



**BOARD OF ZONING APPEALS**

**MEETING MINUTES**

**WEDNESDAY, MARCH 5, 2025**

On Wednesday, March 5, 2025, 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 February 19 and 26, 2025 and written notice having been sent to interested parties.

Members Present:                Rodney M. Poole, Chair  
   Roger H. York, Jr., Vice-Chair  
   Susan Sadid  
   Bryce L. Robertson  
   Edward H. Winks, Jr.

Staff Present:                    Roy W. Benbow, Secretary  
   William C. Davidson, Zoning Administrator  
   Brian P. Mercer, Planner  
   John K. Dickinson, Assistant City Attorney

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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.

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**BZA 09-2025**

**APPLICANT:**                Floyd Grove Sheppard LLC

**PREMISES:**                2911-2915 GROVE AVENUE  
   (Tax Parcel Number W000-1284/003)

**SUBJECT:** An appeal of Floyd Grove Sheppard LLC that the city zoning administrator erred in approval of a plan of development which decision of the zoning administrator is being appealed under Sections 30-402.1(2), 30-402.2, 30-412.1(1), 30-412.2, 30-680.3, 30-1220.1, and 30-1220.2 of the zoning ordinance for the construction of an art storage facility at 2911-2915 GROVE AVENUE (Tax Parcel Number W000-1284/003) and that the property continues to be governed by Special Use Ordinance No. 87-193-185.

APPEAL was filed with the Board on January 3, 2025, based on Section 17.20(a) of the City Charter.

**APPEARANCES:**

For Applicant: Adam Winston

Against Applicant: William Davidson  
Preston Lloyd

CITY OF RICHMOND  
BOARD OF ZONING APPEALS

PUBLIC HEARING

WEDNESDAY, MARCH 5, 2025

1:00 P.M.

AN APPEAL FOR FLOYD GROVE SHEPPARD, LLC

City Hall

900 East Broad Street, 5th Floor

Richmond, Virginia 23219

804-646-6340

Roy Benbow, Secretary, (804) 240-2124

Reported by: Crane Snead & Associates, Inc. (804) 355-4335

1 APPEARANCES:

2

3 Mr. William C. Davidson, Zoning Administrator

4 Mr. Brian C. Mercer, Planner

5 Mr. Neil R. Gibson, Senior Assistant City Attorney

6 Dr. Kevin J. Vonck, Ph.D., Director

7 Mr. Roy W. Benbow, Secretary.

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10 BOARD MEMBERS

11 Rodney M. Poole, Esq., Chairman

12 Roger H. York, Vice Chairman

13 Bryce Robertson, Member

14 Susan Sadid, Member

15 Edward H. Winks, Jr., Member

16

17 Also Present

18

19 Adam Winston, Esq. Sands Anderson, P.C.

20 Appellant Representative

21

22 Preston Lloyd, Esq. Williams Mullen

23 VMFA Real Estate Company, LLC

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## 1 I N D E X

2

3 By Mr. Davidson Page 8

4 By Mr. Winston Page 14

5 By Mr. Gibson Page 8

6 By Mr. Lloyd Page 36

7 Mr. Winston Page 4

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1 P R O C E E D I N G S

2 (Court Reporter Sworn.)

3 CHAIRMAN POOLE: We will now conduct the Board  
4 of Zoning Appeals for the City of Richmond. This meeting will  
5 be open to in-person participation and electronic participation  
6 offered via Microsoft Teams.

7 The Board is compromised of five fellow  
8 citizens who are appointed by the circuit court and serve  
9 without compensation.

10 The affirmative votes are required to prove  
11 any variance, special exception or grant an appeal.

12 The Board is the assisted by a secretary who  
13 has no voting power. The zoning administrator and its  
14 assistant are present but do not vote.

15 The Board's powers are very limited and set  
16 forth in the Code of Virginia, the City Charter, and the  
17 Richmond City Code.

18 The Board does not have the power to rezone  
19 property, but may only grant variances from specific zoning  
20 requirements as they my apply to a particular property, or  
21 grant an appeal in the decisions of the zoning administrator,  
22 or grant certain exceptions to the zoning regulations.

23 The Board's proceedings are informal but we do  
24 adhere to certain rules. We ask that those persons expected to  
25 testify in these case be sworn. The case will be heard in the

1 order in which they appear on the docket.

2 First we will hear from the applicant, then  
3 others who wish to speak in favor of the case, and finally from  
4 persons in opposition.

5 In the cases with variance of special  
6 exception request, the applicants proponents, or person agreed  
7 under 15 .2-2314 of the Code of Virginia shall be permitted to  
8 a total of six minutes each to present their case.

9 The Board will withhold questions until the  
10 conclusion of the presentation. Rebuttal maybe permitted at  
11 the discretion of the Board. It shall be limited to correction  
12 or clarification of factual testimony already presented. The  
13 rebuttal shall not exceed five minutes.

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

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

24 Following the presentations of the zoning  
25 administrator and the appellant or appellant's representative

1 other interested parties shall be permitted the total of 10  
2 minutes to present their views.

3 Interested parties are defined as a property  
4 owner other than the appellant whose property is the subject of  
5 an appeal and the neighborhood constituency consisting of  
6 neighborhoods and neighborhood associations.

7 After all the cases have been heard -- well, I  
8 am going to bury this a little bit for today. We have an  
9 unusual case today. We have an appeal from the decision of the  
10 zoning administrator, so we will hear that case first. When it  
11 completes, we will make a decision on that case, then we will  
12 hear the remaining cases on the docket in that order.  
13 It's a little bit different than we normally do.

14 Whether you are attending in person or  
15 participating electronically, you will have the opportunity to  
16 observe the Board's deliberation regarding your case. The  
17 secretary of the Board will notify each applicant in writing as  
18 to the decision of the Board.

19 In the event that you have difficulty  
20 accessing a public hearing, you may contact the Mr. William  
21 Davidson at 804-396-5350, or by e-mail at  
22 Chuck.Davidson@RVA.gov, for assistance.

23 Our first case today is an appeal by Floyd  
24 Grove Sheppard. That the city zoning administrator heard an  
25 approval of the planned development in its decision of the



1 zoning administrator being appealed under Section 30-402.1  
2 Subsection 2, 30.402.2, 30-412.1 Subsection 1, 30-412.2,  
3 30-680.3, 30-1220.1, and 30-1220.2 of the zoning ordinance for  
4 the construction of the art storage facility at 2911-2915 Grove  
5 Avenue. And the property continues to be governed by a Special  
6 Use Ordinance 87-193-185.

7 Is the appellant or the appellant's  
8 representative present?

9 MR. WINSTON: Adam Winston with Sands  
10 Anderson on behalf of the appellant.

11 CHAIRMAN POOLE: Would you please come  
12 forward.

13 SECRETARY BENBOW: The zoning administrator  
14 goes first.

15 CHAIRMAN POOLE: I'm sorry, the secretary is  
16 the correct. The zoning administrator is going to go first,  
17 according to the statute.

18 Mr. Zoning Administrator, could you please  
19 tell the members of the board what part of your time you want  
20 to have for presentation, and do you want to reserve any time  
21 for rebuttal?

22 MR. DAVIDSON: Eight minutes.

23 CHAIRMAN POOLE: Eight minutes for your  
24 presentation and two minutes for rebuttal?

25 MR. DAVIDSON: Correct.

1                   CHAIRMAN POOLE: Before you begin you need to  
2 be sworn:

3 WHEREUPON,

4                   WILLIAM DAVIDSON,

5 Do you swear or affirm that the testimony you give in this  
6 matter will be the truth, the whole truth, so help you God.

7                   MR. DAVIDSON: I do.

8                   CHAIRMAN POOLE: Before we proceed, this Board  
9 does not hear cases with respect to appeals from the city  
10 zoning administrator very often.

11                   And I think it would be helpful for the Board  
12 if our attorney would please read the applicable section of the  
13 Code of Virginia 15.2-2309 as to powers and duties of the Board  
14 of Zoning Appeals with respect to the hearing and deciding  
15 appeals.

16                   MR. GIBSON: The decision on such an appeal  
17 shall be based on the Board's judgement of whether the  
18 administrative officer was correct.

19                   The determination of the administrative  
20 officer shall be presumed to be correct. At a hearing on  
21 appeal, the administrative officer shall explain the basis for  
22 his determination, after which the appellant has the burden of  
23 proof to rebut such presumption of correctness by a  
24 preponderance of the evidence.

25                   The Board shall consider any applicable

1 ordinances, laws, and regulations in making its decision.

2 CHAIRMAN POOLE: Thank you very much. Again,  
3 that is Subsection 1 of 15.2-2309 of the Code of Virginia.  
4 Previously the court reporter has been sworn in. Do you  
5 acknowledge being sworn in, Madam Court Reporter?

6 MADAM REPORTER: I do.

7 CHAIRMAN POOLE: Thank you. Mr. Zoning  
8 Administrator, would you please proceed?

9 MR. DAVIDSON: Mr. Chairman, members of the  
10 board, I am William Davidson, Zoning Administrator for the  
11 city.

12 The reason we're here today is the present land  
13 owner VMFA Real Estate Company, LLC, who I guess is the holding  
14 company of VMFA. A non-profit organization that supports the  
15 Commonwealth VMFA. They received the approval to erect the  
16 building that will be leased to the Commonwealth VMFA for  
17 museum purposes.

18 The building is approximately 12,000 square  
19 feet. It's a little over 19 foot in height with the top of the  
20 roof, and there is a four foot barabit. And then there is a  
21 stainless screen that surrounds rounds the top two screen  
22 equipment on top of the building that tops off at about 30  
23 feet.

24 The proposed development is a building  
25 approximately 12,000 square feet which include two storage

1 areas totaling 10,000 square feet, some office space, loading  
2 area, and a mechanical room, and things of that nature.

3 The appeal, I think it's in front of you, it  
4 cites a number of code sections, but we are basically here for  
5 one reason. And it comes in two questions: One, is the art  
6 storage warehouse and that is sometimes referred to as the  
7 industrial warehouse, the permitted accessory use allowed in  
8 the R-6 district; the second item is does the SUP still control  
9 the use of the property.

10 Well, the owner of the property is a private  
11 entity. I believe it's the holding company I guess for the  
12 foundation. The only reason we're here today is because of  
13 that ownership of the land and the building that is being  
14 proposed. If it was owned by the Commonwealth, it would be  
15 allowed under that scenario.

16 Now, the ordinance allows certain uses in  
17 residential areas. A regular single family of those things.  
18 It also allows libraries, schools, and museums in these  
19 districts as long as they are owned and operated by any  
20 governmental agency.

21 It is argued that the art storage facility is  
22 not a use that meets these permitted accessible use standards.  
23 I disagree. Obviously if use VMFA as an example, if the museum  
24 function to the average person as you are walking in, you have  
25 galleries, you have rooms, they have a library, you have a rare

1 book room, a lecture room, a classroom, cafe, restaurant,  
2 theater, sculpture garden, and a retail shop.

3                   The museum has the galleries that the public  
4 typically walks around and looks at. They have lectures,  
5 concerts, and plays, and many other activities. So these are  
6 the things that the casual person sees but what else is it?  
7 What is going on behind the scenes?

8                   Well, what does a museum do. A museum procures,  
9 cares, studies, displays objects of lasting interest and value.  
10 What else happens behind the scenes that the general person  
11 does not see? They store, they store a lot of artifacts.  
12 Anything in their collection, they store artifacts art, photos,  
13 books, allegedly they may have in their collection, they  
14 restore and repair these items.

15                   They have private collections that have  
16 restricted access. They have the gallery access that is apart  
17 from the general viewing people. They research and study, the  
18 employees there and others that make them, they catalog.

19                   So if you look at it different way, would you  
20 categorize all these different functions and rooms that are  
21 being located in the museum as not part of the main use? I  
22 would think not.

23                   And I don't think there would be accessory use.  
24 To me the only thing that may be accessory in a museum that I  
25 am looking at is maybe a cafe or a restaurant, something like

1     that, but typically all of these museums have them.

2                     So who is doing all of these things? They have  
3 administrators, they manage the business side of the museum,  
4 they have art typists that maintain the records and track the  
5 relevant documents and files. Conservators who take care of  
6 the objects, preserve and prepare for storing. The curators  
7 that manage and oversee them, create exhibitions, research and  
8 learn more about them, and they may be doing a providence  
9 research. Each may result in restitution or reparations to  
10 where ever that item may have come from.

11                    The registrars that manage them to make sure  
12 they are cared, and manage them when they are on loan with the  
13 other institutions.

14                    I've read some information that a large amount  
15 of the items at a museum are never even on public display, so  
16 they are doing a whole lot of different things other than  
17 showing paintings on the wall, or whatever the case may be.

18                    They also, the excess of the items, so you have  
19 a lot of items that maybe are not a good enough quality, or  
20 things like that, or not really are important works, so they  
21 may get rid of them or store them or may use them for research  
22 purposes.

23                    They may have items that they thought were going  
24 to be popular or important down the road, and that may not eve  
25 come to fruition so they might have dates. So you have all

1 these things that a museum is doing. It's not just the  
2 function that you walk in and you look at paintings.

3 So these museums are made up of a multiple  
4 multitude of separate component activities. They acquire, they  
5 store, they catalog, prepare, curate, research, so that is  
6 basically what my interpretation was. That this is a museum  
7 use, and it's allowed under this statute that says you can have  
8 a museum in R-6.

9 Secretary BENBOW: One minute.

10 MR. DAVIDSON: The other side of it is the  
11 Special Use Permit. Special Use Permits are permissive.  
12 Special Use Permits are approved for properties that the use  
13 cannot meet the underlying zone requirement.

14 So in this instance, the original approved  
15 doctor's office. And then it was mentioned several times to  
16 allow part 4 in the VMFA and for some other uses.

17 Now, what it says, and you might want to look at  
18 Page 19, Special Uses that says: That when the privilege is  
19 rent by this ordinance is terminated, and the special use  
20 become null and void. Well, if you are not going to use it for  
21 that purpose, you don't need special use.

22 And it says if you go down to the underlying  
23 zoning: So applicably, the underlying zones that are special  
24 use are no longer valid.

25 SECRETARY BENBOW: That's eight minutes.

1                   CHAIRMAN POOLE: You reserved two minutes for  
2 your rebuttal.

3                   MR. DAVIDSON: Thank you.

4                   CHAIRMAN POOLE: Now if we could have the  
5 appellant representative give us your name.

6                   MR. WINSTON: Thank you, Mr. Chairman, members  
7 of the board. I am Adam Winston from the law firm of Sands  
8 Anderson, P.C., and I represent Floyd Grove Sheppard, LLC.

9                   CHAIRMAN POOLE: And five others individuals?

10                  MR. WINSTON: And five other individuals.  
11 That's right.

12                  CHAIRMAN POOLE: You need to tell the Board how  
13 much of your time you want for your regular presentation, and  
14 if you want to reserve any time for rebuttal. You have then  
15 minutes total.

16                  MR. WINSTON: Thank you. I would like to use  
17 seven minutes now and reserve three months for rebuttal.

18                  CHAIRMAN POOLE: Very good. And those five  
19 people who you represent are part of your time. So if any of  
20 those five people want to speak, you must give some of your  
21 time to the them.

22                  MR. WINSTON: Understood.

23                  CHAIRMAN POOLE: Do you wish to do that?

24                  MR. WINSTON: No. I will be using that.

25                  CHAIRMAN POOLE: Very good. Do you understand



1 those five people will not be permitted to speak?

2 MR. WINSTON: Yes, sir. We discussed this  
3 before.

4 CHAIRMAN POOLE: Very good. If you would please  
5 proceed.

6 WHEREUPON,

7 ADAM WINSTON,

8 Do you swear or affirm that the testimony you give in this  
9 matter will be the truth, the whole truth, so help you God.

10 MR. WINSTON: I so affirm.

11 CHAIRMAN POOLE: Thank you.

12 MR. WINSTON: Thank you, Mr. Chairman and  
13 members of the board. As I said, I am Adam Winston from Sands  
14 Anderson on behalf of the appellants.

15 And after hearing Mr. Davidson's presentation,  
16 we more confident than ever in our interpretation of zoning  
17 ordinance that this proposed art storage warehouse simply  
18 violates Richmond City's Zoning Ordinance.

19 I want to first sort of address the arguments  
20 that were made directly, and then I will go into my normal  
21 presentation. I think when the Board is considering the  
22 question of whether or not this is a principal museum use or an  
23 accessory use.

24 A good framing question to keep in mind is if  
25 VMFA did not exist would this building be considered a museum?

1 And I think the answer to that question pretty clearly is not.  
2 That this proposed art storage warehouse.

3 While storage in a museum of the art and the  
4 procurement of private collections and research and  
5 refurbishment, and all of those things might be things that  
6 museums do, this is not a museum. This is an accessory  
7 building to the Virginia museum of fine arts.

8 And I think it's also very important to note,  
9 and this is noted in the appeal packet, and we cited it in the  
10 cease and desist letter that we sent to Dr.  
11 Vonck and Mr. Davidson, the principal use on this property is a  
12 studio school.

13 You can't have an accessory use to a principal  
14 use that is located on a different lot. That comes directly  
15 from the definition of an accessory structure in the zoning  
16 ordinance, but it also just comes from the logic. That the  
17 principal structure and the accessory structure in order to be  
18 permissive within the zoning ordinance must be located,  
19 collocated on the same lot.

20 If, in fact, the Board were to approve the  
21 zoning administrator's decision what would effectively happen  
22 is that the VMFA would be permitted to build any building it  
23 wants on any lot it wants in R-6 regardless of whether or not  
24 that use is a principal use or an accessory use or an accessory  
25 use. There can't be an additional principal use structure for

1 the VMFA. The VMFA is the principle use structure.

2                   Regarding the point of the SUP, I think it's  
3 very important for the Board to keep in mind as well that SUP's  
4 are not permissive. And the Supreme Court of Virginia has been  
5 repetitive in its affirmation that conditions in an SUP have a  
6 force of law and are considered to be part of the zoning  
7 ordinance.

8                   And so conditions created in an SUP, in fact as  
9 recently as November or April, I'm sorry, of 2020, there was  
10 Notice of Violation sent to the owner of the property for  
11 noncompliance with this SUP, and that was less than five years.

12                   And there has been no attestation by the owner or  
13 by the administration that the privileges in the SUP related to  
14 the parking lot have terminated. So the administrator says  
15 that the SUP is no longer effective.

16                   But as far we know VMFA employees are still  
17 parking there, and studio school employees are still parking  
18 there. And so it does not make sense from our perspective to  
19 view an SUP which has real obligations, and which the highest  
20 court in this Commonwealth has stated has the force of law is  
21 merely optional, especially when Notices of Violation were  
22 issued recently, relatively recently for noncompliance  
23 therewith.

24                   I do want to walk through some of the relevant  
25 ordinances just to tease out exactly why this building simply

1 does not fit within the framework of per permissible uses in  
2 R-6. First, it's not a permitted principal use. The proposed  
3 building is not a museum. It may house certain functions that  
4 a museum also functions but it's not a museum.

5 On information and belief, the plan of  
6 development that is being challenged here has one bathroom in  
7 it, so it's a museum of a single restroom. It's not within the  
8 spirit or the plain language of the ordinance to define this  
9 building as a principal museum.

10 It's also not an other use required for the  
11 performance of governmental function which is also permitted un  
12 30-402.1 and 30-412.1. It's not an other use retirement  
13 required for the performance of governmental functions because  
14 the warehouse is accessory and ancillary to the VMFA, as I  
15 stated before. So to define this as a separate principal use  
16 is also outside of the plain language of the ordinance.

17 And two, even if the zoning ordinance required  
18 that the use be, or even the Board, I'm sorry, even if the  
19 Board did determine that it was an other use required for the  
20 performance of governmental functions, the zoning ordinance  
21 requires that such use be primarily intended to serve  
22 residences of adjoining neighbors.

23 And we submitted a petition to the Board that  
24 shows that the half of residents who received notice of this  
25 hearing are against the erection of the art storage warehouse.

1 And I think, I believe even the owners in the administration  
2 would admit purpose of this structure is not to serve residents  
3 of adjoining neighbors.

4 So even if the Board were inclined to rule that  
5 this is an other use required for the performance, it does meet  
6 the necessary precondition that it be primarily intended to  
7 serve residents of adjoining neighborhoods.

8 It's not a permitted accessory use in R-6 under  
9 zoning ordinance 30-402.2 or 412.2, either. There is not a  
10 single accessory use in that list that even approximately  
11 resembles the proposed art storage warehouse.

12 And as I said before, even it were a permitted  
13 accessory use, the principal use is the museum which is on a  
14 different lot under different ownership. The principle use on  
15 the lot that is subject of this appeal is a school. And there  
16 is no argument that we have located, identified, that would  
17 justify the art storage warehouse as an accessory use to the  
18 studio school collocated on the lot.

19 SECRETARY BENBOW: You have one minute.

20 MR. WINSTON: Thank you, sir.

21 As I said and, as it says in the appeal  
22 packet, zoning ordinance 30-680.3 says that accessory uses are  
23 only permitted on the same lot as the predicate principal use.

24 Now, under zoning ordinance 30-1030.5, the  
25 zoning administrator is required to certify that a plan of

1 development is compliant with the zoning ordinance. We simply  
2 do not see an argument based on the presentation that you heard  
3 today that is a viable interpretation of the zoning  
4 ordinance. We don't think it suffers that.

5 And we think it would defeat the plain  
6 language and the spirit of the zoning ordinance of the BZA were  
7 to deny our appeal, so we respectfully ask that you grant it.  
8 And I reserve the rest of my time for rebuttal.

9 CHAIRMAN POOLE: Three minutes.

10 MR. WINSTON: Thank you, sir.

11 CHAIRMAN POOLE: Mr. Davidson?

12 MR. DAVIDSON: I have no more.

13 CHAIRMAN POOLE: I take it that since Mr.  
14 Davidson is not going to say anything more that you don't need  
15 your three minutes rebuttal?

16 MR. WINSTON: That's a fair assessment.

17 Thank you, sir.

18 CHAIRMAN POOLE: All right. So it is at this  
19 point that the Board will then have an opportunity to ask  
20 either the zoning administrator of the appellant any questions  
21 that this Board would like to have answered.

22 So are there any members of the board that want  
23 to ask questions because I have several?

24 [Note: Board Members Answer in the Affirmative.]

25 CHAIRMAN POOLE: So, Mr. Zoning administrator,

1 in the R-6 district, you are permitted to use all permitted  
2 principal uses in the R-1 district, correct?

3 MR. DAVIDSON: Correct.

4 CHAIRMAN POOLE: One, as Mr. Winston I think  
5 correctly informed us, the current use on the property that  
6 we're talking about is a school operated by a government  
7 agency, correct?

8 MR. DAVIDSON: Correct.

9 CHAIRMAN POOLE: Subsection 2 of 30.402.1 gives  
10 the permitted principal uses in the R-1 and thus in the R-6.  
11 And that says museums or schools - it says more than that but  
12 those two - and libraries are owned and operated by a  
13 governmental agency. So is that the case?

14 MR. DAVIDSON: Correct.

15 THE COURT: So does that make this a permitted  
16 principal use on this property?

17 MR. DAVIDSON: I would determine that, yes.

18 CHAIRMAN POOLE: All right. 30-402.2 talks  
19 about permitted accessory uses both in the R-1 and R-6,  
20 correct?

21 MR. DAVIDSON: Correct.

22 CHAIRMAN POOLE: Subsection 1 of 30-402.2 gives  
23 a permitted accessory uses; private garages, garden tool sheds,  
24 and storage incidental, and clearly subordinate to the  
25 permitted principal uses?

1 MR. DAVIDSON: Correct.

2 CHAIRMAN POOLE: Is this storage that is  
3 incidental and clearly subordinate to the permitted principal  
4 use of a school or museum?

5 MR. DAVIDSON: No. I would not say that the  
6 building is going to be specifically point 2, considering it a  
7 principal.

8 It's also accessory to the studio school because  
9 of the idea that the studio school may be utilizing part of the  
10 building. And may have some art work that is in the building  
11 in the studio school.

12 CHAIRMAN POOLE: May I clarify to make sure I  
13 heard what you said? You believe both the building itself the  
14 proposed building itself is a permitted use as well as a  
15 permitted accessory use?

16 MR. DAVIDSON: Correct. Otherwise, if it was  
17 not considered accessory, you would say that the studio school  
18 could not have anything to do with that building.

19 CHAIRMAN POOLE: All right. With respect to the  
20 special use permit, I think it's a 1987 special use permit?

21 MR. DAVIDSON: That was the last abatement.

22 CHAIRMAN POOLE: In Section 2 Subsection I it  
23 says: Should the owner use the premises for any purpose which  
24 is not permitted by the ordinance, then, first, what were the  
25 permitted uses in the special use permitted in 1987.



1                   MR. DAVIDSON: Well, I think I will back up a  
2 little bit. The original special use from 1965 was that it was  
3 a medical office.

4                   THE COURT: 1976.

5                   MR. DAVIDSON: There were several, several.

6                   CHAIRMAN POOLE: You're right, there were a  
7 number of special use permits.

8                   MR. DAVIDSON: The last of which authorized a, I  
9 think 43 space parking area that the doctor's office could use  
10 and medical office. The Virginia. Museum of Fine Arts was  
11 authorized to use it.

12                   And also they authorized other uses with within  
13 R-53 district. So I guess that was kind of was opening it up  
14 to anybody that needed the ability to rent spaces, so something  
15 to the effect they could use it, also.

16                   CHAIRMAN POOLE: So there were two permitted  
17 uses in Subsection I, Section 2, Subsection I. One was the  
18 medical office use, and the other one was the parking lot?

19                   MR. DAVIDSON: Correct.

20                   CHAIRMAN POOLE: When was the property no longer  
21 used as a medical office building?

22                   MR. DAVIDSON: I don't have the exact dates.

23                   CHAIRMAN POOLE: But what you would say is that  
24 it is not used as a medical office now?

25                   MR. DAVIDSON: That is correct.

1 CHAIRMAN POOLE: All right.

2 MR. DAVIDSON: Health South, the office was an  
3 orthopedic medical office. And from what I recall which I  
4 think is now Ortho Virginia.

5 And Health South sold the property in the late  
6 80's to the VMFA, late 80's. And some time after 80's subsequent  
7 80's, that is when VMFA studio was established.

8 CHAIRMAN POOLE: And then Subsection J of the  
9 Special Use, so that was longer used a medical office building  
10 after that sale?

11 MR. DAVIDSON: Correct.

12 CHAIRMAN POOLE: So Subsection J, Section 2,  
13 Subjection J following I says that if either of those occurs.  
14 In other words, no longer using it as a medical office  
15 building, or no longer using it as a parking lot, then it  
16 reverts back to its R-6?

17 MR. DAVIDSON: I would agree to that, yes.

18 CHAIRMAN POOLE: So in that instance, the  
19 Special Use Permit is no longer in effect, and is no longer  
20 part of the zoning of this particular property?

21 MR. DAVIDSON: Correct.

22 CHAIRMAN POOLE: So it's subject to the regular  
23 R-6 requirements which you previously talked on principal  
24 permitted uses and accessory uses?

25 MR. DAVIDSON: Correct.

1                   CHAIRMAN POOLE: Are there any other questions  
2 from the members of the board?

3                   MR. WINKS: Yes, sir. I have a question about  
4 the zoning window.

5                   CHAIRMAN POOLE: Please start.

6                   MR. WINKS: I want to ask the proponents of this  
7 if one of these technicalities could be corrected in my worried  
8 mind. If the Virginia museum owned this property themselves  
9 would you object to the facility?

10                  MR. WINSTON: Could you clarify? I heard two  
11 questions, Your Honor. I want to make sure I am answering what  
12 I heard you're asking.

13                  MR. WINKS: I will have you answer the second  
14 one first. If the Virginia museum owned this property would  
15 you object to this building?

16                  MR. WINSTON: In the Commonwealth owned the  
17 land?

18                  MR. WINKS: Correct.

19                  MR. WINSTON: Then it would exempt from zoning  
20 under practice and understanding, yes.

21                  MR. WINKS: And could you see a way where this  
22 plan could be transferred to the Virginia Museum?

23                  MR. WINSTON: That I have no idea.

24                  MR. WINKS: Then you would have no objection?

25                  MR. WINSTON: Oh, I wouldn't classify it as no

1 objection. I think that a lot of the issues pertaining to  
2 compliance with the zoning ordinance would be deferred. But I  
3 wouldn't say that there would be no objection.

4 MR. WINKS: In your appeal of this, do you have  
5 any, I didn't see, other than the items related to the zoning  
6 ordinance in particular of things?

7 MR. WINSTON: And that, frankly, Your Honor,  
8 that is because, our understanding is that while indirect  
9 Commonwealth ownership works in certain instances to exempt  
10 entities from land from property taxes, it does not work to  
11 exempt property from zoning.

12 And so I hear the hypothetical, if the property  
13 were transferred, that would change the nature of our  
14 exemptions, but I think we would insist that given the facts as  
15 they are before us, that it's not at present land that is owned  
16 by the Commonwealth, and it does need to comply with relevant  
17 zoning ordinances.

18 CHAIRMAN POOLE: You are not permitted to speak.  
19 If you all you want consult with him?

20 MR. WINSTON: That's all.

21 MR. WINKS: My follow-up question was is there  
22 anything that the Virginia Museum can do in this building,  
23 could do to make it more acceptable to you, what would that be?

24 MR. WINSTON: Yes. And I don't want to the  
25 provide an exhaustive list of terms now because, frankly, one

1 does not exist. However, I do think there are certain general  
2 principals that I can state.

3 The proper channels that this should have gone  
4 through, this application should go through is application a  
5 for special use permit. And we are under no illusions that the  
6 VMFA Real Estate, LLC is incapable of doing that. And we  
7 believe their application would be duly considered, and would  
8 have high likelihood of success. The advantage to the public  
9 of an SUP process is input on conditions on nth property.

10 So this building which was potentially  
11 characterized as an accessory to the studio school dwarfs the  
12 studio school in size and scope. It has 30 foot security  
13 walls, and it's 15 feet from my client's property.

14 So there's lots of things that could be done in  
15 a proper and fully vetted SUP process that would absolutely  
16 improve the position of my clients, Your Honor.

17 MR. WINKS: And has the Virginia Museum  
18 University addressed these issues with you guys?

19 MR. WINSTON: From my understanding, there has  
20 been little room for cooperation, but we are absolutely at any  
21 timed ready and willing to have those discussions.

22 MR. WINKS: Thank you.

23 MS. SADID: And I guess that kind of along the  
24 same lines when we talk about this very narrow, legal zoning  
25 issue --

1 MR. WINSTON: Sure.

2 MS. SADID: -- when I look at industrial  
3 warehouse in a residential street, we have had government  
4 agencies come before our board, but we typically get a very  
5 thick detail outline of what is the issue; what does it look  
6 like, what is the industrial warehouse, and how many feet from  
7 someone's house.

8 And I guess what I am wondering just from being  
9 a good neighbor, has the VMFA spent a lot of time outlining  
10 what it's going to look like? How is it going to affect the  
11 neighborhood? And we are a Board made up of residences, and we  
12 have neighborhood associations that get very involved.

13 I know if you look at it by a good faith by  
14 right they don't have to. But being a good neighbor, which I  
15 think the VMFA has also tried to be a good neighbor, and I  
16 think they are an incredible asset to our city, to our state.

17 MR. WINSTON: Yes.

18 MS. SADID: So I think along those same lines  
19 what could happen? What would be a way, because we're not  
20 attorneys?

21 MR. WINSTON: Sure.

22 MS. SADID: And I listened to Chuck and I  
23 listened to you, we're going back and forth on legal issues.

24 MR. WINSTON: Sure.

25 MS. SADID: But what would be the outcome that

1 would be good for the community, for the City of Richmond, for  
2 the State of Virginia, for the VFMA to happen?

3 MR. WINSTON: Sure. And again I don't want to  
4 prejudge any hypothetical negotiation or discussions. But as  
5 I, the answer to your initial question, and I don't actually  
6 view this. I don't mean to, I agree with you.

7 The VMFA is an incredible asset. I stand here  
8 before you as an advocate and as a patron of the arts and 100  
9 percent, however there has not been a lot of notice.

10 In fact, the issue came to my client's attention  
11 because construction and fencing went up across the street.

12 MS. SADID: Okay.

13 MR. WINSTON: And to the extent that the VMFA is  
14 a huge operation, it has a lot of moving parts that we don't  
15 attribute malice to that, but the fact that there has been  
16 dearth of malice.

17 And with property community input, I think there  
18 is a way to do this through a SUP, as the zoning ordinance  
19 requires, where we can make sure it's not 15 feet from  
20 anybody's property.

21 But also make sure that the VMFA gets what it  
22 needs because, thank God, it's a successful and expanding.  
23 It's an asset to the Commonwealth, and we certainly are not  
24 obstructionist.

25 MR. ROBERTSON: Can either party speak to what

1 degree the public would have access to the facility to the  
2 warehouse facility. Do you know? Does either party have an  
3 understanding of that?

4 CHAIRMAN POOLE: That will be coming.

5 MR. ROBERTSON: Okay. Great.

6 CHAIRMAN POOLE: I would like a follow up with  
7 Mr. Winston. Mr. Winston, if this Board determines that  
8 presumption or the zoning administrator overcomes the evidence  
9 that you have presented, and determines that the use is  
10 proposed is both a principal and permitted accessory, it would  
11 not be requirement for a special use permit, correct?

12 MR. WINSTON: I, we would still contest the...

13 CHAIRMAN POOLE: I get you say his decision is  
14 wrong. But the question I am asking you is if his decision is  
15 right, if this board or the Circuit Court, which I think that  
16 is where it's headed, determines that it's a permitted  
17 principal use or a permitted accessory use, there is no reason  
18 for the special use permit. And to put in other words, it's by  
19 right use?

20 MR. WINSTON: Subject to our objection that SUP  
21 governs, the 1987 SUP governs, which I understand there are a  
22 lot of questions. Subject to that objection, if that objection  
23 were removed, then I agree with you.

24 CHAIRMAN POOLE: Let's address the special use.  
25 Subsection J says that if either of those conditions no longer



1     exist, then automatically it reverts back to R-6, does it not?

2                     MR. WINSTON: I agree that the SUP says that it  
3     reverts to the underlying zoning of use not permitted by the  
4     ordinance is use. But I don't necessarily concede that the  
5     current use of the property is in violation of the SUP.

6                     CHAIRMAN POOLE: I thought you just said that  
7     there had been a notice of violation?

8                     MR. WINSTON: That was for construction of  
9     temporary fencing in violation of the SUP. But as far as we  
10    are aware, even years sequent, the property has been subjected  
11    to the conditions of the SUP subsequent to the initiation of  
12    the school principal use.

13                    So, in other words, what it would look like.  
14    And I hope it doesn't go to circuit court, but if it does, I  
15    think there is a also a fair argument that one can't, that the  
16    city would be in a difficult position from an equitable  
17    standpoint to say it is subject to the SUP for decades until  
18    this being subject to the SUP challenges a zoning position.

19                    CHAIRMAN POOLE: Would you agree that after  
20    years it's been used at the property now it's not a medical  
21    office building?

22                    MR. WINSTON: Yes, I will agree with that.

23                    CHAIRMAN POOLE: And is that not one of the  
24    triggering items of Subsection J, 2J of the special use permit?

25                    MR. WINSTON: I don't' know because I don't know

1 -- the 1987 SUP references an earlier SUP. And I don't have  
2 that text of that SUP, but I believe that --

3 CHAIRMAN POOLE: If I were to tell you that the  
4 1976 special use permit did make reference to the medical  
5 office use that I am referring to?

6 MR. WINSTON: And that the school use would be  
7 in violation of the SUP.

8 CHAIRMAN POOLE: I'm not following you.

9 MR. WINSTON: If the current school use, the  
10 current principal use of the property, that use violates the  
11 SUP. Is that what you're saying, Your Honor?

12 CHAIRMAN POOLE: No. What I am saying is if  
13 it's no longer a medical office building, if that's a trigger  
14 under Subsection J, doesn't that automatically take it back to  
15 the R-6 in general where you assess permitted principal uses  
16 and permitted accessory uses?

17 MR. WINSTON: I don't know, Your Honor. It  
18 would not be prudent for me to opine without looking at the  
19 language. I am not trying to be evasive. I absolutely would if I  
20 had, but it wouldn't be prudent for me to do it.

21 CHAIRMAN POOLE: Well, you do agree it's not a  
22 medical office use?

23 MR. WINSTON: Yes, I agree.

24 CHAIRMAN POOLE: And you do agree that if it's  
25 no longer subject to the special use, then R-6 would permit a

1 school operated by a governmental agency is a permitted  
2 principal use.

3 MR. WINSTON: Yes.

4 CHAIRMAN POOLE: Any other questions?

5 MR. WINSTON: But we would also submit, Your  
6 Honor, that the art storage warehouse cannot serve as an  
7 accessory use to a principal use of a school when it serves as  
8 a museum even if there are tangential uses that the studio  
9 school may take advantage of simply because the definition of  
10 accessory building is that it's subordinate to the principal  
11 use.

12 And this building is gigantic, it will swallow  
13 the principal use. It is certainly not subordinate to the  
14 studio school. It does not seem like a principal analysis of  
15 the plain language, Your Honor. That is our position.

16 CHAIRMAN POOLE: If the evidence were to show  
17 that it is an accessory use to the school would that be a  
18 permitted use, an accessory use?

19 MR. WINSTON: Yes, an accessory use to the  
20 principal school use school would be permitted on the property.

21 CHAIRMAN POOLE: Any other questions?

22 MR. YORK: I just want to clarify a fine point.  
23 I don't know why this happened, but the 1976 ordinance that  
24 created the permission for allowing those lone buildings to be  
25 used a medical office.

1                   The legal description, as I checked very  
2                   carefully, includes those properties up on Grove Avenue,  
3                   extends back and wraps around the area back in the parking  
4                   area, is that special use ordinance specified medical office  
5                   use as well as, I think it was 43 parking spaces in the area of  
6                   that was their use.

7                   The 1776 Special Use Ordinance for some reason  
8                   instead of amending the 1987, instead of the amending the '76  
9                   ordinance which would have made more sense, they did a legal  
10                  description of only the parking lot. And that ordinance says  
11                  that it permits parking to be used by the Virginia Museum, by  
12                  the medical office building, and any other R-53 use which is  
13                  underlying zoning.

14                 So is it your position that special use  
15                 permit was needed because the parking lot VFMA intended was not  
16                 permit because it was across a school?

17                 MR. DAVIDSON: Yes.

18                 MR. YORK: So then the question is if that  
19                 description only covered just the parking lot, and then under  
20                 paragraph J, or back up to where it talks about what the use  
21                 may be. And that is parking areas serving museum and the  
22                 medical office building, does the fact that the medical office  
23                 building even though it's on a separate lot, stop using that  
24                 parking area constitute termination of the special use permit?

25                 MR. DAVIDSON: Is it required of the medical

1 office building?

2 MR. YORK: In order for the special use to be  
3 valid?

4 MR. DAVIDSON: I don't think so.

5 MR. YORK: Because after the medical office  
6 building ceased using it, it was used just by the Virginia  
7 Museum, allegedly?

8 MR. DAVIDSON: Yes.

9 MR. YORK: Which the special use permit was  
10 required because it's not permitted use.

11 MR. DAVIDSON: Correct.

12 So if that's the case then, the fact that they  
13 are still using it requires a special use permit?

14 MR. DAVIDSON: This proposed building is going  
15 to eradicate all of that.

16 MR. YORK: That's right exactly, it doesn't  
17 matter.

18 MR. DAVIDSON: In the end, it doesn't matter.

19 MR. YORK: Because once that use actually does  
20 stop, then it doesn't need a special use permit unless there is  
21 still some remain parking on that property. And in order for  
22 the VMFA to continue like their own employees using that  
23 parking.

24 MR. DAVIDSON: The VMFA users at the other  
25 property across the street would no longer be permitted unless

1     that were to be amended or it was authorized.

2                     However, anybody at the studio school --

3                     MR. YORK: That's correct.

4                     MR. DAVIDSON: -- and/or in the art warehouse  
5     would certainly be permitted to use that. And you are going to  
6     have probably an overlap of employees coming there and using  
7     it.

8                     MR. YORK: The bottom line is your position is  
9     that none of this history matter because under the proposal  
10    that eradicates everything?

11                    MR. DAVIDSON: Absolutely.

12                    CHAIRMAN POOLE: Any other questions from  
13    members of the board? Thank you, Mr. Davidson.

14                    I believe the next step would be to have the  
15    representative of the land owner present.

16                    Would you please tell us your name, and I will  
17    swear you in.

18    WHEREUPON,

19                    PRESTON LLOYD,

20    Do you swear or affirm that the testimony you give in this  
21    matter will be the truth, the whole truth, so help you God?

22                    MR. LLOYD: I so affirm.

23                    Mr. Chairman and members of the board, my name  
24    is Preston Lloyd. I am an attorney with the law firm of  
25    Williams Mullen. I am here on behalf of VMFA Real Estate

1     Company, LLC, and its sole member the Virginia Museum and Fine  
2     Arts Foundation. And for convenience, I am going to refer to  
3     it as the "company" and "foundation" when I am referring to  
4     those two entities.

5                     And before I begin my remarks, I want to clarify  
6     that this began, as you heard from Mr. Winston, actually before  
7     the events that he described when the neighbors saw the large  
8     construction fences going up on this property and they wondered  
9     what's going on.

10                    At that the moment, we jumped in and we  
11     convened. And when I say "we," I am referring to the  
12     foundation, a community meeting where we invited the members to  
13     hear about what was proposed. And we quickly learned that  
14     there was a great deal of concern about the proposal.

15                    And we subsequently brought in the same members  
16     to talk about what could be done to make adjustments to the  
17     plan that had and been submitted and the pending POD approval.

18                    And the answer that we heard in this the meeting  
19     was effectively we just don't want it here. Will you rent  
20     space elsewhere. Will you not build in our backyard, so we  
21     don't want this building.

22                    So I would offer those facts to perhaps be  
23     considered as part of the overall consideration of what is in  
24     the public interest as we move forward because we acknowledge  
25     that while there has been a certain intentionality around

1     dialogue that has not lead to a very productive place yet.  
2     So instead we will focus on the legal matters here today.

3                     As you have heard, the company owns the real  
4     estate at 2915 Grove Avenue in museum district which it  
5     acquired decades ago. And in requesting that this body uphold  
6     the position of the zoning administrator, I will reiterate the  
7     two points of the zoning administrator.

8                     And the most essential is when the POD was  
9     submitted for consideration it was not a single building, it  
10    was an entire parcel that is being considered. What is the use  
11    of this parcel today? And that is the essential question  
12    before this body.

13                    The zoning administrator appropriately exercised  
14    its statutory powers to interpret facts in support of his  
15    determination. And I will reiterate those facts for you today.

16                    Second, the by right use, as you've heard from  
17    best primary and accessory use as a museum is permitted,  
18    notwithstanding the prior authorization by counsel of special  
19    uses for the property in the past.

20                    The first point, the subject of this appeal, as  
21    I said is that plan of development. So we're again focused on  
22    moment that plan of development was submitted. The facts that  
23    the city had at that time, were they sufficient to allow the  
24    city to make the determination that the primary and accessory  
25    uses were as a museum. And that requires a clear understanding



1 of what is happening at the property.

2                   The museum, the improvements that were shown on  
3 that plan are part of much larger campus. It's operated by the  
4 Commonwealth of Virginia, but we know it as the Virginia Museum  
5 of Fine Arts and for which the museum owes its name. While  
6 it's technically the Commonwealth, I would refer to that as the  
7 museum.

8                   And that campus, as I suspect the Board is  
9 aware, is comprised of improvements both on the state end  
10 property onto the north of Grove which is in addition to the  
11 museum building.

12                   It includes a multistory underground structure,  
13 the parking facility, the Robinson House with offices and  
14 meeting space, the poly center with museum offices, meetings,  
15 reception rooms, art studios, a sculpture garden with outdoor  
16 concerts and other events, galleries, restaurant, theater,  
17 retail shop. What we envision as a museum has to embrace all  
18 of those uses together.

19                   So again at the moment that the POD was  
20 submitted, when that parcel was being looked at could it  
21 considered in totality as museum use. We believe that the  
22 facts suggest that it could.

23                   These components are all fundamentally  
24 integrated with one another, and represent a multifaceted use  
25 over common control of what we know as the museum. That common

1 control by the Commonwealth, which of course must be deemed a  
2 public and a governmental entity, includes the facilities  
3 located at the foundation of the property.

4 And as is typical of museums with the  
5 sophistication and scale of VMFA, right now only a small  
6 fraction of its total collection is on display to the public at  
7 any given time, about 11 percent currently. And this the  
8 result of two factors.

9 First, some works are sensitive such as water  
10 colors that only be displayed for a limited period until being  
11 restored to return to storage to rest. Second, there is simply  
12 not enough space to display all of the collection.

13 And adding to the challenge is the museum's  
14 collection is always growing due to gifts and strategic  
15 acquisition, and so the museum must have adequate space to  
16 store its collection.

17 In 2023 alone, the museum's collection grew by  
18 over 1000 pieces so you see the need is expanding. The  
19 museum's current storage space is sprinkled throughout the  
20 museum. And that is the result of a strategic decision not to  
21 outsource storage to third-party locations.

22 Why, because it's expensive and can be risky  
23 moving pieces long distance closest. Second, because the  
24 closest and nearest existing facilities would the appropriate  
25 security, and climate control would be located far from

1 Richmond. Thus, there are benefits to locating the storage on  
2 the campus that is currently controlled and operated by the  
3 museum currently. And that includes the foundation and the  
4 property, excuse me, the company and the property.

5 If a museum is currently embarking upon a major  
6 expansion of its facilities located on the state owned portion  
7 of the property, as you may know, and this will have two  
8 impacts that are relevant to your facts today.

9 First, the proposed construction will cause the  
10 loss of space currently being used for storage on the state  
11 owned property that are not presently on display.

12 Second, the new gallery space will create  
13 opportunities for new acquisitions will then need to be stored  
14 and cared for when not on display. Where it will it go? The  
15 delays imposed by this appeal are significant and a burden on  
16 the foundation for the company and the museum.

17 For the record, I will note the direct cost of  
18 the foundation for the construction delay imposed by this  
19 appeal is over \$187,000 as of today. That fails to account for  
20 the corresponding delays imposed to the museum's expansion  
21 project that I mentioned, and they are inextricably linked one  
22 to the other.

23 This is what is driving the improvements that  
24 were shown. The POD that was viewed by the director and by Mr.  
25 Davidson, it proposes a state-of-the-art building that is

1 secure, climate controlled, and would otherwise meet the needs  
2 of the museum's growing collection.

3                   The facility will also be operated by museum  
4 staff, and will exclusively occupied by the museum's  
5 collection. It will feature a secure space for viewing of  
6 pieces by visiting scholars as well as security officers' space  
7 for transferring of existing pieces from elsewhere on the  
8 museum's campus.

9                   The POD also shows an exterior fountain  
10 installation which is a work that was donated are currently  
11 comprises as part of the museum's collection. Again, the POD  
12 when it was reviewed, that the zoning administrator have facts  
13 that allowed him to determine that the principal use was  
14 museum, yes.

15                   In short, these proposed improvements would  
16 incorporate uses that presently exist within the stated museum  
17 building just as the restaurant, theater, retail space, and  
18 other component parts were merely being shuffled to make room  
19 for growth and expansion.

20                   And it's not the only museum use that occurs on  
21 this parcel today. You have heard about the VMFA studio school  
22 which offers classes and workshops to members of the public and  
23 a wide variety of media, enhancing the public's understanding,  
24 and an appreciation of art in the broadest context. That is a  
25 museum use. It is directly tied to the core function of a

1 museum as it operates today. Completed works from instructors  
2 and students are displayed in the studio school, adding another  
3 facet to the definition of a museum.

4 In summary, the zoning administrator considered  
5 the use of the proposed facility based on this broader context  
6 which is supported by these facts. Its focus was not so narrow  
7 as to only consider the limited uses within the four walls of a  
8 building that compromises a portion of the plans, but also  
9 appropriately considered other uses on the parcel, the studio  
10 school, and the entire museum campus in making his  
11 determination.

12 Moving with the second point, the appellants  
13 allege that the prior SUP's limit the discretion of the zoning  
14 administrator, and this assertion is inconsistent with the  
15 facts and the law.

16 The charter of the city in Section 1711  
17 authorizes counsel to approve the special use of property  
18 subject to the caveat that the planning commission they  
19 recommend and that council may impose such conditions upon the  
20 use of the land, buildings, and structures as will in its  
21 opinion protect the community, and the area involved, and the  
22 public from adverse effects and detriments that may result  
23 therefrom.

24 It's that inextricable link. You get the  
25 privileges, and then you get the additional regulations that

1     are burdens in exchange for the privileges that are  
2     granted by counsel. At the time that we submitted our plan of  
3     development to city, we sought none of those privileges sought  
4     by the SUP.

5                     So whether any action had occurred, the  
6     appellant seem to assert there was an obligation to do  
7     something else to abandon it. But again when the POD was  
8     approved and considered none of the uses contemplated by those  
9     SUP's were being requested. And this happens frequently in this  
10    city as the following example will illustrate.

11                    A decade ago, the Scott's Addition neighborhood  
12    was all designated M-1 district on the city's zoning map. And  
13    that is an industrial district that does not allow any  
14    residential use.

15                    Many developers saw value in converting old  
16    warehouses to the loft apartments leading to a considerable  
17    volume of SUP requests and approvals.

18                    At some point, the neighborhood's composition  
19    changed to such a degree that counsel in its wisdom changed the  
20    zoning map to designate the neighborhood in a manner that  
21    allowed residential dwellings as a matter of right.

22                    When that occurred, the privileges granted the  
23    by the prior SUP's were no longer needed, and the accompanying  
24    SUP ordinance conditions were no further force and effect.

25                    If it would be to your holding that it requires

1 every individual property owner to come to the city and do  
2 something more tangible to abandon the race when counsel has  
3 acted in that way, it would have much broader implications than  
4 this case. And that is not currently the practice as you heard  
5 from the zoning administrator.

6 MR. BENBOW: You have one minute.

7 MR. LLOYD: Thank you.

8 -- for a correct understanding of law.

9 Here neither the museum nor the company claimed  
10 a privilege is granted the by the SUP when they filed their  
11 POD.

12 And for those reasons, we assert that the  
13 plaintiffs have failed to meet their burden, and request that  
14 the BZA uphold the decision of the zoning administrator and the  
15 director of the department in approving the plan of  
16 development. Thank you. I would be pleased to answer any  
17 questions the Board may have at the appropriate time.

18 CHAIRMAN POOLE: Any questions from members of  
19 the board?

20 MS. SADID: So the neighborhood was brought in  
21 when the construction fence went up?

22 MR. LLOYD: Correct. They were asked, and we  
23 acknowledge that at the outset of that meeting that is not  
24 a best practice. And we appropriated the frustration, and we  
25 said we need to do better. We need to engage and we owned

1     that.  However, we found that at that time there really wasn't  
2     much an opportunity to have that more constructive dialogue.

3                     The perspective was we don't believe this is the  
4     use that belongs here, and we would like you to take it else  
5     where.

6                     MS. SADID:  Well, again, I don't see any  
7     drawings or anything on what the building is going to look  
8     like.

9                     MR. LLOYD:  Indeed.  And we're here to respond  
10    to the assertions made by the appellants.  We have an approved  
11    plan of development, and we are prepared to move forward with  
12    that.  We had put that on the table for the neighbors.  That is  
13    not, of course, before this body today.

14                    Your is decision whether the principal use that  
15    was approved by the zoning administrator has - let me rephrase.  
16    Your burden, as you heard your counsel described at the  
17    beginning of the proceedings today, is whether the appellants  
18    have shown that by the facts that by a preponderance of the  
19    evidence that the zoning administrator's determination was  
20    incorrect.  And we assert that they have not made that showing.

21                    That does not prevent us from making a public  
22    commitment as we have made previously to continue to work with  
23    the neighbors to try to find common ground in managing the  
24    development with this project in a way that both in the  
25    response that the foundation's needs, the museum's needs, but



1     also is considerate of the neighbors.

2                     We got off on a rocky start on that front, but  
3     remain committed to that objective.

4                     CHAIRMAN POOLE: I have a question.

5                     MR. LLOYD: Yes, sir.

6                     CHAIRMAN POOLE: If I understood your  
7     presentation and your summary, you believe that proposed use as  
8     shown by the POD is a principal permitted use as well as an  
9     accessory use?

10                    MR. LLOYD: That's correct.

11                    CHAIRMAN POOLE: And that it was that at that  
12     point in time that the zoning administrator made its  
13     determination?

14                    MR. LLOYD: It was.

15                    CHAIRMAN POOL: And at that time, it was  
16     operated, the POD was just on the property that is before this  
17     Board, correct?

18                    MR. LLOYD: That's correct.

19                    THE COURT: Not on the main museum parcel?

20                    MR. LLOYD: Correct.

21                    CHAIRMAN POOLE: It is specifically in that  
22     defined address for that particular property?

23                    MR. LLOYD: You are correct.

24                    CHAIRMAN POOLE: And the uses that are being  
25     proposed are as a museum and as a school?

1                   MR. LLOYD: They are as a museum. We see the  
2 school use as what we call the VMFA museum school. The  
3 operation of that facility and every aspect in which it is  
4 operated, it's a museum use.

5                   We don't see it as being provided for education  
6 of students. We see it being something that is central to the  
7 function of the museum taken in totality. And so we would  
8 argue that is a museum use today, especially with the addition  
9 of the elements that would be coming across the street from the  
10 Commonwealth and the property as part of our proposal.

11                  And that those are today, they would continue to  
12 linked by that common control and operation by the  
13 Commonwealth.

14                  CHAIRMAN POOLE: So by the strict interpretation  
15 of the principal, the permitted principal uses under 30-402.1  
16 Subsection 2, it is your position that this POD approval was  
17 correct because the use is a museum use?

18                  MR. LLOYD: That's correct.

19                  CHAIRMAN POOLE: And that property is owned  
20 and operated by a governmental agency?

21                  MR. LLOYD: It is operated by, not owned by.  
22 It's managed by an LLC, the sole member of that LLC is a  
23 foundation. That foundation exists for the sole purpose of  
24 supporting the museum.

25                  And so we've got a couple steps to remove here,

1 but functionally the way that it operates, it is operated by  
2 the Commonwealth. There will be a lease that is executed by  
3 the property owner which will construct the facility and the  
4 Commonwealth which will provide exclusive rights to that  
5 building to the Commonwealth consistent with the current use of  
6 the museum.

7 CHAIRMAN POOLE. In 30-402.1, Subsection 2 uses  
8 the words museum or schools owned or operated.

9 MR. LLOYD: They do.

10 CHAIRMAN POOLE: Any other questions from  
11 members of the board? I see you, and I understand what you're  
12 going to ask.

13 In fairness, I am going to give you two of your  
14 three minutes. I just don't think it would be fair not to  
15 allow you to respond.

16 MR. WINSTON: Mr. Chairman, I thank you very  
17 much for both anticipating what I was going to ask and for  
18 generously granting it. I will try to be brief. I just want  
19 to address a couple of points that Mr. Lloyd made.

20 First, as it pertains to the engagement with the  
21 community, the community meeting that Mr. Lloyd refers to did  
22 not approach the type of compromise and deliberation that would  
23 be necessary to, we'll say assuage the resident concern with  
24 the impacts and irrevocable harm, really, that it's going to  
25 unleash on them. It's going to affect their parking, it's

1 going to affect, the sound from the HVAC systems, it is going  
2 to be pervasive. It's going to completely alter the experience  
3 that all of the people that live in on the other side of that  
4 alleyway have in their homes.

5 I also want to address perhaps from a legal  
6 standpoint, this the most concerning thing about the POD  
7 approval is that consideration of the broader museum campus  
8 when determining whether or not this is a permitted principal  
9 or accessory use is simply a violation of the zoning ordinance.

10 If the zoning administrator did consider this  
11 consent that Mr. Lloyd was referring to of a greater museum  
12 campus that can led its principal use to all the, that is a  
13 scary, and frankly inconsistent with the law position to take.  
14 And I think that alone meets or burden for us, frankly.

15 If that is part of the consideration, I think  
16 the Board, I would respectfully submit that the Board should  
17 think very seriously about overturning this decision.

18 SECRETARY BENBOW: Two minutes.

19 MR. WINSTON: And I don't actually have anything  
20 else to say other than that.

21 CHAIRMAN POOLE: Are there any other questions  
22 for Mr. Winston?

23 I would ask you to acknowledge that while I  
24 understand your position with respect to the meeting, that is  
25 irrelevant to the decision that this Board makes, don't you

1     agree?

2                   MR. WINSTON:  Yes.  I only brought it up because  
3     it was brought up in questioning.

4                   CHAIRMAN POOLE:  I understand.  Out of the  
5     fairness, I wanted you to be able to make that point.

6                   MR. WINSTON:  Yes, yes.

7                   CHAIRMAN POOLE:  I think I understand the point,  
8     but it's not really relevant to this Board.

9                   MR. WINSTON:  Understood.  And I don't disagree.

10                  CHAIRMAN POOLE:  Thank you.  All right, so where  
11     we have gone now is we have had all three of the parties.  But  
12     we also have the opportunity for any person that is a member of  
13     the public who is not one of the people who is represented by  
14     Mr. Winston.

15                  Anyone that wants to make a presentation, I am  
16     going allow anyone other than those five people who want to  
17     speak on this issue.  I am going to give you two minutes each,  
18     if you want it, then I am going to determine that this hearing  
19     on this matter -- you can't speak.  Is there anybody online?

20                  SECRETARY BENBOW:  For this case.

21                  CHAIRMAN POOLE:  For this case.  Thank you for  
22     that clarification, you are correct.

23                  Anyone speaking on this case online?  Then I  
24     will declare that this particular hearing is over.

25                  And in keeping in what I stated at the beginning

1 unusual to our normal course of conduct, but because we have a  
2 court reporter and because we have a number of folks here on  
3 other cases, we will go ahead and have our determination on  
4 this matter now rather than later.

5 SECRETARY BENBOW: Mr. Chairman, will you make a  
6 motion to suspend your rules?

7 CHAIRMAN POOLE: Sure.

8 MR. ROBERTSON: I move we suspend the rules.

9 MR. YORK: Second.

10 CHAIRMAN POOLE: We are voting on a motion to  
11 suspend the rules to allow consideration of the case before us  
12 with respect to the Grove Avenue property to be considered now  
13 rather than at the determination of all cases.

14 All those in favor say Aye?

15 [NOTE: All members assent.]

16 CHAIRMAN POOLE: Thank you very much.

17 So now we're at a point where we need a motion,  
18 reminding you that the consideration that we have before us as  
19 described to you by our counsel should be based on the Board's  
20 judgment as to whether the administrative officer, Mr. Davidson  
21 the zoning administrator, was correct in his determination that  
22 this is a permitted use both as a principal use and as an  
23 accessory use.

24 And it is presumed by the law to be correct.

25 And it is the burden of the appellants to rebut such

1 presumption of correctness by a preponderance of the evidence.

2 Given that, is there a motion on this case?

3 MR. YORK: I would move for purposes of  
4 discussion that we uphold the decision of the zoning  
5 administrator.

6 CHAIRMAN POOLE: So that would be to affirm the  
7 decision of the zoning administrator as correct.

8 MR. YORK: Before I give any reason for my  
9 motion, I would like to hear any other members?

10 CHAIRMAN POOLE: Is there a second? We need a  
11 second before we do that.

12 MR. WINKS: I second to that.

13 CHAIRMAN POOLE: We have a motion in second.

14 Mr. York, do you want to begin?

15 Mr. YORK: I would rather you begin.

16 CHAIRMAN POOLE: This has been a well-argued  
17 case both by the zoning administrator and by the appellant.  
18 What it really boils down to what is the use proposed for this  
19 property.

20 And this property, the testimony that I heard  
21 shows that the proposed property as exhibited on the POD, plan  
22 of development, the determination by the zoning administrator  
23 is that us a museum under R-1 30.402.1 that's a permitted use.  
24 Subsection 2 says that is a permitted use so long as it is  
25 owned or operated by any governmental agency.

1                   I think the clear evidence is that if it is  
2     operated by a governmental agency, that it is a museum use.

3                   And the determination of the zoning  
4     administrator is that it is a permitted use. And the approval  
5     of the POD which is subsequently done by the director is  
6     appropriate.

7                   I think the evidence is clear. I understand Mr.  
8     Winston's argument with respect to trying to use the name  
9     "museum" as the basis of the determination as of this property  
10    as a museum, but that is not what the zoning administrator  
11    testified to.

12                  What the zoning administrator testified to was  
13    that he determined that this use as proposed by the POD was a  
14    permitted principal use and permitted accessory use.

15                  I understand Mr. Winston's argument, but I don't  
16    think it meets the preponderance of the evidence standard to  
17    prevail over a presumption, and granted by statute that the  
18    zoning's administrator is correct. So it would be my plan to  
19    vote in favor of this motion to affirm the decision of the  
20    zoning administrator as being correct.

21                  MR. YORK: I would like to add to the statement  
22    by the zoning administrator that the action being pursued would  
23    eradicate the need or application or any previous special use  
24    permits which is one of issues that was raised in this case  
25    have anything to do with this.



1                   It's not an easy case. It's not an absolutely  
2 clear-cut decision, but it really boils down to the question of  
3 what a preponderance of the evidence is to overcome it, and  
4 that is a fairly high standard.

5                   And even though I think there is some room for  
6 debate on it, that standard is so high that I don't think  
7 that --

8                   CHAIRMAN POOLE: I have to disagree with you on  
9 that. That is not standard of preponderance of the evidence.

10                  Preponderance of the evidence means that the  
11 appellant has shown more, that is more likely that the zoning  
12 administrator is incorrect than it is that he correct.

13                  It is the standard that basically if you were  
14 take the scales of the law and look at them as they are  
15 parallel, it dips one way or the other, that's the  
16 preponderance of the evidence.

17                  MR. YORK: That's what I meant. I'm sorry I  
18 didn't explain it.

19                  CHAIRMAN POOLE: I want to make sure that it's  
20 not a high standard. And this is a close case, but I believe  
21 --

22                  MR. YORK: I meant it was a high standard for  
23 the appellant.

24                  CHAIRMAN POOLE: Overcoming a presumption of  
25 correctness is governed by the preponderance of the evidence

1 standard and that standard only.

2 Any other discussion from the members of the  
3 board?

4 MS. SADID: Yes, I do. I guess when I am  
5 looking at this, and I do believe that Mr. Davidson made a very  
6 clear and a very compelling case that this was an extension of  
7 the museum.

8 The storage is needed, we know that. The  
9 construction of the building is for that storage. And he made  
10 very clear decisions based on the historical special use  
11 permit.

12 The thing I am struggling with is when you list  
13 off what can be done - library, museum, school, park,  
14 recreational facility - but then in reality it's an industrial  
15 warehouse. That is the description that I am reading what this  
16 structure will be. It's not a museum or school or recreational  
17 facility, it's an industrial warehouse in a residential  
18 neighborhood.

19 So on one side, I do believe that they are going  
20 to boil it down Mr. Davidson was very correct in his decision,  
21 on other the side I know why the neighborhood was forced to  
22 come forward and pick apart his decision making because they are  
23 getting an industrial warehouse in their neighborhood.

24 CHAIRMAN POOLE: The one thing that I want to  
25 say there is absolutely no question that it is 12,000 square

1 foot.

2 MR. WINKS: Correct. That's on one floor.

3 CHAIRMAN POOLE: I don't know that. The  
4 testimony that is before this Board is 12,000 square foot,  
5 that's all we have.

6 MR. WINKS: That's all we have.

7 CHAIRMAN POOLE: We believe that is the  
8 footprint, but we had the zoning administrator is by law  
9 empowered to make decisions with respect to the zoning  
10 administrator.

11 And our job is to determine did Mr. Winston and  
12 his client by a preponderance of the evidence show that Mr.  
13 Davidson was wrong when he made a decision.

14 My vote would be that they have not.  
15 That's sum and substance of the decision to be made. It would  
16 take a lot of evidence, in fact we have done that for two hours  
17 and 20 minutes.

18 SECRETARY BENBOW: One and half hours.

19 MR. ROBERTSON: I think that the case was made  
20 that a museum is more than just galleries. That a museum in  
21 its function is a repertory of art, they keep and maintain  
22 pieces art.

23 The zoning administrator is afforded the  
24 presumption of correctness. And I think as a Board, we are  
25 required to afford that presumption. And in this case afford

1     that presumption in this case.

2                     And given the arguments made, I don't know that  
3     the appellants have met their burden here, so I do believe  
4     I will vote in favor.

5                     I understand where the community is coming from  
6     here. It is not an easy situation, but I would encourage the  
7     VMFA to continue to work with the community to make sure that  
8     the final product is something that everyone can be happy with.

9                     CHAIRMAN POOLE: Anything further?

10                    MR. WINKS: Mr. Chairman, it probably needs to  
11     be said that the museum could have done a much better job  
12     working in the neighborhood, and getting something that the  
13     neighborhood could accept.

14                    A museum can look like a big box, actually.  
15     Museums look like that. But they are also warehouses that you  
16     put in residential areas that don't look like big box  
17     warehouses. So I am just disappointed that the neighborhood  
18     has got to put up with this, but I have to agree with Mr.  
19     Davidson on this one.

20                    MS. SADID: I agree with Mr. Davidson in his  
21     decision. I think it was correct, but I wonder if we can't  
22     extend this 30 days and allow the neighborhood to meet with the  
23     museum personnel and try to hammer some things out because I  
24     think that is why they brought this case to us. It's focused  
25     on whether or not the zoning administrator made a correct or

1 incorrect decision.

2 I think he made a correct decision, but when I  
3 hear that the neighborhood was never brought into it, it really  
4 does bother me.

5 CHAIRMAN POOLE: A motion to continue is always  
6 in the order. But I would say I would vote to oppose that  
7 motion only because that is really not relevant to this  
8 decision.

9 We have a decision to make about the correctness  
10 of the decision, that is all we are here for. It's Mr.  
11 Davidson's job to determine whether it's appropriate or not  
12 whether it's meet the rules of the zoning code.

13 MS. SADID: Right. I understand that.

14 CHAIRMAN POOLE: And do I think that it would be  
15 wonderful that if I looked over at Mr. Lloyd and said do a  
16 better job in getting with this neighborhood, and remember that  
17 this the Board has a long institutional memory. I am perfectly  
18 willing to say that, but if you want to make a motion to  
19 continue you are entitled.

20 MR. YORK: Well, there is a motion on the floor.

21 CHAIRMAN POOLE: No, the motion to continue  
22 always supersedes.

23 MR. YORK: Excuse me. You are right.

24 MS. SADID: I would like to make a motion for it  
25 to be continued.

1 CHAIRMAN POOLE: Is there a second?

2 Then it fails for the lack of a second.

3 Now we will be voting on the main motion which  
4 is the approval to determine the decision of zoning  
5 administrator as correct. All those in favor say Aye.

6 THE BOARD: Aye.

7 CHAIRMAN POOLE: Any opposed? The case is 5 to  
8 0 in favor of zoning administrator. Thank you very much.

9 Now there are a bunch of folks here. If you want  
10 to leave, you can please try to do it quietly.

11 Thank you.

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19 [PUBLIC HEARING CONCLUDES at 2:28 P.M.]

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1 COMMONWEALTH OF VIRGINIA:

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CERTIFICATION

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I, Stayce Lawson, Machine Shorthand Reporter, do  
hereby certify that I, as the court reporter, appeared in the  
matter on March 5, 2025.

8

9

10

I further certify that the was reported  
stenographically by me, and this transcript is a true record of  
the proceeding to the best of my ability.

11

12

13

I further certify that I am not of counsel to  
any of the parties, not in any way interested in the outcome of  
this action.

14

15

As written as my hand and notarial seal this  
17th day of March 2025.

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19

*Stayce Lawson*

20

21

Stayce Lawson, Court Reporter

22

My Commission Expires: May 31, 2027

23

#369918

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RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for an appeal of Floyd Grove Sheppard LLC that the city zoning administrator errored in approval of a plan of development which decision of the zoning administrator is being appealed under Sections 30-402.1(2), 30-402.2, 30-412.1(1), 30-412.2, 30-680.3, 30-1220.1, and 30-1220.2 of the zoning ordinance for the construction of an art storage facility at 2911-2915 GROVE AVENUE (Tax Parcel Number W000-1284/003) and that the property continues to be governed by Special Use Ordinance No. 87-193-185 be denied based on the record before the Board.

ACTION OF THE BOARD: (5-0)

Vote to Deny

affirmative: Poole, York, Sadid, Robertson, Winks

negative: None

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BZA 05-2025 (CONTINUED FROM FEBRUARY 5, 2025 MEETING)

APPLICANT: St. Christophers School Foundation & St. Christophers School

PREMISES: 103 & 105 PEPPER AVENUE  
(Tax Parcel Number W021-0303/005 & 004)

SUBJECT: A building permit to construct a new fence and retaining wall accessory to an existing school.

DISAPPROVED by the Zoning Administrator on November 14, 2024, based on Sections 30-300, 30-408.5(1) & 30-630.9(b) of the zoning ordinance for the reason that: In an R-4 (Single-Family Residential) District, the maximum permitted fence and wall height located in a required front yard is exceeded. Fences and walls within the required front yard shall not exceed four feet (4') in height. A fence having a height of ten feet (10') and a wall having a height of six and fourth tenths feet (6.4') are proposed.

APPLICATION was filed with the Board on November 15, 2024, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Jennifer Mullen  
Mason Lacky



Against Applicant: Anne Page  
David Lentz  
David Shea

**FINDINGS OF FACT:** The Board finds from sworn testimony and exhibits offered in this case that the applicant, St. Christophers School Foundation, has requested a variance to construct a new fence and retaining wall for property located at 103 & 105 Pepper Avenue. Ms. Jennifer Mullen, representing the applicant, testified that the request is to permit a tennis court fence between 4 feet in height and 10 feet in height and a brick retraining wall between 4 feet in height and 6.5 feet in height which meets the requirements of §15.2-2201 and §15.2-2309 of the Code of Virginia. The request is a reasonable deviation from the permitted 4-foot-tall fence and wall in a front yard setback which the strict application of the ordinance is not generally shared by other properties and is not contrary to the ordinance. Ms. Mullins outlined the following stipulations: the property is part of St. Christophers School which was acquired in good faith, and which is part of a larger campus fronting both Pepper Avenue and St. Christophers Road for the lower portion of the campus, the property is zoned R-4 single-family residential which permits a private school in addition to single-family residential use and the private school campus is not a feature shared generally by other properties, the campus nature of the property is unique, the property features other structures already constructed with the existing tennis courts, utilities, topographical changes and new school facility is being constructed that set the location of the proposed tennis courts, the school use itself is also unique and not generally shared by other properties, the courts used for interscholastic match play which requires the new courts to be oriented in the same manner as existing courts, this is not generally shared by the single-family residential uses, nor is a tennis court in general. The underlying zoning ordinance permits fences and walls within the front yard setback of 4 feet in height. Ms. Mullen stated that the physical condition of the existing improvements and the nature of the use creates the hardship, and it would be unreasonable for the tennis court fence to remain at 4 feet for safety given the particular nature of the sport. The applicant is requesting the minimum encroachment necessary to maintain an accessible path between the existing improvements and has mitigated the visual impact of the tennis courts fence above and below 4 feet in height and the retaining wall above and below 4 feet in height with significant evergreen plantings that are not only along the Pepper Avenue frontage for which the variance is requested, but also along the side yard for which no variance is required. Ms. Mullen stated that these are highlighted in your materials and far exceed the benefit of a 4-foot fence and wall alone and provide the safety benefits of keeping the balls on the court. The landscaping and the recreational facilities themselves tie into the overall improvements to the campus that have benefited the surrounding property values. Ms. Mullins noted the following that each adjacent property owner has increased

exponentially over any incremental measure such as 20 years, 10 years, five years or even one year, the school uses permitted and the fence encroachment is transparent, and the wall is brick consistent with the school buildings and the surrounding area and provides significant additional landscaping. Ms. Mullins noted that a special exception exists to allow fences in front yard setbacks up to 8 feet on any of the surrounding properties is not available to the school. Ms. Mullen stated that the safe and practical use of the tennis courts requires the additional height. Ms. Mullen noted that the use of the property as a school is permitted, and the variance would not authorize a new use and the variance request is not contrary to the purpose of the ordinance. The campus nature of the property with existing improvements creates this unique circumstance where it is necessary for safety. Ms. Mullins indicated that the landscaping enhances the surrounding properties and minimizes any visual impact of the fence above 4 feet and does not confer any greater rights that afforded by the zoning ordinance. Finally, Mr. Mullins indicated that the variance is not general or reoccurring in nature.

In response to a question from the Chairperson, Mr. Poole, Ms. Mullens stated that there is a significant grade change between the proposed tennis courts and Pepper Avenue with Pepper Avenue being elevated over the proposed tennis courts which increases the need for a taller fence which is the minimum height necessary. Ms. Mullins stated that the standard tennis court fence height is 10 feet which is a safety measure.

In response to a question from Mr. York, Ms. Mullen stated that the perceived fence height from Pepper Avenue would be approximately 7 feet.

Speaking in support, Mr. Mason Lacky testified that he is the headmaster of St. Christophers School. Mr. Lacky stated St. Christophers school was established in 1914. Mr. Lacky explained that St. Christophers only wants what's best for the school and the neighborhood. In April 2023 St. Christophers initiated contacts with the surrounding neighbors. Mr. Lacky stated that they initiated 23 different types of contacts. Mr. Lacky noted that the tennis program has been located along Pepper Avenue since 1979. Mr. Lacky explained that Pepper Avenue has been a hub of activity for St. Christophers School for decades. Mr. Lacky stated that regarding the variance request location of the proposed courts and the fence surrounding them is based on the existing tennis courts and the need to maintain a walkway between the courts for both access and safety. The additional fence height that is being requested will improve safety along Pepper Avenue and St. Christophers school has proposed as part of the application a condition for the installation of landscaping along the Pepper Avenue frontage as well as the side property line.

Speaking in opposition, Ms. Anne Page testified that she and her husband reside at 101 Pepper Avenue. Ms. Page stated that she was in opposition to the proposed variance for the reason that it is not consistent with the zoning ordinance which is designed to protect surrounding property owners. Ms. Page requested that the Board deny the applicants request for the reason that the applicant is requesting relief to locate a structure within the required setback. Ms. Page stated that being the adjacent property owner that she and her husband will be most impacted by the requested variance. Ms. Page explained that approval of the variance would negatively affect their safety, privacy and security. Ms. Page noted that approval of the variance would result in illumination of a 28-foot-tall hedge and the use of their garden and grounds would be negatively affected. Ms. Page contended that their property values would be significantly impacted, and the hardship was of the school's own making. To allow the encroachment within the 25-foot setback would be a life-changing hardship. Ms. Page stated that the school has other options available for location of the tennis courts.

Speaking in opposition, Mr. David Lentz testified that he was an attorney who represents David Shea who resides at 100 Pepper Avenue. Mr. Lentz explained that under §15.2-2201 of the Code of Virginia the applicant has failed to show that the use of the property has been unreasonably restricted. Mr. Lentz speculated that the school has future plans regarding utilization of the property adjacent to Pepper Avenue and the current request is just the first step. Mr. Lentz explained that the school has created its own hardship under §15.2-2309 that it is improper to grant the variance if the hardship is self-created which is what is the case in this instance. Further, granting of the variance will create substantial detriment to surrounding property owners.

Speaking in opposition, Mr. David Shea testified that he had lived on Pepper Avenue for 40 years and the school is an asset to the community but in this case they had created their own hardship. Mr. Shea explained that they are constructing two tennis courts which is the crux of the problem. Mr. Shea stated that they had plenty of land to achieve the desired result. Mr. Shea pointed out that he lives directly across the street in close proximity to the proposed fence and that Pepper Avenue is narrow and not a thoroughfare. Mr. Shea stated that approval of the variance will increase traffic on Pepper Avenue. Mr. Shea explained that the way they found out about the hearing was as a result of the letter mailed to them by the Board back in December.

Ms. Mullins testified that the zoning ordinance does permit a fence to be located in the front yard of four feet in height and the request before the Board is for a fence 10 feet in height which is mitigated by the significant landscaping. The definition of a hardship is based on the location of the existing improvements with the unreasonable or absurd result of the tennis court fence of only 4 feet in height in the front yard. Ms. Mullen cited the case of Spence versus Virginia Beach

which stated that there must be a violation for the request to be a self-inflicted hardship. Ms. Mullen indicated that traffic is not generated by the additional height of the fence.

Speaking opposition, Ms. Anne Page testified that they could move the tennis court over and they have 18 feet in the back of it. They are proposing to go into the 25-foot setback by 16 feet. They are only leaving 9 feet for the cypress trees.

The Board finds that evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property and that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

Finally, the Board finds by a preponderance of the evidence that the application meets the standard for the variance as defined in §15.2-2201 of the Code of Virginia and the criteria set out in this section.

**RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS** that a request for a variance from the maximum permitted fence and wall height requirements be granted to St. Christophers School Foundation & St. Christophers School for a building permit to construct a new fence and retaining wall accessory to an existing school, subject to substantial compliance with the plans submitted to the Board.

**ACTION OF THE BOARD:** (5-0)

Vote to Grant Conditionally  
affirmative: Poole, York, Sadid, Robertson, Winks

negative: None

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BZA 10-2025

APPLICANT: Goodwin Michelle Ruth & Cherry George T

PREMISES: 1205 NORTH 36<sup>th</sup> STREET  
(Tax Parcel Number E000-1410/003)

SUBJECT: A lot split and building permit to construct a new single-family  
(detached) dwelling.

DISAPPROVED by the Zoning Administrator on January 16, 2025, based on Sections 30-300 & 30-410.4 of the zoning ordinance for the reason that: In an R-5 (Single-Family Residential) District, the lot area and lot width requirements are not met. Lot areas of six thousand square feet (6,000 SF) and lot widths of fifty feet (50') are required. For zoning purposes, one lot having a lot area of 7,200 square feet and a lot width of sixty feet (60') currently exists. Lot areas of 3,600 square feet and lot widths of thirty feet (30') are proposed.

APPLICATION was filed with the Board on January 16, 2025, based on Section 30-1040.3(2) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Alessandro Ragazzi

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case the applicant, Goodwin Michelle Ruth & Cherry George T, have requested a special exception to construct a new single-family detached dwelling for property located at 1205 N. 36<sup>th</sup> Street. Mr. Alessandro Ragazzi, representing the applicant, testified that the goal of the application is to permit construction of a single-family detached dwelling. Mr. Ragazzi noted that historically the parcel consisted of lots three and four of block three of the McCarthy Vineyard Subdivision and that the subject lots were combined by deed. Mr. Ragazzi stated that the request is consistent with the special exception intent of creating infill housing that is compatible with the neighborhood. Mr. Ragazzi noted that the applicant is proposing to retain the existing two-story frame dwelling located on the western portion of the parcel and to construct a new single-family detached dwelling on the vacant eastern portion of the parcel. The proposed dwelling has

been designed to be compatible with existing homes in the area and to meet the needs of today's homebuyers with an open first floor kitchen and living area and second floor bedrooms. The proposed structure will include approximate 2320 ft.<sup>2</sup> of floor area and include four bedrooms and three baths. Mr. Ragazzi indicated that the exterior will be consistent with existing dwellings in the area which include a full width front porch, two stories with side gable roof and include cementitious siding. The proposed lots will be 30 feet in width reflecting the width of the two original subdivision lots which make up the property. The subject lots contained 3600 ft.<sup>2</sup> of lot area. Mr. Ragazzi stated off-street parking will be provided via a rear alley. Mr. Ragazzi indicated that the proposed lots are consistent with the predominant lot widths and lot areas in the vicinity. Furthermore, the new dwellings will be compatible with dwellings in the vicinity which are mix of one and two stories and include a range of building materials and architectural styles. Mr. Ragazzi concluded by stating that letters were sent to all property owners within 150-foot radius and no objections were noted. In addition, the Church Hill Central Civic Association received a full presentation on February 25 and to date no opposition has been noted.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 30-1040.3 (2) of the zoning ordinance, the subject lots have previously consisted of legal lots of record that were subsequently combined by deed or other means, 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 30-610.1 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, the areas and widths of the lots created by the division are consistent with the predominant lot areas and lot widths in the immediate vicinity of the property 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 and lot width requirements be granted to Goodwin Michelle Ruth & Cherry George T for a lot split and building permit to construct a new single-family (detached) dwelling, subject to substantial compliance with the plans submitted to the Board and provision of cementitious siding.

**ACTION OF THE BOARD:** (5-0)

Vote to Grant Conditionally

affirmative: Poole, York, Sadid, Robertson, Winks

negative: None

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BZA 11-2025

APPLICANT: Daniel Olson

PREMISES: 3208 BUTE LANE  
(Tax Parcel Number W000-1435/042)

SUBJECT: A building permit to construct a new fence accessory to an existing single-family (detached) dwelling.

DISAPPROVED by the Zoning Administrator on January 17, 2025, based on Sections 30-300 & 30-630.9(b) of the zoning ordinance for the reason that: In an R-4 (Single-Family Residential) District, the maximum permitted fence height located in a required front and side yard is exceeded. Fences shall not exceed four feet (4') in height within the required front yard and six and half feet (6.5') in height within the required side yard. A fence having a height of eight feet (8') is proposed within the required front and side yard along the western property line.

APPLICATION was filed with the Board on January 17, 2025, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Daniel Olson

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Daniel Olson, has requested a variance to construct an 8-foot fence to be located within the front, side and rear yards along the western property line for property located at 3208 Bute Lane. Mr. Daniel Olson testified that the request is prompted by the significant noise pollution generated by the nearby Powhite Parkway and the CSX Railroad. Mr. Olson stated that the primary purpose of the fence is to act as a sound barrier. Mr. Olson stated that in addition to improving the effects of the aforementioned sounds the proposed fence will have the added benefit of reducing sound pollution for other properties in the neighborhood. Mr. Olson noted that the relief sought by the variance is not available through the special exception process. Mr. Olson noted that the noise from the Powhite Parkway and the CSX Railroad frequently exceeds 70 dB which has been determined to affect health and well-being. Mr. Olson explained that his property is the last property on a dead-end street. The proposed fence will abut a

vacant wooded area which is corporately owned and will not border any other residential properties. The fence will be built in accordance with the USBC and will be constructed of either pine or cedar lumber. Mr. Olson stated that he had reached out to surrounding neighbors and had heard nothing negative in return. Further, he had contacted the neighborhood association but had received no comment regarding his request.

In response to a question from the Chairperson, Mr. Poole, Mr. Olson stated that the fence is also needed for security purposes given the fact that their property adjoins a large tract of vacant land.

The Board finds that evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

Finally, the Board finds by a preponderance of the evidence that the application meets the standard for the variance as defined in §15.2-2201 of the Code of Virginia and the criteria set out in this section.

**RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS** that a request for a variance from the maximum permitted fence height requirement be granted to Daniel Olson for a building permit to construct a new fence accessory to an existing single-family (detached) dwelling, subject to substantial compliance with the plans submitted to the Board.

**ACTION OF THE BOARD:** (5-0)

Vote to Grant Conditionally  
affirmative: Poole, York, Sadid, Robertson, Winks



negative:                      None

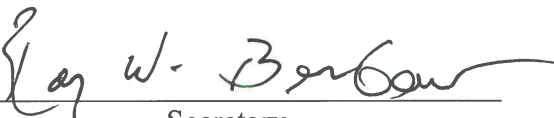
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Upon motion made by Mr. Robertson and seconded by Mr. Winks, Members voted (5-0)  
to adopt the Board's February meeting minutes.

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The meeting was adjourned at 3:15 p.m.

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Secretary

  
VICE Chairman