



CITY OF RICHMOND

DEPARTMENT OF
PLANNING AND DEVELOPMENT REVIEW
BOARD OF ZONING APPEALS

BOARD OF ZONING APPEALS

MEETING MINUTES

WEDNESDAY, MARCH 4, 2020

On Wednesday, March 4, 2020, 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 18 and 25, 2020 and written notice having been sent to interested parties.

Members Present: Burt F. Pinnock, Chair
 Roger H. York, Jr., Vice-Chair
 Rodney M. Poole
 Mary J. Hogue
 Kenneth R. Samuels, Sr.

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

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

BZA 08-2019

APPLICANT: Metro Treatment of Virginia, L.P.

PREMISES: 449-A BELT BOULEVARD
(Tax Parcel Number C006-0154/038)

SUBJECT: An appeal by Metro Treatment of Virginia, L.P., a subsidiary of Colonial Management, L.P., (collectively, "CMG") that a decision of the Zoning Administrator dated November 7, 2019 in which the Zoning Administrator determined that CMG's proposed use as a methadone treatment clinic for the property located at 449-A Belt Boulevard was not permitted within the M-1 District because it did not qualify as a "medical or dental office or clinic". The specific section numbers of the Zoning Ordinance being appealed are §30-452.1 (Section 30-452.1 incorporates by reference all permitted uses listed in §30-438.1) and §30-1220.21.

APPEAL was filed with the Board on December 3, 2019, based on Section 17.20(a) of the City Charter.

APPEARANCES:

For Applicant: Jim Horwitz
John Buford

Against Applicant: None

**PLEASE SEE COURT REPORTER TRANSCRIPT AT THE END OF THESE
MINUTES FOR COMPLETE DETAILS OF THE CASE.**

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that an appeal by Metro Treatment of Virginia, L.P., a subsidiary of Colonial Management, L.P., (collectively, "CMG") that a decision of the Zoning Administrator dated November 7, 2019 in which the Zoning Administrator determined that CMG's proposed use as a methadone treatment clinic for the property located at 449-A Belt Boulevard was not permitted within the M-1 District because it did not qualify as a "medical or dental office or clinic" be denied based on the record before the Board.

ACTION OF THE BOARD: (5-0)

Vote to Deny

affirmative: Pinnock, York, Poole, Hogue, Samuels

negative: None

BZA 09-2020

APPLICANT: Jeffrey & Stephanie Willis

PREMISES: 4511 PARK AVENUE
(Tax Parcel Number W000-2025/022)

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

DISAPPROVED by the Zoning Administrator on January 9, 2020, based on Sections 30-300 & 30-404.4 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. A lot area of six thousand square feet (6,000 SF) and a lot width of fifty feet (50') are required. For zoning purposes, one (1) lot having a lot area of 9,748.6 square feet and a lot width of seventy-five feet (75') currently exists; a lot area of 3,249.5 square feet and a lot width of twenty-five feet (25') are proposed (#4511 1/2).

APPLICATION was filed with the Board on January 7, 2020, based on Section 1040.3(2) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Stephanie Willis
Jeffrey Willis

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants, Jeffrey and Stephanie Willis, have requested a special exception to split an existing lot improved with a single-family detached dwelling and to construct a new single-family detached dwelling on the proposed vacant lot for property located at 4511 Park Avenue. Ms. Stephanie Willis testified that the request is to build a single-family home on one of three lots adjacent to their home. Ms. Willis noted that their home is located on two of the lots. Ms. Willis indicated that the lot had been surveyed and they were working with an architect to design a house that will be compatible with both the lot and the surrounding neighborhood. Ms. Willis stated that they had lived in their home for over 10 years and are vested in the community. Ms. Willis explained that adjacent to the lot in question is a dwelling that is similar in size to the one being proposed. Ms. Willis noted that the setbacks have been revised to meet the current R-5 regulations. Ms. Willis indicated that approximately 50% of the lot areas in the

neighborhood are consistent with that being proposed. Ms. Willis explained that the proposed lot width is also consistent with that in the neighborhood being that more than one third of the surrounding lots have a lot frontage of less than 50 feet. Ms. Willis noted that three of the subject lots are on the same side of the street as their property and six of the lots are located behind their property. Ms. Willis further noted that there is a wide variety of architectural styles within the neighborhood. Ms. Willis indicated that the siding will be cementitious. Ms. Willis stated that there was no opposition from the surrounding neighbors regarding the request nor was there any opposition from the Malvern Gardens Civic Association. Ms. Willis concluded by stating that all of the relevant special exception criteria have been met.

In response to a question from Mr. Poole, Mr. Willis stated that the lots in question were legal lots of record as required by the special exception.

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, 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 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 Jeffrey & Stephanie Willis for a building permit to split an existing lot improved with a single-family detached dwelling and to construct a new single-family detached dwelling on the proposed vacant lot, subject to substantial compliance with the plans submitted to the Board and provision of cementitious siding.

ACTION OF THE BOARD: (4-0)

Vote to Grant Conditionally

affirmative: York, Poole, Hogue, Samuels

negative: None

BZA 10-2020

APPLICANT: Hugh G. Edmunds, III

PREMISES: 1905 & 1907 MAPLEWOOD AVENUE
(Tax Parcel Number W000-0843/003 & 004)

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

DISAPPROVED by the Zoning Administrator on January 7, 2020, 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. A lot area of six thousand square feet (6,000 SF) and a lot width of fifty feet (50') are required. For zoning purposes, one (1) lot having a lot area of 9,360 square feet and a lot width of eighty feet (80') currently exists; lot areas of 4,680 square feet and lot widths of forty feet (40') are proposed.

APPLICATION was filed with the Board on January 7, 2020, based on Section 1040.3(2) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Hugh Edmunds

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Hugh G Edmunds III, has requested a special exception to split an existing lot improved with a single-family detached dwelling and to construct a new single-family detached dwelling on the proposed vacant lot at 1905 & 1907 Maplewood Avenue. It was noted that a lot area of 6000 ft.² and a lot width of 50 feet is required. It was further noted that lot areas of 4680 ft.² and lot widths of 40 feet are proposed. Mr. Edmunds testified that the lots had existed as legal lots of record since 1940. Mr. Hugh Edmunds stated that when his father purchased the parcels approximately 10 years ago that a portion of the dwelling porch on one of the lots encroached on the other lot. Mr. Edmunds explained that the subject encroachment based on the zoning interpretation had combined the previously existing legal lots of record into one lot and as part of his application he was removing the porch encroachment. Mr. Edmunds further explained that his request was merely to restore the legal lots of record as they had previously existed prior to the porch encroachment. Mr. Edmunds noted that

the neighborhood is a mix of single and two-story dwellings. Mr. Edmonds indicated that parking will be provided in the rear of the lot. Mr. Edmonds stated that there was no opposition from the Randolph Neighborhood Association. Mr. Edmonds explained that he had sent out letters to all of the surrounding property owners within 150 foot radius and was aware of no opposition. I

In response to a question from Mr. Poole, Mr. Edmonds stated that provision of off-street parking is a condition of the case. Mr. Edmonds stated that the proposed lot is similar in size and width to other neighboring lots.

In response to a question from Mr. York, Mr. Edmonds stated that the siding will be cementitious. Mr. Edmonds further stated that the cementitious siding was no more expensive than vinyl siding.

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, 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 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 width and lot area requirements be granted to Hugh G. Edmunds, III for a building permit to split an existing lot improved with a single-family detached dwelling and to construct a new single-family detached dwelling on the proposed vacant lot, subject to substantial compliance with the plans submitted to the Board and provision of cementitious siding.

ACTION OF THE BOARD: (4-0)

Vote to Grant Conditionally

affirmative: York, Poole, Hogue, Samuels

negative: None

BZA 11-2020

APPLICANT: Gulnora LLC

PREMISES: 2501 BERWYN STREET
(Tax Parcel Number S008-0380/025)

SUBJECT: A building permit to demolish an existing single-family detached dwelling and split the existing lot into two parcels to construct a single-family detached dwelling on each newly created lot.

DISAPPROVED by the Zoning Administrator on January 15, 2020, 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 width requirement is not met. Lot widths of fifty feet (50') are required. For zoning purposes, one (1) lot having a lot width of ninety-seven feet (96.83') currently exists; Lot widths of 49.07' (2501 Berwyn) and 47.56' (2501 ½ Berwyn) are proposed.

APPLICATION was filed with the Board on January 15, 2020, based on Section 1040.3(2) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Gulnora Yokubore

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Gulnora Yokubore, has requested a special exception to demolish an existing single-family detached dwelling and split the existing lot into two parcels to construct a single-family detached dwelling on each newly created lot for property located at 2501 Berwyn Street. It was noted that lot widths of 50 feet are required in the R-5 Single-Family Residential District and lot widths of 49.07 feet and 47.56 feet are being requested. Ms. Yokubore testified that the property was purchased in November 2019. Ms. Yokubore stated that they were unaware of the condition of the existing dwelling which had suffered years of deferred maintenance and was dilapidated. Ms. Yokubore noted that the property was originally subdivided in 1938 as three parcels having a width of approximately 32 feet for each lot. Ms. Yokubore indicated that the neighborhood was very pleased when they began to clear the lot. Ms. Yokubore noted that each parcel lacks approximately 240 ft.² in lot area and between 1 and 2 ½ feet in lot width. Ms. Yokubore explained that the resulting lots are similar to other lots in the surrounding neighborhood. Ms. Yokubore stated that the siding will be cementitious. Ms. Yokubore indicated that there was no opposition from any of the surrounding property owners to the requested special exception. Ms. Yokubore noted that the applicable special exception criteria had been met.

In response to a question from Mr. Poole, Ms. Yokubore stated that parking will be located in front of the proposed dwellings for the reason that there is no rear yard access.

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, 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 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 width requirement be granted to Gulnora LLC for a building permit to demolish an existing single-family detached dwelling and split the existing lot into two parcels to construct a single-family detached dwelling on each newly created lot, subject to substantial compliance with the plans submitted to the Board and provision of cementitious siding.

ACTION OF THE BOARD: (4-0)

Vote to Grant Conditionally
affirmative: York, Poole, Hogue, Samuels

negative: None

BZA 12-2020

APPLICANT: Lissenden Bros, LLC

PREMISES: 3132 GRAYLAND AVENUE
(Tax Parcel Number W000-1402/042)

SUBJECT: A building permit to construct a two-story addition onto the rear of an existing single-family detached dwelling.

DISAPPROVED by the Zoning Administrator on December 18, 2019, based on Sections 30-300, 30-410.5(2) & 30-620.1(c) of the zoning ordinance for the reason that: In an R-5 (Single-Family Residential District), the side yard setback requirement is not met. A side yard of three feet (3') is required; none (0') is proposed along the southwest property line.

APPLICATION was filed with the Board on January 17, 2020, based on Section 1040.3(1) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Robert Lissenden

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Lissenden Brothers LLC, has requested a special exception to construct a two-story addition onto the rear of an existing single-family detached dwelling for property located at 3132 Grayland Avenue. It was noted that a three-foot side yard waiver is being requested from the southwest property line which was originally objected to by the adjoining neighbor as part of an administrative variance request. Mr. Robert Lissenden advised the Board that the subject block is very important to Mr. Lissenden and his brother having been in residence there for several years. In recent years they have constructed new housing and renovated several homes in the neighborhood. Mr. Lissenden noted that they are very sensitive to the architecture of the neighborhood. Mr. Lissenden indicated that they were approached by a long-term resident of the neighborhood in 2018 for the purposes of purchasing her house. Mr. Lissenden stated that the individual was very much interested in selling her home to them based on her observation of the quality of their work. Mr. Lissenden stated that the dwelling had suffered from deferred maintenance and that a portion of the rear of the house had actually collapsed. Mr. Lissenden indicated that the dwelling was purchased in November 2018. Mr. Lissenden explained that the front portion of the house is two stories and they had worked with a structural engineer to stabilize the dwelling. Mr. Lissenden noted that the rear portion of the dwelling was utilized for a kitchen but due to a leaking roof it had collapsed. Mr. Lissenden noted that there was no architectural theme or setback consistency present in the neighborhood. Mr. Lissenden stated that the final plans call for a 1412 ft.² house. Mr. Lissenden indicated that the main body of the house will remain but that they are proposing a two-story addition to the rear of the dwelling. Mr. Lissenden noted that there is 1 inch encroachment on the adjoining property which will be removed as part of the renovation. Mr. Lissenden explained that they are proposing three small bedrooms which is more or less consistent with other dwellings in the neighborhood. Mr. Lissenden noted that the master

bedroom which is only 11'6" in width will be located within that portion of the dwelling which is adjacent to the requested setback waiver. Mr. Lissenden indicated that there was no opposition from any of the other property owners within the neighborhood or the Carytown South Neighborhood Association.

In response to a question from Mr. Pinnock, Mr. Lissenden indicated that the middle bedroom does have a window.

Mr. York inquired whether it would be possible based on the request from the neighbor who originally opposed the administrative variance to inset the dwelling an additional 6 inches. Mr. Lissenden indicated that as stated the master bedroom is already exceedingly small and that any reduction would render it virtually useless. Mr. Lissenden commented that he could not conceive of any benefit to setting the wall in 6 inches. Mr. Lissenden stated that this would seriously jeopardize the economic viability of the project.

Mr. York inquired as to how the addition would be built on the property line. Mr. Lissenden stated that they would frame it, install siding and stand the wall up on the property line.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 30-1040.3(1) of the City Code, the intended purpose and use of the proposed addition is consistent with the zoning district regulations; departure from the yard requirements is the minimum necessary to accommodate the intended purpose of the addition; the addition or similar construction serving the same purpose cannot reasonably be located elsewhere on the lot in compliance with the zoning ordinance; and the addition will be in keeping with the architectural character of the dwelling and development within the neighborhood.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the side yard setback requirement be granted to Lissenden Bros, LLC for a building permit to construct a two-story addition onto the rear of an existing single-family detached dwelling, subject to substantial compliance with the plans submitted to the Board and provision of cementitious siding.

ACTION OF THE BOARD: (4-0)

Vote to Grant Conditionally

affirmative: York, Poole, Hogue, Samuels

negative: None

BZA 13-2020

APPLICANT: Tom Hanrahan

PREMISES: 4206 BROOK ROAD
(Tax Parcel Number N000-2346/018)

SUBJECT: A building permit to enlarge an existing second floor porch, replace a stair, and construct a first floor deck to a nonconforming two-family detached dwelling.

DISAPPROVED by the Zoning Administrator on January 16, 2020, based on Sections 30-300 & 30-800.1 of the zoning ordinance for the reason that: In an R-5 (Single-Family Residential District), the nonconforming use requirements are not met. No building or structure devoted to a nonconforming use shall be enlarged unless such building or structure is thereafter devoted to a conforming use.

APPLICATION was filed with the Board on January 17, 2020, based on Section 1040.3(13) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Tom Hanrahan

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Tom Hanrahan, has requested a special exception to enlarge an existing second floor porch, replace a stair and construct a first floor deck to a nonconforming two-family detached dwelling for property located at 4206 Brook Road. Mr. Hanrahan testified that he is requesting a special exception to enlarge a nonconforming use. Mr. Hanrahan explained that his property is zoned R-5 Single-Family Residential which does not permit a byright two-family dwelling. Mr. Hanrahan stated that he went door-to-door within a 150 foot radius to make certain that all of his neighbors were aware of his proposed renovations. Mr. Hanrahan noted that there was no objection from any of his neighbors nor was there any objection from his civic association. Mr. Hanrahan explained that the deck and stairs were deteriorated and in need of repair for safety reasons. Mr. Hanrahan indicated that the plans also call for expanding the second story deck in order to provide more outdoor living space. Mr. Hanrahan noted that the proposed improvements will also provide needed privacy from Brook Road which carries a significant amount of traffic. Mr. Hanrahan indicated

that the building materials will be composite/PVC which will significantly reduce deterioration.

In response to a question from Mr. Poole, Mr. Hanrahan stated that there will be no increase in the number of dwelling units located on the property nor will there be any increase in the lot area devoted to the nonconforming use.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 30-1040.3 (13) of the zoning ordinance, the applicant has shown that the proposed enlargement and alteration are primarily for the purpose of enabling the nonconforming use to be operated more efficiently or safely and in a manner that does not adversely impact adjoining and surrounding properties.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the nonconforming use requirements be granted to Tom Hanrahan for a building permit to enlarge an existing second floor porch, replace a stair, and construct a first floor deck to a nonconforming two-family detached dwelling.

ACTION OF THE BOARD: (4-0)

Vote to Grant

affirmative: York, Poole, Hogue, Samuels

negative: None

BZA 14-2020

APPLICANT: Beverley R Tucker III and Mary Madelyn Trustees C/O Thalhimer

PREMISES: 409 LIBBIE AVENUE
(Tax Parcel Number W020-0113/003)

SUBJECT: A building permit to renovate an existing restaurant (ice cream parlor) into a new restaurant (coffee shop and café) with hours of operation between 7 a.m. and 11:00 p.m.

DISAPPROVED by the Zoning Administrator on January 17, 2020, based on Sections 30-300, 30-910.1(b)(2) & 30-1040.2(a) of the zoning ordinance for the reason that: In an UB-PO1 (Urban Business – Parking Overlay District), required parking is not met and the proposed use is not in conformity with the conditions of a previously approved Variance. Thirteen (13) spaces are required; nine are

provided. The previous Board of Zoning Appeals approval (Case No. 42-05) granted a Variance from three required off-street parking spaces, subject to the conditions that alcoholic beverages may not be sold from or consumed on the premises and that the hours of operation be limited to 11:00 a.m. – 11:00 p.m., Monday through Sunday; four (4) off-street parking spaces are needed to be waived in order to accommodate a wheelchair-accessible handicap parking space and the proposed hours of operation are 6:00 a.m. – 11:00 p.m. Monday through Sunday.

APPLICATION was filed with the Board on January 17, 2020, based on Section 17.20(b) of the Charter of the City of Richmond.

APPEARANCES:

For Applicant: Dan FitzGerald

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants, Beverley R Tucker III and Mary Madelyn Trustees have requested a variance to renovate an existing restaurant (ice cream parlor) into a new restaurant (coffee shop and café). Mr. Dan FitzGerald, representing the applicants, testified that he owns five coffee shops which are located in Charlottesville. Mr. Fitzgerald indicated that the Richmond location is the first one outside of Charlottesville. Total employment for all of the coffee shops is approximately 60 individuals. Mr. Fitzgerald noted that they do not have a strong food component associated with the business. Mr. Fitzgerald indicated that the majority of the business occurs in the morning. Mr. Fitzgerald expressed the view that a significant amount of business will come about as a result of walk-in traffic being that the business will be located on Libbie and Grove. Mr. Hanrahan noted that in 2005 the Board granted a three parking space variance for the prior restaurant use. Mr. Hanrahan explained that the current parking request came about due to providing a handicapped space which increased the originally approved waiver of three spaces to the requested four spaces or an increase of one space overall. Mr. Hanrahan indicated that consistent with the original approval alcohol beverages will not be sold. Mr. Hanrahan explained that he is requesting a revision in hours from 6 AM to 6 PM. Mr. Hanrahan noted that the bulk of the coffee shops business will be conducted in the early morning hours and that the majority of surrounding businesses do not open up until 10 AM which results in ample on-street parking. Mr. Hanrahan stated that there will be no sale of alcoholic beverages. Mr. Hanrahan indicated that there was no objection from any of the property owners located within a 150 foot radius. Further that there was no objection from the Westhampton Civic or Merchants Association.

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.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the off-street parking requirements and the conditions of a previously approved Variance, subject to be granted to Beverley R Tucker III and Mary Madelyn Trustees C/O Thalhimer for a building permit to renovate an existing restaurant (ice cream parlor) into a new restaurant (coffee shop and café), subject to the following conditions:

- 1) Hours of operation shall be limited to 6 a.m. through 6 p.m., Monday through Sunday.
- 2) Sale of alcoholic beverages shall not be permitted to be consumed on or sold from the premises.

ACTION OF THE BOARD: (4-0)

Vote to Grant Conditionally

affirmative: York, Poole, Hogue, Samuels

negative: None

BZA 15-2020

APPLICANT: Hippodrome Taylor Mansion LLC

PREMISES: 522 NORTH 2nd STREET
(Tax Parcel Number N000-0062/013)

SUBJECT: A building permit for a restaurant use (954 square feet).

DISAPPROVED by the Zoning Administrator on December 18, 2019, based on Sections 30-300 & 30-710.1(a)(26) of the zoning ordinance for the reason that: In a B-2 (Community Business District), the off-street parking requirement is not met. Ten (10) off-street parking spaces are required; five (5) are provided (four spaces are nonconforming and one space is credited for on-street parking).

APPLICATION was filed with the Board on January 17, 2020, based on Section 1040.3(11) of the City of Richmond Zoning Ordinance.

APPEARANCES:

For Applicant: Debbie Jackson
Brandon Jackson

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case the applicant, Hippodrome Taylor Mansion LLC, has requested a special exception for a 954 ft.² restaurant use for property located at 522 N. 2nd Street. Ms. Debbie Jackson, representing the applicant, testified that the plans call for opening a sandwich and soup business on the first floor of the aforementioned property. Ms. Jackson noted that the property is zoned B-2 Community Business District. Ms. Jackson further noted that 10 parking spaces are required and five parking spaces are proposed to be provided. Ms. Jackson stated that they canvassed the surrounding parking lots and were unable to identify leasable spaces. Ms. Jackson explained that there is ample on-street parking available. Ms. Jackson noted that their business will be frequented by walk-in traffic. Ms. Jackson stated that the business will be open between the hours of 10 AM and 8 PM Monday through Sunday.

In response to a question from Mr. York, Ms. Jackson stated that there are no plans for utilization of the second floor and it is not a part of the current request.

Mr. Davidson stated that the business lost its nonconforming rights when the conversion to a catering business occurred.

Speaking in support, Mr. Brandon Jackson testified in response to a question from Mr. York that that seating will be limited to eight people. Further, due to the fact that the second floor will not be utilized for business purposes the remaining

square footage is 560 ft.². Mr. Poole stated that he frequents 2nd Street during the lunch hour and has found that there is ample parking.

The Board is satisfied that the property was acquired in good faith and pursuant to Section 30-1040.3 (11) of the zoning ordinance, the applicant has demonstrated that the exception will not result in an inadequate supply of parking or other adverse impact on the neighborhood; adequate parking to serve the needs of the use is provided within convenient proximity and the number, location and arrangement of parking spaces intended to serve the use is sufficient to provide for its parking needs based on the nature of the use and the characteristics of its operation.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the off-street parking requirements be granted to Hippodrome Taylor Mansion LLC for a building permit for a restaurant use (954 square feet), subject to the following conditions:

- 1) Hours of operation shall be limited to 10 a.m. through 8 p.m., Monday through Sunday.
- 2) The use of the second floor shall be limited to accessory storage associated with the restaurant operation.

ACTION OF THE BOARD: (4-0)

Vote to Grant Conditionally
affirmative:

York, Poole, Hogue, Samuels


negative:

None

At the conclusion of the public hearings Mr. Pinnock excused himself and Mr. York assumed the acting Chairman's position.

Upon motion made by Mr. Poole and seconded by Mr. Samuels, Members voted (4-0) to adopt the Board's February meeting minutes.

The meeting was adjourned at 3:20 p.m.



Secretary



Chairman

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CITY OF RICHMOND

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BOARD OF ZONING APPEALS

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CASE NO. BZA 08-2020

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CITY HALL - 900 EAST BROAD STREET

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5TH FLOOR CONFERENCE ROOM

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RICHMOND, VIRGINIA 23219

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MARCH 4, 2020

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1:00 P.M.

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22 REPORTED BY:

23 JACQUELIN O. GREGORY-LONGMIRE, RPR, LSR

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APPEARANCES

Board Members:

Burchell F. Pinnock, Chairman
Rodney Poole
Mary J. Hogue
Roger H. York, Jr.
Kenneth Samuels
Roy W. Benbow, Secretary

Zoning Administrator:

William C. Davidson
Brian Mercer

Counsel for Metro Treatment:

John S. Buford
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I N D E X

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P R O C E E D I N G S

MR. PINNOCK: All right. Ladies and gentlemen, this is a regular monthly meeting of the Board of Zoning Appeals of the City of Richmond. The Board is comprised of five of your fellow citizens who are appointed by the circuit court and serve without compensation.

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

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

The Board's proceedings are informal, but we do adhere to certain rules. We ask that those persons expecting to testify in each case be sworn in when the case is called. The cases will be heard in the order in which they appear on the docket. First, we

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

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

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

15 In the case of an appeal of the decision of the
16 zoning administrator, the zoning administrator and
17 the appellant or appellant's representative shall be
18 permitted a total of 10 minutes to present their case
19 in chief and their rebuttal.

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

25 Following the presentations of the zoning

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

5 Interested parties are defined as a property
6 owner, other than the appellant, whose property is
7 the subject of an appeal and the neighborhood
8 constituency consisting of neighbors and neighborhood
9 associations.

10 After all the cases have been heard, the Board
11 will decide each case. After your case is heard, you
12 are welcome to stay through the remainder of the
13 docket to hear the Board's deliberations or you may
14 leave. If you choose to leave, please do so quietly.
15 The secretary of the Board will notify each applicant
16 in writing as to the decision of the Board.

17 The first case, 08-2020, 449-A Belt Boulevard.
18 An appeal by Metro Treatment of Virginia, LP, a
19 subsidiary of Colonial Management, LP, collectively
20 CMG, that a decision of the zoning administrator
21 dated November 7, 2019, in which the zoning
22 administrator determined that CMG's proposed use as a
23 methadone treatment clinic for the property located
24 at 449-A Belt Boulevard was not permitted within the
25 M-1 district because it did not qualify as a medical

1 or dental office or clinic.

2 The specific section numbers of the zoning
3 ordinance being appealed are 30-452.1,
4 Section 30-452.1 incorporates by reference all
5 permitted uses listed in Sections 30-438.1 and
6 30.1220.21.

7 So I'm assuming the appellant is here.

8 And the administrator goes first.

9 MR. POOLE: Mr. Chairman?

10 MR. PINNOCK: Yes.

11 MR. POOLE: We're going to have a court reporter
12 in this particular case.

13 Would you swear her in?

14 (Reporter sworn.)

15 MR. POOLE: Thank you.

16 And there was a request by a city council person
17 to address, but I don't see them here.

18 MS. ROBINS: Hi, Amy Robins. I'm the liaison --
19 (Ms. Robins was sworn.)

20 MS. ROBINS: I swear to tell the truth.

21 Amy Robins, Fifth District liaison to council
22 member Stephanie Lynch. We would just ask for a
23 continuance, not understanding that this was an
24 appeal for the applicants to come out to the
25 Swansboro West Civic Association, to kind of give an

1 update, and they have agreed to actually come out
2 next month to talk about their practice so...

3 MR. PINNOCK: Okay.

4 MS. ROBINS: I believe they didn't actually get
5 the information or the request until after the
6 meeting.

7 MR. PINNOCK: Okay.

8 MS. ROBINS: Thank you.

9 MR. POOLE: Would there be any harm done if they
10 waited until after this hearing?

11 MS. ROBINS: Say again, sir.

12 MR. POOLE: Is there any harm to the association
13 if they waited until after this meeting?

14 MS. ROBINS: In pride.

15 MR. POOLE: Okay.

16 MR. PINNOCK: Just because we don't have a
17 request from the appellant --

18 MR. POOLE: The applicant has to make a request.

19 MR. BENBOW: The appellant is here.

20 MR. PINNOCK: Okay. So thank you.

21 So not having a request from the appellant to
22 continue this, Mr. Davidson.

23 (Mr. Davidson sworn.)

24 MR. BENBOW: I need your time breakup.

25 MR. DAVIDSON: Seven, three.

1 MR. BENBOW: Seven, three. Okay.

2 STATEMENT BY WILLIAM C. DAVIDSON

3 MR. DAVIDSON: Members of the Board, chairman.
4 With this appeal, it basically boils down to whether
5 the proposed methadone treatment clinic shall be
6 allowed as a clinic as defined in the ordinance.

7 The zoning ordinance is a permissive document
8 that the uses allowed. It is listed. If it's not
9 listed, it's interpreted to mean that it is not
10 allowed.

11 MR. PINNOCK: Mr. Davidson, can you speak up
12 just a little bit?

13 MR. DAVIDSON: Speak up?

14 MR. PINNOCK: Yes, sir.

15 MR. DAVIDSON: Many districts build upon the
16 hierarchy of the previous districts which uses may
17 begin in single-family districts; however, some
18 districts are stand-alone and enumerates specific
19 limited allowable uses.

20 Medical and dental offices and clinics are of
21 stated use in numerous districts that be given the
22 R-73 multifamily district.

23 Included in your packet is a list of those
24 districts that permit medical and dental offices and
25 clinics.

1 Clinic is defined as a facility providing health
2 services for persons on an outpatient basis. There
3 were no patients that are lodged overnight. In this
4 sense, the proposed facility could appear to meet
5 that definition.

6 However, following, there is a list of zoning
7 districts that enumerate permitted uses that
8 specifically prohibit facilities primarily for the
9 care, treatment, or housing of persons who are
10 currently using or addicted to a controlled
11 substance. This includes numerous districts that
12 allow uses owned or operated by a governmental
13 agency.

14 These governmental uses are first permitted at
15 the R0-3 district. These districts also specifically
16 permit medical and dental offices and clinics as
17 separate permitted uses.

18 Another use, social service delivery use, is
19 enumerated as permitted, the use in the B-4 district.
20 This use as can be seen --

21 I think you have the definition in your packet.

22 -- it sets out certain parameters that
23 encompasses the social service delivery use. That's
24 providing services to members of a specific client
25 group, not the general public, counseling, training,

1 medical care or similar services.

2 Proposed methadone clinic exhibits some of these
3 attributes; however, this definition also goes
4 further. It, specifically, prohibits the care or
5 treatment of persons currently illegally using or
6 addicted to a controlled substance.

7 The facility, as discussed and as written in my
8 letter, the zoning confirmation letter, indicates
9 that my interpretation is based on the long-standing
10 interpretations and application of this and not
11 merely a policy.

12 I am, the zoning administrator, is responsible
13 for applying, interpreting a document that I'm
14 presented with as adopted by council. I'd be asked
15 to apply federal law to a document. I have no
16 federal law that I've seen that tells me that it is,
17 in fact, a violation to treat the facility different
18 from a clinic.

19 You've been provided with cases -- examples of
20 case law decisions supporting this by the appellant.
21 I have asked the city's attorney's office to research
22 this matter to see if, in fact, these rulings were
23 the result in me revising my interpretation.

24 The city attorney has indicated and reminded me
25 that in Virginia, neither the zoning administrator

1 nor a Board of Zoning Appeals has the authority to
2 rule on the validity of a zoning regulation nor to
3 waive any zoning requirement without legislative
4 authority for such waiver. This means that any
5 argument as to the validity of the current city
6 ordinance under federal law isn't material for
7 purposes of today's hearing.

8 The Supreme Court -- the Virginia Supreme Court
9 has made it clear that the validity question is the
10 sole province of the judiciary.

11 The cited cases may not exist -- the same facts
12 may be from other jurisdictional venues or there may
13 exist other judicial opinions that conflict. We're
14 not in total agreement with some of these decisions.

15 The proposed clinic is specific to the care and
16 treatment of a specific clientele. The clinic will
17 include an on-site pharmacy that provides limited and
18 specific drugs for treatment of substance abusers.
19 Neither the clinic nor the pharmacy are what you
20 would normally construe as a clinic or pharmacy. It
21 is unique and as unique as only certain clientele,
22 not the general public, can or need to utilize the
23 services or access the facility.

24 Also, the City has specialized as there is
25 federal oversight as well as oversight by the

1 Commonwealth.

2 The Commonwealth must issue special approval for
3 it to operate. So if it is a clinical lab to be in
4 many locations, why are there special regulations of
5 the Commonwealth in place?

6 Why is the Commonwealth discriminating by
7 requiring special approval?

8 I enforce the zoning ordinance is adopted by
9 council in a document that has been introduced and
10 vetted by the legal representative serving council.

11 There are instances where the ordinance has been
12 amended to reflect federal and/or state law that
13 specifically prohibits a locality from regulating.
14 There are a number of examples where the Commonwealth
15 has explicitly stated in the code what localities can
16 or cannot regulate it.

17 One example is with regard to day care. The
18 Code of Virginia specifically was amended to say that
19 no locality can prohibit the care of four or less
20 children.

21 Another example is with regard to housing where
22 Virginia code and the City's zoning ordinance was
23 amended to incorporate federal Fair Housing laws to
24 allow increased occupancy for handicapped persons as
25 a family unit.

1 This could be seen also in one of your handouts
2 as the definition of family and there are two
3 provisions, one a federal provision and one a state
4 law provision. It allows a district provision for
5 handicapped persons and family unit under Virginia
6 law, but, again, in that definition it has a
7 disclaimer about not being applicable to current
8 illegal use or addiction to a controlled substance.

9 In your packet there's also numerous
10 memorandums, e-mails over a number of years going
11 back -- for what I could find back to 1990 that offer
12 discussion about similar uses. It's been a
13 long-standing policy or a long-standing determination
14 and interpretations by others even before me that
15 these facilities are unique and they are not allowed
16 in any district other than M-2.

17 There was some discussion, I think, in the
18 letter about a facility at 2217 and another facility
19 at Cary Street. There was an October letter,
20 October 12th letter, from the 2217 facility, and when
21 it first came in, it said it was going to be a
22 medical office and clinic. The letter was written.
23 It said it was permitted in the M-1.

24 When that letter was written, I don't believe
25 that the individual writing the letter understood

1 that it was actually going to be a facility for
2 treatment of substance abusers.

3 However, several months later upon the
4 application for the building permit and probably four
5 months later, I believe it was, it was discovered
6 that the facility wouldn't be serving these persons.

7 So it was further scrutinized and discussed and
8 I think in the end -- in the end, the result was that
9 the previous use was an M-2 use and so rights
10 conveyed over to that facility to actually operate
11 it.

12 15 West Cary is another facility that they
13 listed. I've gone through that file. I've looked
14 for any approvals. I can't find anything in the
15 files nor do I have any other knowledge that the City
16 has ever sanctioned anything at that facility. The
17 only thing that I have seen, basically, says it's a
18 social service delivery use.

19 So depending on what happens today, it could be
20 that that facility may be in jeopardy of having a
21 violation.

22 In conclusion, my decision is based on, you
23 know, what I've seen in the ordinance, my analysis of
24 that, and the Board is charged with deciding if that
25 decision is supportable. If the zoning ordinance is

1 not in line with federal law, then that may be
2 decided outside this venue.

3 MR. PINNOCK: Questions?

4 MR. POOLE: Is it your position that if federal
5 law is to be applied, then it either needs to come
6 through city council and amending the zoning
7 ordinance or from an order of a federal court?

8 MR. DAVIDSON: I would say so. Yes.

9 MR. PINNOCK: Other questions for Mr. Davidson?
10 Yes.

11 MR. YORK: Have you authorized or are you aware
12 of any predecessors authorizing any facilities in the
13 city that operates similar to the one that's being
14 discussed?

15 MR. DAVIDSON: Not that I'm aware of.

16 MR. YORK: So the fact that there may be some
17 doesn't necessarily suggest that you've sanctioned
18 them?

19 MR. DAVIDSON: Correct.

20 I think in the packet, there is one permit where
21 something was sanctioned in M-2. I don't recall the
22 address off the top of my head, but -- and there's
23 other ones in there indicating that -- I guess they
24 weren't zoned M-2 and there were no provision
25 services on site or something like that.

1 So I think it's been consistent. And a lot of
2 the e-mails that are in the packet, too, are from
3 other individuals asking, you know, where can we put
4 one of these and it's always -- my answer has always
5 been M-2 so...

6 MR. YORK: And the Franklin Street situation is
7 strictly a matter of nonconforming rights?

8 MR. DAVIDSON: Correct.

9 MR. PINNOCK: Okay. Other questions for
10 Mr. Davidson?

11 MR. POOLE: Yes, I do, Mr. Chairman.

12 Just for clarity. I think you stated this in
13 your argument, but I just want to make sure that I'm
14 clear with this and that is that this is a
15 determination that you have made that is consistent
16 with previous determinations, not only by you, but by
17 previous zoning administrators?

18 MR. DAVIDSON: Absolutely.

19 MR. POOLE: And it's based on the application of
20 the zoning ordinance as a whole where you're pulling
21 various pieces of the --

22 MR. DAVIDSON: Correct.

23 MR. POOLE: -- zoning ordinance to apply to this
24 particular situation?

25 MR. DAVIDSON: Yeah, the ordinance is, you know,

1 a number of sections and a lot of times the answer
2 isn't always in one section. You have to look at it
3 in totality.

4 MR. POOLE: And that totality includes the
5 prohibition of the use for substance abuse treatment?

6 MR. DAVIDSON: Correct.

7 MR. POOLE: Thank you.

8 MR. PINNOCK: So the appellant or appellant's
9 representative.

10 MR. BENBOW: Do you have a sheet?

11 Thank you.

12 (Mr. Horwitz sworn.)

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

14 MR. HORWITZ: My name is Jim Horwitz.

15 MR. PINNOCK: And then how much time do you want
16 to devote to your case in chief of the ten minutes
17 that you have?

18 MR. HORWITZ: Probably combined eight and we'll
19 reserve two.

20 **STATEMENT OF JIM HORWITZ**

21 MR. HORWITZ: I'm the vice president, business
22 development for Colonial Management Group. Before I
23 was hired at Colonial Management Group, I worked for
24 another firm that did opioid treatment as well. That
25 was primarily a treatment of Suboxone and group

1 therapy.

2 If you step back and you look at all of the
3 available medical-assisted treatment that's out there
4 for someone who's looking for treatment, there
5 probably -- the vast majority are going to end up in
6 some sort or form of treatment with Suboxone or
7 methadone and it's about a fifty-fifty split across
8 the country.

9 If they choose Suboxone, it's more than likely
10 than not they're going to go to a doctor who has a
11 DEA waiver that allows them to prescribe Suboxone and
12 that doctor probably exists in a family practice.
13 They probably are a pediatrician or a surgeon or they
14 have a family general practice.

15 My reason for mentioning that to you is there's
16 no distinguishing between us and a family doctor. A
17 patient comes, is evaluated by a doctor. Okay? It's
18 determined and given a prescription and given therapy
19 and then comes back for that prescription, for that
20 therapy and leaves. They come in, they get their
21 prescription, they leave.

22 In the case of a methadone clinic, because the
23 pharmacies are required in a methadone clinic to be
24 on site, they'll actually get the methadone in the
25 clinic and then leave. Whereas, with a family doctor

1 or a Suboxone provider, they're probably going to get
2 a prescription for seven days or 14 or 20, go to CVS
3 or a pharmacy, get that prescription filled, come
4 back.

5 If you are going to hang your hat on the fact
6 that you can't treat someone who's addicted, has a
7 disease and needs treatment, but you can't let them
8 be in the zone, you can't distinguish between us and
9 all of the other doctors that are also doing the same
10 thing for Suboxone that we're doing for methadone.

11 You know, the federal government sees us as a
12 medical practice. The state of Virginia sees us as a
13 medical practice. The Board of Pharmacy in Virginia
14 sees us as a medical practice. When you come to us,
15 you see a doctor, you're evaluated, you're put on a
16 program, you're an outpatient, you leave.

17 So I can't follow the logic that we're
18 different, that we're not medical. I can't follow
19 the logic that says you should shut us all down and
20 not provide treatment to anyone.

21 So with that, if you have any questions for me,
22 I'll --

23 MR. POOLE: Yeah. I have a question.

24 You understand the distinction between your
25 office, which is exclusively there to treat only

1 substance abuse, and all the other offices that you
2 make reference to as not being that? There is a
3 distinction between the two. And that's what you
4 addressed.

5 MR. HORWITZ: That's a distinction that you're
6 drawing because I don't think that distinction
7 exists. No, I don't agree with it.

8 MR. POOLE: Well, that's why you're here.

9 MR. HORWITZ: Right.

10 MR. POOLE: And I understand that.

11 MR. HORWITZ: Right.

12 MR. POOLE: There's no need for us to argue over
13 that. I'm just asking you, do you see a distinction
14 and your answer is, apparently, no?

15 MR. HORWITZ: No, I do not.

16 MR. POOLE: Thank you.

17 MR. PINNOCK: Other questions at this time?
18 Thank you, sir.

19 How much time does he have left?

20 MR. BENBOW: He's got five minutes and --
21 exactly.

22 (Mr. Buford sworn.)

23 MR. PINNOCK: State your name, sir.

24 **STATEMENT OF JOHN S. BUFORD**

25 MR. BUFORD: Mr. Chairman, members, I'm John

1 Buford. I'm an attorney with the Hancock, Daniel &
2 Johnson Law Firm in Glen Allen. I appreciate your
3 time today.

4 We've made our points in our submission and so I
5 don't want to belabor them and I'm quite confident I
6 won't need all of the allotted five minutes, but I
7 do -- I think the text of the ordinance should
8 control here and the text of the ordinance in terms
9 of what is a clinic is a facility providing health
10 services for persons on an outpatient basis and where
11 no patients are lodged overnight. That is it. Those
12 are the only elements that one needs in order to
13 satisfy the definition of a clinic.

14 And based on the material that's been submitted
15 and then based on testimony from Mr. Horwitz, there
16 can be no doubt that this facility would satisfy the
17 definition of a clinic, just as the Franklin Street
18 location satisfies the definition of a clinic.

19 These are health services. We have a medical
20 doctor. We've got nurses, licensed professional
21 counselors, mental health professionals. You know,
22 there is both medicine and behavioral health
23 components to it.

24 Certainly, on an outpatient basis, there is no
25 room and board. Nobody is staying overnight. That's

1 it. Those are the only facts that you need in order
2 to qualify as a clinic.

3 Now, as we've pointed out in the materials,
4 federal law does not allow any government under
5 Title II of the ADA to pick and choose between
6 different types of medicine and so what that means is
7 a facility, a medical practice like ours, has to be
8 treated the same way as an orthopedic practice or a
9 physical therapy practice or a cardiology practice,
10 that state and local governments are not allowed to
11 pick and choose between preferred types of medicine
12 and it's precisely because of the type of stigma that
13 is animating -- that's animating this decision. It
14 appears to have animated the historical practice.

15 And as we pointed out in the materials, this is
16 not a new issue around the country. It may be new
17 here as a legal issue, but it's not a new issue
18 around the country.

19 And the courts -- the federal courts have been
20 very consistent in overruling these types of
21 interpretations that put opioid treatment medical
22 practices in some different category than any other
23 general medical practice.

24 And so what that means is -- you know, what that
25 means is there is federal litigation, there is fee

1 shifting in the ADA to the detriment of the city, and
2 for no reason.

3 And so while I understand and appreciate the
4 very focused view that the Board is constrained only
5 to rely on the ordinance and Virginia law, and while
6 I admit I have never seen any of you take your oath
7 of office here -- typically, an oath of office swears
8 to uphold not only the laws of the Commonwealth but
9 also the laws of the United States. And the
10 Supremacy Clause and the U.S. Constitution would
11 provide for that even if the oath did not.

12 And so if you are to make a ruling on a very
13 narrow basis, there is a very predictable next step
14 as a result of that. And based on the law that we've
15 cited, it comes out a certain way and to no good end
16 for the city, for the residents who need these
17 services.

18 And so I would urge you to look at what the
19 ordinance actually says, the definition of a clinic
20 that is and has always been in the ordinance.
21 Regardless of how it may have been interpreted in the
22 past, the actual words in there provide only a
23 handful of elements all of which are met here.

24 I'd be glad to answer any questions.

25 MS. HOGUE: I do have a question.

1 MR. BUFORD: Yes, ma'am.

2 MS. HOGUE: Preston Bryant with McGuire Woods
3 back in 2013 made the statement that the Metro
4 Treatment of Virginia --

5 Let's see. How did he put it?

6 -- is not a government agency and it really
7 didn't fall under Section 114-434 in order to have a
8 private treatment center.

9 I wasn't quite sure what he was trying to say.
10 Again, I'm not an attorney.

11 MR. BUFORD: And I'm not sure I understand the
12 reference either. I think, clearly, we don't -- we
13 don't meet -- we're not a social service delivery use
14 because those are limited to not-for-profit or
15 government type operations. But, you know, I think
16 the point is not that we don't fit in some other
17 category, which happens to mention controlled
18 substances as an exception to that other category.
19 The point here is that we do fit the definition of a
20 medical clinic under the ordinance.

21 MR. POOLE: Mr. Chairman?

22 MR. PINNOCK: Yes.

23 MR. POOLE: Mr. Buford, you do recognize the
24 Virginia law, that the decision of the zoning
25 administrator is presumed to be correct and that it's

1 your burden to overcome that presumption?

2 MR. BUFORD: I believe that to be an accurate
3 statement of law. Yes, sir.

4 MR. POOLE: All right. And you also --

5 MR. BUFORD: With -- and I'm sorry to interrupt,
6 but with the exception that a pure interpretation of
7 law is subject to de novo review, of course, so...

8 MR. POOLE: Sure, it is. That's why they have
9 an appeal to the Board of Zoning Appeals --

10 MR. BUFORD: Surely.

11 MR. POOLE: -- an appeal to the circuit court,
12 an appeal to the Court of Appeals and then the
13 Virginia Supreme Court, and then the federal system
14 as well.

15 MR. BUFORD: Yes, sir.

16 MR. POOLE: So there's all levels of appellant
17 procedure. But you heard me ask Mr. Davidson about
18 the fact that the city council is the governing body
19 of this city and they're the ones who established the
20 zoning ordinance.

21 MR. BUFORD: Yes, sir.

22 MR. POOLE: Our job as five volunteers here is
23 to listen to the zoning administrator and presume he
24 is correct until we're shown that he is not correct.

25 He also said that when there has been a problem

1 with the issue of federal override, the council has
2 been approached and has chosen, in some instances, to
3 do that.

4 Why can't you do that?

5 MR. BUFORD: Well, I think two points. Number
6 one, those are not necessarily exclusive paths.

7 MR. POOLE: Agree.

8 MR. BUFORD: And, number two, as you're probably
9 aware, in order for us to access any further
10 remedies, we have to exhaust certain steps along the
11 way. And so to the extent we are to proceed along
12 alternative paths, we don't want to get tripped up on
13 an exhaustion basis if we have to take path B instead
14 of path A.

15 MR. POOLE: I might take a little bit of an
16 argument with you on that, not to quibble, but I
17 understand you have to appeal the decision of the
18 zoning administrator within 30 days, but that doesn't
19 necessarily mean that that's the exclusive -- as you
20 said, it's not the exclusive path, and you could be,
21 as a part of this process, approaching city council
22 for changes. They're the ones that make the policy
23 decisions. We're not policy makers.

24 MR. BUFORD: Yes, sir.

25 MR. POOLE: We are only persons who are here to

1 try to interpret the zoning ordinance to the best of
2 our ability to do that.

3 MR. BUFORD: And so to bring it back to your
4 original comment in terms of the presumed correctness
5 of the zoning administrator's decision, you've heard
6 no evidence today that this is not a medical use.
7 You've heard no evidence today that this is not an
8 outpatient treatment facility. You've heard no
9 evidence that guests are lodged overnight. There is
10 no evidence on which you could base a decision,
11 presumption or not, that this is not a medical clinic
12 as defined in the ordinance.

13 MR. POOLE: But we have heard evidence that
14 that's not the exclusive basis upon which the zoning
15 administrator has made the determination because
16 that's why I asked him about using the zoning
17 ordinance as a whole.

18 There are other portions of the zoning ordinance
19 that apply to this particular scenario dealing with
20 substance abuse that he is applying to this
21 particular case and that's his determination.

22 We would have to find that that determination
23 was clearly wrong in order to grant your appeal, and
24 it's your burden to give us the -- and I've heard
25 your arguments. I read your letters carefully, and

1 I'm just saying to you I don't believe that you've
2 given us clear evidence as to a mistake. If you take
3 his argument as a whole, that meaning that the zoning
4 ordinance has read with all of the conditions in it
5 and that's applicable to this and that this is not a
6 policy that he's made. This is a determination
7 that's been made in this case and in previous cases.

8 And if you think we should apply the -- other
9 than our -- and I think you're right. It's been a
10 while since I've taken my oath doing this. This is
11 only my 23rd year of doing this. I don't remember
12 any case before this board as long as I've been on
13 here where we have, of our own volition, used federal
14 law to overrule any zoning ordinance in the City of
15 Richmond.

16 You may be right. You have an avenue of
17 approach in the federal courts, but we're here to
18 make the determination that we're granted the powers
19 to do by the city charter, which it tells us how we
20 have to make this decision. And I haven't heard you
21 tell me anything that would make me believe anything
22 different.

23 So if there's something else that you know in
24 our charter that tells us that we have to apply
25 federal statutes, I'm open to hear it.

1 MR. BUFORD: No. I think what compels you to
2 apply federal statutes is Article VI, Section 4
3 clause to the U.S. Constitution, but we may disagree
4 about how that impacts us today, but I appreciate
5 your time.

6 MS. HOGUE: Mr. Buford?

7 MR. BUFORD: Yes, ma'am.

8 MS. HOGUE: I see things going back to 1990.

9 Do you know when this ordinance was created?

10 Was it -- I'm just wondering. I know that we
11 have some health issues that have grown since
12 probably the ordinance, so I'm just maybe asking
13 for -- you know, just to -- for more information.

14 Has the ordinance not grown with the needs of
15 the community?

16 MR. BUFORD: Well, I think that's clearly the
17 case and not unique to this ordinance in this city.
18 And while I don't have the institutional background
19 to be able to recall when this particular definition
20 would have been promulgated, the ADA itself was only
21 enacted in 1990. And so it has taken some time,
22 although it has percolated through to this point, I
23 think, rather successfully, but it's taken some time
24 to get those interpretations in place for, then,
25 cities to be able to react to.

1 So I think history and I think previous
2 interpretations are of increasingly diminished value
3 in that regard.

4 MS. HOGUE: And I understand, I guess, that
5 y'all haven't had time to reach out to the
6 neighborhood what the concerns, if any, with the
7 neighborhood?

8 MR. BUFORD: Well, we found out this morning,
9 about 8:45 this morning that a request had been made
10 in February from the neighborhood association for
11 someone to come speak. And I think the request was
12 directed to the City rather than the appellant, but
13 we are glad to engage with the community with the
14 caveat that, of course, this is not a special use
15 permit or rezoning or anything like that.

16 Our position is that this is a use as of right
17 under the ordinance and so regardless of how anybody
18 else feels about that, either the right exists or it
19 doesn't.

20 MS. HOGUE: Well, this would usually request
21 proactively that anyone that is making placement
22 changes in a community do talk to the neighborhood --
23 and I agree with Mr. Poole -- talk to some of the
24 leaders on city council, so just because we do
25 believe that the neighborhood should -- everybody

1 should be working together.

2 MR. BUFORD: And we look forward to being a good
3 neighbor, if permitted.

4 Sir?

5 MR. POOLE: I do have one follow-up question.

6 I was a little confused by your answer to
7 Ms. Hogue's question.

8 You said you just learned of it this morning.

9 Does that mean that you would like to have a
10 continuance?

11 MR. BUFORD: No, sir. It's taken us a year to
12 get to this point. It took us -- it took us from
13 last March until last November to get a decision from
14 the zoning administrator despite the statutes that
15 say otherwise, so we're not interested in any further
16 delay of any kind.

17 MR. POOLE: I just wanted to make it clear that
18 it's the general policy of this board when the
19 appellant asked for a continuance in order to meet
20 with the neighborhood, we consistently grant that,
21 but it's only if it comes from the appellant or the
22 applicant.

23 MR. BUFORD: Yes, sir. And I'm aware of that --
24 I'm aware of that policy and we have taken that into
25 account in us being here today.

1 MR. PINNOCK: Other questions?

2 Mr. Buford, thank you, sir.

3 MR. BENBOW: Mr. Chairman?

4 MR. PINNOCK: Yes.

5 MR. BENBOW: I just wanted to state for the
6 purpose of the record that we received an inquiry
7 from a Reverend Miles. I contacted Reverend Miles.
8 I gave Reverend Miles Mr. Buford's name. I gave
9 Reverend Miles Mr. Buford's phone number and I gave
10 Reverend Miles Mr. Buford's e-mail address. I did
11 that twice.

12 So we attempted to contact the neighborhood and
13 give them the information they needed. And for
14 whatever reason, it wasn't pursued.

15 MR. BUFORD: And I can -- just for the sake of
16 completeness, I did not receive any inquiry until
17 Mr. Benbow forwarded me the e-mail chain this
18 morning.

19 MR. PINNOCK: Okay. Thank you.

20 MR. BUFORD: Thank you.

21 MR. PINNOCK: Mr. Davidson, do you have any
22 rebuttal?

23 MR. DAVIDSON: No, sir.

24 MR. PINNOCK: Okay. So are there other
25 interested parties that wish to testify or speak on

1 this matter?

2 (No response.)

3 MR. PINNOCK: All right.

4 MR. BENBOW: You need to amend your rules.

5 MR. POOLE: I would make a motion to amend our
6 rules to take this case and decide on it immediately
7 and then go to the other cases. We have a court
8 reporter that needs --

9 MR. PINNOCK: Okay.

10 MR. POOLE: -- to finish up the case and I would
11 move that we amend our rules to allow us to decide
12 this case immediately.

13 MR. PINNOCK: All right. Is there a second?

14 MR. SAMUELS: I second it.

15 MR. PINNOCK: All right. All in favor?

16 (Response of "aye.")

17 MR. PINNOCK: Okay. So, ladies and gentlemen,
18 we'll amend our rules to be able to deliberate this
19 case and decide it and then we'll come back to the
20 next case on the docket.

21 All right. So this is Case No. 08-2020,
22 449-A Belt Boulevard and I'm looking for a motion on
23 the appeal by Metro Treatment Virginia, LP.

24 MR. POOLE: I would move to deny the appeal.

25 MR. PINNOCK: Okay. Is there a second?

1 MR. SAMUELS: I will second.

2 MR. PINNOCK: Okay.

3 MR. POOLE: As I stated, the rules are,
4 basically, that the zoning administrator has the
5 presumption that he's correct and the appellant has
6 the burden to overcome that presumption.

7 What's before us today is Mr. Davidson's
8 testimony that in taking the zoning ordinance as a
9 whole, it contains prohibitions against use of
10 property for purposes of substance abuse. It's
11 applicable in this particular instance and has been
12 on a consistent basis.

13 I have not heard any evidence that convinces me
14 that Mr. Davidson's determination in this case is
15 incorrect and, therefore, I believe that we should
16 uphold the decision of the zoning administrator for
17 failure of the appellant to provide us clear and
18 convincing evidence or --

19 Let me make sure the level of --

20 MR. YORK: There are two levels.

21 MR. POOLE: Our decision is to be based on our
22 judgment that the zoning administrator's decision is
23 the correct decision and I believe that that is the
24 case and that that is a second basis upon which we
25 would grant or deny this appeal.

1 MR. PINNOCK: Okay.

2 MR. YORK: I would add to that, that anything we
3 do here today should not in any way suggest that we
4 don't think that the applicant what they're doing is
5 perfectly legitimate and desirable objective nor that
6 the location they're proposing isn't an appropriate
7 location for it. It's just not something that's
8 before us as an issue.

9 MR. PINNOCK: Noted.

10 Any further discussion?

11 (No response.)

12 MR. PINNOCK: Okay. All those in favor of the
13 motion to deny the appeal please say "aye."

14 (Response of "aye.")

15 MR. PINNOCK: So the decision of the
16 administrator, the zoning administrator, is upheld
17 and the appeal is denied.

18 Thank you very much.

19

20 (This proceeding was concluded at 1:43 p.m.)

21

22

23

24

25

1 STATE OF VIRGINIA

2 COUNTY OF CHESTERFIELD, TO WIT:

3

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

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

16

17 WITNESS my hand this _____ day of _____, 2020.

18 My commission expires September 30, 2021.

19 Notary Registration No. 7275579.

20

21

22 JACQUELIN O. GREGORY-LONGMIRE

23

24

25

<p>08-2020 [3] - 1:9; 6:17; 34:21 10 [1] - 5:18 114-434 [1] - 25:7 12th [1] - 14:20 14 [1] - 20:2 15 [1] - 15:12 15.2-2314 [1] - 5:6 18 [1] - 3:4 1990 [3] - 14:11; 30:8, 21 1:00 [1] - 1:16 1:43 [1] - 36:20 20 [1] - 20:2 2013 [1] - 25:3 2019 [1] - 6:21 2020 [3] - 1:15, 24; 37:17 2021 [1] - 37:18 21 [1] - 3:5 2217 [2] - 14:18, 20 23219 [1] - 1:14 23255-2050 [1] - 2:13 23rd [1] - 29:11 30 [2] - 27:18; 37:18 30-438.1 [1] - 7:5 30-452.1 [2] - 7:3 30.1220.21 [1] - 7:6 37 [1] - 3:7 4 [2] - 1:15; 30:2 449-A [3] - 6:17, 24; 34:22 5TH [1] - 1:13 7 [1] - 6:21 72050 [1] - 2:13 7275579 [1] - 37:19 8:45 [1] - 31:9 9 [1] - 3:3 900 [1] - 1:12 ability [2] - 28:2; 37:11 able [3] - 30:19, 25; 34:18 absolutely [1] - 17:18 abuse [4] - 18:5; 21:1; 28:20; 35:10 abusers [2] - 12:18; 15:2 access [2] - 12:23; 27:9 account [1] - 32:25 accurate [1] - 26:2 acted [1] - 37:14 actual [1] - 24:22 ADA [3] - 23:5; 24:1; 30:20 add [1] - 36:2 addicted [3] - 10:10; 11:6; 20:6</p>	<p>addiction [1] - 14:8 address [3] - 7:17; 16:22; 33:10 addressed [1] - 21:4 adhere [1] - 4:22 administrator [20] - 4:11, 19; 5:16, 20; 6:1, 20, 22; 7:8; 11:12, 25; 25:25; 26:23; 27:18; 28:15; 32:14; 35:4, 16; 36:16 Administrator [1] - 2:7 administrator's [2] - 28:5; 35:22 administrators [1] - 17:17 admit [1] - 24:6 adopted [2] - 11:14; 13:8 agency [2] - 10:13; 25:6 aggrieved [1] - 5:6 agree [3] - 21:7; 27:7; 31:23 agreed [1] - 8:1 agreement [1] - 12:14 Allen [1] - 22:2 allotted [2] - 5:23; 22:6 allow [4] - 10:12; 13:24; 23:4; 34:11 allowable [1] - 9:19 allowed [5] - 9:6, 8, 10; 14:15; 23:10 allows [2] - 14:4; 19:11 alone [1] - 9:18 alternative [1] - 27:12 amend [4] - 34:4, 11, 18 amended [3] - 13:12, 18, 23 amending [1] - 16:6 Amy [2] - 7:18, 21 analysis [1] - 15:23 animated [1] - 23:14 animating [2] - 23:13 answer [5] - 17:4; 18:1; 21:14; 24:24; 32:6 appeal [16] - 4:9; 5:15; 6:7, 18; 7:24; 9:4; 26:9, 11-12; 27:17; 28:23; 34:23; 35:25; 36:13, 17 appealed [1] - 7:3 appeals [1] - 4:18</p>	<p>APPEALS [1] - 1:5 Appeals [4] - 4:4; 12:1; 26:9, 12 appear [2] - 4:25; 10:4 APPEARANCES [1] - 2:1 appellant [16] - 5:17, 20; 6:1, 6; 7:7; 8:17, 19, 21; 11:20; 18:8; 26:16; 31:12; 32:19, 21; 35:5, 17 appellant's [4] - 5:17, 21; 6:1; 18:8 applicable [3] - 14:7; 29:5; 35:11 applicant [6] - 5:1, 5; 6:15; 8:18; 32:22; 36:4 applicants [1] - 7:24 application [3] - 11:10; 15:4; 17:19 applied [1] - 16:5 apply [7] - 4:17; 11:15; 17:23; 28:19; 29:8, 24; 30:2 applying [2] - 11:13; 28:20 appointed [1] - 4:6 appreciate [3] - 22:2; 24:3; 30:4 approach [1] - 29:17 approached [1] - 27:2 approaching [1] - 27:21 appropriate [1] - 36:6 approval [2] - 13:2, 7 approvals [1] - 15:14 approve [1] - 4:8 argue [1] - 21:12 argument [4] - 12:5; 17:13; 27:16; 29:3 arguments [1] - 28:25 Article [1] - 30:2 assistant [1] - 4:11 assisted [2] - 4:10; 19:3 Association [1] - 7:25 association [2] - 8:12; 31:10 associations [1] - 6:9 assuming [1] - 7:7 attempted [1] - 33:12 Attorney [1] - 2:12 attorney [3] - 11:24;</p>	<p>22:1; 25:10 attorney's [1] - 11:21 attributes [1] - 11:3 authority [2] - 12:1, 4 authorized [1] - 16:11 authorizing [1] - 16:12 available [1] - 19:3 avenue [1] - 29:16 aware [5] - 16:11, 15; 27:9; 32:23 aye [3] - 34:16; 36:13 B-4 [1] - 10:19 background [1] - 30:18 base [1] - 28:10 based [7] - 11:9; 15:22; 17:19; 22:14; 24:14; 35:21 basis [8] - 10:2; 22:10, 24; 24:13; 27:13; 28:14; 35:12, 24 begin [1] - 9:17 beginning [1] - 5:22 behavioral [1] - 22:22 belabor [1] - 22:5 Belt [3] - 6:17, 24; 34:22 BENBOW [8] - 8:19, 24; 9:1; 18:10; 21:20; 33:3, 5; 34:4 Benbow [2] - 2:5; 33:17 best [2] - 28:1; 37:11 between [6] - 19:16; 20:8, 24; 21:3; 23:5, 11 bit [2] - 9:12; 27:15 blood [1] - 37:12 BOARD [1] - 1:5 board [3] - 22:25; 29:12; 32:18 Board [17] - 2:2; 4:3, 9, 15; 5:9, 11, 22; 6:10, 15-16; 9:3; 12:1; 15:24; 20:13; 24:4; 26:9 Board's [3] - 4:13, 21; 6:13 body [1] - 26:18 boils [1] - 9:4 Boulevard [3] - 6:17, 24; 34:22 Box [1] - 2:13 breakup [1] - 8:24 Brian [1] - 2:8</p>	<p>bring [1] - 28:3 BROAD [1] - 1:12 Bryant [1] - 25:2 Buford [6] - 2:11; 21:22; 22:1; 25:23; 30:6; 33:2 BUFORD [23] - 3:5; 21:24; 25:1, 11; 26:2, 5, 10, 15, 21; 27:5, 8, 24; 28:3; 30:1, 7, 16; 31:8; 32:2, 11, 23; 33:15, 20 Buford's [3] - 33:8 build [1] - 9:15 building [1] - 15:4 Burchell [1] - 2:3 burden [3] - 26:1; 28:24; 35:6 business [1] - 18:21 BY [2] - 1:22; 9:2 BZA [1] - 1:9 cannot [1] - 13:16 cardiology [1] - 23:9 care [6] - 10:9; 11:1, 4; 12:15; 13:17, 19 carefully [1] - 28:25 Cary [2] - 14:19; 15:12 Case [1] - 34:21 CASE [1] - 1:9 case [26] - 4:23; 5:2, 4, 8, 15, 18, 24; 6:11, 17; 7:12; 11:20; 18:16; 19:22; 28:21; 29:7, 12; 30:17; 34:6, 10, 12, 19-20; 35:14, 24 cases [6] - 4:24; 6:10; 11:19; 12:11; 29:7; 34:7 category [3] - 23:22; 25:17 caveat [1] - 31:14 center [1] - 25:8 certain [6] - 4:19, 22; 10:22; 12:21; 24:15; 27:10 certainly [1] - 22:24 CERTIFICATION..... [1] - 3:7 certified [1] - 37:5 certify [2] - 37:5, 12 chain [1] - 33:17 chairman [1] - 9:3 Chairman [6] - 2:3; 7:9; 17:11; 21:25; 25:21; 33:3 changes [2] - 27:22; 31:22</p>
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