: Just wanted to know if you thought
10 you made a decision.

11 MR. DAVIDSON: I think I did. I don't like to
12 write letters that aren't decisions.

13 MR. POOLE: All right.

14 MR. PINNOCK: Okay. Thank you, sir.

15 Any other questions of Mr. Davidson?

16 So to be clear, he still has his declared
17 six minutes?

18 MR. BENBOW: He took five minutes and one second
19 so he's got five left.

20 MR. PINNOCK: And the question was, does this
21 count against the ten minutes?

22 MR. BENBOW: If there's a second hearing on the
23 merits. This is a separate hearing on the
24 timeliness.

25 MR. PINNOCK: Okay. Thanks.

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STATEMENT BY JOSEPH K. REID, III, ESQ.

MR. REID: Good afternoon, Mr. Chairman and members of the board. My name is Joe Reid. I live at 1821 Monument Avenue and I'm here representing the appellants, Stephen C. and Janice H. Nuckolls.

I would like to reserve two minutes for rebuttal on this issue of -- procedural issue of timeliness.

As Mr. Davidson alluded, I do think that this issue begins and ends with the language of 15.2-2311. And this board is constrained to follow that language strictly. It's in the Virginia code.

And the language of 15.2-2311 with respect to the notice requirements begins with the preamble, "notwithstanding any charter provision to the contrary."

So this is not a discretionary matter on the part of this board.

The language continues that any written notice of a zoning violation or written order of the zoning administrator dated after 1993 shall include a statement informing the recipient that he may have the right to appeal the notice within 30 days and that the decision shall be final and unappealable if not appealed within that 30 days.

And it continues to say that the appeal period

1 shall not commence until this statement is given.

2 Now, there is no dispute, if you look at the
3 April 2018 decision of the zoning administrator, that
4 there is no such statement in his decision. And the
5 language -- the plain language of the statute
6 dictates that the appeal period will not commence
7 until such statement is included in that decision or
8 in connection with that decision.

9 So then the question becomes, was there any
10 sufficient notice outside of what was included in the
11 four corners of the April letter decision?

12 And Mr. Davidson referred to some communications
13 with the appellants. He indicated that in June --

14 I don't think that this is in your packet.

15 But he indicated today that in June a copy of
16 the letter decision was provided to the appellants;
17 however, nobody disputes the notice requirements were
18 not in that decision, so that would have been to no
19 avail.

20 What is included in your packet is some
21 communication between Mr. Davidson and Mr. Nuckolls,
22 not Mrs. Nuckolls, but Mr. Nuckolls in August of 2018
23 as well as some back and forth e-mails between
24 Mr. Davidson and Mr. Bieber, who is Councilwoman
25 Gray's liaison, and I have copies if you need them,

1 but they are in your packet.

2 And if you review those e-mail exchanges, you
3 will see that the requirements of the statute, even
4 if they could be included in a separate e-mail, have
5 not been met. Those exchanges do not specifically
6 state that the appellant has a right to -- the
7 recipient has a right to appeal the notice within
8 30 days and that the decision shall be final and
9 unappealable if not appealed within 30 days.

10 And, in fact, if you read those exchanges, the
11 clear import of what Mr. Davidson is saying is that
12 the time has run. He says in his back and forth with
13 Mr. Bieber that that decision was made back in April
14 and it's a 30-day time limit.

15 Clearly, the implication is there is no
16 opportunity to appeal. It is not the statement that
17 is required by the strict language of 2311(A). It
18 simply doesn't comply with the strict requirements of
19 the statute.

20 There was the question of is this a decision. I
21 think you have a memorandum from the developer in
22 front of you that suggests that this is not a
23 decision. That issue should be resolved at this
24 point because Mr. Davidson has said today, he
25 considers it a decision.

1 If you look at the August exchange between
2 Mr. Davidson and Mr. Bieber, he calls it a decision.
3 It is something more than simply a zoning
4 confirmation letter, because it contains the
5 statement that you may convert this property by right
6 under 800.3 from office to multifamily. And that's
7 not conceding that a zoning confirmation letter
8 standing alone isn't an appealable instrument. I
9 think that it could be.

10 And, in fact, if you look at Exhibit 1 to the
11 packet that Ms. Mullen provided earlier this week on
12 behalf of the developer, there was a 2005 letter to
13 the owner of this property simply confirming the
14 zoning, which did include what I'll call the "magic
15 language." You have the right to appeal. And, you
16 know, as a matter of course, that language is
17 included in decisions of the zoning administrator.

18 I don't know why that magic language, that
19 required language under the statute wasn't included
20 in the April 2018 decision, but the fact of the
21 matter is, it wasn't. That makes this appeal timely
22 because the appeal period does not run until that
23 language is properly given.

24 And, also, that means that the further action
25 that Mr. Davidson took with respect to this property

1 and its proposed conversion in February of 2019 was
2 of no avail insofar as it addressed the issue of
3 by-right conversion because under the language of
4 15.2-2311(B), the appeal stays all proceedings in
5 furtherance of the action appealed from.

6 It is -- you know, again, I'm not sure why the
7 language wasn't included. It wasn't included. It's
8 required by the statute. Adequate notice wasn't
9 given. The appeal is timely.

10 MR. PINNOCK: Are there questions for Mr. Reid?

11 MR. POOLE: Yes, sir.

12 MR. PINNOCK: Yes.

13 MR. POOLE: Mr. Reid, the reason I asked him
14 whether he made a decision or not, you're correct
15 that 2311 is the statute that we have to interpret
16 and deal with and abide by.

17 It appears to me that the appeal may be to a
18 zoning administrator's decision or order,
19 requirement, decision, or determination made by any
20 other administrative officer, so that's two different
21 things.

22 Do you agree?

23 MR. REID: I do agree, Mr. Poole. There is
24 another statute that I'm sure you are aware that is
25 in play here, which is 2309, which deals with the

1 board's authority to hear appeals and that statute
2 uses the language order, requirement, decision,
3 determination interchangeably, I will say, but I
4 agree with you that what is subject to appeal from
5 the zoning administrator is a decision.

6 MR. POOLE: If you agree with me on that then,
7 do you then also agree with me that in the
8 notwithstanding language, which is what establishes
9 the 30-day notice requirement, that that applies only
10 to the notice of violation -- zoning violation or a
11 written order of the zoning administrator?

12 MR. REID: No, I don't agree with that,
13 Mr. Poole, and I will --

14 MR. POOLE: Help me understand.

15 MR. REID: I will look further in the language
16 of that sentence that says that the decision shall be
17 final and unappealable if not appealed within
18 30 days.

19 I think there that, you know, again, the
20 language is being used interchangeably. It says even
21 further down in the statute that the appeal shall be
22 taken within 30 days after the decision appealed
23 from.

24 So I would say that if there's any question that
25 this language about written notice applying to a

1 decision, I think it does apply to a decision.

2 MR. POOLE: Leaving that for further discussion,
3 you used the word "recipient," which is in the
4 statute as well, and that's in the notwithstanding
5 language, that the recipient received this notice.
6 The recipient in this is the person who applied for
7 the decision.

8 Do you agree?

9 MR. REID: I do agree with that. That would be
10 the attorney for the developer.

11 MR. POOLE: And the notwithstanding language
12 that requires the notice at least implies, if not
13 directly says that that notice is for the benefit of
14 only the applicant, the person who applied for the
15 letter for which the decision was given.

16 MR. REID: Well, I think that would be difficult
17 to read that -- read it that way, Mr. Poole, from the
18 standpoint that any party aggrieved from a decision
19 of a zoning administrator or other administrative
20 officer has a right to appeal. I mean, that's clear
21 in our Supreme Court precedent.

22 I think it would be quite a strained
23 construction to suggest that only the recipient of
24 the letter would be afforded the notice protections
25 that are provided in 2311 versus any party aggrieved

1 by the action of the zoning administrator.

2 MR. POOLE: I agree with you that the statute is
3 confusing, but that's the statute we have. We don't
4 get to write that, and so we have to make an
5 interpretation of what that statute means.

6 Do you have case law that supports your
7 statement that this notice is applicable not only to
8 the person who asked for the decision and, thus, the
9 recipient that says that it's applicable to all
10 parties?

11 MR. REID: I don't know that there's any -- a
12 specific authority.

13 MR. POOLE: I couldn't find any.

14 MR. REID: I couldn't find any from the Supreme
15 Court, but, logically, you would read that notice
16 requirement to apply to any person that is aggrieved
17 by the decision of the zoning administrator and not
18 simply the property owner.

19 MR. POOLE: We might disagree on that, but I'm
20 trying to give you an opportunity to help me
21 understand your position.

22 Further on, the last sentence of that first full
23 paragraph, "The owner's actual notice of such notice
24 of zoning violation or written order..."

25 Does that imply that it is -- that this is

1 intended for the owner?

2 MR. REID: I'm sorry. I'm not following where
3 you are, Mr. Poole.

4 MR. POOLE: All right. If you would go to the
5 first full paragraph of subparagraph A, it begins,
6 "The owner's" -- it's 1, 2, 3, 4 -- five lines from
7 the bottom of that first paragraph just before
8 subparagraph B. And it reads, "The owner's actual
9 notice of such notice of zoning violation or written
10 order or active participation in the appeal hearing
11 shall waive the owner's right to challenge the
12 validity of the board's decision due to the failure
13 of the owner to receive the notice of zoning
14 violation or written order."

15 MR. REID: I agree that's the language of it,
16 but -- and I agree that the language of the statute
17 is somewhat ambiguous and inconsistent because
18 earlier in 2311(A) it refers to the recipient, which
19 is not necessarily the owner.

20 2309 uses the terms, determination, order,
21 requirement, decision interchangeably. The language,
22 written order, recipient, owner, they're used
23 interchangeably and, perhaps, somewhat inconsistently
24 and ambiguously in the statute, but I believe that
25 the thrust of the notice requirement is that any

1 person aggrieved by an order of the zoning
2 administrator or other administrative officer is
3 entitled to written notice and many of these folks
4 are not attorneys, including Mr. and Mrs. Nuckolls.

5 And the entire purpose of 2311 is to inform them
6 if they are potentially an aggrieved party, whether
7 it's the owner or a third party, which there are many
8 third-party appeals that come before this board, to
9 make it crystal clear to them that they have 30 days
10 in which to appeal and if they don't, that the
11 decision will be final and unappealable.

12 So I think that, respectfully, that this board
13 needs to look beyond any ambiguity in the statute and
14 apply that purpose, which is, you know, it needs to
15 be -- you know, there's no discretion to waiver from
16 the language of 2311.

17 MR. POOLE: You do agree that when you interpret
18 a statute, and our job here is, at the outset, to
19 determine what that statute means, that you use --
20 you read the whole statute, not just a part of it?

21 MR. REID: You do indeed, Mr. Poole. I think
22 the other rule of statutory construction that's in
23 play here is that if the language of a statute is
24 ambiguous, then you should look to the intent of the
25 statute and the intent of the legislature.

1 MR. POOLE: Isn't the rule, if it's ambiguous,
2 you use its generally accepted dictionary
3 interpretations?

4 MR. REID: I believe that, with respect, that
5 the rule is that you look first to the plain
6 language, right, and if the plain language is
7 ambiguous, then you look to legislative intent.

8 MR. POOLE: Do you see -- I don't think in
9 Virginia we have much in the way of legislative
10 intent that's described in any recordable form.

11 MR. REID: That is true. The words "purpose"
12 and "intent" are used interchangeably with respect to
13 that rule of statutory construction. It is correct
14 that our general assembly does not have recorded
15 legislative intent, but looking to the legislative
16 purpose, the purpose, clearly, of this notice
17 requirement is to allow clear notification to
18 aggrieved parties that they have a right to appeal,
19 particularly, in the context, as we have here, where
20 it may not be lawyers that are reading these
21 decisions, and they need a clear indication that they
22 have the right to appeal.

23 For the record, I will say that as soon as
24 Mr. and Mrs. Nuckolls were advised legally that they
25 had a right to appeal, because this language was not

1 included in the April order, they promptly proceeded
2 with filing the appeal.

3 MR. POOLE: Help me understand what that point
4 was. At what point, as you put it, were they legally
5 advised that they needed to appeal or had a right to
6 appeal?

7 MR. REID: Subject to check, I would say it
8 would have been in mid-October, within a week or two
9 of the appeal being filed.

10 MR. POOLE: And who gave them that advice?

11 MR. REID: I did as an informal legal advisor.

12 MR. POOLE: Do you not believe that the zoning
13 administrator gave them that opinion?

14 MR. REID: I don't.

15 MR. POOLE: I mean, what's the difference
16 between the zoning administrator telling them they
17 don't have a right to appeal and you telling them
18 that they do?

19 MR. REID: I don't think that the zoning
20 administrator, with due respect to Mr. Davidson, gave
21 them advice in August that was in any way clear that
22 they still had a right to appeal. In fact, if you
23 read the e-mails, the clear suggestion is your time
24 has run.

25 MR. POOLE: I agree.

1 MR. REID: Yeah. And we just don't believe that
2 that's the case under 2311.

3 MR. POOLE: I'm done.

4 MR. PINNOCK: Any other questions?

5 Okay. Thank you, Mr. Reid.

6 MR. REID: Thank you.

7 MR. BENBOW: Rebuttal. Chuck has five minutes
8 of rebuttal.

9 MR. POOLE: How about Ms. Mullen speak?

10 MR. BENBOW: It's actually procedures. The
11 procedures are they rebut and then she goes.

12 MR. POOLE: Okay.

13 MR. PINNOCK: Okay.

14 MR. BENBOW: I'm just going by what's written --
15 the new bylaws.

16

17 **STATEMENT BY MR. WILLIAM DAVIDSON (REBUTTAL)**

18 MR. DAVIDSON: Well, I, obviously, disagree that
19 the appeal time hadn't run and for the reason I
20 stated earlier. You know, when you create code and
21 you have certain words in there and then you drop
22 them out, that means they don't apply, that only the
23 notice of violation applies or the order of the
24 zoning administrator.

25 Why would you have a requirement that you can

1 appeal my letter that's telling you, you can do
2 something that you want to do? That doesn't make any
3 sense.

4 If I sent a notice of violation and order
5 somebody to correct something, then that has to be in
6 there under the statute as I read it. And I think if
7 you look back at the construction of this 2311, this
8 statement about the after '93 came in after the fact,
9 and I think it's been amended several times where it
10 talks about sending it to the registered agent, the
11 clerk of the State Corporation Commission, period.

12 "The appeal shall be taken within 30 days after
13 the decision applied from by filing with the zoning
14 administrator."

15 If you read the Lilly's decision, the Lilly
16 decision says that you don't have to even give a
17 written determination. In that instance, they were
18 in a public hearing and they asked them, "Can I do
19 something?"

20 And the zoning administrator said, "You can do
21 this by right. If you don't agree with it, you can
22 appeal."

23 They didn't appeal within the 30 days. The
24 Supreme Court said that was noticed.

25 So e-mail, verbally, they knew. The Lilly

1 decision says you don't need to do it in writing. I
2 don't have to have that statement in there. I
3 disagree. I don't think you have to have that
4 statement in there, only for notices of violation.

5 MR. POOLE: May I ask you a question?

6 MR. DAVIDSON: Oh, one other thing.

7 The Reed Smith document that was presented,
8 there was a reference to the -- there's an Albemarle
9 Land Use Handbook. And there's an actual section
10 that talks about this provision in the code.

11 It talks about the notice of -- written notice
12 of violation in that order.

13 The second paragraph of it says, I quote, "Under
14 Virginia Code 15.2-2311(A), the required notice of
15 appeal applies only to written notices of violation
16 and written orders of the zoning administrator. It
17 does not apply to other decisions and determinations
18 that may be made and, thus, the 30-day appeal period
19 may run against someone who may not have received, or
20 may not have been entitled to receive notice of the
21 decision or determination.

22 "In other words, third parties do not have an
23 unlimited period of time to appeal a decision, even
24 if they assert that they are aggrieved."

25 And we still haven't even determined that.

1 "Otherwise, there would be no finality to a
2 decision or determination."

3 Think of, I could write a letter today and
4 ten years from now somebody says, "Well, I disagree
5 with that," and they say, "Well, I'm going to appeal
6 it."

7 That doesn't make any sense. You've got to have
8 finality.

9 MR. POOLE: With respect to your discussion with
10 respect to the Lilly case, you made reference to the
11 fact that an oral statement can be a decision and
12 that the 30 days can be binding, but didn't it also
13 say that you had to tell them that they could appeal?

14 MR. DAVIDSON: Yes.

15 MR. POOLE: And when did you tell them that they
16 could appeal?

17 MR. DAVIDSON: Would I tell the --

18 MR. POOLE: When did you tell the people that
19 you were discussing this with, at what point did you
20 tell them that they could appeal?

21 MR. DAVIDSON: Well, I'm not sure I specifically
22 told them they could appeal, but in the e-mail they
23 were asking regarding their time frame in which they
24 could appeal the decision. So the response back was,
25 it was a 30-day appeal period.

1 MR. POOLE: I just was clarifying whether you
2 thought your oral conversations with the current
3 appellants, not the applicant or the letter that you
4 wrote in April of 2018, but do you take the position
5 that your oral statements to them that their time had
6 run equals telling them that they had an appeal
7 period?

8 MR. DAVIDSON: I'm not sure I specifically
9 talked to anybody by phone. It was only in the
10 e-mails.

11 MR. POOLE: Okay. So did your e-mail give
12 them --

13 MR. DAVIDSON: Well, I mean the question was,
14 what is --

15 MR. POOLE: Because you're arguing that all of
16 this material that you had subsequent in e-mails gave
17 them notice, but did you ever say you have 30 days
18 and then you can run the clock from that point?

19 MR. DAVIDSON: Well, no, I didn't say they could
20 run the clock from that point. I said that Virginia
21 law says they have a 30-day appeal period.

22 MR. POOLE: I think your interpretation of the
23 Lilly case doesn't apply to this particular set of
24 facts is all I'm saying.

25 MR. DAVIDSON: Well, I mean, it's just

1 representative of the fact that it doesn't have to be
2 in the statute. It doesn't have to be in every
3 letter you write.

4 MR. POOLE: The Albemarle manual, does it make
5 reference to case law to support that statement you
6 just read to us about the finality issue?

7 Sometimes it does and sometimes it doesn't.

8 MR. DAVIDSON: Not in that particular paragraph
9 it doesn't.

10 MR. POOLE: Okay. Thank you.

11 MR. PINNOCK: Okay.

12 MR. BENBOW: Mr. Reid has four minutes left.

13

14 **STATEMENT BY JOSEPH K. REID, III, ESQ. (REBUTTAL)**

15 MR. REID: And I won't take the whole four
16 minutes. Just a couple of points.

17 Mr. Poole, in response to your exchange with
18 Mr. Davidson, I agree with you that the Lilly case is
19 not applicable on these facts. I agree with the
20 exchange that the Albemarle County Land Use Handbook
21 doesn't cite any proposition for the statements --
22 proposition of case law for the statements that he
23 recited about third parties potentially having an
24 unlimited right to appeal and so forth.

25 And on this question of whether or not the --

1 what I'll call the statutorily required language or
2 magic language is only required in a notice of zoning
3 violation or a written order as opposed to a
4 decision, I think this board can look to the course
5 of dealing by this zoning administrator in that
6 regard.

7 If it's only required in a written order, then
8 why was that language included in the June 2005
9 zoning confirmation letter, which arguably is not a
10 written order, to the owners of this property
11 confirming the existing zoning?

12 Why was that language included in the
13 February 2019 letter decision that the zoning
14 administrator issued in this case, which we say was
15 partially a nullity because --

16 MR. POOLE: I don't mean to interrupt you, but
17 can we just agree that if that language had been in
18 the April 2018 letter, we wouldn't be here?

19 MR. REID: There's no question about that.
20 There's no question about that.

21 MR. POOLE: I get your point on that.

22 MR. REID: That is the hook. That is the hook.
23 And it's not a technicality. It's a statutory
24 requirement.

25 Again, we don't know why contrary to in many of

1 these other decisions the language wasn't included,
2 but it wasn't included and that makes the appeal
3 timely.

4 MR. POOLE: Do you acknowledge that the
5 Albemarle Handbook is a generally accepted
6 authoritative subject matter such as a -- a
7 recognized authority for land use decisions in
8 Virginia?

9 MR. REID: It is. It is a resource that can be
10 cited, Mr. Poole. If you ask the justices of the
11 Supreme Court what it is, they would say it's not
12 something that tells us what to do.

13 MR. POOLE: I don't think anybody tells the
14 justices of the Supreme Court what to do.

15 MR. REID: I agree with you. They speak through
16 their orders.

17 MR. POOLE: I think you're absolutely correct
18 with respect to that.

19 The last question I really need to ask you is,
20 is it your position that if that language is not in
21 an order, that the time frame for an appeal doesn't
22 run ever?

23 MR. REID: No. I wouldn't go that far. There
24 is no outside limit in the statute, but there could
25 be intervening events and facts where it could be

1 determined that a potential appellant, a punitive
2 appellant had waived their right to appeal.

3 For example, here, if construction had -- you
4 know, if we were a year into construction and the
5 people living two doors down came to this board and
6 appealed, you could very well find that under the
7 Doctrine of Laches or otherwise that they've sat on
8 their rights.

9 MR. POOLE: Yeah. And that's really
10 subsection C, though, isn't it?

11 MR. REID: Well, subsection C, I'm not -- I
12 don't want to get in a protracted debate with you,
13 but I think subsection C speaks more towards changes
14 by the zoning administrator in his or her order,
15 which are limited to the 60-day period.

16 But I think you can find certain fact sets where
17 it was determined that an appeal was not timely, but,
18 I mean, the intent of the statute is when zoning
19 administrators issue decisions, they should include
20 this language and then it never comes up.

21 MR. POOLE: Because we don't have the clear-cut
22 answer to the questions that I'm asking, at least,
23 and at least in my mind, if we look at the actual
24 ordinance itself for some guidance, it makes a
25 statement that the owner's actual notice is binding

1 on them.

2 Do you think that applies to the other aggrieved
3 parties, actual notice?

4 MR. REID: I guess I would have to look at the
5 specific section of the ordinance that you're
6 referring to, Mr. Poole.

7 MR. POOLE: I'll read it for you.

8 MR. REID: In which section?

9 MR. POOLE: Again, we're in the next to the last
10 sentence of subsection A.

11 MR. REID: Oh, we're in 2311 again.

12 MR. POOLE: Yeah. And it's -- 1, 2, 3, 4, 5 --
13 six lines up.

14 It begins, "The owner's actual notice of such
15 notice of zoning violation or written order," again,
16 using those two specific -- but that's a different
17 point that I'm trying to make here. It waives the --
18 if there's actual notice, it waives the right to
19 object to that notice being provided.

20 MR. REID: If you actually participate in the
21 hearing.

22 MR. POOLE: But it also says if you have actual
23 notice. It doesn't require "and you participate."
24 It's "or", "or active participation." I'm just sort
25 of making a goose and gander argument here.

1 MR. REID: Right.

2 Yeah, but I don't think you can read that
3 sentence in the statute to obviate the need to
4 provide the written notice in the first place.

5 MR. POOLE: I agree. I'm just saying if you
6 look at the statute --

7 MR. REID: Yes.

8 MR. POOLE: -- as you're asking us to do, to
9 look at overall intent, isn't the overall intent of
10 this to say if you have actual notice and you don't
11 do anything, then you've waived it?

12 MR. REID: I do, with this caveat, Mr. Poole.
13 If you have actual notice and knowledge of your right
14 to appeal, as you were suggesting with Mr. Davidson a
15 moment ago, and that, you know, I think he was
16 answering the question forthrightly, but, clearly, he
17 did not provide actual notice and notice of, you now
18 have 30 days to appeal this or it will be final and
19 unappealable at any time to Mr. and Mrs. Nuckolls.

20 MR. POOLE: And that's what he clearly said and
21 that was what I was clearly asking.

22 MR. REID: Thank you.

23 MR. BENBOW: Jennifer Mullen.

24 MR. PINNOCK: Thank you.

25 MR. BENBOW: Ten minutes.

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STATEMENT BY JENNIFER MULLEN, ESQ.

MS. MULLEN: Thank you, Mr. Chair, members of the board. Jennifer Mullen with Roth Jackson here on behalf of Lee Medical LLC, the owner of the building located at 1805 and the adjacent parcels that is the subject of this appeal.

I guess just to piggyback off of a few things that were said, I want to just highlight that the zoning administrator's job is not to be the neighbors' attorney, so he provided that there is a 30-day appeal period. The neighbors knew about the April 2018 letter.

And in Virginia, you are obligated to go and do your own research, so not only was there an April 2018 letter; there is a 2005 letter. There is a 1978 letter, all of which talk about the nonconforming rights and, specifically, how one converts the medical office to a different use.

And if we move beyond the timeliness, that even tracks if you're going to say that you can convert from a medical office to another kind of office, then, certainly, you can go to a multifamily that's first permitted for categories earlier than that.

So from a notice standpoint, this has been a longstanding rule, not only for this property, but in

1 the city and the owners clearly had notice of that
2 and even e-mailed back and forth about that notice.

3 Just to identify one point, Mr. Poole, that you
4 made. I think you're absolutely correct. It would
5 be completely inconsistent to have a different appeal
6 period run for adjacent neighbors who are not
7 aggrieved, have not provided any evidence of being
8 aggrieved than that of an actual aggrieved party, who
9 would be the owner of this property. It would be
10 completely inconsistent and contrary to Virginia law.

11 So as we've talked about, Mr. Davidson's office
12 has provided the information in June. There was a
13 letter written by the appellants in July. I don't
14 know when Mr. Reid was hired, but that's not a
15 requirement. Each of us as our own individual
16 citizens are required to be present about our rights.
17 We cannot sit on our rights and we cannot waive four
18 months later, six months later.

19 Again, what's to stop it?

20 If that notice hasn't been provided, we might be
21 back here again next week. There is no finality,
22 which is a case that has been decided. That is a
23 case that is in the courts that was decided based on
24 the zoning determination, particularly from Richmond
25 two years ago.

1 You cannot have an indeterminate time for
2 appeal. That is the law.

3 This is not a question of lawyer versus
4 nonlawyer. This is a question of notice. The
5 appellants had notice. They had time to appeal. It
6 is not incumbent upon the other citizens to provide
7 them the wherewithal to write that appeal for them.
8 They did write an appeal. They didn't appeal it when
9 final plans were filed. They didn't appeal it when
10 plans were revised for that based on the special
11 exception that this body heard. So we would ask for
12 you to deny that appeal.

13 MR. POOLE: A couple of questions.

14 MS. MULLEN: Yes, sir.

15 MR. POOLE: Do you mind, Mr. Chairman?

16 MR. PINNOCK: No. You go, man.

17 MR. POOLE: When do you think that the
18 aggrieved -- the potential aggrieved parties are
19 entitled to the 30-day notice?

20 MS. MULLEN: When they have notice of that
21 notice as the law clearly states, which you provided
22 in the 2311.

23 MR. POOLE: All right. You acknowledge that the
24 April 2018 letter did not provide any notice of
25 appeal language?

1 MS. MULLEN: Yes. It does not have it on the
2 face.

3 MR. POOLE: So at what point do you think the
4 30 days in this case on that letter, not any of the
5 other letters --

6 MS. MULLEN: Sure.

7 MR. POOLE: -- on the April 2018 letter, when
8 does that 30-day period run?

9 MS. MULLEN: Well, one, you have to be
10 aggrieved, and I don't think that the appellants have
11 established any evidence.

12 MR. POOLE: I don't think we've asked anybody to
13 go to that point.

14 MS. MULLEN: Correct. But that is -- it's a
15 two-prong test, correct?

16 MR. POOLE: Uh-huh.

17 MS. MULLEN: So you have to be aggrieved, number
18 one, which they have not established and I don't
19 think they can and, number two, the actual notice.
20 So the statute clearly says, as you read, the actual
21 notice.

22 So if the -- the June is the only evidence that
23 I have as to when they received actual notice. If
24 they came in before that, that would be their actual
25 notice of that determination.

1 MR. POOLE: If Mr. Davidson didn't say you had a
2 right to appeal, how is that actual notice of a right
3 to appeal?

4 MS. MULLEN: He said that there is a 30-day
5 appeal right. You do not have to write the appeal
6 for them. There is a 30-day appeal right.

7 As you know in Virginia, you have to be -- it's
8 a buyer beware state. There's a 30-day appeal right
9 and you feel that right now starts your 30-day
10 appeal, then appeal.

11 It didn't stop them from appealing in October.
12 They could have appealed in June and July, if the
13 June was their actual notice, but they didn't.

14 They could have appealed in August, but they
15 didn't. They waited until October to file that
16 appeal, which was noted November 7th.

17 MR. POOLE: If you accept Mr. Reid's
18 interpretation in that the 30 days never run until
19 that statutory notice is given in the form that the
20 statute requires --

21 MS. MULLEN: Sure.

22 MR. POOLE: -- that notice has not been given up
23 to this point?

24 MS. MULLEN: It actually has. It was given in
25 the February 9, 2009, letter. It was given in the --

1 MR. POOLE: But we're not here on that letter.

2 MS. MULLEN: Exactly. They didn't appeal it,
3 nor did they appeal the 2005 letter that included
4 language.

5 MR. POOLE: Just as a matter of fairness, how
6 did every other aggrieved party, at least in the city
7 of Richmond, get the notice that a certificate of
8 zoning compliance has been issued?

9 MS. MULLEN: Typically, the City posted it on
10 the website and that's the notice provision. There's
11 not a requirement that the City give notice to
12 individuals. Again, it's incumbent upon each
13 individual to go and find out if there has been
14 something filed on an adjacent property.

15 Here it's clear that something has been done.
16 The neighbors were involved and went to a hearing of
17 the Department of Historic Resources in 2007. There
18 was a certificate of appropriateness that was
19 granted, so there has been many number of things that
20 might indicate that there is activity going on, on
21 the property and, yet, they waited an additional
22 six months to even file an appeal.

23 MR. POOLE: Thank you.

24 MR. PINNOCK: Thank you.

25 MS. MULLEN: Any other questions?

1 Thank you.

2 MR. BENBOW: Collectively neighbors and
3 association now get ten --

4 MR. PINNOCK: On this matter?

5 MR. BENBOW: On this matter.

6 MR. PINNOCK: On the timeliness of this appeal?

7 MR. BENBOW: Exactly. It's not to do anything
8 with the issue.

9 MR. PINNOCK: Right, but on the --

10 MR. BENBOW: On the merits of the case.

11 It should be timeliness. I don't know what
12 they're going to say but...

13 MR. PINNOCK: Right.

14 So if there are members of the neighborhood or
15 association that wish to speak to the matter of the
16 timeliness of the appeal, there is a ten-minute --
17 only on the timeliness.

18 MS. AGNEW: I'm sorry. Can you repeat?

19 MR. PINNOCK: Only on the timeliness of the
20 appeal.

21 MS. AGNEW: Is this the time to speak against
22 it?

23 MR. PINNOCK: If you have something to speak on
24 the timeliness of the appeal.

25 MS. AGNEW: The timing of the appeal?

1 MR. PINNOCK: Yes. Only that matter.

2 MS. AGNEW: How about the content of the appeal?

3 MR. PINNOCK: Only the timing right now.

4 MS. AGNEW: Oh, okay.

5 MR. PINNOCK: Okay. All right.

6 MS. AGNEW: Suffice it to say, we neighbors
7 haven't gotten any notice so...

8 MS. WOFFORD: Yes, that's what I'm going to
9 address.

10

11 **STATEMENT BY CINDY WOFFORD**

12 MS. WOFFORD: I live at 1637 Monument.

13 MR. PINNOCK: If I could get you to state your
14 name.

15 MS. WOFFORD: Cindy Wofford.

16 I live at 1637 Monument, from my front porch, if
17 I stare at this building; however, I never received
18 notification about anything due to the widths of the
19 streets. Your notifications go out to a geographic
20 area encircling the building.

21 We have a two-lane street and a median that
22 buffers. None of us on this side of the -- and they
23 have a buffer behind the building that is a parking
24 area that also buffered many of the people on this
25 street behind them.

1 So for you to, you know, say we didn't say
2 enough soon enough, we weren't notified. We did not
3 receive letters. We applaud the Nuckolls for
4 being --

5 MR. PINNOCK: Okay.

6 MS. WOFFORD: -- immediate enough of a neighbor
7 to take this on and they are representing a huge
8 amount of homeowners.

9 MR. PINNOCK: Understood. Okay.

10 MS. WOFFORD: Thank you.

11 MR. PINNOCK: Thank you.

12 There's a question from guess who?

13 MS. WOFFORD: Yes, sir.

14 I'm happy to answer.

15 MR. POOLE: I'm glad.

16 First, I want to clarify for you.

17 There is no requirement when you're asking for a
18 certificate of zoning compliance that any neighbor be
19 notified.

20 MS. WOFFORD: Okay.

21 MR. POOLE: The only thing that the City does to
22 give that notice to anyone else other than the owner
23 is to post it online and they do that within about
24 five days after the letter is written.

25 I think the actual letter or the appeal on there

1 talks about when it was posted. I think it was
2 posted -- I can't really tell because the writing is
3 not very effective, but that's how you get noticed
4 and that's the only way you get noticed and that's
5 what Ms. Mullen was talking about with respect to
6 your obligation as a citizen.

7 MS. WOFFORD: As a community --

8 MR. POOLE: Yes, ma'am.

9 MS. WOFFORD: -- we get notification --

10 MR. POOLE: I may not agree with that.

11 MS. WOFFORD: -- from numerous departments.

12 MR. POOLE: Right. Right. I know.

13 MS. WOFFORD: And they usually are
14 geographically based. And this particular building
15 really is in a buffered area so that an immediate
16 neighbor really isn't very immediate and the family
17 live on top of each other, as you well know, and our
18 buildings are this far apart. But this particular
19 property is unusual in that we do not buffer. The
20 buffer is there.

21 MR. POOLE: But the point I'm trying to make
22 is --

23 MS. WOFFORD: I understand your point.

24 MR. POOLE: -- as a citizen, I don't like the
25 idea that the other neighbors don't get a copy of

1 that, but that's what the law is in Virginia. And,
2 unfortunately, that's how we have to live and we're
3 bound by the law in Virginia, but I just wanted you
4 to not have a misperception that because you're
5 farther across the street from the normal --

6 MS. WOFFORD: Right. Okay. I think --

7 MR. POOLE: Did you know about any of the other
8 letters that Ms. Mullen made reference to?

9 MS. WOFFORD: We have received --

10 MR. POOLE: Did you know anything the --

11 MS. WOFFORD: -- nothing official.

12 MR. POOLE: -- historical decision-making
13 process that occurred, I think, in '07 Ms. Mullen
14 said?

15 MS. WOFFORD: Many times we received --

16 MR. POOLE: In 2005. Excuse me.

17 MS. WOFFORD: -- architectural -- if someone is
18 changing their paint color and it's within an
19 immediate amount of space, we receive written
20 notification that gives clarified what to do if you
21 are not in approval of that particular thing --

22 MR. POOLE: But what I'm really asking you --

23 MS. WOFFORD: -- and zoning may be different,
24 but --

25 MR. POOLE: -- at any point --

1 MS. WOFFORD: -- I'm much more worried about
2 this building than the color of white that someone's
3 trim is being painted.

4 MR. POOLE: I understand.

5 The only question I'm asking you is, did you at
6 any point in time have any notice of official acts by
7 the City --

8 MS. WOFFORD: Not --

9 MR. POOLE: -- saying that this property could
10 be converted to multifamily --

11 MS. WOFFORD: No, not that I --

12 MR. POOLE: -- in any form or fashion?

13 MS. WOFFORD: Not that I remember.

14 And if I were to receive some -- I think if you
15 were saying we should be look- -- as citizens, we
16 should be looking at a website is putting much of the
17 burden on us and there are many people who don't use
18 websites the way --

19 MR. POOLE: I don't disagree with you.

20 MS. WOFFORD: So that's not a good form of
21 communication for every neighbor.

22 MR. POOLE: I don't disagree with you on that
23 but --

24 MS. WOFFORD: Right.

25 MR. POOLE: -- the point I'm trying to make for

1 you is that that's how it works in Richmond. Maybe
2 that's not the right way for it to work.

3 MS. WOFFORD: So how often should we check the
4 website?

5 MR. POOLE: If you would have followed the
6 actual requirement of what the law is, every day.

7 MS. WOFFORD: Okay. I'll go home and check
8 my --

9 MR. PINNOCK: Excuse me.
10 Can I get you to fill out a yellow sheet,
11 please?

12 MR. BENBOW: I need your form.

13 MS. WOFFORD: I got one already filled out.

14 MR. BENBOW: Can you bring it to me, please?

15 MS. WOFFORD: Yes, I will do that.

16 MR. BENBOW: And, Ms. Mullen, did you give me
17 one of these?

18 MR. PINNOCK: I wasn't tracking the time there,
19 but is there anyone else that would like to --

20 MR. BENBOW: I was.

21 MR. PINNOCK: Okay. With the remaining --

22 MR. BENBOW: They've got seven minutes left.

23 MR. PINNOCK: Okay. Is there anyone else that
24 wanted to speak on the timeliness matter?

25 Okay. Thank you.

1 MR. BENBOW: Need a motion.

2 MR. PINNOCK: I need a motion.

3 If she wants to speak from right there since we
4 don't have a --

5 MR. BENBOW: Just let her speak from there.

6 MR. PINNOCK: You can speak from right there.

7 MS. AGNEW: Oh, thank you very much.

8 Will this be recorded?

9 MR. PINNOCK: Yes.

10 MS. AGNEW: Okay. Good.

11 Well, I'm very concerned that --

12 MR. BENBOW: Need her name.

13 MR. PINNOCK: Can I get you to state your name?

14 MS. AGNEW: Oh, sorry. Marian Agnew.

15 MR. PINNOCK: Thank you.

16

17 **STATEMENT BY MARIAN AGNEW**

18 MS. AGNEW: I live on Park Avenue about a
19 hundred yards from the Lee Medical Building.

20 MR. PINNOCK: Okay.

21 MS. AGNEW: Okay. I'm very concerned that the
22 neighborhood is totally unaware of the implications
23 of density in this particular location on their
24 individual properties, so that has never been
25 circulated around the neighborhood.

1 When density is increased like this under --
2 kind of under the radar, we need to know what's going
3 to be the effect on our properties, what's going to
4 happen.

5 This is, essentially, a vacant building as far
6 as sewage discharge and water usage is concerned.
7 Now, what's going to happen when that's increased
8 fifty-fold, a hundredfold, how much, and when all
9 that wastewater hits --

10 Just a minute.

11 Just a minute.

12 Please let me speak.

13 When all that wastewater hits the combined
14 sewers, which are already overflowing and,
15 particularly, when we have flash flood and the
16 manholes become fountains, this is a public health --

17 MR. PINNOCK: Ms. Agnew, I'm sorry. I
18 appreciate --

19 MS. AGNEW: I understand --

20 MR. PINNOCK: I do appreciate you coming.

21 MS. AGNEW: I understand what you're saying.

22 MR. PINNOCK: I've asked for if there are
23 members that have --

24 MS. AGNEW: Timeliness, we need to know --
25 timeliness has to do with now. What we need to do is

1 address these issues now. They should have been
2 addressed heretofore. All the people on this board
3 should already know what the impact is going to be on
4 the community public health if this variance is
5 granted.

6 MR. PINNOCK: Okay.

7 MS. AGNEW: That's -- this is what your job is,
8 protecting health -- public health and welfare, and
9 that's what I'm here to say.

10 MR. PINNOCK: Okay. Thank you.

11 MS. AGNEW: But, you know, every one of our --
12 every one of our buildings between here and the
13 sewage plant is going to be a fountain of wastewater
14 morning and evening if that variance is granted.

15 MR. PINNOCK: Ms. Agnew, thank you. I
16 appreciate you coming in.

17 MS. AGNEW: Thank you very much for allowing me
18 to speak.

19 MR. PINNOCK: Thank you very much.

20 MR. BENBOW: All right. Now a motion.

21 MR. POOLE: I would move to determine that this
22 appeal is not timely made and I do that with great
23 regret because I'm not sure that the statute is as
24 clear as it should be. I'm not -- I'm positive that
25 the rules as they apply to these types of

1 determinations is fair, but that's not our job here.

2 Our job here is to interpret the statute as it's
3 written as best as we know how. And when you read
4 all of the language of the statute -- and you need to
5 read all of it together -- the notwithstanding
6 language, which is, essentially, the notice language
7 that's required, the written notice applies only to
8 notices of zoning violations and written orders of
9 the zoning administrator. And the April 18th letter
10 was not that. It was not either one of those.

11 It was a decision of the zoning administrator,
12 which is why I asked him that question and I think
13 Mr. Davidson made that point.

14 I don't like the motion that I've made, but I
15 think it's the correct determination with respect to
16 how the statute is written and what this board should
17 do, but it's a motion only.

18 MR. PINNOCK: So there's a --

19 MR. BENBOW: Do you have a second?

20 MR. PINNOCK: I don't have a second yet.

21 MR. YORK: I'll second it.

22 MR. PINNOCK: Mr. York.

23 MR. YORK: The only thing I would add to that to
24 the extent that it's even applicable is that as was
25 pointed out, one of the requirements of interpreting

1 things like this is you have to read laws and
2 ordinances as a whole and Mr. Reid raised the
3 question about to what extent intent should read and
4 feed into it, if there's any ambiguity in the
5 language.

6 And if you look at the various actions the
7 General Assembly has taken over the past decade or so
8 with respect to these regulations, each time they've
9 have done something, it has been more towards
10 favoring a developer and making it more difficult for
11 other parties to even be involved in processes.

12 And, again, I don't know that necessarily should
13 feed into our decision, but I throw that out because
14 of the remark Mr. Reid made about intent.

15 MR. PINNOCK: Further discussion?

16 (No response.)

17 MR. PINNOCK: So there's a motion to deny the
18 appeal based on the timeliness of the application and
19 a second by Mr. York.

20 All those in favor say "aye."

21 (Response of "Aye.")

22 MR. PINNOCK: Opposed?

23 (No response.)

24 MS. HOGUE: Does this mean that their case is
25 not --

1 MR. BENBOW: Speak up. We can't hear you.

2 MS. HOGUE: Just wondering what this vote means
3 for the rest of the case.

4 MR. PINNOCK: That there is no rest of the case.

5 MS. HOGUE: There is none.

6 MR. PINNOCK: So was that five votes?

7 MR. BENBOW: Is it five, zero?

8 I didn't hear any "nays."

9 MR. PINNOCK: All right. So the appeal is
10 denied.

11 Next case.

12 (This proceeding was concluded at 2:05 p.m.)

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1 STATE OF VIRGINIA
2 COUNTY OF CHESTERFIELD, TO WIT:

3
4 I, Jacquelin O. Gregory-Longmire, a fully trained,
5 qualified, and certified court reporter, do hereby certify that
6 the proceedings in the herein matter were taken at the time and
7 the place therein stated; that the proceedings were reported by
8 me, Professional Court Reporter and disinterested person, and
9 that the foregoing contains a true and correct verbatim
10 transcription of all portions of the proceedings.

11 I certify that I am not related by either blood or
12 marriage to any of the parties or their representatives; that I
13 have not acted as counsel to or for any of the parties; nor am
14 I otherwise interested in the outcome of this complaint.

15
16 WITNESS my hand this _____ day of _____, 2019.
17 My commission expires September 30, 2021.
18 Notary Registration No. 7275579.

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JACQUELIN O. GREGORY-LONGMIRE

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37:9; 38:24; 42:8;
45:18; 47:23; 53:8, 11
ZONING [1] - 1:5
Zoning [2] - 2:7; 4:5

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that an appeal of Stephen C. and Janice H. Nuckolls that an April 19, 2018 decision of the Zoning Administrator to permit conversion of 1805 MONUMENT AVENUE and 408, 410 & 412 N. ALLEN AVENUE from a nonconforming office use to a multifamily residential apartment building under Sec. 30-800.3 of the Zoning Ordinance was in error be denied based on the record before the Board.

ACTION OF THE BOARD: (5-0)

Vote to Deny

affirmative: Pinnock, York, Poole, Hogue, Sadid

negative: None

BZA 35-2019

APPLICANT: William and Louise Wiltshire

PREMISES: 704 WESTOVER ROAD
(Tax Parcel Number W000-1107/004)

SUBJECT: A building permit to split an existing lot improved with a single-family detached dwelling and to construct a new single-family detached dwelling on the proposed vacant lot.

DISAPPROVED by the Zoning Administrator on June 13, 2019, based on Sections 30-300 & 30-404.4 of the zoning ordinance for the reason that: In an R-2 (Single-Family Residential District), the lot area requirement is not met. A lot area of fifteen thousand square feet (15,000 SF) and a lot width of ninety feet (90') are required. For zoning purposes, one (1) lot having a lot area of 34,838.0 square feet and a lot width of 241.3 feet currently exists; a lot area of 12,803.0 square feet (#702) is proposed.

APPLICATION was filed with the Board on June 13, 2019, based on Section 1040.3(2) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Alex Davis

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants, William and Louise Wiltshire, have requested a special exception to split an existing lot improved with a single-family detached dwelling and to construct a new single-family detached dwelling on the proposed vacant lot for property located at 704 Westover Road. Mr. Alex Davis, architect for the applicant, testified that Mr. Wiltshire's grandfather constructed the existing dwelling at 704 Westover Road. Mr. Davis noted that Mr. Wiltshire's grandfather also built other houses on the block. Mr. Davis stated that the proposed lot has two front yards one being on Police Memorial Way and the other on Westover Road. It was noted that the proposed dwelling will front Westover Road. Mr. Davis stated that they contacted surrounding property owners including the Parks Department and there is no opposition to the proposed project. Mr. Davis explained that the property originally existed as two separate lots that were combined by deed. Mr. Davis indicated that the current lot is the largest on the block and that after division it will be the sixth largest of 13 lots. Mr. Davis noted that the lot currently includes 34,838 ft.². The required lot area is 15,000 ft.² and 12,803 ft.² is being proposed. Mr. Davis stated that the proposed dwelling architecturally speaking will be consistent with other dwellings in the neighborhood.

In response to a question from Mr. York, Mr. Davis stated that there is an existing site wall located along the rear property line and the intent is to preserve the site wall while providing as much frontage on Westover Road as possible. Mr. Davis further noted that the lot is irregularly shaped.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 114-1040.3 (2) of the zoning ordinance, the subject lots have previously consisted of legal lots of record that were subsequently combined by deed, and the number of lots to be created do not exceed the number of previously existing lots of record, the new lots comply with Section 114-610.1 of the zoning ordinance and off-street parking requirements will be met, each lot created by the division will comply with the requisite side yard requirements, the division will comply with applicable requirements of the subdivision regulations and that dwellings to be constructed on the lots will be compatible with the dwellings existing or to be constructed in the immediate vicinity of the property.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the lot area requirement be granted to William and Louise Wiltshire for a building permit to split an existing lot improved with a single-family detached dwelling and to construct a new single-family detached dwelling on the proposed vacant lot.

ACTION OF THE BOARD: (5-0)

Vote to Grant

affirmative: Pinnock, York, Poole, Hogue, Sadid

negative: None

BZA 36-2019

APPLICANT: City of Richmond Department of Public Works

PREMISES: 6255 OLD WARWICK ROAD
(Tax Parcel Number C007-0099/024)

SUBJECT: A Richmond Stormwater Management Permit to construct an addition to an existing community center and redevelopment of surrounding site.

DISAPPROVED by the Zoning Administrator on June 14, 2019, based on Sections 30-300, 30-650.2, 30-1220.1 & 30-1220.138 of the zoning ordinance for the reason that: In an R-3 (Single-Family Residential District), the proposed height of accessory structures exceeds the maximum height limit applicable in the zoning district and accessory structures are not permitted in the front yard.

APPLICATION was filed with the Board on June 14, 2019, based on Section 17.20(c) of the Charter of The City of Richmond.

APPEARANCES:

For Applicant: Dexter Goode
Scott Wiley

Against Applicant: None

Undecided: Thelma Brown

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Department of Public Works, has requested permission to construct accessory structures, light poles, within the required front yard for property located at 6255 Warwick Road. Mr. Dexter Goode, representing the city, testified that the proposed project is for the Southside Community Center and is a continuing phase of the project. Mr. Goode noted that the light poles are permitted in the front yard provided that they are no taller than

35 feet in height. Mr. Goode further noted that the proposed light poles will be roughly 70 feet in height and serve the adjoining athletic fields. Mr. Goode indicated that they had canvassed the neighborhood and were aware of no objections to the proposed lighting. Mr. Goode testified that the project will protect the health and safety and general welfare of the surrounding neighborhood.

Ms. Thelma Brown testified that she was concerned about the effect the proposed lighting would have on her townhome. Ms. Brown also expressed concern about the condition of the existing facility and in particular the parking lots.

Mr. Scott Wiley, project engineer, stated that the existing asphalt will be removed as part of the project and that new parking areas will be constructed. Additionally the existing dilapidated structures will also be removed. Mr. Wiley stated that all of the infrastructure that would be expected of a modern facility will be provided. Mr. Wiley indicated that there is a comprehensive lighting plan that takes into account different types of lights and pole heights. Mr. Wiley stated that visors are attached to the light fixtures which eliminates glare and light spillover. Mr. Wiley noted that there is one small area in the vicinity of the proposed softball field which has one footcandle of light spilling out into an adjoining lot which is the equivalent of a flashlight and given the existing vegetation should not affect the neighbor whatsoever.

The Board finds that evidence shows that the City of Richmond, Department of Public Works, has satisfied the conditions of §17.20 paragraph C of the City Charter and that the proposed lighting structures are consistent with the health, safety and general welfare of the city and surrounding neighborhood.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a City Charter special exception from the maximum height and front yard requirements for accessory structures be granted to the City of Richmond Department of Public Works for a Richmond Stormwater Management Permit to construct an addition to an existing community center and redevelopment of surrounding site.

ACTION OF THE BOARD: (5-0)

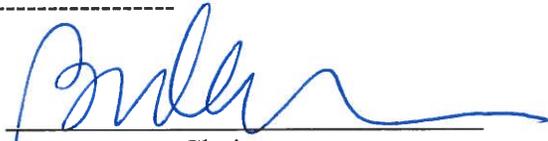
Vote to Grant

affirmative: Pinnock, York, Poole, Hogue, Sadid

negative: None

Upon motion made by Mr. Poole and seconded by Mr. York, Members voted (3-0) to adopt the Board's July meeting minutes.

The meeting was adjourned at 3:10 p.m.


Chairman


Secretary