



**CITY OF RICHMOND**

DEPARTMENT OF  
PLANNING AND DEVELOPMENT REVIEW  
BOARD OF ZONING APPEALS

**MINUTES OF A MEETING OF THE BOARD OF ZONING APPEALS**  
**WEDNESDAY, June 7, 2017**

On Wednesday, June 7, 2017, 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 Voice Newspaper on May 24 and 31, 2017 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 Jane Hogue  
                                  Kenneth R. Samuels  
                                  Stephen Hall, City Attorney

Member(s) Absent:

Staff Present:               Roy W. Benbow, Secretary  
                                  William Davidson, Zoning Administrator

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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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Upon motion made by Mr. York and seconded by Ms. Hogue, Members voted (4-0) to amend the agenda to move Case #15-17 to the end of the agenda given the anticipated length of the subject case. Mr. Poole noted his abstention from the vote.

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**CASE NO. 16-17**

APPLICANT:               Richmond Metropolitan Habitat for Humanity

PREMISES:                1517 NORTH 35<sup>TH</sup> STREET  
                                  (Tax Parcel Number E000-1544/019)



(Tax Parcel Number E000-1544/019)

**SUBJECT:** A building permit to convert a new single-family detached dwelling.

**DISAPPROVED** by the Zoning Administrator on April 12, 2017, based on Sections 30-300, 30-410.5(1) & 30-630.2(b)(1) of the zoning ordinance for the reason that: In a(an) R-5 Single-Family District, the front yard (setback) requirement is not met. A front yard of 23.6 feet, as established by 3508 Briel Street is required; nine feet (9') is proposed.

**APPLICATION** was filed with the Board on April 7, 2017, based on Section 17.20(b) of the City Charter and Section 15.2-2309.2 of the Code of Virginia.

**APPEARANCES:**

For Applicant: Jack Thompson

Against Applicant: none

**FINDINGS OF FACT:** The Board finds from sworn testimony and exhibits offered in this case that the applicant, Richmond Metropolitan Habitat for Humanity, has requested a variance to construct a new single-family detached dwelling located at 1517 North 35<sup>th</sup> Street. Mr. Jack Thompson, vice president of construction and real estate for Habitat for Humanity, testified that the subject property has been entangled in a tax delinquency issue for approximately 10 years. Mr. Thompson noted that the degree of disrepair of the structure was extreme given extensive water penetration. Mr. Thompson stated that in consort with personnel from the Commission of Architectural Review it was determined that the building could not be salvaged. Mr. Thompson noted that it simply was not cost-effective to attempt to repair the building. Mr. Thompson indicated after receiving Historical Review approval the building was demolished. Mr. Thompson stated that based on the lotting pattern the property is subject to a front yard along Briel Street and North 35th Street. Mr. Thompson noted that given a severe topographical change in the rear of the property that it was not possible to build a house that was narrower that would eliminate the need for the requested setback waivers. Mr. Thompson stated that the structure is considered an "easy living" dwelling which improves accessibility.

In response to a question from Mr. York and after consideration Mr. Thompson stated that absent a variance the proposed dwelling could not be built.

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 front yard (setback) requirements be granted to Richmond Metropolitan Habitat for Humanity for a building permit to construct a new single-family detached dwelling.

ACTION OF THE BOARD: (5-0)

Vote to Grant

affirmative: Poole, Hogue, Pinnock, York, Samuels

negative: none

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CASE NO. 17-17 (CONTINUED TO JULY 5, 2017 MEETING)

APPLICANT: Church Hill Ventures, LLC

PREMISES: 1209 HULL STREET  
(Tax Parcel Number S000-0085/018)

SUBJECT: A building permit for a restaurant use with an accessory outdoor roof top dining patio.

DISAPPROVED by the Zoning Administrator on April 20, 2017, based on Sections 30-300 & 30-433.11(22)a of the zoning ordinance for the reason that: In a(an) UB-2 Urban Business & PE-1 District, no deck, patio, terrace or other area outside a completely enclosed building and used for the services or accommodation of patrons shall be situated with 100 feet of any R district; the outside area is situated approximately sixty four feet (64') from an R-63 district.

APPLICATION was filed with the Board on April 11, 2017, based on Section 15.2-2309.2 of the Code of Virginia.

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CASE NO. 18-17

APPLICANT: 1004 North Thompson, LLC

PREMISES: 1004 NORTH THOMPSON STREET  
(Tax Parcel Number W000-1665/025)



**SUBJECT:** A building permit to convert an office building into a 23-unit multi-family dwelling.

**DISAPPROVED** by the Zoning Administrator on April 12, 2017, based on Sections 30-300 & 30-426.5(2)b of the zoning ordinance for the reason that: In a(an) RO-2 Residential –Office District, the side yard (setback) requirement is not met. A side yard of fifteen feet (15') is required; 12.12 feet exists/is proposed along the northern property line.

**APPLICATION** was filed with the Board on April 11, 2017, based on Section 17.20(b) of the City Charter and Section 15.2-2309.2 of the Code of Virginia.

**APPEARANCES:**

For Applicant: Mary Krumbein

Against Applicant: none

**FINDINGS OF FACT:** The Board finds from sworn testimony and exhibits offered in this case that the applicant, 1004 N. Thompson LLC, has requested a variance for a building permit to convert an office building into a 23 unit multi-family dwelling for property located at 1004 Thompson Street. Ms. Mary Krumbein, representing the applicant, testified that the property had been vacant for approximately 10 years. Ms. Krumbein noted that the building was historic and that when constructed it met the requisite setback on the east side of 12 feet. Ms. Krumbein indicated that conversion to a multi-family use triggered a 15 foot setback requirement. Ms. Krumbein noted that the project would employ federal and state historic tax credits. Ms. Krumbein also noted that the proposed multi-family use was permitted by right. Ms. Krumbein indicated that given the length of vacancy that it was clear that without approval of the requested variance that the building overtime would most likely be demolished. Ms. Krumbein stated that the request is to merely use the existing building and not to alter its footprint.

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 from the side yard (setback) requirement be granted to 1004 Thompson LLC for a building permit to convert an office building into a 23 unit multi-family dwelling.

ACTION OF THE BOARD: (5-0)

Vote to Grant

affirmative: Poole, Hogue, Pinnock, York, Samuels

negative: none

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WITHDRAWN

CASE NO. 19-17

APPLICANT: Edmund and Stephanie Ruffin, Jr.

PREMISES: 2327 MONUMENT AVENUE  
(Tax Parcel Numbers W000-1086/001)

SUBJECT: A building permit to remove an open porch and construct a two-story addition to a single-family detached dwelling.

DISAPPROVED by the Zoning Administrator on April 18, 2017, based on Sections 30-300, 30-412.5(1)a, 30-630.2(b)(1) & 30-810.1 of the zoning ordinance for the reason that: In a(an) R-6 Single-Family Attached Residential District, the front yard (setback) requirement is not met. A front yard of ten feet (10'), as established by 605 North Davis Avenue, is required; a nonconforming front yard of 0.15 feet exists, and 0.31 feet ± is proposed. No building or structure having a nonconforming feature shall be reconstructed with another building or structure unless such nonconforming feature is hereby eliminated and the building or structure is made to conform.

APPLICATION was filed with the Board on April 12, 2017, based on Section 15.2-2309.2 of the Code of Virginia.

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CASE NO. 20-17

APPLICANT: William Mitchell

PREMISES: 12 EAST CHARITY STREET  
(Tax Parcel Number N000-0084/016)

SUBJECT: Building permit to convert a take-out-restaurant into a convenience store.



DISAPPROVED by the Zoning Administrator on February 28, 2017, based on Sections 30-300, 30-418.1, 30-710.1(27) (a), 30-800.4 & 30-1040.2(a) of the zoning ordinance for the reason that: In an R-53 (Multi-Family Residential) District, the proposed use (convenience store) is not permitted as the previous nonconforming use rights have expired. Whenever nonconforming uses of a building is discontinued for a period of two years or longer, any subsequent use of the premises shall conform to the regulations applicable in the district in which it is located. Previous approvals by the Board in 2004 (Case No. 1103-04) and 2010 (13-10) from the nonconforming use and parking regulations are null and void as the commercial use of the building has expired and the previous approved cases were for a restaurant (take-out) use. Two (2) on-site parking spaces are/would be required by current regulations; none are proposed.

APPLICATION was filed with the Board on April 14, 2017, based on Section 1040.3 paragraph (14) of the Zoning Ordinance of the City of Richmond.

APPEARANCES:

For Applicant: William Mitchell

Against Applicant: Wanda Stallings

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Mr. William Mitchell, has requested a special exception to convert a take-out-restaurant into a convenience store for property located at 12 East Charity Street. Mr. Mitchell testified that he is requesting permission to reinstate the nonconforming rights for a convenience store. Mr. Mitchell noted that he had previously operated the business as a take-out restaurant. The Zoning Administrator, Mr. Davidson, advised the Board that the parking requirements were the same for either a convenience store or take-out restaurant. Mr. Davidson also noted that the nonconforming use rights are identical being that both the convenience store and restaurant appear for the first time in the same zoning district. The previous restaurant uses were nonconforming having been authorized by the Board in 1968, 1975, 2004, 2010 and in 2014. Mr. Mitchell stated that given the size and configuration of the building that it was not possible to convert it to a conforming residential use.

In response to a question from Mr. Poole, Mr. Mitchell stated that he was offering as a condition of approval the floor plans submitted with his application.

In response to a question from Mr. York, Mr. Mitchell stated that he was offering as a condition of approval that there will be no outside consumption of food or beverage nor would there be any sale of alcohol.

Speaking in opposition, Ms. Wanda Stallings expressed concern over the lack of compatibility of the proposed convenience store with the surrounding neighborhood and the condition of the existing building.

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 special exception be granted to William Mitchell for a building permit to convert a take-out-restaurant into a convenience store subject to the conditions that alcoholic beverages shall not be sold from or consumed on the premises, that there shall be no outside consumption of food or beverages and that the approval is conditioned on the floor plan submitted with the application..

ACTION OF THE BOARD: (5-0)

Vote to Grant

affirmative: Poole, Hogue, Pinnock, York, Samuels

negative: none

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CASE NO. 21-17

APPLICANT: Old Monroe, LLC c/o Bank Street Advisor

PREMISES: 10120 WEST BROAD STREET, SUITE J  
(Tax Parcel Number W000-0101/009)

SUBJECT: A building permit B.P. to convert existing office space to dwelling units on the ground, 1<sup>st</sup> and 2<sup>nd</sup> floors of an existing building.

DISAPPROVED by the Zoning Administrator on April 17, 2017, based on Sections 30-300 & 30-438.1 (15) of the zoning ordinance for the reason that: In a(an) B-3 General District, the proposed use is not permitted as the minimum commercial frontage and depth ratio requirements are not met. Dwelling units are permitted when contained within the same building as other permitted principal uses, provided that such dwelling units shall be located above the ground floor of the building or to the rear of other permitted principal use so as not to interrupt commercial frontage in the district, and provided further that the total floor area devoted to commercial use be a minimum of one-third (1/3) or one-thousand (1, 000) square feet, whichever is greater, of the floor area of the ground floor of the building and shall not be less than twenty feet (20') in depth along the entire length of the principal street frontage, except for ingress and egress. No commercial use is proposed as the entire building will be devoted to residential use.



APPLICATION was filed with the Board on April 17, 2017, based on Section 1040.3 paragraph (5) of the Zoning Ordinance of the City of Richmond.

APPEARANCES:

For Applicant: Mark Kronenthal

Against Applicant: none

**FINDINGS OF FACT:** The Board finds from sworn testimony and exhibits offered in this case that the applicant, Old Monroe, LLC c/o Bank Street Advisor, has requested a special exception for a building permit (B.P.) to convert existing office space to dwelling units on the ground, 1<sup>st</sup> and 2<sup>nd</sup> floors of an existing building. Attorney for the applicant, Mr. Kronenthal, testified that what is being requested is a special exception under §30-1040.3 of the Zoning Ordinance. Mr. Kronenthal stated that the objective is to permit the dual building configuration to have the same functionality as if there one building. Mr. Kronenthal noted that the property is zoned B-3 General Business District. Mr. Kronenthal asked that the Board to note the fact that South Foushee Street which is the cross street at the corner of West Cary Street and ends at the Downtown Expressway. Mr. Kronenthal noted that Building I is a three-story building encompassing approximately 3500 ft.<sup>2</sup> which fronts on West Cary Street and was constructed in 1925. Mr. Kronenthal further noted that Building II was constructed in 1900, encompasses approximately 10,000 ft.<sup>2</sup> which includes a 2800 ft.<sup>2</sup> basement. Mr. Kronenthal stated that the previous occupant was an engineering firm which vacated the premises in 2014. Mr. Kronenthal explained that the proposal is to convert the second building to 18 dwelling units without benefit of the required commercial frontage along South Foushee Street. Mr. Kronenthal noted that if the two buildings were connected that there would be no necessity for requesting a special exception. Mr. Kronenthal explained that with respect to the special exception criteria that the requirement for ground floor commercial in the subject building is neither practical nor economically viable. Further, the proposed multi-family dwelling units will facilitate the mixed use character of the neighborhood and that the architectural style of the building is not incompatible with the neighborhood as there exist no prevailing architectural style.

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 special exception for the proposed use requirements be granted to Old Monroe, LLC c/o Bank Street Advisors for a building permit (B.P.) to convert existing office space to dwelling units on the ground 1<sup>st</sup> and 2<sup>nd</sup> floors of an existing building.

ACTION OF THE BOARD: (5-0)

Vote to Grant

affirmative: Poole, Hogue, Pinnock, York, Samuels

negative: none

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CASE NO. 22-17

APPLICANT: Norman MacArthur/Kady Lutz

PREMISES: 2000 WESTOVER HILL BOULEVARD  
(Tax Parcel Number S006-0144/008)

SUBJECT: A building permit to construct a two-story addition to a single-family detached dwelling.

DISAPPROVED by the Zoning Administrator on April 28, 2017, based on Sections 30-300, 30-406.5(1), 30-406.5(2) & 30-360.1(a)(1) of the zoning ordinance for the reason that: In an R-3 Single-Family Residential District, the front and side yard setback requirements are not met. A front yard of twenty-five (25') is required; 22.1 feet ± is proposed along the Evelyn Byrd Road frontage. A side yard of seven and one-half feet (7 ½') is required; six feet (6') is proposed along the northern property line.

APPLICATION was filed with the Board on April 28, 2017, based on Section 17.20(b) of the City Charter and Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Norman MacArthur

Against Applicant: none

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants, Norman MacArthur/Kady Lutz, have requested a variance for a building permit to construct a two-story addition to a single-family detached dwelling. Mr. Norman MacArthur testified that he has owned the home since 2012 and that he lives there with his family which includes a 20 month-year-old son. Mr. MacArthur noted that his home does not meet contemporary needs with regards to its functionality. Mr. MacArthur stated that the home includes two usable bedrooms, one bathroom above grade and that there is no room to expand. Mr. MacArthur indicated that is necessary to use their basement as a closet. Mr. MacArthur stated that their problem is further compounded by the fact that they have a corner lot which



imposes dual front yards. Mr. MacArthur stated that the proposed addition is in compliance with the Westover Hills Boulevard setback but does not meet the Evelyn Byrd Road setback. Specifically, the ordinance requires a 25 foot setback and that he is requesting a 22.1 foot setback. In addition, a setback waiver for the interior side yard is being requested to permit construction within 6 feet of the property line. Mr. MacArthur stated that there was no opposition to their request from surrounding neighbors. Mr. MacArthur pointed to the fact that his lot is irregularly shaped which precludes expansion to the rear which represents a significant hardship.

In response to a question from Mr. York, Mr. MacArthur replied that reducing the proposed addition in size to meet the required setback would have the effect of rendering it unusable.

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 front and side yard setback requirements be granted to Norman MacArthur/Kady Lutz for a building permit to construct a two-story addition to a single-family detached dwelling, subject to substantial compliance with the plans submitted to the Board.

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

Vote to Grant

affirmative: Poole, Hogue, Pinnock, York, Samuels

negative: none


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The minutes on Case 15-17 are included in the June 7, 2017 Board of Zoning Appeals file.

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Upon motion made by Mr. Poole and seconded by Ms. Hogue, Members voted (5-0) to adopt the Board's May 3, 2017 meeting minutes.



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The meeting was adjourned at 4:30 p.m.  
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Chairman

  
Secretary



CASE NO. 15-17

**APPELLANTS:** Rev. Ben Campbell, Win & Roger Loria, Katherine Wetzel, Pierce Homer, Mary Swezey, William T. Van Pelt, Ruth Eggleston, Tim & Stephanie Socia, Bruce B. Stevens, Sarah Driggs

**PREMISES:** Tax Parcel Number 000-1230-001; (N000-1230-001); Westwood Tract

**SUBJECT:** An appeal by Rev. Ben Campbell, Win & Roger Loria, Katherine Wetzel, Pierce Homer, Mary Swezey, William T Van Pelt, Ruth Eggleston, Tim & Stephanie Socia, Bruce B Stevens, Sarah Driggs based on Virginia Code Section 15.2 2286(4), Richmond Code Section 30-1000.1 and Richmond Code Ordinance No 53-21-31 (1953) of the Zoning Administrator’s March 24, 2017 determination that a decision rendered on May 16, 2012 cannot be changed, modified or reversed based on Virginia Code Section 15.2-2311 & City Code Section 30-1040.1:1 for property identified by the appellants as Tax Parcel Number 000-1230-001; (N000-1230-001); Westwood Tract.

APPEAL was filed with the Board on April 6, 2017, based on Section 17.20(a) of the City Charter.

**APPEARANCES:**

<b>For Appeal:</b>	Ned Freeman	Ben Scribner
	Adam Sitterding	Elizabeth Kostelny
	Hampton Carver	Ron Friedman
	Viola Baskerville	Piece Howe
	Sarah Driggs	Ron Friedman
	Roger Loria	William T. Van Belt
	Ben Campbell	R. R. Gordon
	E.J. Erhardt	

<b>Against Appeal:</b>	Jennifer Mullen	Andrew Condlin
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PROCEEDINGS

MR. PINNOCK: Case Number 15-17. An appeal by Reverend Ben Campbell, Win & Roger Loria, Katherine Wetzel, Pierce Homer, Mary Swezey, William T. Van Pelt, Ruth Eggleston, Tim & Stephanie Socia, Bruce B. Stevens, Sarah Driggs based on Virginia Code, Section 15.2-2286, Section 4, Richmond Code, Section 30-100.1 and Richmond Code Ordinance No. 53-21-31 of the zoning administrator's March 24, 2017, determination that a decision rendered on May 16, 2012, cannot be changed, modified, or reversed based on Virginia Code, Section 15.2-2311 and Richmond Code, Section 30-1040.1, Section 1, for property identified by the appellants as tax parcel 000-1230-001, also known as Westwood Tract.

First, I'm going to read the section on the procedures so we all know what we're doing. The zoning administrator, the appellant, and other persons aggrieved under Section 15.2-2314 of the Code of Virginia, proponents and the staff of local governing bodies shall be permitted a total of ten minutes each to present their case.

The zoning administrator and the appellant shall be required prior to beginning their presentation to

JANE K. HENSLEY - COURT REPORTERS

1 declare to the Board how many of their allotted  
2 minutes shall be devoted to their case-in-chief and  
3 their rebuttal.

4 Can everyone hear me?

5 Thank you.

6 I'd like to swear in everybody who expects to  
7 testify in this case now, including the court  
8 reporter.

9 Please raise your hand.

10 (Court reporter and all participants to testify sworn.)

11 MR. PINNOCK: Thank you.

12 MR. POOLE: Mr. Chairman, before we proceed, I  
13 would like to note to the record that I am recusing  
14 myself from this case as that I've taken a public  
15 position in this matter and I do not feel that it's  
16 appropriate for me to be on the Board for this  
17 hearing.

18 MR. PINNOCK: Okay. So Mr. Poole has recused  
19 himself from the case and Mr. Winks will be sitting  
20 in his place.

21 Yes, sir.

22 MR. DAVIDSON: Good afternoon, members of the  
23 Board. My name is William Davidson.

24 MR. YORK: You want me to go before him?

25 I need to go before you.

JANE K. HENSLEY - COURT REPORTERS

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I want to make a few remarks before we get started on this. I worked in the planning department since the early 1970s and have been very involved in the zoning history of this property as well as other major issues at north side and I see a few faces here that I remember from over 40 years ago.

The Board is aware of the concerns that the folks in the neighborhood have about the proposed multi-family development of the property. They're also aware that the folks in the neighborhood have been trying to deal with this for, actually, many years now with members of the staff, City Council, the Seminary representatives and so forth.

But I want to clarify and make sure it's understood exactly what the role of the Board of Zoning Appeals can be in this case because as you heard when we were dealing with the other cases, each case we dealt with a little bit differently and that's because our powers are very, very narrow and very specific.

Each type of case has different criteria that we use to evaluate it and sometimes we're not allowed to consider certain things. Like in the case of the convenience store where we were not allowed to consider the testimony of the neighbor who was

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opposed to it because it doesn't give us that authority in our criteria.

I'm going to read the provision under which we have the authority to deal with this case so it's very clear. This is 15.2-2311 of the Code of Virginia: "An appeal to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article and any ordinance adopted pursuant to this article or any modification of the zoning requirements pursuant to 15.2-2286."

And it goes on to say and I quote, "The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator and with the Board a notice of appeal specifying the grounds thereon."

So in this case, it breaks down into three pieces. The first issue is whether the appellants are aggrieved.

The second issue is whether the appeal was filed within the mandated 30 days of the decision that's

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being appealed from.

And then the third is the actual merits of the case, which is before us.

The problem we have with the question of whether the appellants are appealed, even though the Code of Virginia is very clear on the fact that the appellants must be aggrieved, there's nothing in the state law that gives us any guidance in the rules pertaining to the Board of Zoning Appeals on how to interpret what the word "aggrieved" means.

It's a matter of law and I do not believe that we are qualified or capable of making a determination as to whether or not the applicants -- the appellants in the case are aggrieved.

I reviewed the records of the assessment office and confirmed that all ten of the appellants do, in fact, own property that's immediately or close by to the subject property.

I think in this case the attorney for the Seminary has raised an issue as to whether or not the appellants are aggrieved. And I don't think that it's appropriate for this Board to not pursue -- not go forward with this case on the basis that the appellants may or may not be aggrieved in this case.

The applicant's attorney -- the appellant's

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1 attorney has submitted a stipulation which describes  
2 the basis upon which they feel that the applicants in  
3 in this case are aggrieved by listing a whole lot of  
4 factors about the impact of the proposed use.

5 An appeal -- if this case is appealed after  
6 we're finished with it, appeals of the decision of a  
7 Board of Zoning Appeals, the provision in the state  
8 law, which is 15.2-2314 states, "The Court shall hear  
9 any arguments on questions of law de novo."

10 What that means is that if this case is appealed  
11 to the Circuit Court, there's an opportunity for both  
12 sides to present their arguments in front of a Court  
13 that is qualified to hear them about whether or not  
14 the appellants in this case are aggrieved.

15 My opinion is, and subject to the decision of  
16 the rest of the Board, that we should not hear  
17 testimony about whether the applicants -- the  
18 appellants are aggrieved in this case, that we accept  
19 the application, move forward on the issues of  
20 whether the 30-day requirement has been met and then  
21 whether the merits of the case are met with regard to  
22 the decision of the zoning administrator.

23 The powers that the Board have to deal with this  
24 case, as I said, are very narrow. There are three  
25 elements to this case, which are under consideration.

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There is the original letter from the appellants providing some information about some conditions that they feel were part of a 1953 rezoning of this property asking the zoning administrator to reconsider his 2012 interpretation.

He wrote back subsequently and stated that those decisions could not -- that information did not affect his decision, that decision stands.

And then

subsequent to that, an attorney representing the appellants filed the formal appeal that's before the Board.

We are limited in our authority to testimony that relates just to those three documents that we have before us. It is not permitted because of the 30-day requirement to introduce any new arguments or new facts because they were not part of the decision that the zoning administrator made.

Now having said all that, this is a public meeting. And even though we are required to consider sworn testimony, that doesn't mean that we're not interested from anybody who might be able to provide some insight that would be valuable for us in deciding this issue. But, again, the issues that come before us must relate to the appeal and the zoning administrator's letter.

1                   So having said that, I would ask the Board and  
2                   the chairman to decide if they want to entertain  
3                   testimony with regard to the aggrieved status of the  
4                   appellants or let that go and then proceed and let --  
5                   if necessary, let the courts deal with it later

6                   because I don't think we're qualified.                   There's no

7                   guidance in the law that we as laypeople can find  
8                   that can help us make that decision.

9                   MR. WINKS:     So moved.

10                  MR. SAMUELS:    Second.

11                  MR. PINNOCK:    I would agree with you.

12                  MR. YORK:     For those who may not know and,  
13                  apparently, some of you don't, the attorney for the  
14                  appellants has submitted a long letter outlining in  
15                  great detail all of the concerns the neighborhood has  
16                  about what the potential impact of this development  
17                  would have, and those are being stipulated so they're  
18                  part of the record, just as the concerns that the  
19                  attorney for the Seminary has represented about the  
20                  fact that he doesn't believe that they have provided  
21                  information on that status, but, anyway, that's all I  
22                  have to say.

23                  MR. PINNOCK:    May I suggest that we hear from  
24                  the zoning administrator and the attorneys for the  
25                  appeal and make clear what testimony would be

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1 applicable to the case at that point and try to  
2 clarify with folks that expect to testify what that  
3 would mean. So with that said, I would like to move  
4 forward with the zoning administrator.

5 MR. SAMUELS: Prepared to go forward.

6 (Speaking simultaneously.)

7 MR. YORK: He has no authority to do this. He's  
8 withdrawn.

9 MR. BENBOW: He's withdrawn. 10

11 STATEMENT BY WILLIAM DAVIDSON

12 MR. DAVIDSON: Board members, my name is William  
13 Davidson. I'm the zoning administrator for the city  
14 of Richmond.

15 UNIDENTIFIED SPEAKER: We can't hear you.

16 UNIDENTIFIED SPEAKER: Can you afford to have a  
17 microphone?

18 MR. DAVIDSON: This case is about the zoning of  
19 the Westwood Tract. In 2012, I received a  
20 confirmation letter request enclosed as ZA Exhibit 2,  
21 which the appeal is based.

22 I received hundreds of zoning request  
23 confirmations -- for confirmation. This one was  
24 actually quite simplistic. It requested two  
25 determinations: What is the zoning and is

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1 multi-family use allowed?

2 Shortly thereafter, I also -- and that's  
3 attached as Exhibit 1, Zoning Administrator  
4 Exhibit 1.

5 Shortly thereafter, the zoning office  
6 forwarded -- I was forwarded an e-mail from a  
7 neighborhood resident asking pretty much the same  
8 question. That decision was -- it's in your packet 9 as --

10 MR. BENBOW: Speak up.

11 MR. DAVIDSON: It's in your packet as No. 4,  
12 that, basically, the same decision, that it was  
13 zone R-53 and multi-family was permitted.

14 Both of these established that main contact of  
15 the Westwood Tract. It was and still is R-53 and the  
16 existing institutional use of the property was and  
17 still is nonconforming. Neither of the letter or the  
18 e-mail was appealed to the Board.

19 In 2015, the proposed developer and the owner  
20 asked this very Board permission to divide the  
21 institutional use in half and allow development on  
22 the remaining portion. The Board approved it.  
23 That's attached as Exhibit 6. No appeal of this  
24 Board's approval was filed in the Circuit Court.

25 Another letter was asked from the developer's

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representative in 2016. Again, confirmation was granted. No appeal of that approval.

In 2016 a POD approval was granted by the director of this department. That approval came after many months of studies and city agency reviews, a number of meetings with neighborhood residents. appeal of that decision was made.

No

However, lo and behold, in 2017, earlier this year, several neighborhood residents submitted a request for me to reconsider my previous 2012 decision saying that I did not have the information, that it was new information regarding the original 53 zoning.

My response back to them was -- and that's attached as Appellant's Exhibit 2 -- that I had received a letter and per code and Virginia law -- the city Code of Virginia law and concurred with by the city attorney that my decision could not be changed, modified or reversed. This appeal followed and it's five years after my original determination. There was no change in my decision.

The specific provision states, as cited in my response back in the e-mail, was that "in no event should the decision of determination be subject to change, modification or reversal where the person

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aggrieved has materially changed his position in good faith reliance on the action after 60 days."

In other words, if I make a decision and somebody relies on it and for some reason the way I'm reading it, I was wrong, then it stands unless it was proven that I did it by malfeasance or fraud.

The owner and developer have been in good faith pursuing this development for five years, not 60 days.

As previously indicated, the 2012 letter stated that the property was multi-family and had been since the rezoning at 53. It also included a statement relative to who had initiated the rezoning. This particular statement had and still has absolutely no bearing of the 2012 zoning designation reported in the letter. It didn't matter then and it doesn't matter now. The property was in 2012 zone R-53 and still is zone R-53.

The appellant's appeal also cites that Virginia law Section 15.2-2286.A.4, which sets out the zoning administrator's authority administering and enforcing the ordinance as well as 3101 of the zoning ordinance, which is the enforcement provision.

It alleges that I have not carried out my

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1 official duties as mandated by Virginia law. I,  
2 obviously, disagree. The 2012 zoning and the current  
3 zoning allowed the development, so there could be no  
4 violation.

5 They also state I failed or refused to respond  
6 to their request, but I did respond. I said I  
7 couldn't change my mind or I wouldn't change my mind,  
8 and that if I hadn't said anything back, then this  
9 appeal could not exist.

10 The 2012 zoning and the current zoning permit  
11 multi-family use. It does not permit institutional  
12 use. No appeal was filed for any of these  
13 determinations. There must be formality in these  
14 decisions and that's why Virginia law provides for an  
15 appeal period of 30 days and for the 60-day  
16 non-reversal provision. However, the applicants now  
17 come and request that this Board ignore these  
18 provisions relative to the 30 and the 60 days.

19 They're, basically, asking this Board to fix the  
20 supposed zoning loophole and rezone it back to the  
21 previous status with conditions and/or amend the  
22 zoning provisions to mandate it institutional use,  
23 which is not even allowed. These are functions only  
24 permitted by City Council.

25 Under Virginia law, the zoning administrator is

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1 given great weight relative to zoning decisions.

2 15.2-2309, that's my Exhibit 9, BZA appeal  
3 section of Virginia law, which is entitled Powers and  
4 Duties of the Board, the code reads, "The  
5 determination of the administrative officer shall be  
6 presumed to be correct."

7 Keep this mind when you listen to the testimony  
8 from the appellant's attorney or the neighborhood  
9 citizens. Also, be cognizant of another portion of  
10 the same section in part which states, "At the  
11 hearing on an appeal, appellant has the burden of  
12 proof to rebut such presumption of correctness by a  
13 preponderance of the evidence."

14 And it goes further to state that "The Board  
15 shall consider any applicable ordinances, laws, and  
16 regulations in making its decision."

17 This provision is the same standard I apply when  
18 I provide a decision.

19 Based on these facts that I provided, your  
20 decision must be to uphold the zoning administrator's  
21 decision.

22 Any questions?

23 MR. PINNOCK: Any questions?

24 MR. BENBOW: He has about two minutes and  
25 45 seconds left.

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MR. PINNOCK: Thank you.

Okay. We will now hear from the attorney representing the applicant or the appellant. 4

STATEMENT BY ROBERT R. GORDON, ESQ.

MR. GORDON: Good afternoon.

My name is Robert Gordon. I'm with the law firm of Durette Crump here in town, and I represent the appellants in this case, who have already been introduced, but just for the record, it's Ben Campbell, Win & Roger Loria, Katherine Wetzel.

MR. BENBOW: Excuse me. You didn't get a declaration of the case-in-chief and the rebuttal, if he wants to do that.

MR. YORK: He needs to tell us how many minutes he wants to reserve.

MR. GORDON: I'm going to reserve five minutes for my rebuttal.

MR. BENBOW: Okay. I'll let you know when your five minutes is up.

You're already on the clock.

MR. GORDON: Say again.

MR. BENBOW: You're already on the clock. I'll reset.

MR. GORDON: Again, my clients are Reverend Ben

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1 Campbell, Win & Roger Loria, Katherine Wetzel, Pierce  
2 Homer, Mary Swezey, William Van Pelt, Ruth Eggleston,  
3 Tim & Stephanie Socia, Bruce Stevens, Sarah Driggs  
4 and Ronald Friedman and Helen Virginia Friedman, who  
5 as I understand it, sent in an e-mail requesting the  
6 opportunity to be considered as one of the appellants  
7 in this case.

8 MR. BENBOW: They have it.

9 MR. GORDON: And since then they have been  
10 retained by our office.

11 All of these neighbors are people who live in  
12 close proximity to the Westwood Tract. I think  
13 that's something that's been stipulated, essentially.  
14 And that's with the exception of two of these  
15 neighbors who live within about two blocks and by  
16 perimeter, I mean the exact around the edge of this  
17 thing, adjacent to the property.

18 You know, we're here today appealing the zoning  
19 administrator's refusal to investigate a zoning  
20 complaint and that references back to the  
21 March 12, 2017, letter that was sent in by  
22 Reverend Ben Campbell and all the people that I just  
23 referred to.

24 We're not asking that this Board overturn the  
25 existing zoning on the property, make a decision

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1                   about what used to be put on this property, make a  
2                   decision about the conditions under which a use may  
3                   be made on this property.                   What we are asking the  
4                   Board to do is to send the case back to the zoning  
5                   administrator to do that what he should have done in  
6                   the very beginning and that is to investigate a  
7                   zoning complaint.

8                   Now, much has been made about the fact that  
9                   Reverend Campbell's letter referred to this thing as  
10                  a request for a consideration and I don't deny that  
11                  that's in the letter, but the letter also makes it  
12                  clear that they are complaining about the approval of  
13                  permits in this case as a violation of the zoning  
14                  that's applicable to this property.

15                  Moreover, when I sent this thing in, e-mailed it  
16                  in on behalf of the appellants, I made it clear that  
17                  it was a zoning violation and not just a request for  
18                  reconsideration.                   I don't see anything in any of the  
19                  statutes, the state statutes, the city code, any of  
20                  the zoning ordinances that says that this Board  
21                  cannot consider this as both a request for  
22                  reconsideration and a complaint about the zoning.  
23                  And there's absolutely no question that the state  
24                  statute and the Richmond city ordinance mandates that  
25                  when a zoning complaint is made, the zoning

1 administrator is responsible for investigating that  
2 complaint.

3 It would have been sufficient for our purposes  
4 that he investigate the complaint and instead of  
5 saying, "No, I can't look at it because it's time  
6 bar," saying "I looked at it and I'm not changing my  
7 mind." That would have been an investigation and a  
8 response. And we might still be here on a different  
9 topic, but at least we would be in a posture in which  
10 the zoning administrator had done that which he is  
11 statutorily mandated to do.

12 A couple of questions that I would like to pose  
13 for this case. Number one, we've heard certain  
14 testimony about how this occurred. This decision is  
15 before the Board now five years after the initial  
16 zoning determination letter was sent out, a certain  
17 number of years after another request was made, that  
18 there was a set of plan of development that was put  
19 in and was approved and that there were permits  
20 issued in reliance on that plan of development.

21 My question for the Board and I think something  
22 that somebody needs to answer is, is there any  
23 evidence in this case anywhere that any single one of  
24 those decisions or permit issuances was based on  
25 notice to the neighborhood? And I don't just mean

1 notice to the people who are immediately adjacent to  
2 it, but I mean notice to the people that are affected  
3 by it, in general.

4 And I point specifically to this particular  
5 proceeding in which we've got, roughly,  
6 two-and-a-half pages of people in the neighborhood  
7 who were notified about this. Notice and the  
8 opportunity to appear and state your case is a  
9 fundamental fairness issue in this country. And  
10 nowhere in this proceeding, thus far, from 2012 until  
11 the present have these people gotten any notice prior  
12 to the issuance of determinations, permits, plans of  
13 development, and then finally building permits and  
14 only --

15 MR. PINNOCK: Five minutes.

16 MR. GORDON: Time is done. Absolutely.

17 MR. BENBOW: You can keep going.

18 MR. GORDON: Oh, okay.

19 MR. PINNOCK: Go ahead.

20 MR. BENBOW: We'll just take it off the rest.

21 You don't have to stop.

22 MR. YORK: If you have some more salient points  
23 that you want to speak to. And we may have some  
24 questions as well.

25 MR. GORDON: Okay. All right.

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Catch up to where I am in my own notes.

The language is in the May 16, 2012, letter.

The zoning administrator has referred to it as being irrelevant to this decision and that is the language

that says, "As the records regarding this rezoning are not available, I then turn to look to the tax map."

Well, there's a couple of points to be made

about that. One is, obviously, that's important.

Why? Because it's in the letter.

Secondly, we know it's important or at least it was important to somebody because the Hunton & Williams Law Firm provided the zoning administrator with an exact copy of the letter that they wanted submitted in this case and that's been attached in here. It doesn't have a specific exhibit number, but it's in the zoning administrator's exhibits, an exact letter of what the response that they wanted. And rather than simply adopting that letter, the zoning administrator pointed to the fact that as we don't have records of these original rezoning, we turn to the tax map.

Why is that important?

That's important because without those records, without a document saying what the original rezoning,

1                   specific rezoning on the property, you have to look  
2                   at the tax map.                   But where there is a rezoning and a  
3                   specific rezoning as opposed to a general overall  
4                   community-wide changing of the ordinance, then you go  
5                   back and you start looking with the original rezoning  
6                   on the property.

7                   Now, we've attached the documents that are part  
8                   of that.                   They're in the record and you folks can  
9                   take a look at that, but there's no question at the  
10                  time this was done in 1953, it was an institutional  
11                  use.                   It was used institutionally.

12                  The Seminary promised at every step of the way  
13                  from 1953 to the present that that use would continue  
14                  to be institutional and, yet, here we are today with  
15                  a commercial 300-unit apartment complex proposed for  
16                  this very spot.

17                  And with that, I will rest.

18                  Two minor housekeeping issues.                   One is, I don't  
19                  know if I actually have to move the proffer into the  
20                  record or into evidence, but I so move.

21                  And, secondly, we have a number of witnesses.  
22                  The Reverend Ben Campbell is going to act as our sort  
23                  of traffic cop.                   I guess, actually, there's other  
24                  people that are going to testify before them,  
25                  probably the proponent.                   But Reverend Campbell will

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1                    act as a traffic cop and make sure people will come  
2                    up and sit down in a timely fashion.                    Probably should  
3                    have done that with me.

4                    Thank you.

5                    Oh, questions.

6                    MR. BENBOW:    You got a minute and 30.

7                    MR. PINNOCK:    So you have a-minute-and-a-half  
8                    left for after.

9                    MR. YORK:        You're going to be giving a lot more  
10                    testimony, to testify, because we're entitled to ask  
11                    you some questions.

12                    MR. GORDON:     Do you have any questions now?

13                    MR. YORK:        Yes.

14                    Let's clarify something here.                    You kind of  
15                    contradicted yourself by saying that your primary  
16                    concern was about the fact that you don't think that  
17                    the zoning administrator adequately responded or at  
18                    least informed that he responded to the initial  
19                    concern that was expressed, but in your application,  
20                    you also go on about the substantive issues in the  
21                    case, about the history of the zoning and so forth.

22                    I assume that you do want us to take all of that  
23                    in consideration and make a ruling also on whether or  
24                    not those 1953 conditions are still applicable on the  
25                    property?

1 MR. GORDON: The narrow issue in front of the  
2 Board today is a question of whether or not the  
3 zoning administrator fulfilled his statutory duties  
4 to investigate this complaint. Subsumed in that is  
5 an argument that had he done so, he would have  
6 discovered a mistake in the original ruling and a  
7 number of other mistakes in the zoning that would be  
8 very relevant to a subsequent discussion about what  
9 should be the rules applicable to this particular  
10 piece of property.

11 MR. YORK: Can I ask you to confirm two other  
12 things?

13 The 1953 rezoning, which we have a copy of the  
14 ordinance, do you agree that the ordinance itself  
15 does not include any language about any conditions?

16 MR. GORDON: I'm sorry. Does not include any  
17 language about any conditions?

18 MR. YORK: Do you agree that that 1953 zoning  
19 ordinance, the ordinance itself, it specifically  
20 rezoned the property?

21 There are no conditions described in that  
22 ordinance.

23 Do you agree with that?

24 MR. GORDON: I don't agree with that because --

25 MR. YORK: Why is that?

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1 MR. GORDON: -- one of the conditions that's  
2 part of that ordinance --

3 MR. YORK: In the ordinance.

4 MR. GORDON: Yeah. That's what I'm talking  
5 about, is that the ordinance contains a metes and  
6 bounds description of the property that is being  
7 rezoned.

8 MR. YORK: That's correct.

9 MR. GORDON: It does not rezone the portion of  
10 the property that lies on Rennie and lies on Loxley,  
11 and those things are reserved as a buffer zone or a  
12 buffer strip with respect to the neighbors and  
13 activities that take place.

14 MR. YORK: That may be but how can we infer that  
15 from the ordinance?

16 MR. GORDON: Because there's no reason for those  
17 buffer strips to be there other than to be buffers.

18 MR. YORK: But you still --

19 MR. GORDON: And --

20 And let me just go on.

21 -- those buffer strips appear in the tax map  
22 records for years after that. Now, what happened to  
23 them, I don't exactly know.

24 MR. YORK: Well, you do know that subsequent to  
25 1953 those properties had been rezoned four times?

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1 MR. GORDON: It's been generally rezoned when  
2 the city has changed the overall ordinance. And the  
3 question remains as to whether or not those general  
4 changes affect a specific site, specific rezoning,  
5 and my contention is that they do not.  
6 MR. YORK: Also, the property -- I realize that  
7 the issue before the Board covers the entire site,  
8 but you do realize that the proposed development of  
9 the property does not include, I understand, the  
10 areas where the buffers are?  
11 MR. GORDON: I disagree.  
12 MR. YORK: Well, it's not necessarily relevant,  
13 but it looked that way to me.  
14 MR. GORDON: Well, that's why we attached the  
15 sketch that's overlaid the original 1953 rezoning  
16 with the current proposal or at least the property  
17 that was subdivided from the current proposal. And  
18 there is an overlap or an encroachment. It's not  
19 large, but there is an overlap, an encroachment. And  
20 under other circumstances, that alone would be enough  
21 to say that this cannot go forward without at least  
22 an amendment of the plan of development.

23 MR. YORK: All right. That's it.

24 MR. PINNOCK: So just to be clear, this case is  
25 about sending it back to the zoning administrator to

1 confirm his previous decisions that have not changed  
2 since 2012.

3 MR. GORDON: I would rephrase it slightly  
4 differently. I would say it's about sending it back  
5 to the administrator, the zoning administrator, to  
6 conduct the investigation that's required of him by  
7 the Richmond City ordinance and state statute.

8 Now, whatever his decision is, it is, and we can  
9 deal with that, but we need -- what we're asking for  
10 specifically is a decision and not an end run that  
11 says I don't have to make a decision here because  
12 I've already made one.

13 MR. PINNOCK: And just to clarify, is it your  
14 assertion that notification laws, as the city of  
15 Richmond is required to notify people of various  
16 developments, has that been broken in some way  
17 when --

18 MR. GORDON: No. What I'm saying is that the  
19 city of Richmond does not have in its ordinances  
20 provisions to provide for notice with respect to any  
21 of the steps that have been taken in this case.

22 MR. PINNOCK: Okay.

23 MR. GORDON: Advance notice. That's all I'm  
24 saying. And that's a due process issue.

25 MR. YORK: But you're not saying that there is

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state law that requires us to do so?

MR. PINNOCK: Thank you.

MR. GORDON: Not state law other than state constitutional law.

MR. YORK: In your experience, have you experienced with other jurisdictions that, in fact, send notices every time a building permit or a plan of development has been issued?

MR. GORDON: My experience is primarily in Fairfax County and other counties in Northern Virginia and all I can tell you is that up there they notify everybody about everything all the time.

MR. YORK: You mean any time somebody applies for a building permit?

MR. GORDON: I don't know specifically. I know there's an opportunity and a way to find out that those building permits have been applied for and the plan of development has been applied for. In Richmond, there is no way to find out.

MR. YORK: Well, once they're issued, they are online.

MR. GORDON: Well, then it's too late. That is too late, isn't it?

I'm sorry. I'm sorry.

MR. YORK: Okay. You know, I understand, but,

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1                   nevertheless, it goes online immediately and so, you  
2                   know, some neighborhoods actually -- well, all right,  
3                   there's no reason to go any further on it.

4                   MR. GORDON:    I know.        I know.

5                   Thank you, sir.

6                   Are there any other questions?

7                   MR. PINNOCK:    And the current zoning of R-53  
8                   does allow what's being proposed, as you understand 9        it --

10                  MR. GORDON:    The --

11                  MR. PINNOCK:    -- without conditions or  
12                  otherwise?

13                  MR. GORDON:    The R-53 category is a multi-family  
14                  category that would allow for this type of  
15                  development.        That's correct.

16                  I don't agree that the R-53 is what's applicable  
17                  to this case.

18                  MR. PINNOCK:    Any other questions?

19                  Thank you.

20                  MR. GORDON:    Thank you.

21                  MR. YORK:       Oh, I have a question for you, so you  
22                  better get up.

23                  MR. BENBOW:    You have 2 minutes, 45.

24                  MR. PINNOCK:    Okay.        Do you have anything to  
25                  say?

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MR. WINKS: Mr. Chairman, may I ask the secretary a question?

MR. PINNOCK: Yes.

MR. WINKS: You put out the agenda for this. What is the agenda called, the question to be in this case?

MR. BENBOW: The chairperson has already read into the record the nature of the appeal and the statutes under which that both the -- the zoning administrator has relied on and the statutes on which the appellants' attorney has relied on, including the list of all of the appellants and including a statement of the zoning administrator's determination regarding the initial letter that was submitted by the appellants.

That's all I can say.

MR. WINKS: Okay. Thank you.

MR. PINNOCK: Two minutes, 45, is that what you said?

MR. BENBOW: Two minutes and 45.

MR. PINNOCK: For rebuttal. 22

**REBUTTAL STATEMENT BY WILLIAM DAVIDSON**

MR. DAVIDSON: Well, I guess in response to one of the issues about that a complaint was filed, I

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1 mean, I'm reading the letter from the appellants. I  
2 don't see anywhere in here they're saying that it's a  
3 complaint. It's saying reconsider. So unless  
4 somebody can find it, I can't.

5 MR. YORK: Well, I have a question before you  
6 sit down.

7 MR. BENBOW: No. He's got 2, 45.  
8 Are you done?

9 MR. YORK: Except for my question.

10 MR. DAVIDSON: And, you know, to talk about the  
11 53 rezoning, I think you hit on it in that the  
12 language of the metes and bounds of the rezoning is  
13 all that's done. They're reading in other  
14 information that a staff report provided, that it was  
15 only for institutional use, et cetera, et cetera,  
16 et cetera. That's not what the law says.

17 And what they are suggesting is that this is  
18 conditional zoning, and it didn't even exist in  
19 Virginia and it didn't even exist in the city of  
20 Richmond until 2002. It originally existed, I think,  
21 in -- I think in 1978, the General Assembly --

22 MR. YORK: That's when they created it.

23 MR. DAVIDSON: -- approved, I think, other  
24 localities throughout the state to adopt it.

25 MR. YORK: But I have a question.

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MR. BENBOW: You still have time.

MR. DAVIDSON: So you can't have conditional zoning because it didn't exist.

MR. YORK: Respond to the question.

MR. DAVIDSON: So, yes, maybe they said they want to develop it for educational, but I can't go back now and say, "Oh, you could only develop educational," because now the zoning doesn't even allow it. I mean, that's backward.

And talking about I'm trying to do an end around in my response, that's what the law says. The law says they get 30 days or they get 60 days if I made a decision. That's what the law says. The end around is on their side trying to get me to reconsider because then they would say, "Oh, it's a new decision because now you had the information."

R-53 existed in 2012. In 1953 when it was rezoned, it didn't matter. It's been changed, but I wasn't even born until '59 so, if that matters.

UNIDENTIFIED SPEAKER: Can you explain "it didn't matter?"

I'm sorry. We can't hear you, but can you explain "it didn't matter?"

MR. PINNOCK: You will have an opportunity.

MR. DAVIDSON: I would also like to add, there's

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1 a lot of discussion about, you know, the Seminary

2 promised this, promised that. I think that's all

3 hearsay. I mean, there may be discussions with

4 particular individuals, but that's hearsay. That

5 can't be even brought into this case.

6 MR. YORK: Well, I do have two questions.

7 MR. DAVIDSON: Oh, I will add one other thing.

8 MR. BENBOW: He's got 15 seconds.

9 MR. YORK: All right.

10 MR. DAVIDSON: In 1988, the Seminary came to

11 develop a master plan and rezone it institutional.

12 They withdrew it because there was neighborhood

13 opposition to the plan.

14 MR. YORK: All right. Now, you get to answer my  
15 two questions.

16 Just, for the record, when you sent your letter  
17 of March 24, 2017, where you determined that you had  
18 already made that determination in May of 2012 and  
19 you couldn't reverse it because of that provision in  
20 state law that says that once 60 days have passed,  
21 you can't change your mind, were you aware of the  
22 issues the neighborhood had raised when you submit  
23 that letter?

24 MR. DAVIDSON: Absolutely.

25 MR. YORK: Okay. So you did know about that?

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1 MR. DAVIDSON: Sure.

2 MR. YORK: Okay. And is it your determination  
3 that at this point the only applicable zoning for  
4 this property is that which City Council adopted in 5 1979?

6 MR. DAVIDSON: Yes. That they actually  
7 readopted it when they knew --

8 MR. YORK: And every time --

9 MR. DAVIDSON: -- when they readopted the GIS  
10 maps as the official zoning map in 2002.

11 MR. YORK: And every time City Council does a  
12 citywide remapping, that eliminates everything that  
13 came before it?

14 MR. DAVIDSON: Yeah. And I think that's what  
15 the statute says. It says that if there are proffers  
16 on conditional zoning and it's rezoned, those  
17 proffers go away. And that's what they are talking  
18 about here are proffers, conditions on the property.

19 MR. YORK: Okay. But the key, really, from what  
20 you're saying, it sounds to me like, is the reason  
21 you phrased your letter the way you did, the primary  
22 reason is --

23 MR. DAVIDSON: Which letter?

24 MR. YORK: The short one.

25 MR. DAVIDSON: You're talking about the e-mail?

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1 MR. YORK: No. The March 25th, was that an  
2 e-mail?

3 MR. DAVIDSON: That's an e-mail. Yes.

4 MR. YORK: The reason that you were as brief and  
5 simply said that you weren't going to reconsider it  
6 is because of the 60-day provision?

7 MR. DAVIDSON: Well, I think both.

8 MR. YORK: But even if you agreed --

9 MR. DAVIDSON: Well, I mean, the quandary I was  
10 caught in is if I talked about everything else, the  
11 whole history and everything, then it would be a new  
12 decision and then I would be here on an appeal of  
13 that decision, so I was trying to avoid that, but I  
14 guess it doesn't matter now.

15 MR. YORK: But even if you wanted to make a new  
16 decision arguing that you can't was because 60 days  
17 had passed?

18 MR. DAVIDSON: Oh, I would -- from what I see of  
19 the law, yes.

20 MR. YORK: Yes. The law clearly -- the state  
21 leans in the favor of property owner's rights and  
22 developers. There's no question about it, that  
23 that's what the law says.

24 MR. PINNOCK: Any other questions for  
25 Mr. Davidson?

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Okay. Thank you.

MR. YORK: You need to decide on the issue of  
the --

MR. BENBOW: No, you got rebuttal.

MR. YORK: Oh, that's right.

MR. BENBOW: You got another minute 40.

MR. YORK: Mr. Gordon, you get another whack at  
it for a couple of minutes.

MR. GORDON: I presume Mr. Condlin is going to  
speak on behalf of the --

MR. YORK: Not until after the other appellants  
have spoken.

MR. GORDON: And that's where I'm reserving my  
rebuttal time.

MR. BENBOW: And you don't. No, you can't.

MR. YORK: You can only rebut the zoning  
administrator.

MR. GORDON: Very briefly, the zoning  
administrator's testimony that a rezoning undoes  
everything that went before it is true as far as it  
goes, but if it is true in the literal sense, then  
there is no nonconforming use ever.

Everything that existed before a rezoning, a  
general rezoning, is illegal. That's why we have  
nonconforming uses. And that's why these original

1 zoning ordinances that are adopted specifically with  
2 respect to a piece of property as opposed to  
3 generally continue in force and effect after a  
4 general rezoning until, A, the use changes or, B, the  
5 property owner comes in and specifically asks for a  
6 rezoning and gives the opportunity at that time for  
7 the community to weigh in on the development, weigh  
8 in on what's being done.

9 MR. YORK: And that happened in the 1980s when  
10 they acquired institutional zoning.

11 MR. GORDON: Well, we don't have any idea why  
12 that was withdrawn, whether there was community  
13 opposition, whether it was because it was too  
14 expensive or what. I don't know. But it's not even  
15 in the record what happened. It could have been in  
16 the record, but it's not.

17 Now, let's look at, very briefly, the 2008  
18 ordinance, which is supposed to be another one of  
19 these citywide changes to everything. Okay? And  
20 that's in the Board's package.

21 And it says, the purpose of the proposed  
22 amendment is to replace the current diagrammatic  
23 mapping system with a geographical information  
24 system. It then goes on to say that it cannot be  
25 stressed enough that the GIS zoning district map is

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1 merely a digitized version of the zoning district map  
2 of 1978.

3 And my point is, map amendments are map  
4 amendments. They do not affect the substantive  
5 rezoning of the property. That can only be done by  
6 an actual zoning ordinance passed and considered by  
7 the Board specific to that piece of property.

8 MR. PINNOCK: Okay. Thank you.

9 MR. YORK: We have to decide about dealing with  
10 the aggrieved issue.

11 MR. PINNOCK: Yeah.

12 MR. YORK: Or do you want to hear from  
13 Mr. Condlin about that issue only before we go any  
14 further and then decide?

15 MR. PINNOCK: Yes.

16 I'd like to hear from Mr. Condlin.

17 MR. YORK: We're going to change the order.

18 MR. PINNOCK: The attorney for the Seminary.

19 MR. YORK: Just to talk about the aggrieved  
20 issue and then we'll go back, deal with the order we  
21 had before, where the other appellants get to speak.

22 After Jennifer speaks, Mullen speaks, about just  
23 the issue of whether we should consider the issue of  
24 whether they're aggrieved, then we go back and the  
25 other appellants get to speak and then when they're

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1 finished, then the attorneys for the Seminary gets to  
2 speak.

3 MR. CONDLIN: So we're limiting it to the  
4 aggrieved issue?

5 MR. YORK: Just -- right now.

6 MR. PINNOCK: Yes, please. 7

8 STATEMENT BY ANDREW CONDLIN, ESQ.

9 MR. CONDLIN: All right. Members of the Board,  
10 my name is Andy Condlin. I'm here on behalf of the  
11 Seminary.

12 MR. YORK: You understand what I was talking  
13 about?

14 MR. CONDLIN: I understand, I think, everything  
15 except for what the appellant's attorney has said 16 so...

17 I am here to talk specifically about the  
18 standing and I'll be able to speak later on after all  
19 the proponents of the appellant speak to be able to  
20 talk later about the other issues. So I'm going to  
21 talk specifically regarding the standing issue. And

22 I don't stipulate anything with respect to standing  
23 because, in fact, they are not an aggrieved party.

24 There is a public policy set by the General  
25 Assembly that says only aggrieved people can --

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aggrieved parties can go ahead and appeal to the BZA and then from there appeal to the Circuit Court. It's specifically stated in both state law and city ordinance that only aggrieved people can -- aggrieved parties can appeal to the BZA.

Now, what is it that they're appealing?

We'll get into that a little bit later regarding the timing.

But with respect to the standing and the aggrieved party, I would say that it is clear and I do think it is within your abilities -- and I've actually argued this specifically before, that a party doesn't have standing and that this BZA has ruled under that point specifically, and I would ask you today to rule that they, in fact, do not have standing, because not only do they have to have proximity, but they have to have an immediate and substantial interest in the development.

And more to

the point, they can't point to any loss of personal or property right that is different than that which is suffered by the public generally.

That's what

we're talking about. They have to point to a specific fact that I am harmed different than the public generally.

And you heard from the appellant's attorney.

1                   What are they appealing?

2                   They're appealing that they haven't gotten their  
3                   day in court with Mr. Davidson.                   They're appealing  
4                   the fact -- I think, also, he said that they're  
5                   appealing the fact that the zoning is wrong.

6                   How is that different than the public generally  
7                   that the zoning is wrong?

8                   They are not an aggrieved party different than  
9                   anybody in the public.

10                  Further, based on the record and the information  
11                  that was provided in their appeal, there's long  
12                  conversations about storm water.                   There's long  
13                  conversations about the traffic and having to play  
14                  "frogger."

15                  Well, I have to say, that's part of the POD  
16                  process, the plan of development process that was  
17                  reviewed.           That city's experts actually took a look  
18                  at those issues and deemed us to comply and,  
19                  therefore, issued the POD.

20                  They're asking you to review the POD instead of  
21                  the city experts that already approved it and make up  
22                  different standards that are different for the  
23                  Seminary than any other property that's substantially  
24                  the same as this.           They're asking you to treat  
25                  similarly situated property different than other

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1 property that's similarly situated. And that's  
2 contrary to the Constitution of the United States and  
3 Virginia and contrary to Virginia case law.

4 Further, to the point, that harm is raised from  
5 any development. What they're telling you is that  
6 they're going to be harmed by storm water and traffic  
7 and the fact that there's not cross lanes and the  
8 fact that there's a bike lane.

9 If any development occurs on this property,  
10 period, they are going to be harmed or have the same  
11 impacts as what the Seminary is proposing or maybe  
12 even worse.

13 And the real question is that their appeal -- is  
14 the development of 301 apartments, is that there is a  
15 zoning violation. So they need to show the harm from  
16 the development, not just from the development, but  
17 from the zoning itself that is harming them,  
18 specifically. And they are not able to do that nor  
19 has there been any testimony to that fact.

20 And the fact that the appellants believe that  
21 the zoning administrator is wrong does not give them  
22 standing to appeal. The fact that they feel like  
23 they are really aggrieved and I mean really, really  
24 aggrieved does not make them an aggrieved party. All  
25 that makes them is someone that's in opposition to a

1 by right development and that does not give you  
2 standing as an aggrieved party.

3 With that, I would ask that you go ahead and  
4 find that they are not aggrieved parties and they,  
5 therefore, don't have standing to be here today.

6 MR. YORK: Don't go away.

7 MR. CONDLIN: I'm not moving anywhere. Yes,  
8 sir.

9 MR. BENBOW: I've got a question. Since you --  
10 Mr. Chairman?

11 MR. PINNOCK: Yes, sir.

12 MR. BENBOW: Since you asked for this to be  
13 considered, you specifically asked for this question,  
14 does this count against the time or not?

15 MR. PINNOCK: No.

16 MR. BENBOW: Okay. I just want to be sure.

17 MR. YORK: I just lost my train of thought.

18 Two things. I may be reading into Mr. Gordon's  
19 appeal and testimony, but under the current R-53  
20 zoning, institutional uses aren't permitted.

21 MR. CONDLIN: Correct.

22 MR. YORK: And the appellants are arguing that  
23 multi-family development is not permitted either.

24 MR. CONDLIN: Correct.

25 MR. YORK: Which means that the only thing

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that's permitted on this property is one- and  
two-family.

MR. CONDLIN: Or open space, which is what the  
residents really want this for.

MR. YORK: Well, yeah. Right. But,  
nevertheless, their argument is that those are the  
only uses permitted on the property.

MR. CONDLIN: Okay.

MR. YORK: If that's the case --

MR. CONDLIN: I'm not sure they have actually --  
that I hear testimony -- I didn't hear that  
testimony.

MR. YORK: Well, there's information in there.

MR. CONDLIN: Okay. Well, I wasn't -- I wasn't  
privy to that.

MR. YORK: Anyway, so based on what they're  
arguing, the development of this property, what's  
permitted by this property from their point of view  
is no different than any of the other properties  
around there because their view is that it's limited  
to practically the same thing that they can do on any  
other property, just one- or two-family. And under  
their argument, there wouldn't be any -- there would  
almost be no impact.

MR. CONDLIN: Well, but right across the street

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1 is R-53 for Veritas, academic institution.

2 MR. YORK: Yes. I'm talking about the  
3 subject --

4 MR. CONDLIN: Across the street, again, is R-53.

5 MR. YORK: I'm talking about the subject party.

6 MR. CONDLIN: Well --

7 MR. YORK: But the impact of development of the  
8 subject property --

9 MR. CONDLIN: You have to treat property similar  
10 to other similarly situated property, and it's right  
11 across the street in two instances used for academic  
12 purposes and used for multi-family.

13 MR. PINNOCK: Let's limit this to the discussion  
14 of this property.

15 MR. YORK: If the subject property -- it is true  
16 that there are non-single family uses in the  
17 neighborhood?

18 MR. CONDLIN: Correct.

19 MR. YORK: Those uses create a greater impact in  
20 some instance. I mean, there are rules dealing with  
21 drainage and so forth.

22 MR. CONDLIN: Correct.

23 MR. YORK: But, certainly, activity and traffic  
24 is going to be greater --

25 MR. CONDLIN: Correct.

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MR. YORK: -- with these institutional uses?

MR. CONDLIN: Right.

MR. YORK: So and the entire neighborhood has to share in the burden of dealing with that?

MR. CONDLIN: Well, and as you probably know, the new state law, new as of 2014, requires that any new development under Storm Water Act on any new development has to be equal or less impact.

MR. YORK: Yes. I'm aware of that.

MR. CONDLIN: And so this is actually a better situation.

MR. YORK: So the storm water argument really is not relevant here.

MR. CONDLIN: Correct.

MR. YORK: Because there are laws -- other laws that deal with that. The point I'm trying to get to is that under their interpretation or the argument they're making, if the development is permitted, then the impact would be greater than the impact and development that they're saying is all that's permitted.

MR. CONDLIN: If that's the case, then they're incorrect in that situation.

MR. YORK: Yeah, but, I mean, that's what they're saying.

1 MR. CONDLIN: Then I agree with you. That's  
2 incorrect.

3 MR. YORK: Okay. That's all I'm trying to --

4 MR. CONDLIN: No. I appreciate it.

5 MR. PINNOCK: Okay.

6 MR. CONDLIN: Thank you.

7 MR. PINNOCK: Thank you.

8 MR. GORDON: Excuse me. I want a procedural  
9 clarification I would like to ask.

10 Since the proponent has specifically argued on  
11 this question of what is an aggrieved party, do we,  
12 as the appellant, in here get an opportunity to  
13 respond to that, or are we going to be foreclosed  
14 from responding to that?

15 MR. YORK: Well, the applicant's attorney has  
16 already done that.

17 MR. PINNOCK: I'm going to ask for testimony  
18 from the persons named in the appeal.

19 MR. GORDON: So I won't have an opportunity to  
20 respond to this?

21 MR. YORK: Are you one of the appellants?

22 MR. GORDON: I'm not one of the appellants. I'm  
23 the appellant's attorney.

24 MR. YORK: Oh, I'm sorry. I'm sorry. My mind  
25 is spinning. I can't see very clearly from here.

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MR. GORDON: I can't hear either.

MR. YORK: But we already asked you to address that and you did.

MR. GORDON: I was told that we weren't going to address that based on the proffer. All I'm asking for is an opportunity for 30 seconds to respond to that --

MR. PINNOCK: Please.

MR. GORDON: -- at the end of this.

MR. PINNOCK: Please go ahead and respond now. I'm going to ask you to respond now.

MR. GORDON: Standing in this case comes down to one simple issue. Okay?

Are we in the position to be impacted by something different than the public in general? Okay?

Well, it rains everywhere in the city, but only in this neighborhood do people get one to two feet of water standing in their basement that includes raw human excrement and that water is traceable right back to the Westwood Tract. That's standing. And if that doesn't give somebody standing to come in and complain and be an aggrieved party under the statute, then nothing does.

That's all I got to say on that.

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1 MR. PINNOCK: This case is about sending this  
2 back to Mr. Davidson.

3 MR. YORK: A couple of things.

4 MR. BENBOW: Time out.

5 We got a court reporter here. You need to kind  
6 of talk over here, please.

7 MR. PINNOCK: Yeah. Certainly.

8 MR. YORK: Well, let's talk about the aggrieved  
9 issue.

10 MR. PINNOCK: I would like to consider at this  
11 point what testimony we'll hear from aggrieved  
12 parties, if any. At this point, I would like a  
13 discussion with the Board first before making any  
14 decision.

15 MR. YORK: The drainage issue is -- the  
16 development of the property will be required to  
17 deal -- under state law to deal with the drainage  
18 issue. It's not something that we can take into  
19 consideration.

20 As it was pointed out, the plan of development  
21 process, all those laws are in place to deal with  
22 that issue.

23 The question is, whether we should refuse to  
24 either -- two things, either refuse to hear the case  
25 or go ahead and hear it and then decide that the

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1 parties did not meet the standard of being aggrieved,  
2 so, perhaps, what we should do is go ahead and hear  
3 the case, at the end then we would make a decision  
4 about whether they're aggrieved or not. But it  
5 raises the question about are we going to entertain  
6 additional testimony from the other appellants  
7 pertaining to the issue of whether they're aggrieved  
8 or whether --

9 MR. PINNOCK: I understand the underlying parts  
10 of this case, but this appeal is based on the zoning  
11 administrator not doing due diligent and researching  
12 whether or not there is a condition that is attached  
13 to this and whether the current zoning is  
14 appropriate.

15 MR. BENBOW: You guys got to talk over here.  
16 Please.

17 MR. PINNOCK: Well, I would like to hear  
18 testimony from the appellants named in the case,  
19 which would be the Reverend Ben Campbell, Win & Roger  
20 Loria, Katherine Wetzal, Pierce Homer, Mary Swezey,  
21 Williams T. Van Pelt, Ruth Eggleston, Tim & Stephanie  
22 Socia, Bruce B. Stevens, Sarah Driggs and --

23 MS. HOGUE: Friedman.

24 MR. BENBOW: Just a question. Will the  
25 testimony be relevant to these three pillars?

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1 MR. PINNOCK: That is --

2 MR. BENBOW: The original letter that was sent  
3 to the zoning administrator, number one, the zoning  
4 administrator's response, and the language contained  
5 in the appeal.

6 MR. YORK: The problem is that we're not allowed  
7 to consider anything that wasn't submitted as part of  
8 the original application. That's new information  
9 that the zoning administrator didn't respond to.

10 MR. DAVIDSON: I'm sorry. What's the issue?

11 MR. YORK: No, I'm saying that under the law, we  
12 are required -- and in the rules and procedure, we  
13 are required to respond to the appeal that was issued  
14 here. There's nothing in this appeal that talks  
15 about some of these issues.

16 MR. DAVIDSON: Are we talking about the  
17 drainage?

18 MR. YORK: Yes.

19 MR. PINNOCK: Yes.

20 MR. YORK: Traffic and so forth.

21 It's not addressed in the appeal so I don't see  
22 how -- it's inherent in the argument about being  
23 aggrieved, perhaps, but it wasn't raised in the  
24 appeal and that's new information that is being  
25 brought.

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MR. DAVIDSON: And I think I made my point earlier that under the POD approval, if they had appealed it, then they could bring those issues to the forefront, but that wasn't --

UNIDENTIFIED SPEAKER: You can't appeal it when you do not know about it.

MR. YORK: Notification is a separate issue. You know, that's a political issue and that's one that, you know, it doesn't involve us. We send notices. That's all I can tell you. We are required to do so and we do so and we exceed the requirements.

MR. PINNOCK: Yes.

MR. BENBOW: You do have the stipulation. You have a proffer that sets out the testimony. I would anticipate you -- you exceed beyond that that meets the test of the three pillars, so you do have that already.

MR. PINNOCK: Thank you.

MR. YORK: It's not a decision that ultimately we're going to make anyway.

MR. PINNOCK: That's correct.

MR. YORK: The courts are going to decide it if it goes to court. It's a matter of law. As I read, it's de novo and the courts are going to make that decision.

1 MR. PINNOCK: So to that point, there is a  
2 specific point to this appeal about the decision, the  
3 zoning administrator not being able to be changed,  
4 modified or reversed based on the code.

5 And the other points about this development have  
6 been proffered by the attorney as to all the things  
7 that's been mentioned thus far. So the people that  
8 are named in this appeal, I am asking for testimony  
9 relevant to this current case.

10 Is that clear enough for the people named in  
11 this appeal what I'm asking for?

12 If you have testimony relevant to the letter of  
13 the appeal --

14 MR. HOMER: Mr. Chairman, I --

15 MR. PINNOCK: The original.

16 MR. HOMER: May I?

17 My name is Pierce Homer.

18 MR. BENBOW: Wait, wait, wait.

19 MR. PINNOCK: I'm going to ask you to stand up.

20 MR. HOMER: This is about understanding the  
21 rules of engagement.

22 MR. PINNOCK: And you are?

23 MR. HOMER: My name is Pierce Homer.

24 MR. PINNOCK: Thank you.

25 MR. HOMER: I live at 1507 Confederate Avenue.

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MR. PINNOCK: Okay.

MR. HOMER: I want to, before we get into testimony, just clarify what's been said here. is public hearing, right?

This

MR. PINNOCK: Yes.

MR. HOMER: And duly advertised as such?

MR. PINNOCK: Yes.

MR. HOMER: So is the inference here that many people who came here to testify will not be allowed to testify?

MR. YORK: Everyone is allowed to testify.

MR. HOMER: Everyone is allowed to testify?

MR. YORK: Everyone who is here.

MR. HOMER: Okay.

MR. YORK: If the testimony is relevant.

MR. HOMER: All right. So, secondly, the issue of standing, which Mr. Condlin has challenged, in fact, does come down to things like traffic and storm water and property value impacts and disproportionate impacts, I would say.

And, Mr. York, I would like to correct you on storm water. It is true there is a statewide law about storm water that's part of the POD process. There is also a city storm water requirement as part of that, which says, to see if there are effects on

1 adjacent properties, they have to do a hundred year  
2 storm test, which goes above and beyond the state  
3 code.

4 And this, in a neighborhood that's had -- and  
5 I've been swimming in four feet of water in my  
6 basement.

7 MR. PINNOCK: So I'm sorry. Mr. Homer?

8 MR. HOMER: And I understand, but this is  
9 relevant. This is relevant to standing.

10 MR. BENBOW: Mr. Pinnock, we need a ruling.

11 You have a ruling before you. It has not been  
12 made and you're hearing testimony without the ruling.

13 MR. HOMER: I want to make that point, but if  
14 people are saying you're out of order because they're  
15 talking about traffic or storm water or property  
16 values --

17 MR. PINNOCK: No, I'm not --

18 MR. HOMER: -- with respect to standing, they  
19 should be allowed to make that statement.

20 MR. PINNOCK: The attorney representing the  
21 appellants has proffered many conditions that you  
22 referenced.

23 MR. YORK: All of the information that you're  
24 talking about has been proffered.

25 MR. PINNOCK: So it is part of the record.

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1 MR. HOMER: So we do not as individual speakers  
2 need to justify our status as aggrieved or -- because  
3 you're going to make that decision after all the  
4 testimony so we need to know that upfront what --

5 MR. YORK: Well, we may rule that you are  
6 aggrieved or we may decide not to rule on it at all.

7 MR. HOMER: So, then, is it the will of this  
8 body that each individual speaker should state why  
9 they're an aggrieved party?

10 You guys are shutting down, you know, public  
11 speaking in a public hearing. I have to remind you  
12 of that. Do you want to be in that situation? You  
13 know, we can stand up and talk and then after you can  
14 say, "Well, that doesn't count."

15 MR. PINNOCK: Excuse me, Mr. --

16 MR. HOMER: We need to know in advance  
17 whether --

18 MR. PINNOCK: Excuse me. Excuse me. Excuse me.  
19 I'm going ask your attorney to step back up for  
20 a second, if I could.

21 Are all the people named in this aware of this  
22 information that's proffered --

23 MR. GORDON: No.

24 MR. PINNOCK: -- that we just got handed?

25 MR. GORDON: No. I sent it counsel on the other

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1 side and I sent it to Mr. Benbow, and, apparently, it  
2 was not received by Mr. Benbow, but it was received  
3 by opposing counsel, but some of the people --

4 MR. YORK: But the ten folks have not received a  
5 copy of it?

6 MR. GORDON: No. Some of them have but not all  
7 of them.

8 MR. WINKS: This comes in late.

9 MR. BENBOW: This is the attorney that's  
10 proffering. I mean, is it a proffer or isn't it?

11 MR. GORDON: The proffer is simply a statement  
12 of what the testimony may have been, okay, would have  
13 been.

14 MR. YORK: And they hired you as their attorney  
15 and you're representing those ten people?

16 MR. GORDON: That is correct.

17 MR. WINKS: Did this information come in after a  
18 decision was made by the zoning administrator?

19 MR. YORK: It came in today.

20 MR. WINKS: Huh?

21 MR. PINNOCK: This came in today.

22 MR. WINKS: Correct.

23 So what bearing does it have on this case?

24 MR. YORK: It's just made part of the record so  
25 that when it goes to appeal, the court is going to

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1 consider it.

2 MR. WINKS: Okay. That's fine.

3 MR. YORK: I mean --

4 MR. WINKS: Well, it's part of the record and we  
5 already have it.

6 MR. YORK: I can just tell you where I'm coming  
7 from. I don't think the Board is capable of dealing  
8 with the issue, the legal issue of whether these  
9 people are aggrieved.

10 I looked at dozens and dozens and dozens of  
11 cases online in Virginia about this issue, and I  
12 couldn't find anything that gives us any guidance on  
13 this kind of a case. And I just don't feel we're  
14 qualified to be able to decide on it.

15 The law, as I said -- there's nothing in the  
16 state law that gives us any guidance whatsoever on  
17 how to interpret that language. It gives us plenty  
18 of information about all the other stuff we're  
19 dealing with today but --

20 MR. PINNOCK: I agree with you, Mr. York. I  
21 guess my assumption was a given that this is a  
22 proffer of testimony on the behalf of the appellants,  
23 that they were aware of what that testimony was,  
24 which were a lot of the things that the previous  
25 gentleman, Mr. Homer, was beginning to delve into.

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1                   So I just want to make clear that those issues  
2                   regarding the development of the Westwood Tract that

3                   Mr. Homer was beginning to testify about have been  
4                   proffered by the appellants' attorney and the letter  
5                   handed to us at the beginning of this.

6                   So based on that information, I will suspend  
7                   hearing aggrieved testimony as it is related to the  
8                   information in this.                   And I don't believe that we  
9                   have the ability to then determine, as Mr. York  
10                  stated, what is aggrieved under the current case.  
11                  And that will have to be decided later.

12                  UNIDENTIFIED SPEAKER:    Would you read that  
13                  article to the rest of us?

14                  MR. BENBOW:    We can't.

15                  MS. HOGUE:    Can I add one exception, possibly?

16                  If there is professional testimony from  
17                  engineers that have done a study of a particular  
18                  aggrieved resident, that that might -- if that has  
19                  any proof that there's been no difference for anyone  
20                  else in the community versus the people, if there's  
21                  professional testimony that an engineering or more  
22                  professional study has been done at an aggrieved  
23                  person's home, and I don't know if any of that is  
24                  available.

25                  MR. YORK:    Well, it was evaluated as part of the

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POD, but we don't have any of that before us.

MR. PINNOCK: Thank you.

Again, that's not a relevant part of this appeal.

MR. YORK: I mean, clearly, everybody in this room understands the concerns the neighborhood has about the impact of this development. They've been enumerated in here. I'm certainly -- I've been dealing with issues in this neighborhood for decades. I certainly know what they all are. So I don't think there is any question about knowing what the claims are.

I think the question -- the only question before us is whether or not that information is sufficient to constitute the fact that the applicants -- the appellants are aggrieved and --

MR. BENBOW: I think we have a ruling.

We need to start the testimony. There's a ruling.

MR. GORDON: Just so that the record is clear, this issue was put into play by the proponent of the land use, by the owner of the property.

My point was to respond to that and to put it in writing as best I could and then we do have people that are prepared to testify on that, if

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1 necessary.

2 But the point is that we're simply trying to  
3 respond to the case that was presented to us in this  
4 hearing.

5 MR. PINNOCK: I understand.

6 MR. YORK: We understand.

7 MR. GORDON: With that, I will sit down and shut  
8 up.

9 MR. YORK: And we appreciate that.

10 MR. PINNOCK: Mr. Gordon, I appreciate it, but I  
11 do not believe that that testimony is necessary in  
12 the information that you've given us today.

13 MR. YORK: So that the testimony that we will  
14 be hearing from the appellants and anyone else who  
15 feels they can provide testimony that can be helpful  
16 to us must relate to the issues that are raised in  
17 the --

18 MR. BENBOW: Was that the ruling?

19 I thought the ruling was that the appellants  
20 would -- you would hear testimony from the appellants  
21 based on 2314, potentially, but beyond the  
22 appellants, I didn't hear the Chair rule.  
23 trying to get it clear for the record here what  
24 exactly is the ruling.

I'm just

25 MR. PINNOCK: The ruling is that we won't hear

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1 from any aggrieved persons, including the appellant,  
2 because there is not --

3 MR. YORK: On the issue of whether they're  
4 aggrieved.

5 MR. PINNOCK: On the issue of whether they're  
6 aggrieved.

7 UNIDENTIFIED SPEAKER: I think you're judging  
8 essentially --

9 MR. PINNOCK: I'm sorry?

10 UNIDENTIFIED SPEAKER: Are you prejudging our  
11 statement from the beginning?

12 MR. YORK: Only to the extent that it must  
13 relate to the issues that were raised.

14 UNIDENTIFIED SPEAKER: But you were doing that  
15 ahead of time.

16 MR. BENBOW: You need to call witnesses.

17 You're going to have individuals that are going  
18 to testify two to three main points is what I  
19 believed the Chair ruled.

20 MR. YORK: It's time to hear from the appellants  
21 and anyone else who wishes to speak in support --

22 MR. BENBOW: Roger, we can't hear you over here.  
23 Please sit forward. The audience can't hear you.

24 MR. YORK: The next step is to hear from the, if  
25 necessary, any or all of the ten appellants and then

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1 after that, anyone else who's here who feels they can  
2 provide testimony to help us in making our decision  
3 that is relevant to the issues that were raised in  
4 the appeal and the zoning administrator's response to  
5 that appeal. But the appeal that was raised back on  
6 April 4th, it has to relate to the issues that were  
7 raised back then.

8 UNIDENTIFIED SPEAKER: Do you want to read those  
9 for us real quick?

10 MR. YORK: Read what?

11 UNIDENTIFIED SPEAKER: What you've spoken to.

12 MR. YORK: It's many, many pages long.

13 UNIDENTIFIED SPEAKER: Only the basics because  
14 that's all you talked about.

15 MR. YORK: Well, the attorney for the applicant  
16 pretty much summed it up. He was saying if the  
17 zoning administrator didn't respond to the request  
18 from the neighborhood to reconsider because -- and  
19 then --

20 Are you saying -- you're not agreeing with that?

21 That's what he said you said.

22 MR. DAVIDSON: Are you asking me a question?

23 MR. YORK: No.

24 MR. BENBOW: Time out, please.

25 We have a question from an audience member that

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I don't know who it is. We're not bringing him forward. We can't make a record this way, guys.

MR. PINNOCK: Thank you.

So if there are appellants who wish to testify that would shed any new information on the appeal relating to the response of the zoning administrator, to the letter.

REVEREND CAMPBELL: So, Mr. Chair, thank you.

What I have here is actually a kind of a list of nine folks who want to speak, some of whom are official appellants and some of whom are not. Now, we can select them out and then go with the others. So you can just let me run this list and get them to identify whether they're on your official appellant list or not, either way.

MR. YORK: Well, both are acceptable.

REVEREND CAMPBELL: Okay. Well, let's just run the list I've got and then there will be others who will speak to you as well, I'm sure.

MR. PINNOCK: Okay.

REVEREND CAMPBELL: Excuse me. And just for fun, how many of y'all are here -- basically are here to try to get this Westwood Tract straight and zoned properly for institutional and not to have this big project?

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(Hands were raised.)

REVEREND CAMPBELL: Okay. That's just to show  
you who is here. 4

STATEMENT BY REVEREND BEN CAMPBELL

REVEREND BEN CAMPBELL: My name is Ben Campbell.  
I'm a resident of Whitby Road on the corner of  
Rennie. I live right across from the Westwood Tract.

In 1953, the City Planning Commission, the City  
Council, Union Seminary, and the Sherwood Park  
neighborhood all agreed how to zone the Westwood  
Tract. The Council enacted that zoning into law. It  
was placed in the city master plan and still is  
there, and the public records are in City Hall today.

I know you don't agree with me, but I have to  
say this. Based on this zoning, in 1953, the  
administrator ruled that the Seminary could build  
student housing on the Westwood Tract, that the  
Seminary could alter and improve its institutional  
and educational facilities by right and that the  
small single-family neighborhood surrounding the  
Westwood Tract would be protected from commercial  
development.

Zoning affects not only the property owner. It  
affects the neighboring owners as well and that's the

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1 basic principle.

2 But here today, the zoning administrator has

3 turned this ruling in 1953 upside down.

He has ruled

4 that the Seminary is not permitted to build student

5 housing or approve its educational institutional

6 facilities by right and that the developer can build

7 a massive commercial apartment project in the middle

8 of our single-family neighborhood.

9 Since 1953, there has been no actual notice of

10 proposed specific change in the zoning of this

11 property. The master plan has remained the same, but

12 according to the zoning administrator, the only use

13 now permitted on the Westwood Tract is the use that

14 was specifically excluded in the 1953 legislative

15 record.

16 The Seminary has been discouraged from

17 developing healthy uses, which would strengthen the

18 north side and bring in the income the Seminary says

19 it needs. Instead, the Seminary has desperately

20 placed the Westwood Tract in the hands of an

21 aggressive production-oriented out-of-town developer,

22 who in doing what he does well will drain the

23 neighborhood of its value, drain the maximum value

24 out of this neighborhood and leave the cost to the

25 city, the Seminary, and the residents of this

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1 community and everybody here knows this is wrong.  
2 Finally, a personal note. There are a lot of us  
3 who have a big investment in Union Seminary. I have  
4 four kinfolk who graduated from there and did a good  
5 bit of stuff there myself a few years ago.  
6 Union's greatest strength for over a century has  
7 been its understanding that true Christian mission  
8 begins at home with being a constructive part of the  
9 community in which you live and that mission today is  
10 being devalued and it cannot, I fear, be effectively  
11 replaced.

12 Thank you.

13 And the next person on the list, if I can find  
14 my list here, is Bill Van Pelt. 15

## 16 STATEMENT BY WILLIAM T. VAN PELT

17 MR. VAN PELT: Good afternoon.

18 My name is William T. Van Pelt. I live at  
19 3217 Brook Road directly across Brook Road from the  
20 Westwood Tract. I own the property and have lived  
21 there since 1988.

22 I'm not supposed to speak about water drainage,  
23 but I have written here that's what I'm going to talk  
24 about for a moment. After heavy precipitation, water  
25 stands on portions of the Westwood Tract for days.

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1 This happens a few times almost every year.

2 Adding to the impenetrable ground surface with the

3 Canopy development will obviously worsen this

4 situation.

5 MR. PINNOCK: Mr. Van Pelt, I'm sorry.

I

6 understand where you're coming from, I do, because

7 it's actually proffered right here in front of me --

8 MR. VAN PELT: Yes.

9 MR. PINNOCK: -- those conditions of development  
10 of this site.

11 Are there other points that you would make that  
12 would be relevant to the appeal that is before us?

13 MR. VAN PELT: Well, perhaps.

14 I'm a native Richmonder and I've known  
15 Ginter Park since the late 1940s through frequent  
16 visits to my maternal grandparents' home at  
17 3502 Seminary Avenue where my grandparents resided  
18 from the mid-1930s until the early 1970s.

19 My grandfather was a real estate developer, who  
20 spoke of the Seminary as a respectable institution.  
21 My grandparents entertained seminarians in their home  
22 from the 1940s and 1950s. And until very recently,  
23 the Seminary has been a beneficial presence in Ginter  
24 Park.

25 Today, the Seminary pursues an entrepreneurial

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path as its student body wanes. The Seminary's leadership seeks financial gain probably at the behest of its board of directors who also administer the newer and well-regarded Presbyterian Seminary campus in Charlotte, North Carolina, where the board is based.

This entrepreneurial pursuit is enabled through the zoning errors that allow a commercial housing enterprise to be developed on a land that most everybody understands has always been intended for institutional use. I certainly understood the land on Westwood Tract to be protected by institutional zoning when I purchased my house in 1988.

Who would

have told us that the Seminary's land is zoned for commercial development?

Who would have expected government to be so ineffective to prevent such a destructive turn of events, even when a clear zoning violation has occurred?

We have enjoyed nearly three decades of living at Ginter Park. It's a beautiful place.

My neighbors three doors away are Tim and Stephanie Socia and their young children. They cannot be here today and asked me to bring their thoughts to the Board of Zoning Appeals.

1                   The Socias also thought the Seminary's land was  
2 zoned for institutional use when in 2008 the Seminary  
3 sold them the former Seminary president's house.  
4 That house is located at 3221 Brook Road at the  
5 corner of Westwood and Brook.

6                   A member of the Seminary's board of directors  
7 acted as the sales agent for the house.                   Dr. Brian  
8 Blount decided he did not wish to reside in the house  
9 when he became the Seminary's president in 2007.  
10 They did not tell the Socias about the pending Canopy  
11 development across the street.                   They're probably not  
12 required to, but, nonetheless, more than 1,000  
13 apartments have been threatened to be built there.

14                   Where was their moral compass?

15                   Stephanie Socia sent me a letter she wrote to  
16 Dr. Blount on July 30, 2014, with the thought that  
17 its message could be shared with you today.

18                   Stephanie wrote, quote, "I am a product of a  
19 family that lived in the north side until the  
20 development of apartments and destruction of  
21 Chamberlayne Avenue sent many away.                   Like many  
22 families, my parents moved my family into the county  
23 for the security, the school systems, and because  
24 most of the rest of our family had already moved out  
25 of the city for similar reasons.                   But as a child, I

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1 would return to Ginter Park for my dance and piano  
2 lessons.

3 "I can remember being so excited to come to the  
4 city to do the things that brought me the most  
5 happiness and pleasure and telling my mom from the  
6 back seat how incredibly beautiful this neighborhood  
7 was.

8 "So as an adult, my husband and I moved back to  
9 the city and I was able to fall in love with the  
10 north side all over again. When the opportunity to  
11 purchase our current home from the Seminary came  
12 along, I was thrilled. I felt so blessed and  
13 grateful to have the opportunity to live in such a  
14 beautiful community, to own a piece of history that  
15 is now 104 years old and to have the amazing view of  
16 the majestic Seminary as my neighbor.

17 "Many of the friends have asked, 'Why in the  
18 world would you choose to live in north side with  
19 sirens going by your home nightly? What about  
20 schools and the crime that surrounds you?'

21 "My response is always the same. 'My  
22 neighborhood is one of the most beautiful  
23 neighborhoods in the city. If we all leave, then who  
24 will take care of it?'

25 "We cannot let what happened years ago to our

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1 beautiful Chamberlayne Avenue ever happen again. For

2 me to live here, it's a choice that I feel strongly

3 about and that I sacrifice for. I want my children

4 to grow up in a community that is not only beautiful

5 to the eye, but also made beautiful by the people who

6 live in it.

7 "My children can cross the street and play on

8 tennis courts that my father played on many times as

9 a child. We can cross the street as a family and

10 meet people from all ethnic and socioeconomic

11 backgrounds, many of whom are walking or running on

12 the exercise trails.

13 "We can teach the history of the home of Hunter

14 Holmes McGuire, a founding father of my alma mater,

15 the Medical College of Virginia." Quote, "I am not a

16 lawyer, a developer, a president, a financial expert,

17 by any means. I am a humble pediatric nurse, mother,

18 wife and Christian. How can something so ethically,

19 morally and basically wrong have any good outcome for

20 your institution? Nothing positive can come out of

21 so much wrongness."

22 Thank you.

23 MR. YORK: Excuse me. I sincerely don't mean

24 any disrespect when I ask you this question.

25 MR. VAN PELT: Yes, sir.

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1 MR. YORK: And the reason I'm going to ask it is  
2 because I want everybody in the room to hear it and  
3 know how important it is and that is, before you  
4 bought your house, did you check as to whether what  
5 the zoning was for the property?

6 MR. VAN PELT: I had real estate agents for the  
7 seller and real estate agents for the buyer. The  
8 buyer never brought up what might be going on with  
9 the adjacent property nor did anybody else ever think  
10 that the Seminary would --

11 MR. YORK: Well, that's why I raised --

12 MR. VAN PELT: Well, if we had looked, what  
13 would it have said?

14 MR. YORK: You would have found out --

15 MR. VAN PELT: In 1988, it would have said what?

16 MR. YORK: That it was zoned to allow  
17 multi-family.

18 MR. VAN PELT: And, yet, it was being used for  
19 an institution.

20 MR. YORK: That's why I'm telling everybody here  
21 make sure you ask the question before you buy a  
22 house.

23 MR. VAN PELT: I mean, there was an institution  
24 that had been there more than a hundred years used as  
25 an institution.

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Ginter Park is called park. There is no park.  
The park is the Westwood Tract and the city has  
allowed that to go on for more than a hundred years.  
That is our park.

MR. YORK: You understand what I'm saying?

MR. VAN PELT: Thank you.

MR. PINNOCK: Thank you.

MR. VAN PELT: I do understand what you're  
saying.  
Thank you.

STATEMENT BY ROGER LORIA

MR. LORIA: Good afternoon.

I'm Dr. Roger Loria and my wife Win Loria, we've  
been residents at 3219 Brook Road in front of the  
Westwood Tract for the last 36 years.

My neighbors were the previous presidents of the  
Seminary, Dr. Hall and Dr. Wix, and were good  
neighbors and never mentioned anything of rezoning or  
changing the place to a commercial entity. Our  
understanding all the years --

And we're talking 36 years now.

-- was that the Westwood Tract was zoned for  
institutional purposes and we were never notified of  
any proposal to change the zoning on the Westwood

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1 Tract or given the opportunity, 60 days or not, that  
2 would be possible. And it's like a catch-22, if you  
3 don't know it, you cannot do it.

4 So, clearly, it's a bit, you know, a joke to say  
5 that, that that is a criteria that you have to abide  
6 by.

7 The zoning changed under construction of a  
8 commercial entity and that is the elephant in the  
9 room, zoning or not, that there would be 300 units  
10 there in front of my street, in front of me, will  
11 change this neighborhood from a residential area to a  
12 commercial area, which within a short time will  
13 change the entire nature of the neighborhood. And

14 just saying that it is not relevant doesn't really  
15 meet the issue. It still bleeds and it's going to  
16 continue to bleed and I hope you listen to that.

17 Thank you.

18 MR. PINNOCK: Thank you, Mr. Loria. 19

20 STATEMENT BY VIOLA BASKERVILLE

21 MS. BASKERVILLE: Good afternoon, to the members  
22 of the Board. My name is Viola Baskerville. My  
23 husband and I have lived in Ginter Park for 35 years.

24 MR. PINNOCK: Excuse me.

25 MS. BASKERVILLE: Yes.

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MR. PINNOCK: This is not one of the appellants.

REVEREND CAMPBELL: You said we could just go down the list.

MR. PINNOCK: No, I didn't know you had list or who was on your list so can you --

MR. YORK: Are you interspersed?

REVEREND CAMPBELL: Yeah, they're interspersed.

MR. PINNOCK: Oh, okay.

MR. YORK: We probably ought to hear from the formal applicants and then --

REVEREND CAMPBELL: Meet the appellants.

MR. PINNOCK: Yeah. Sorry about that.

MS. BASKERVILLE: Okay. Somebody else.

REVEREND CAMPBELL: Then I will go through the ones that are formal applicants.

Ron, you're next then.

Could you speak?

Were you planning on speaking?

MR. FRIEDMAN: Well, I was, but I'm not sure I can add anything more to the --

REVEREND CAMPBELL: Well, just tell them where you live and why it matters to you in about two seconds.

MR. PINNOCK: If I could give you your yellow sheet for Mr. Benbow. And state your name, please.

1 MR. FRIEDMAN: Let's see. I know my time is  
2 running.

3 MR. PINNOCK: And your name, sir?

4 MR. FRIEDMAN: My name is Ron Friedman.

5 MR. PINNOCK: Thank you. 6

7 STATEMENT BY RON FRIEDMAN

8 MR. FRIEDMAN: I just wanted to thank you for  
9 the opportunity to comment on this case. I'm not  
10 sure I can --

11 MR. YORK: Are you one of the appellants?

12 MS. HOGUE: Yes.

13 MR. YORK: You're not on the list.

14 MR. FRIEDMAN: Yes. I was added to the list.

15 MR. YORK: Yeah. There's a problem with that.

16 MR. FRIEDMAN: All right.

17 MR. YORK: You can't add appellants to the  
18 application after the deadline.

19 MR. FRIEDMAN: Okay.

20 MR. YORK: You can still speak, but you need to  
21 do it --

22 REVEREND CAMPBELL: Oh, I'm sorry. He's on the  
23 court case.

24 MR. FRIEDMAN: I'm on the court case.

25 REVEREND CAMPBELL: Okay. So that would be --

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next would be -- sorry.

Hampton, you're on.

MR. YORK: I'm sorry, are you an appellant?

REVEREND CAMPBELL: There's continuing confusion. If y'all can just address who do you want to speak in order.

MR. PINNOCK: I have the names that I named at the top of the meeting.

(Speaking simultaneously.)

MR. BENBOW: Hold on, please. The Chair is speaking.

MR. PINNOCK: So I have the names: Reverend Ben Campbell, Win & Roger Loria, Katherine Wetzel, Pierce Homer, Mary Swezey, William Van Pelt, Ruth Eggleston, Tim & Stephanie Socia, Bruce B. Stevens and Sarah Driggs.

REVEREND CAMPBELL: Here's one.

### STATEMENT BY SARAH DRIGGS

MS. DRIGGS: My name is Sarah Driggs, Sarah Shields Driggs, and my family and I have lived at 1501 Palmyra Avenue, two blocks from the Westwood Tract for 30 years. I'm an architectural historian and I've served four terms on the Urban Design Committee, so I know what you're going through.

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Things get confusing.

REVEREND CAMPBELL: A lot louder if you can.

MS. DRIGGS: Okay. Our home will be -- well, you already know I'm -- okay. When the zoning administrator reported in his 2016 letter that the records from 1953 weren't available, I started thinking, and I called the city clerk's office to ask for an appointment to come in and do some research. They told me I didn't have to come in, that they would just e-mail me those records, and within ten minutes I had them in my hand.

That's how we discovered that the supporting documentation for the original ordinance not only existed contrary to his letter, but stated that the Seminary requested the change so they could use the property for educational purposes. They told the Planning Commission and the neighborhood that and the neighborhood allowed it specifically for those reasons.

By the way, the chairman of the Planning Commission at that time was the treasurer of the Seminary.

Significantly, a buffer zone of single-family use was placed along the south and west sides to separate the existing single-family homes from the

1 campus activities. The change, granted, was from B,  
2 a single-family house district, to E, which was a  
3 grab bag with not just institutional uses but also  
4 multi-family, fraternity houses, nursing homes,  
5 dentist office and various other uses.

6 I don't know why the zoning administrator  
7 couldn't find those records and I think he said he  
8 did know they existed, but if he had, I believe this  
9 might have changed what we're talking about today.

10 I continued researching after that and each step  
11 along the way found deviations from the original  
12 purpose of the requested 1953 change. It seems that  
13 no one had ever looked back at the original  
14 documentation indicating purposes.

15 The 1953 ordinance is the only written record of  
16 a zoning change for the Westwood Tract. The other  
17 changes that occurred were all accomplished by map  
18 changes and map changes, I have learned since then,  
19 do not hold up in court against written ordinances.  
20 That 1953 ordinance had a purpose and that purpose  
21 was lost because no one ever looked at it.

22 Evidently, it's not easy to find records in the  
23 zoning department. My FOIA request always takes  
24 weeks to be filled rather than the five days that are  
25 allotted by FOIA. But the maps I have finally seen

1 showed that the zoning for the Westwood Tract and the  
2 constantly diminishing buffer changed every time  
3 there was a comprehensive zoning change, even though  
4 there's never been another ordinance specifically  
5 changing that property.

6 One of my colleagues, Pierce Homer, a former  
7 two-term Secretary of Transportation will show you  
8 the maps, but I'll go over a quick explanation of the  
9 changes they reflect.

10 A zoning map from 1958, just five years after  
11 the original change, shows that the southern half of  
12 the buffer was eliminated already with no written  
13 explanation. In the maps of the late 1950s and early  
14 '60s, the designation of the remaining half of the  
15 buffer went from B to R-2 to R-3 back to R-2, all  
16 with no explanation. And the remainder of the tract  
17 was changed to R-6, a multi-family zone similar to  
18 the previous E.

19 Then in 1976, the zoning changed from R-6 to  
20 R-53 and the buffer remained R-2. R-53 included  
21 multi-family, day nurseries and nursing homes.

22 Why wasn't the Seminary considered  
23 institutional, which allowed religious institutions  
24 and schools?

25 Dorms are considered part of a school rather

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1 than multi-family housing. Surely, this is a mistake  
2 caused by not examining the record or considering the  
3 obvious current use of the property at that time.  
4 Think about it. It was a religious institution and a  
5 school and, yet, it wasn't put in that category.

6 Now, I have been told by people who work in the  
7 planning department that an institution -- that the  
8 property owner has to request to be put in an  
9 institutional zone. Now, why that makes sense, I  
10 don't know, but it does not say that in the 1976  
11 ordinance. I haven't got other ordinances because  
12 it's really hard to get hold of them. Let me tell  
13 you, FOIA and I are close friends now.

14 All right. In 1978, the entire tract was zoned  
15 R-53 and the buffer disappeared entirely. Again, we  
16 have no explanation except that a new map had been  
17 drawn. These changes were all done automatically  
18 constantly shifting the property further and further  
19 from its intended use. Eliminating the buffer zone  
20 and shifting the overall zone toward multi-family use  
21 instead of the intended institutional educational use  
22 are clearly mistakes, violations of the zoning code.

23 These events have been called a mistake by a  
24 respected member of the city's planning community and  
25 blatant errors by Major Stoney.

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Mr. Davidson said he doesn't even have to

2

consider this because we waited too long to appeal,

3

but he's not listening to our question, I'm afraid.

4

We are not here to talk about a zoning variance,

5

which has a 30-day deadline.

We are here to say that

6

we have discovered a zoning violation, a mistake, and

7

by law he has to address it.

8

Remember, ordinance 15.2-2286.4 says, "The

9

zoning administrator shall use all best efforts to

10

prevent violations and to detect and secure the

11

detection of violations."

12

The reason the neighbors are here is that we

13

want to know how this long series of mistakes can be

14

rectified.

We've tried to work with the Seminary.

15

We talked about other uses that would be appropriate

16

and would fit on the property.

The Seminary will not

17

listen.

They are interested in as much money as they

18

can make in one fell swoop.

And they seem to think

19

that this is their option, although we've offered

20

them many different options that would probably make

21

them more money.

They're throwing good money after

22

bad and we're all disappointed in them.

And that's

23

why we're here.

24

Thank you.

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MR. PINNOCK: Thank you.

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REVEREND CAMPBELL: Homer, Pierce.

STATEMENT BY PIERCE HOMER

MR. PIERCE: Thank you, Mr. Chairman.

Pierce Homer, 1507 Confederate Avenue. Once

again --

MR. BENBOW: Can I have your form, please?

MR. HOMER: I'm sorry?

MR. BENBOW: Your form.

MR. HOMER: I gave it to you earlier. You have

it.

I want to say I have 20 years of experience in the local government including overseeing the development agencies in Prince William County, Virginia. I've seen some very difficult and I understand exactly you guys have to operate in some narrow lanes.

The frustration for all these people here is there's not been public hearing on this property this huge for 64 years. That was the last time there was a legislative determination about what can be done that gave adjacent properties and neighborhoods the right to speak and to determine what are the proper use for the city and in conformance with the zoning codes, so that explains some of the frustration here.

So having said that, Mr. Chairman, let me come

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back to our complaint here. First is, I want to identify three zoning errors that we believe need to be looked at.

The first is that the 1953 single-family buffers that were part of the written ordinance intrude into the approved plan of development. It's taken us a lot of time, a lot of effort to find this. These are the buffers that are laid out in that ordinance.

Oops, it's upside down. Excuse me.

I've never been accused of being good with a map. Trust me.

So this is Rennie Avenue. This is Loxley, Westwood, Brook Road. The 200-foot buffers, which are explicitly mentioned in the ordinance to retain as single-family and were described in the staff memos as a buffer to protect these adjacent neighborhoods we believe intrudes into the approved plan of development. We believe that that is a zoning violation and should be evaluated and investigated.

Secondly, if you agree that this single-family buffer still exist --- and I'm going to come back to that at the end because I believe there is no way a map amendment can extinguish something that's gone through a public hearing and a written ordinance

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process. You cannot. And I say that from hard  
personal experience that I've learned being on the  
other side of the table on that.

We do not know what is the setback requirement  
from the single-family to this multi-family approval,  
and we would ask the zoning administrator again to  
see if there is an error to see if the building line  
is located too close to this single-family buffer.

MR. YORK: What is that map?  
Where did you get it?

MR. HOMER: This is a map that we had paid for  
with a local drafting firm. We used the plots.

MR. YORK: But that map was not used in 1953?

MR. HOMER: No, sir.

MR. YORK: You created that map?

MR. HOMER: We created this map. Yes, sir.

MR. PINNOCK: Based on information that you  
compiled?

MR. HOMER: Based on the 1953 metes and bounds  
description that are in the ordinance and the metes  
and bounds that are in the POD approval. And it's a  
local drafting firm.

The third violation is that we believe that the  
Westwood access point violates the city zoning code.  
Section 30-1040.4(4) says that "where the predominant

1 established character of the development is suburban  
2 in nature, vehicle access to the site from local  
3 residential streets and alleys abutting residential  
4 districts should be avoided when adequate arterial or  
5 collector street access is available to the site."

6 Well, clearly, Brook Road is the collector and  
7 arterial site. Westwood is not. And we believe that  
8 is a third zoning violation at this site that we are  
9 requesting the zoning administrator to evaluate.

10 So, let me come back, Mr. Chairman, to some of  
11 the questions here. And, again, if there is a  
12 discussion of standing, we would appreciate the  
13 opportunity to not have people's testimony  
14 extinguished. We would appreciate that opportunity.

15 If for some reason there is a vote to say,  
16 "Well, that testimony is not relevant, we're not  
17 going to include it," we would appreciate that  
18 opportunity.

19 The point that Sarah Driggs made -- and I want  
20 to share with you -- is a history of maps. And one  
21 of the assertions, Mr. York, you said, "Boy, every  
22 time there's a comprehensive rezoning, it wipes  
23 everything out."

24 My experience running a planning and zoning  
25 office in Northern Virginia is absolutely that's not

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true. What matters is the written ordinance that follows a public hearing where there's adequate notice for affected parties to be there. legislative body makes that determination, not an appointed or quasi-judicial body, and that has superior standing.

The

So let's look at how things changed since 1953. If you look -- if I can get this right with my poor mapping skills -- this is what they did.

Let me make

sure I have this right. Brook Road on the north, Rennie Avenue, Loxley, Westwood. This is the carved out, the map that clearly shows those buffers.

Okay?

Then around about 1960 -- and, by the way, that map you just saw, that's based on a public hearing, 64 years ago, the last time we had a public hearing. The last time we had a chance to speak to these issues was 64 years ago.

So here we are in 1960 -- it was a 1960 map. Excuse me. I'm not the most organized guy. 1960. And all of a sudden it shows buffers, R-6.

Here's

The Seminary is R-5. Partly and partly R-6. today Veritas school is partly R-5. R-6 on Chamberlayne Avenue.

What's

And you know what? That was done under the cover of night. That was a map amendment that had

1 enormous bearing. And, typically, in Virginia, if  
2 you're going to undertake a major complex zoning like  
3 that, there would be a master plan, there would be  
4 public hearings, and these kinds of changes would  
5 have been vetted. Instead, it was buried in a  
6 comprehensive zoning ordinance update.

7 MR. YORK: Are you arguing that there were no  
8 public hearings?

9 MR. HOMER: There were public hearings, but not  
10 specific to this area. It was part of the adoption  
11 of a new zoning ordinance. We have never had actual  
12 notice about these very significant land-use changes.

13 So that's 1960.

14 Then just a year later, 1961 --

15 Where is that? Here, here it is.

16 -- the buffer goes all the way to Brook Road and  
17 it's R-2 on one side and R-6 on the other.

18 MR. WINKS: Could you turn that around so we can  
19 all see that?

20 MR. HOMER: I'm sorry.

21 And it's R-1 back here and there's no  
22 designation on the Seminary.

23 MR. WINKS: Question for you. Why does any of  
24 this matter?

25 Isn't the only thing that matters is what was

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1                   the zoning when the zoning administrator made its  
2 ruling?

3                   MR. HOMER:    The Chairman, because this was a  
4 question and a colloquy between Mr. York and our  
5 attorney is, well, what zoning prevails?

6                   And my point here is that these changes have  
7 been part of comprehensive citywide zoning ordinances  
8 like this one here in 1976 where the buffers  
9 disappear on Rennie, but they stayed there on Loxley.

10                  And my point in making this is that these are,  
11 in effect, random changes.                   They are not made with  
12 due notice or actual notice to affected parties and  
13 we've been denied access since 1964 to the  
14 legislative process where these decisions should be  
15 made.    And I do believe that that is relevant because  
16 we do believe the 1953 ordinance controls here.

17                  Thank you.

18                  MR. YORK:    Before you go, let me point out, for  
19 the record, that the four zoning changes that you  
20 referred to under the cover of darkness, 1961 --  
21 1960, '61, '76 and '79, I was involved in the '76,  
22 '79 changes.            There were many, many public hearings.  
23 There were specific meetings in the Ginter Park  
24 neighborhood.         Many -- a couple of the people I see  
25 here, I think, I remember from those meetings.

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1                   There was a great deal of involvement with  
2                   specific association of the neighbors, specific  
3                   discussion about this property, the involvement of  
4                   the Seminary, a great deal of discussion, and all  
5                   that took place at least on two of those four  
6                   occasions because I was there and was involved in it.

7                   MR. HOMER:    Well, I thank you and I suspect  
8                   there was very stiff opposition from the neighbors?

9                   MR. YORK:     No.

10                  MR. HOMER:    Correct?

11                  MR. YORK:     No.    They were not opposed to it.

12                  MR. HOMER:    Oh, come on.        I -- well, I think you  
13                  missed it.

14                  MR. YORK:     Thank you.

15                  MR. HOMER:    Thank you.

16                  MR. YORK:     They may not have understood what was  
17                  going on but, anyway, that's -- enough of that. 18

19                               **STATEMENT BY STEPHEN HALL, ESQ.**

20                  MR. STEPHEN HALL:    If I may.        My name is Steve  
21                  Hall.        I'm from the City Attorney's Office.                I did  
22                  not swear in as a witness because I'm an attorney,  
23                  not a fact witness.                But I simply want to point out  
24                  that in the City's filings -- and the City would like  
25                  nothing better than the citizens and the Seminary to

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1 work out things as best as possible.

2 But the fact is, is that we have cited  
3 ordinances in a related case that very clearly --  
4 very clearly and expressly adopted the maps as part  
5 of the ordinance so that the two were working very  
6 much hand in hand. So -- and that goes back to 1979,  
7 in particular, and ever since then.

8 And, you know, again, I appreciate the firsthand  
9 knowledge that was provided, but these things were  
10 done with public information, with public knowledge.  
11 They were not done in the dark and so I just refer --  
12 refer you all to that. And the Seminary has made  
13 similar points.

14 And, again, we feel -- the City feels caught in  
15 the middle and we're sorry about that, but the  
16 ordinances are what they are and they have been for  
17 quite some time.

18 MR. PINNOCK: So in my cheat sheet order of  
19 testimony here, I have, basically, support of the  
20 zoning administrator's position at the end of it.

21 Can I ask you to testify at that point?

22 MR. HALL: If you need it, briefly. That's all.  
23 I was just speaking directly to the issue that was  
24 just mentioned.

25 MR. WINKS: Mr. Chairman, can we take a quick

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break at some point?

MR. PINNOCK: Sure.

MR. BENBOW: The court reporter may need a  
break, also.

MR. PINNOCK: Okay. Let's take a five-minute  
break, if we could.

Thank you.

(Break, 3:52 p.m. - 4:05 p.m.)

MR. PINNOCK: Okay. Go ahead. 10

### STATEMENT BY VIOLA BASKERVILLE

MS. BASKERVILLE: Good afternoon to members of  
the Board. My name is Viola Baskerville. My husband  
and I have lived in Ginter Park for 35 years. 32 of  
those years, we have lived three blocks east of the  
Westwood Tract.

In the past, I represented the area on City  
Council, served on the Council's land use and housing  
committee, and serving as the Council's  
representative to the Planning Commission.

I also served eight years as the area's  
representative to the Virginia General Assembly and  
served the Commonwealth as Secretary of  
Administration overseeing some agencies, some of  
which sought regulatory changes.

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In my experience both at the state and local levels, changes in laws or regulations have come through an open process and have had public hearing where citizens are given notice and allowed to speak to any proposed changes.

Among the powers that the State has deferred to the locality's governing body is the ability to enact zoning laws to promote orderly land use and development. Zoning laws are not changed through administrative fiat or a flawed interpretation of the zoning laws or by staff members drawing maps and changing substance.

Changes in zoning laws are only within the purview of the locally elected body and are made law only in a well-defined legislative process carefully examining any zoning changes that are anticipated to be made after having given the public notice and an opportunity to be heard.

As a former member of the City's Planning Commission, I have sat in this room to receive public comment on many land-use issues impacting the city from pole signage to the placing of monuments to the plans for the development of housing in the city.

Land-use changes so directly touch and concern individual property interests that public notice and

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1 opportunity to be heard are paramount. The Planning  
2 Commission deliberates and then gives its  
3 recommendation to the City Council, which is then  
4 charged with debating in a public hearing to which  
5 notice has been given whether or not the  
6 recommendation of the Commission shall become law.

7 Members of the Board, you have a difficult task.

8 You have heard from many speakers who live in the  
9 area. They have always understood that the property  
10 under discussion was zoned for the Seminary as an  
11 institution, that they were never notified of any  
12 proposed changes to the zoning or given an  
13 opportunity to comment on any changes.

14 We respectfully ask that you take the comments  
15 and concerns of the homeowners who live in Ginter  
16 Park under serious consideration as you deliberate  
17 your decision.

18 Thank you.

19 MR. PINNOCK: Thank you. 20

## 21 STATEMENT BY RON FRIEDMAN

22 MR. FRIEDMAN: I'll be brief.

23 My name is Ron Friedman. My mother Helen  
24 Friedman and I live on Rennie Avenue on the south  
25 edge of Westwood Tract and own three houses on

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Rennie Avenue. Helen has owned 1219 for 37 years,  
and 1225 for 32 years. And I have owned 1223 Rennie  
for 18 years.

As others have mentioned, never were we informed  
of a change in zoning that would allow development  
for a for-profit multi-family housing on the Westwood  
Tract. We would have rigorously opposed such a  
change.

The whole point of zoning is to protect  
neighborhoods from inappropriate development. One  
doesn't want a nuclear power plant next to an  
elementary school. One doesn't want an 832-unit  
apartment complex next to single-family homes.

And 832 units is really what we're talking  
about, because the Seminary is trying today with the  
best lawyers it can buy to break its promise to build  
nothing but dorms on the property and to provide a  
buffer zone between its dorms and Rennie and  
Loxley Avenue.

The Seminary will likely try to break any  
promises lawyers make today not to further develop  
the Westwood Tract if it gets its way today. No  
homeowner wants to live near a 300- or 1200-unit  
apartment complex.

So Viola Baskerville clearly noted all the other

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1 things that I have to say, so I'll just stop here.

2 MR. PINNOCK: Thank you.

3 Good afternoon.

4 MR. CARVER: Good afternoon. 5

6 STATEMENT BY HAMPTON CARVER

7 MR. CARVER: My name is Hampton Carver. I live

8 at 1500 Westwood Avenue. I'm a block away from the  
9 subject property.

10 You've heard a lot of folks talk about how they  
11 would be injured by this development, you know, for  
12 standing and so forth. You've heard about the cars,  
13 the traffic, everything else, and I think it's to the  
14 record.

15 I want to bring a little bit different  
16 perspective to this based on the fact that I'm a  
17 longtime professional in the commercial real estate  
18 business, participated in multiple developments  
19 domestically and international. So I have a little  
20 bit of a different perspective in what I see as the  
21 damage of this error in zoning is going to have on  
22 our ability, in my profession and others, in the city  
23 to perfect proper economic development.

24 And one of the interesting points I have about  
25 perspective is that a couple of years back in my

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1 career, I was responsible for master planning a  
2 thousand acres of a mixed-use community in China,  
3 about 70 miles south of Shanghai. And it was a very  
4 extensive project, but the government, who I was  
5 working with, of course, they owned the land,  
6 communist party officials and such, people that I  
7 would have significant differences with.

8 They said to me, "Look, Hampton, we want you to  
9 do this, but you've got to do a couple of things that  
10 are important to us. You've got to protect the  
11 architectural heritage of this land. You've got to  
12 protect the environment, and you've got to protect  
13 the land use and value for the people who are there  
14 today." Now, that's what these communist ideologues  
15 told me.

16 Well, why did they want me and my team,  
17 which involved U.S. and Chinese, to get involved in  
18 this?

19 Because this thousand acres was right in the  
20 pathway of development.

21 For what?

22 Apartments, because the growth was happening.

23 Developers were taking the advantage of incentives  
24 and they were putting apartments everywhere.

25 Cultural heritage was being lost. Agricultural lands

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1 were being lost. People's lives were being changed.

2 So it was a very unique experience I had there  
3 years ago. I come back. That's what I'm looking for  
4 in my own hometown, a concern, someone's going the  
5 extra mile and holding me and others accountable to  
6 do it right, not to do the wrong thing well, but to  
7 do the right thing well and there's a distinct  
8 difference.

9 From its impact on economic development, I think  
10 failure of the BZA to send this back to the zoning  
11 administrator for this error in zoning to be  
12 corrected will have a chilling effect on economic  
13 development in the city. Let me tell you why. The  
14 kind of development you want here in Richmond, the  
15 kind of developers you want are those who want  
16 transparency, clarity, effective government. They  
17 want to know that what they see is going to be  
18 reliable.

19 If you want to put an RFP out for a piece of  
20 land, you better back it up with proper zoning that's  
21 reliable. You're going to chase away the quality  
22 development.

23 You know, the elephant in the room, part of the  
24 discussion behind doors and others is changing this  
25 is going to hurt economic development. Going back

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1 against, you know, changing land use, that's a threat  
2 on property rights; it's not. Property rights, as  
3 counsel has already said earlier, is protected by --  
4 personal property rights, land ownership is protected  
5 by the Constitution.

6 Zoning is all about intent. That's the very  
7 basis of zoning. It's aspirational, in many  
8 instances. It's to drive the community where it  
9 needs to be.

10 So zoning changes and any land-use attorney in  
11 this room is adept at working that, whether it's  
12 appropriate in some instances and inappropriate in  
13 others. That's the art of the trade.

14 So it's a subjective point. But to your point,  
15 you know, you asked when we bought into the  
16 neighborhood did we check the zoning. I was assured  
17 that that site was that way and always would be that  
18 way and the narrative in the community was the  
19 Seminary has no plans to develop this site. And  
20 that's the narrative they will put out for the  
21 remaining 19 acres: "We have no plan." And, yet,  
22 when you ask them to put a proffer on it or to change  
23 the zoning, oh, umbrage, insult, agony.

24 So looking at, you know, the condition today, we  
25 have a mistake. If you go back and if I before I

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1 bought my house 15, 16 years ago had gone back to the  
2 original zoning documents, which, of course, I would  
3 have been told they didn't exist, because that's what  
4 everybody in this room was told, they didn't exist,  
5 except for one of our neighbors went and found them,  
6 lo and behold. So then we have a new ball game.  
7 So what interpretation are we going to accept  
8 here? Because if I had gone back to the 1953 zoning,  
9 I would have seen the discussion, that art that I  
10 talked about. We will grant you zoning to build your  
11 dorms if that's all you're going to build. Go back  
12 and look at the Sherwood Park documents. That's a  
13 negotiation. That's fair. That's reliable.  
14 And if you're going to tell us today that the  
15 words of your predecessors don't matter, they didn't  
16 count, those kinds of agreements, you know, because  
17 they may not have worked themselves into the black  
18 and white of an ordinance are worthless, that's a  
19 problem for me. And I think it's a problem for a lot  
20 of people in the profession -- in the economic  
21 development profession as well. Words matter.  
22 Agreements count.  
23 So it's been intimated here, from what I've  
24 heard, is that many feel that, perhaps, this is going  
25 to go beyond this hearing. I'm not prepared to make

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1                   that statement.                   But if it does, y'all are still  
2                   being put in the position of having to take a  
3                   position and I would rather have to defend myself for  
4                   doing what's right than defend myself from what  
5                   you're doing wrong.                   That's a decision that I'm  
6                   outside of.                   That's y'all's decision.

7                   So the interpretation -- my characterization of  
8                   the development's interpretation would be one of  
9                   opportunism and transience.                   It's one that the words  
10                   and the goodwill of your predecessors don't matter,  
11                   that we're going to do what we want to do today and  
12                   we're not going to worry that much about the future  
13                   so long as it covers one of our other desires, or  
14                   what I would characterize as a citizen  
15                   interpretation, which is one of an enfranchisement  
16                   and legacy.

17                   You know, many of our homes are a hundred years  
18                   old.                   That's legacy and that's enfranchisement and  
19                   that's where economic development comes from:  
20                   stabilized communities.                   So you don't stabilize a  
21                   historic single-family community with the addition  
22                   of 300 units in phase one and the addition of  
23                   another 800 units in phase two because until they  
24                   take the zoning away, there is going to be a phase  
25                   two.                   So that's the interpretation that has to be

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1 thought of.

2 I think the 1953 ruling is fundamental to how  
3 this zoning should be interpreted and anybody who's  
4 had access to the file, which I think we've made them  
5 available to everybody, I think fair-minded folks  
6 were provided the same opinion, so I would  
7 respectfully ask that you accept our paper, return  
8 this back for a relook from the zoning administrator  
9 now that they have the full benefit of all the  
10 information that we were told previously didn't  
11 exist.

12 Thank you very much.

13 MR. PINNOCK: Thank you.

14 MR. CARVER: Certainly.

15 (Applause.)

16 MR. PINNOCK: Thanks.

17 MR. YORK: Let's assume as a given that there  
18 were conditions attached to the 1953 rezoning. Are  
19 you arguing that a subsequent City Council doesn't  
20 have a right to eliminate those conditions?

21 MR. CARVER: I, on a hypothetical, would say no,  
22 but then can you provide the documents where they did  
23 deny those rulings, as well as the legal paper that  
24 we have received from Wayland Rennie, City Council  
25 member at the time, who helped negotiate some of

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1 this?

2 What will he testify to that?

3 MR. YORK: Well, but you're not arguing that if

4 there is evidence that City Council changed the

5 zoning of this property without any condition in

6 1979, would you argue that Council didn't have the

7 authority to do that?

8 MR. CARVER: I don't know enough to answer that

9 question, but I do know that y'all are certainly

10 aware of Council's unanimous resolution to send this

11 back to the City, to the various offices that are

12 affected by this --

13 MR. YORK: We know about that.

14 MR. CARVER: -- to do the studies that we hear

15 that have been done. Yet, since they haven't been

16 made public, we don't know. And we would welcome

17 the opportunity to compare those studies to our

18 own professional knowledge of the subject or

19 others that we can bring in to counter, because I

20 think there might be glaring inconsistencies and

21 shortfall.

22 MR. YORK: Thank you.

23 MR. CARVER: Thank you very much.

24 MR. PINNOCK: Mr. Campbell, how many do you

25 have?

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1 REVEREND CAMPBELL: I have two more that I'm  
2 going to call and I don't know who's going to do  
3 what.

4 MR. PINNOCK: Okay.  
5

## 6 STATEMENT BY E.J. ERHARDT

7 MS. ERHARDT: I'm Mrs. Erhardt. I live at  
8 1207 Rennie Avenue. I was born in Richmond  
9 April 15, 1951, and lived in Chesterfield County  
10 until 1970.

11 A few years after my husband and I married, we  
12 looked for a house and we decided on Rennie Avenue.  
13 Sherwood Park was very beautiful at the time and so  
14 was the Seminary. We had buildings across the street  
15 from us. They were like separate houses that I'm  
16 guessing maybe four families lived. We had neighbors  
17 from the Seminary that visited us and I visited them.  
18 They were very nice and we got together and we went  
19 and did everything.

20 We had security in Sherwood Park at the time.  
21 The Seminary had their security guards that drove  
22 through the neighborhood, so when the security was  
23 there, Sherwood Park had security. We no longer have  
24 security in our area in Rennie Avenue since the  
25 buildings are no longer there and operative. It was

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1 nice there during that time. One building remains on  
2 front of Rennie Avenue, I believe, probably for  
3 furniture storage. It was nice then.

4 But you said for us to stick only to about the  
5 drainage area. I want to bring up our lives.

6 How much does a person's life matter?

7 Crime is a big factor for me. I had been

8 fighting for six to eight years. The neighbor- --

9 MR. PINNOCK: I'm sorry, ma'am. I think you  
10 misunderstood, to not focus on those issues of the  
11 development that have been --

12 MR. YORK: But rather on the zoning issues.

13 MS. ERHARDT: Well, I'm looking at possibility.

14 MR. PINNOCK: So -- yes. And we are sticking  
15 with the issues that are relative to the zoning of  
16 this property as sort of determined by the zoning  
17 administrator that this is zoned properly and it's  
18 all current.

19 MS. ERHARDT: I understand that.

20 MR. PINNOCK: Okay.

21 MS. ERHARDT: I'm speaking from my experience.

22 MR. YORK: What year did you buy your home?

23 MS. ERHARDT: 1988.

24 And I knew all my neighbors. I was the block  
25 captain on Rennie Avenue for a number of years, and I

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1 knew every single person on my block, went down, and  
 2 I didn't just shove the leaflets in. I knocked on  
 3 the door or rang the doorbell. I collected dues. I  
 4 went to all the meetings. And then after everything  
 5 went online, I retired from that and some other  
 6 different health things developed so I stopped.

7 But, in general, for me, having lived there,  
 8 having been involved in Sherwood Park, the  
 9 neighborhood has gone down. I love the Seminary, but  
 10 I want it to be the Seminary. I don't want anybody  
 11 from the outside to come in and rent apartments.  
 12 Who's coming in? And you don't know who's doing  
 13 what. I want people who are serious in God's work,  
 14 who is wanting to study the Bible to come in and  
 15 live, and I would love to have buildings across the  
 16 street from us.

17 I'm probably unsure of all the streets. There's  
 18 Rennie Avenue and I know Little John are two of the  
 19 main streets. We don't have people living across the  
 20 street from us.

21 MR. PINNOCK: I understand.

22 MS. ERHARDT: All of the others do. So we  
 23 welcome -- I welcome people from the Seminary  
 24 building buildings or homes across, not gargantuan  
 25 buildings, but for Seminary students.

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MR. PINNOCK: Okay. Thank you.

### STATEMENT BY ELIZABETH KOSTELNY

MS. KOSTELNY: Good afternoon.

Thank you for your patience. I know this is a long session.

I'm Elizabeth Kostelny. I'm CEO of Preservation Virginia, a voice for historic places since 1889. I live across from the Westwood Tract at 3316 Loxley Road.

In 2016 an independent committee of preservation planners and architects listed the Westwood Tract as a Virginia's most endangered historic place because of the significant threat to the historic districts, the McGuire Cottage, and the historic Seminary campus.

The density and scale of the kind of development that was initiated overwhelmed the existing freestanding single-family homes that spread over multiple blocks in the historic districts.

The panel judged the development out of step with best practices and economic analysis of what encourages stable communities.

Since that time, Preservation Virginia has grand concern by how the 1953 and also the 1976 zoning

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1 ordinances have been ignored and the superficial  
2 nature of the impact studies.

3 I want to focus on Ordinance No. 76.16.38, which  
4 adopted a comprehensive list of zoning considerations  
5 to maintain the health, safety, and vitality of

6 Richmond. These included considerations to, quote,  
7 protect against destruction or encroachment upon  
8 historic areas.

9 In reviewing this proposal, neither the planning  
10 office nor the BZA seem to focus on this particular  
11 part of the zoning code and its implications to the  
12 encroachment or destruction of the historic McGuire  
13 Cottage, the Seminary campus, the 1968 Poor People's  
14 March campsite and the Westwood Tract's connectivity  
15 to the adjacent historic districts.

16 That approach directly contrast to the  
17 Department of Historic Resources' quick finding under  
18 the Federal Section 106 that this dense multi-family  
19 development will have an adverse impact on those  
20 historic sites.

21 If you would allow me, like Hampton, I would  
22 like to put this a little bit in context. Historic  
23 neighborhoods with their mix of old and well-crafted  
24 buildings are recognized nationally as contributing  
25 to robust, local economies by creating distinct

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1 livable communities.

2           The National Trust Preservation Green Labs'  
3 study:     Older, smaller, better demonstrates that  
4 older neighborhoods and -- I quote from that study --  
5 "perform better than districts with larger, newer  
6 structures when tested against a range of  
7 economic, social, environmental outcomes and  
8 measures."

9           This analysis reveals that people are attracted  
10 to older buildings and older neighborhoods, walkable  
11 neighborhoods, places where the sense of history  
12 prevails and where new construction that comes in  
13 adopts that same feel, not oversized new  
14 construction.

15           Further, VCU's Center for Urban and Regional  
16 Analysis undertook a statewide historic tax credit  
17 program that revealed 1,185 projects, invested more  
18 than \$2.2 billion in Richmond in 13 years.                     Annually,  
19 Richmond benefits from a portion of the \$7.7 billion  
20 spent by visitors to the Commonwealth.

21           And this week Richmond achieved number two  
22 status nationally in attracting millennials.                     And  
23 why?     The integrity of the historic character of its  
24 neighborhoods, whether it's Scott's Addition, the  
25 Fan, and, yes, the north side.                     That's the reason for

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1 the resurgence.

2 For decades zoning served Richmond and  
3 contributed to this revitalization. The 1976

4 ordinance clearly acknowledges the obligation that  
5 zoning has in protecting the historic area to ensure  
6 their vital role in Richmond's economy. The

7 ordinance implies historic character, a scale and  
8 proportion, and other of its criteria related to  
9 lessening congestion on streets, preventing  
10 overcrowding, avoiding undue concentration and  
11 others, if you look back at that ordinance.

12 The Canopy project is the kind of inappropriate  
13 development the 1976 ordinance sought to avoid.

14 The 1953 ordinance was not even considered,  
15 apparently.

16 Preservation for Virginia is concerned that the  
17 failure of the planning office to perform its basic  
18 due diligence is against decades of Richmond's zoning  
19 law and sets a dangerous precedence for other  
20 Richmond neighborhoods.

21 Personally, my family is concerned about the  
22 immediate and direct impacts of this commercial  
23 development on property values and the quality of our  
24 life and those of our neighbors.

25 In doing the research and looking at the

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1 National Register nomination put forth for the  
2 Seminary's campus --

3 MR. PINNOCK: Ms. Kostelny, two minutes.

4 MS. KOSTELNY: Okay. I'm going to wrap up.

5 This is a 1982 map. And I think it really shows  
6 the fact that at the time Westwood Tract was  
7 considered part of Ginter Park, part of  
8 Sherwood Park. It was the transition point for the  
9 neighborhood and it was recognized by the  
10 neighborhood and by the Seminary. Perhaps, they  
11 remembered the spirit of these two ordinances.

12 MR. YORK: Who did that plan?

13 MS. KOSTELNY: The Seminary.

14 MR. YORK: So that was the one they used when  
15 they were considering an institutional zone?

16 MS. KOSTELNY: It's their campus map. It's not  
17 even a plan. It's their campus map.

18 MR. YORK: Okay.

19 MS. KOSTELNY: My question is, if the BZA had  
20 access to the 1953 rezoning materials and the DHR  
21 finding of adverse impacts, would you have gone  
22 ahead with the same lot split and finding a  
23 nonconformity?

24 I would respectfully suggest no.

25 Thank you.

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MR. PINNOCK: Thank you.

STATEMENT BY BEN SCRIBNER

MR. SCRIBNER: I'm Ben Scribner. I wasn't  
planning on speaking otherwise I would have dressed a  
little better. But I have grown up in the  
Ginter Park area. I'm now a homeowner in that area,  
3704 Hermitage.

Obviously, this is the exact type of thing that  
the Board is meant to do is to take a look at these  
and see if there's been mistakes.

Now, I would remind you guys that a city is made  
up of people. It's not made up of institutions and  
corporations and developers.

The law is made up for the people and you've got  
a lot of people here that think that, perhaps,  
there's been a mistake and, perhaps, this should be  
revisited, even just to make sure that there hasn't  
been a mistake. And if this doesn't get done, then  
there's going to be a little bit of a cloud that  
exists over this development going forward because  
there's lot of people that feel like there's been an  
opaqueness to this whole process. Whether there has  
or not, it's important that we resolve that before we  
move forward.

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1 And that's all I want to say.

2 Thank you for hearing me.

3 MR. PINNOCK: Thank you.

4 Okay. I'm going to let one more person testify.

5 Unless there is additional factual information to add

6 to what's already been testified to, I'm going to ask

7 that we cut it off after this last one. 8

9 STATEMENT BY ADAM SITTERDING

10 MR. SITTERDING: Thank you.

11 My name is Adam Sitterding. I live at

12 1326 Brookland Parkway.

13 MR. BENBOW: Excuse me. Were you sworn?

14 MR. SITTERDING: Yes, I did raise my hand, sir.

15 MR. BENBOW: I just wasn't sure.

16 MR. PINNOCK: I swore in, like, 200 people.

17 MR. SITTERDING: No, I raised my hand. Yes.

18 MR. BENBOW: I have to be sure.

19 MR. SITTERDING: I appreciate that.

20 I moved to north side in 2004 and recently --

21 MR. PINNOCK: I'm sorry. Your address again.

22 MR. SITTERDING: I'm sorry. 1326 Brookland

23 Parkway.

24 MR. PINNOCK: Thank you.

25 MR. SITTERDING: My home boundaries Rennie,

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1 Loxley and Brookland Parkway. My driveway is on  
2 Rennie overlooking the Westwood Tract, and I've known  
3 about the project. I've been in the north side. I'm  
4 a fifth generation Richmonder. I was aware of the  
5 Seminary's desire to do this.

6 We purchased our home two years ago where it's  
7 at now in Brookland Parkway. Our kids attend  
8 Veritas, and we've been -- I'm very concerned because  
9 I'm all for property rights, but what appears to be  
10 happening here is that there was a lot of intention.  
11 I know Wayland Rennie and there's a lot of intention  
12 and there was a lot of public involvement with the  
13 use of the property.

14 And I'm really concerned about the negative  
15 impacts historically, which is what we love about the  
16 north side -- it's what kept us in the city -- the  
17 impacts to our school Veritas.

18 You know, there's some concern that traffic  
19 studies and thing of that nature and pedestrian  
20 safety studies haven't been done. I'm concerned  
21 about that and the negative impacts of high density  
22 development on the neighborhood that seems out of  
23 character with the fabric of the neighborhood and  
24 it's been very unsettling.

25 So I'm just -- I'm here to represent my concerns

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1 personally and the personal impact this has on my  
2 family.

3 So thank you.

4 MR. PINNOCK: Okay.

5 All right. Thank you.

6 MR. FREEMAN: You asked if there was one  
7 other -- other facts related to it?

8 MR. PINNOCK: If there are other facts that had  
9 not been presented.

10 MR. FREEMAN: Yes, sir. I believe so.

11 MR. PINNOCK: Okay.

12 MR. FREEMAN: Thank you.

13 MR. BENBOW: Do you have your form?

14 MR. FREEMAN: I do.

15 MR. PINNOCK: And you were sworn?

16 MR. FREEMAN: I was.

17

## 18 STATEMENT BY NED FREEMAN

19 MR. FREEMAN: My name is Ned Freeman. I live at  
20 3324 Loxley facing the tract.

21 Certainly, plenty of comments, most of which  
22 have been echoed by others.

23 Early on, Mr. York --

24 UNIDENTIFIED SPEAKER: Speak up, please.

25 MR. FREEMAN: Yes, certainly.

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1                   Early on, Mr. York commented on a couple of  
2 standards that needed to be met, for you to meet, one  
3                   of which the timing within 30 days, I don't believe  
4                   has been spoken to yet during the conversation and I  
5                   just wanted to make sure we addressed that, briefly.

6                   The city administrator -- the zoning  
7 administrator --

8                   I apologize.           I don't know your name.           Sir, it's  
9                   kind of weird that everyone talks about you in the  
10 third person when you're right here.

11                   MR. DAVIDSON:    It's always like that.

12                   MR. FREEMAN:    -- spoke to 15.2-2311, appeals to  
13 the Board, and the 60-day time limit that I believed  
14 was one of the bases for not looking back at it.           In  
15 reading that, it appears to me that that limitation  
16 doesn't apply in a case where there is a clerical  
17 error.           And I would just submit that from looking at  
18 the balance of evidence that has been supported in  
19 this case, it certainly feels to me like there was a  
20 clerical error in not considering the background  
21 information that was available at City Hall related  
22 to this.

23                   I know how frustrating it must be to have all of  
24 this energy around this property and I respect the  
25 comments you made about, you know, hundreds of these

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1 that you have to deal with on an ongoing basis.

2 My request would simply be, it certainly seems  
3 like if there were clear information available and  
4 part of the record that was not considered, I  
5 consider that a clerical error of no ill-intent, but,  
6 certainly, believe it merits looking at again and  
7 that is a basis for substantiating looking at it past  
8 the 60-day time.

9 MR. PINNOCK: Thank you.

10 Okay. I think I'm looking for the attorney for  
11 the Seminary.

12 So ten minutes between you?

13 MR. CONDLIN: We were told ten minutes each  
14 because I'm representing the Seminary and she's going  
15 to be representing the developer.

16 MR. PINNOCK: Okay.

17 MR. CONDLIN: I'm not going to need the entire  
18 time, in any case, so...

19 MR. PINNOCK: All right. 20

21 **STATEMENT BY ANDREW CONDLIN, ESQ.**

22 MR. CONDLIN: Again, members of the BZA. My  
23 name is Andy Condlin and I'm here on behalf of the  
24 Seminary.

25 On behalf of the Seminary, you've heard a lot --

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1 MR. BENBOW: Excuse me. You're going to have  
2 two?

3 MR. CONDLIN: Yes.

4 MR. BENBOW: Ten total?

5 MR. CONDLIN: We both represent different

6 parties and interest.

7 MR. BENBOW: I'm just asking the Board, how do  
8 you want to do this?

9 MR. PINNOCK: Yes. I've got two different  
10 parties represented here.

11 MR. BENBOW: Okay. I just want to be sure.

12 MR. CONDLIN: You've heard a lot of emotional  
13 context here, and the Seminary, obviously, is sorry  
14 that it's come to this from a standpoint of the  
15 emotion and where this goes.

16 A little bit dismayed, I am personally, that  
17 there's a question of whether engagement of the  
18 community, for example. We have engaged the  
19 community over the last four years. And I would ask  
20 you, what other landowner that has by right zoning  
21 would spend tens of thousands of dollars to hold a  
22 dozen formal meetings and over 50 informal meetings,  
23 made substantial changes to the plan including a  
24 year-long moratorium on development to give an  
25 opportunity to have a discussion further with the

1 neighbors, decrease the density, increase setbacks,  
2 increase the style -- or change the style of the  
3 architecture?

4 Actually hired a planning commissioner to be a  
5 moderator of a charrette with designated  
6 representatives, all with a by right development.

7 We have engaged the community and we're here  
8 before you with a plan that we felt had been vetted  
9 and, certainly, the neighbors didn't get everything  
10 the wanted because the Seminary didn't get everything  
11 they wanted either.

12 But we're here before you on various specific  
13 narrow issues. The appellant has three parts to  
14 their claim: The zoning administrator breached his  
15 duty by not properly enforcing the appellant's  
16 interpretation of the zoning ordinance.

17 As stated in the appellant's attorney letter of  
18 appeal, the zoning in 1953 is carried forward to  
19 today with no changes despite numerous zoning actions  
20 that have taken place, both a text and zoning map  
21 amendments with number of notices and City Council  
22 action in each and every case that you'll hear today.

23 And the fact that the City allowed the  
24 nonconforming use, they are arguing, supports their  
25 position that the use is limited only to that

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1 nonconforming and you can never use it for a by right  
2 use. That's their third point.

3 Let me cut to the chase. The appellants are  
4 saying that what occurred in 1953 is what applies

5 today and nothing else. And what occurred in 1953,  
6 they're saying, is restrictive zoning despite the  
7 fact that there was not proffer, there was not  
8 conditional zoning at that time, despite the fact

9 that their claims that the action in '53 restricted  
10 the use of the property, which it doesn't, despite  
11 the numerous changes that were referred to.

12 None of these arguments have merit. None give  
13 the applicant any right to appeal to the BZA. None  
14 of them are timely, and as I've already pointed out,  
15 even if they did have merit, they're not an aggrieved  
16 party with the right to come forward.

17 I'm going to review the timing and the first  
18 claim by the appellants. I'm going to ask that my  
19 partner Jennifer Mullen, who's representing Bristol,  
20 will review the inaccuracies of the last two claims.

21 But, first, I would like to, at least, make sure  
22 we establish what, in our mind, are the bases of the  
23 facts. With respect to the property itself, Jennifer  
24 will address the zoning history specifics.

25 The property has been owned by the Seminary

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1 since 1917. For over a hundred years, the Seminary  
2 has permitted, even invited seminarians, faculty,  
3 staff, neighbors, the public at large. They've even  
4 improved the property for the benefit of the use of  
5 that property, that they've invited to that property.

6 And what is clear, over everything that you  
7 review -- and I have reviewed every piece of paper  
8 that's come forward on this -- is that in 1953 it was  
9 zoned for multi-family use, and it's been  
10 multi-family zoning ever since through appropriately  
11 zoned actions by the City Council.

12 And ever since that multiple rezoning since 1953  
13 for multi-family, it was confirmed in the May 2012  
14 zoning conformance letter from the zoning  
15 administrator and again in April of 2016, the  
16 property is zoned R-53 without any limitations.

17 These determinations were not appealed by  
18 anyone, including no appeal from the appellants. The  
19 property owner submitted and ultimately received  
20 approval of a plan of development to build  
21 301 apartments.

22 The POD review process actually started the  
23 matter that came before you with the special  
24 exceptions because the zoning administrator made a  
25 determination that we did not agree with at all.

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1 Yet, we heard no appeal or no complaints from the  
2 neighbors about the zoning administrator at that  
3 time. And we came before and we received from you,  
4 after public notice to the neighbors, a special  
5 exception to split the property.

6 And based on the POD review, which did go  
7 through a number of reviews from all of the  
8 departments in the city and checked off and met all  
9 the requirements for a POD that is set forth in the  
10 city code, including traffic, including storm water,  
11 including access, major changes were made to the plan  
12 based on those comments and based on the studies that  
13 were done and the POD was approved, and, then,  
14 finally, building permits were approved for this  
15 property.

16 All this was done in reliance of the R-53 zoning  
17 that the property is part of. And part of the  
18 history of this property and the Seminary property is  
19 that the Seminary was required to go through special  
20 use permits in order to use the property for  
21 institutional zoning.

22 Again, no objection and no appeal by the  
23 neighbors, but we had to go through a special use  
24 permit because that's not a permitted use.  
25 permitted use is multi-family based on the R-53.

The

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1                   And on March 12, 2017, the appellants requested  
2                   the zoning administrator, in their words, to  
3                   reconsider the 2012 determination.                   Mr. Davidson, as  
4                   you will see from Ms. Mullen's presentation,  
5                   rightfully looked at the evidence, that it didn't  
6                   justify a change.                   There's been no evidence that he  
7                   didn't investigate it.                   He had already done the  
8                   investigation.

9                   And this red herring about the 1953 and the  
10                  correspondence, which will be addressed as well, is  
11                  only that.            It has no effect.            It has no point and  
12                  position in this presentation at all with respect to  
13                  what is a current zoning on this property.

14                  So with respect to timing, let me strip it down  
15                  to its bare essentials.                   The appellants missed their  
16                  opportunity and now they're trying to claw back and  
17                  reach back to the appeal period they missed in 2012.  
18                  It's nothing more complicated than that.                   They can  
19                  call it a zoning violation.                   They can call it wrong.  
20                  They can say it's un-American, but the reality of the  
21                  law is that they had an obligation that they were  
22                  going to appeal it at that time.

23                  And Mr. Davidson has the obligation to approve  
24                  and sign off on the POD and has an obligation to  
25                  approve and sign off on the building permit and has

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1 an obligation to stand by the zoning determination he  
2 made in 2012 and again in 2016 because we relied on  
3 it. The Seminary relied on it with its submissions.  
4 And we're not trying to win on a technicality  
5 here. Let there be no misunderstanding. They're  
6 completely wrong about the R-53 zoning and what  
7 happened in 1953. The law is clear. It's R-53.  
8 R-53 by the ordinance permits multi-family, exactly  
9 what we're allowed to do, which is 301 units. We're  
10 not asking for rezoning. We're only asking to do  
11 what is allowed to by the ordinance and only that.  
12 We're not asking for a special exception. We're not  
13 asking for a special use permit. They're the ones  
14 that appealed it. We're just trying to enforce that  
15 right.  
16 So their appeal is really, I think, that  
17 Mr. Davidson was wrong in March of 2017.  
18 It can't be about what happened in 2012 because  
19 they missed their appeal period. It can't be what  
20 happened in 2016 because they missed their appeal  
21 period. It can't be about the special exception.  
22 They didn't appeal that. It can only be about what  
23 he decided in March of 2017, which is that the appeal  
24 period has already run, and that's what the appeal is  
25 and it actually did run. That's the state law.

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1 That's the city law.

2 They also admit through their letter that the  
3 zoning administrator's determination that the period

4 for appeals to the BZA has expired would be correct  
5 if this were not a complaint about the existence of a  
6 zoning ordinance violation. That is a distinction  
7 without impact.

8 It doesn't matter whether it's zoning violation  
9 or not, because the very thing that they're  
10 complaining about the zoning violation is the use,  
11 which has already been determined. They're not  
12 saying in any instance, for example, that the  
13 parking is not met. They didn't appeal the POD.  
14 They're saying that the use is not appropriate,  
15 which was exactly what the zoning administrator  
16 decided in 2012, so they're trying to bootstrap that  
17 argument.

18 In essence, the appellants are contending that  
19 they can wait five years until the Seminary has spent  
20 hundreds of thousands of dollars with their partner  
21 to rely on the 2012 determination to obtain a POD and  
22 building permit approval and then claim they have a  
23 right to appeal to the zoning administrator's  
24 decision as a zoning violation.

25 If that claim is accepted, it would effectively

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1                   eviscerate all land use law.                                 The purpose of the  
 2                   zoning ordinance is it specifically states and from a  
 3                   policy standpoint and for the system to work, for  
 4                   development to occur, people have to invest.                                 People  
 5                   invests millions of dollars.

6                   MR. BENBOW:     One minute, 50.

7                   MR. CONDLIN:     On what?

8                   MR. PINNOCK:     One minute and 50.

9                   Thank you, sir.

10                  MR. CONDLIN:     I've already done eight minutes  
 11                  and 50 seconds?

12                  MR. BENBOW:     You've done eight minutes and  
 13                  10 seconds.

14                  MR. CONDLIN:     With respect to the standing, we  
 15                  talked about that.                                 With respect to the abrogation of  
 16                  the duty to enforce, I'm going to quickly cover that  
 17                  first.

18                  Whether Mr. Davidson does or does not enforce a  
 19                  perceived zoning violation is not the basis in and of  
 20                  itself for an appeal to the BZA.                                 There's absolutely  
 21                  no reference in the city code or state code that  
 22                  allows that.                                 And there's no power to this BZA to  
 23                  dictate to the zoning administrator that he must  
 24                  enforce the zoning ordinance.                                 That's at his  
 25                  discretion.                                 It's his obligation.                                 It's been

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1 investigated and that's where he's at.

2 They also have that he's already set forth the  
3 legislative presumption that he has with respect to  
4 what he's already decided. There's been no evidence  
5 that he hasn't investigated.

6 And, finally, with a conclusion, beyond that,  
7 that the BZA cannot create a policy that would stand  
8 state law and city code on its head.

9 This appeal should be denied. And a big deal  
10 may have been made about the 1953 records.  
11 Ultimately, all of that is irrelevant. The thing  
12 that is relevant in this case is that the zoning  
13 ordinance is R-53. It had been properly approved in  
14 all instances with public hearings and that's what  
15 stands today and we ask that you approve that and  
16 deny the appeal.

17 MR. PINNOCK: Thank you.

18 MR. YORK: Hold on a second.

19 Do you have any questions?

20 MR. PINNOCK: I do not have any questions.

21 Do you have questions?

22 MR. YORK: I may have some, but they may be  
23 covered so I reserve the right to come back and --

24 MR. CONDLIN: Absolutely.

25 MR. YORK: It may be covered by Ms. Mullen.

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MR. PINNOCK: Okay.

STATEMENT BY JENNIFER MULLEN, ESQ.

MS. MULLEN: Good evening now.

I'm Jennifer Mullen, also with Roth Jackson on behalf of Bristol Development Group, the developer of the property that is before you today.

As Andy mentioned, the counts before you are simple and inaccurate. The appeal, claim, the reconsideration is necessary because there is a zoning violation. The appellants are asking for it to be 1953. They are asking for the owner to change their application to rezone the property to the D district instead of the E district as it was applied for.

That D district is the one that actually permitted, first, the institutions of educational and religious purpose and that is the same district that the main quad was rezoned in 1951, but the Seminary did not request that.

As you see in your packet, the application is basic. It requests the property be rezoned from B to E, period.

Then they go on further to ask that the property owner restrict the property to a use that is

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1 institutional and educational purpose alone. They're  
2 asking the General Assembly to have permitted  
3 conditional rezoning prior to 1978 and City Council  
4 to have permitted it prior to decades even after  
5 that. Then they are asking the Board to  
6 retroactively impose a condition on the property that  
7 was not offered by the owner in writing. It was not  
8 presented to a public hearing. It was not accepted  
9 by City Council that would require the use to be  
10 institutional.

11 This fact pattern is flawed at every level and  
12 cannot work. In the alternative, the applicants are  
13 then asking in count three that this Board  
14 specifically limit the use of the property to only a  
15 legally nonconforming use as institutional and  
16 educational purposes, rezoning the property.

17 This is so contrary to the law and policy I'm  
18 going to repeat it. The claim is that because the  
19 property has been used as a legally nonconforming use  
20 that this Board should today impose a condition on it  
21 to restrict that to be the only use permitted on the  
22 property irrespective of the zoning, forever.

23 Now, no coming into compliance with the  
24 underlying zoning, which is what you typically see by  
25 this Board. Both counts should be denied by the

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Board and I'm going to walk through each one in detail.

Count two, the applicants claim the 1953 rezoning precludes the development pursuant to the R-53 without restrictions.

Now, as you know -- you've heard different testimony today, which is interesting -- zoning of a property in the Commonwealth of Virginia is achieved two ways: One, a text amendment that amends the regulations; two, a map amendment that amends the zoning district in which the land is situated typically called a rezoning.

Both are legislative acts. Both may be initiated by the petition of an owner or by the locality, both having equal weight. Both acts rezone property pursuant to the code, which does include public notice and comment. And as you'll see in your binder, there is actually even an article that was written prior to the 1979 ordinance where there were evidence of meetings in the north side specific to the rezonings that were applicable at that time.

And the property before you today is appealed on the basis of a purported zoning violation because the appellants don't believe it's zoned R-53. They believe it's E, somehow limited to institutional and

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educational purposes alone.

It's inaccurate and unfounded for multiple reasons. I'm going to highlight a few.

One, the 1953 text was plain and unambiguous on its face. It describes the property by metes and bounds and then says it's removed from the B district and included in the E district, period.

There is no language, as Reverend Campbell claims, prohibiting the uses. There are no buffer zones, as it's been claimed before earlier, that simply a portion of the property was not zoned E. It remained in the B district.

If you flip to the zoning maps that are included, you'll see the change. There was not a buffer. There was no specific detail in the ordinance as the appellants claimed and the metes and bounds to E was it, zoned to E, period.

There is no need to speculate as to the thoughts of Council or the Seminary in 1953. The ordinance speaks for itself. The code provision of 15.2-2309.5 is very clear. The Board cannot rezone or based its decisions on the merits and purpose and intent of local ordinances duly adopted by the governing body.

The 1953 ordinance rezoned the property from B to E, no buffer, no conditions, only property that

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1 the zoning. It is only with City Council. The plain  
2 language of the ordinance cannot be rewritten to  
3 include a new condition rezoning the property.

4 And then, four, the appellants don't believe the  
5 zoning has changed since 1953. It has. It is R-53  
6 without condition.

7 The zoning ordinance changed. It's no longer B,  
8 D and E. It has changed multiple times.

9 If you flip to your maps, the City initiated a  
10 rezoning, again, all with public notice, all with  
11 public comment, all before City Council adopting the  
12 ordinance and implementing not only map amendments  
13 but text amendments. We heard about one of those  
14 earlier.

15 1963, E was rezoned to R-6. B was rezoned to 16  
16 R-3.

17 1961, R-6 was rezoned again to R-6; R-3 to R-6  
18 along Rennie, R-3 to R-2 along Loxley. 19  
19 1976, R-6 to R-53; R-3 to R-2.

20 At that point in time there was also a text  
21 amendment which specifically -- and if you look in  
22 your packet under 1976 -- specifically talks about  
23 the fact that the educational -- institutional uses  
24 for educational and religious purposes are pulled  
25 out. They're now nonconforming.

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1 Board to have the legislative authority to rezone,  
2 which we know this Board does not.

3 Further, the property has been rezoned multiple  
4 times since the original petition, none of which  
5 included a condition.

6 Count three, this one is -- this one took me a  
7 lot to wrap my head around, I will say. They're

8 claiming that the Board is to restrict the property  
9 to a use that is not permitted within the R-53  
10 district, so they're claiming that because there is a  
11 legally nonconforming use on the property, that is  
12 evidence that there is a condition that it may only  
13 be used for that use forever.

14 So legally nonconforming property -- legally  
15 nonconforming use of a property is tantamount to a  
16 restriction on that property to only use it for that  
17 nonconforming use forever, no by right use and that,  
18 essentially, rezones the property because it's not  
19 permitted in R-53.

20 It's completely opposite of the code provisions  
21 for nonconforming use. It's opposite the policy. It  
22 means that any -- that this action of the Board from  
23 2015 would be void because there is a legally  
24 established nonconforming use and all because the  
25 appellants like the open space. As we heard before,

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that the Westwood Tract is really Westwood Park.

That's what this is about.

3                                    This is about trying to freeze the property in  
4                                    time, tried to freeze it in 1953.                                    If it's a legally  
5                                    nonconforming use, you can't expand your use.                                    You

6                                    can't reduce that lot area until we come before the  
7                                    Board as we did in 2015.

8                                    This is a by right use under R-53 without  
9                                    conditions.                                    My client is vested in his right to use  
10                                    the property for R-53 purposes, one of which is  
11                                    multi-family use.                                    The neighbors are not vested in a  
12                                    legally nonconforming use of the property that they  
13                                    don't own.                                    Just go back.                                    Again, this is not a park.

14                                    All notices have been provided by code and then  
15                                    some.                                    As Andy mentioned, we held multiple meetings  
16                                    and the Board hearing in November of 2015 provided  
17                                    the same notices.                                    The same issue was discussed at  
18                                    that point in time.                                    Our development plan was  
19                                    presented in November of 2015.

20                                    Respectfully request that you uphold the zoning  
21                                    administrator's decision and specifically find the  
22                                    property zoned R-53.

23                                    I'll be happy to answer any questions.

24                                    MR. BENBOW:    Two seconds.                                    Seriously.                                    That was  
25                                    good.                                    Two seconds.

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1 MS. MULLEN: Thank you.

2 MR. YORK: How many times did you rehearse that  
3 speech?

4 MS. MULLEN: Just two seconds?

5 MR. PINNOCK: Any questions for Ms. Mullen?

6 MS. HOGUE: Ms. Mullen, I have a question.

7 It was alluded by the other -- by the neighbor

8 that the latest master plan, that it was using

9 information from 1953. Is that correct?

10 I don't know what --

11 MS. MULLEN: Well, I can't speculate as to what

12 the latest master plan would be using. The master

13 plan is undergoing an amendment. As you know, the

14 master plan is a guide, so I think much of what

15 Mr. Carver was talking about, about it being

16 aspirational, that actually relates to the master

17 plan.

18 Zoning is not aspirational. What zoning is, is

19 provides you with your legal rights. And if you keep

20 coming back and having the ability to use argument

21 such as the master plan says it's something else or

22 that you can come in and claim a zoning violation

23 after all the appeal periods have run because you

24 don't like that use, there would be no finality ever.

25 So master plan -- and it may have taken into

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1 account that. A lot of master plans look at what the  
2 current use is, but that is not the zoning. The  
3 zoning is R-53.

4 MS. HOGUE: Thank you.

5 MR. PINNOCK: Any other questions?

6 Okay. Thank you.

7 MR. YORK: You need to ask if anybody else wants  
8 to speak?

9 MR. PINNOCK: Yes. I do know that there are  
10 others who want to speak.

11 MR. YORK: Well, maybe not out there.

12 MR. PINNOCK: But this is the time for others in  
13 support of the zoning administrator to speak so...

14 MR. HALL: Yes. And if I may speak here instead  
15 of at the podium, if that's all right.

16 MR. PINNOCK: We're doing okay. Yeah.

17

18 STATEMENT BY STEPHEN HALL, ESQ.

19 MR. HALL: As I mentioned, my name is Steve

20 Hall. I'm with the City Attorney's Office and I'm

21 here representing the zoning administrator and I just

22 want to -- I don't want to repeat a lot of the

23 details that very capable counsel have already

24 presented about the specifics of the zoning history.

25 We've made court filings in the Circuit Court that

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1 points these things out in sort of a very summary  
2 way.

3 The more critical issue that I think we have  
4 concerning this appeal is the fact that what has been  
5 appealed here isn't the proper subject for an appeal.  
6 What Mr. Davidson did in answering the inquiry about  
7 his 2012 decision was to simply state a legal fact,  
8 that that earlier decision, right or wrong, was  
9 final.

10 Simply stating a legal fact is not a decision  
11 under Virginia Code 15.2-2311 or it shouldn't  
12 because, if so, it means that any time someone  
13 e-mails the zoning administrator challenging  
14 something that happened decades ago and that person  
15 says, I'm sorry, but it's too late to change that,  
16 then they automatically -- the person e-mailing him  
17 automatically gets to appeal. And the precedent that  
18 that would set would be extremely damaging both to  
19 the zoning administrator and to the BZA.

20 So this appeal truly is not proper simply for  
21 that same reason. He was simply stating a legal  
22 fact. It's not a decision that was really  
23 appealable.

24 If you decided to go to the merits, the merits  
25 have already been addressed by others, and I won't

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1 get into those.

2 And, again, the City would love for the Seminary  
3 and for the citizens to work through this any

4 favorable way that they can. The City feels very  
5 much stuck, but the law is what it is, and we need to  
6 protect the zoning administrator from getting sort of

7 sandbagged, so to speak, about late inquires about  
8 things that were done much earlier.

9 And I'm going to hand out a case. There should  
10 be one copy for each of you. This is a case that  
11 we've discussed at length in a court filing that we  
12 sent in today. And I'll hand one over -- some over  
13 to counsel, if you would, I guess, and to the three  
14 of you over there.

15 And it's a Fairfax County case that we've  
16 discussed at some length in a reply brief we filed  
17 this afternoon. And it interprets the predecessor  
18 statute to 2311, but it makes the point extremely  
19 well. And the point simply is this. And I'm going  
20 to read a couple of quotes from this opinion. In  
21 this case, they were dealing with whether or not --  
22 what is the purpose of that -- of the finality and  
23 the necessity of enforcing the 30-day appeal period.

24 And it's very clear. It said, the stated  
25 purpose behind the statute's deadlines was, quote, to

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1 provide a mechanism through which an individual may  
2 rely on the zoning administrator's decision if an  
3 appeal is not taken within 30 days of that decision.

4 The Court also stated that a conclusion to the  
5 contrary would clearly circumvent the legislature's  
6 intention that such decisions provide finality to the  
7 zoning process.

8 And then on pages 3 and 4, if you look at the  
9 asterisks, pages 3 and 4 -- you have to look at the

10 pages. There a little asterisk where the page  
11 numbers are. And I'm just going to go ahead and  
12 quote, "The language of" -- and then it mentions the  
13 predecessor statute, which was 15.1-496.1 --  
14 "provides for a final interpretation by the zoning  
15 administrator which may be relied upon by the party  
16 to whom that decision is rendered. A decision of the  
17 zoning administrator which becomes final absent an  
18 appeal -- absent an appeal without the 30-day period  
19 should allow a builder, contractor, and/or individual  
20 the right to rely on this decision and permit a party  
21 to proceed with the proposed project. A conclusion  
22 to the contrary would have far reaching consequences  
23 on the economic and financial stability of the  
24 construction and development industries."

25 I can't say it any more clearly that builders,

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1                   whether you agree with them or not, need to be able  
2                   to rely on decisions that are made.

3                   And I would also add, too, and, you know, we  
4                   pointed this out in court filings already, is that  
5                   the homeowners in the area have been following the  
6                   plan of development very carefully.                   This has been  
7                   publicly known.                   It's been widely known.                   You know,  
8                   if there was a concern about the plan of development,  
9                   that could have been appealed.                   It wasn't.

10                   The November 2015 BZA hearing that has been  
11                   referenced before and Mr. Campbell, whose a friend of  
12                   many years, but spoke at and objected to the size of  
13                   the project.

14                   So, you know, all of these things have been  
15                   known for some time and people have been following  
16                   these issues for some time.                   And the bottom line is  
17                   that it's simply too late to revisit some of those  
18                   things.                   And the one thing they are trying to revisit  
19                   is not proper.

20                   And I take no delight in saying that, but the  
21                   law is what it is and we do hope that, you know, the  
22                   Seminary and the citizens can work together  
23                   absolutely as much as possible.                   We feel caught in  
24                   between, but we can't change the law and we simply  
25                   don't have the basis for saying that the developer

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1 can't do what they have a legal right to do so...

2 MS. DRIGGS: Does that count as a rebuttal again  
3 from the zoning administrator?

4 Does our attorney have another rebuttal?

5 MR. PINNOCK: No, it does not. This is in the  
6 order to testimony. This is now looking for --

7 MR. HALL: And I was not here as a witness. I  
8 was here as an attorney, so I don't know if you  
9 needed to swear me in.

10 MR. YORK: We're asking for -- we're allowing  
11 anyone who wishes to speak in support of the zoning  
12 administrator has a right to speak for ten minutes.  
13 So if there is anybody else here who wants to speak  
14 in support of the zoning administrator for ten  
15 minutes, they have that right.

16 MR. PINNOCK: There is no downstream rebuttal.  
17 Sorry.

18 Is there anyone else here to speak in support of  
19 the unnamed zoning administrator?

20 All right. At this time, we're going to close  
21 it up and deliberate and we will render a decision.

22 MR. BENBOW: Do you want to take a break or --

23 MR. PINNOCK: I'm going to ask the members if  
24 they need a break.

25 MR. WINKS: Does not the representative of the

1 community have another chance to speak a final  
2 rebuttal?

3 MR. BENBOW: Not under the rules. No, sir.

4 MR. WINKS: Okay.

5 MR. YORK: We're taking a break.

6 MR. PINNOCK: We're taking a break. 7  
(Break, 5:05 p.m. - 5:14 p.m.)

8 MR. PINNOCK: All right. To my fellow Board  
9 members, you have heard a lot and in the interest of  
10 beginning a discussion, I am looking for a motion as  
11 to the appeal.

12 MR. YORK: Well, I'll start it by saying that 13 I'm --

14 MR. BENBOW: Hold on one second.

15 MR. YORK: Well, I'm going to make a motion.

16 I'm not quite sure at this point how much I'm going  
17 to put in it, but before I make the motion, I want  
18 to say something about my sharing of the concerns  
19 that was expressed by people in the neighborhood  
20 and point out the fact that my own house is only a  
21 block from industrial zoning so I think I have some  
22 idea of what the potential is for a situation like  
23 this.

24 But as it's been stated over and over again  
25 throughout this whole procedure, we're bound by the

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1 laws that guide us in this case.

2 So I'm going to move that the appeal be denied,  
3 and the question is, what elements of the appeal  
4 should I bring up in that denial?

5 I've already indicated, at least from my point  
6 of view, that we should not make a ruling on whether  
7 or not the applicants are appealed or not. I think  
8 that's a matter that if it goes to court that the  
9 Court --

10 MR. PINNOCK: Aggrieved.

11 MR. YORK: I mean, aggrieved. I'm sorry.  
12 Aggrieved.

13 -- as to whether we -- that we should make a  
14 determination as to whether the appellants are  
15 aggrieved or not. I don't think we should do that  
16 and leave that to some future date.

17 The law -- vesting law in Virginia states that  
18 if there has been a specific governmental act that  
19 approves or indicates that a development is  
20 permitted, like a zoning confirmation letter, a plan  
21 of development review, a special exception issue by  
22 the Board of Zoning Appeals, that any of those are  
23 presumed to be correct unless they're appealed within  
24 30 days. That's what it says in that vesting  
25 provision. It says, "They are assumed to be valid

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1 unless they're appealed within 30 days."

2 In this case, the letter that was first received

3 by the zoning administrator, depending upon how you

4 read this, either was simply asking him to correct a

5 violation or was asking him to reconsider his 1912

6 opinion. If there's a violation of the zoning

7 ordinance --

8 MR. PINNOCK: 2012.

9 MR. SAMUELS: 2012.

10 MR. YORK: 2012.

11 What did I say?

12 MR. PINNOCK: 1912.

13 MR. YORK: If there is a violation of the zoning

14 ordinance, we don't have the power to enforce it.

15 You have to go to court and get a writ of mandamus,

16 which may or may not prevail. But the bottom line is

17 that that's not something we can address. We cannot

18 order the zoning administrator to enforce the zoning

19 ordinance. He made the determination in 1912 --

20 MR. SAMUELS: 2012.

21 MR. YORK: -- in 2012 that the property was

22 zoned R-53 without conditions and that the use of the

23 property for proposed multi-family development was

24 permitted as a matter of right. So I don't feel that

25 the appeal in this case was timely filed and we could

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1 let it go just at that, but I think it's probably  
appropriate for us to go on and deal with the merits  
3 of the case as well just to make sure that we've  
4 covered all the bases.

5 As was pointed out, the 1953 rezoning may have  
6 been approved after having given some considerations  
7 to some conditions and representations that were  
8 made, but there was no such thing as conditional  
9 zoning in 1953. And even if there were, there is  
10 now.

11 Council cannot force conditions on a rezoning  
12 unless the applicant agrees to those conditions.  
13 even if there had been conditional zoning in '53, it  
14 still wouldn't have been legal to impose those  
15 conditions on the ordinance, but that's all  
16 irrelevant because four times after that, City  
17 Council with proper notice with numerous, numerous  
18 public hearings, because I was involved in many of  
19 them, made a decision to change the zoning of this  
20 property.

21 There were specific meetings in the specific  
22 neighborhoods. They was well attended. I was there.  
23 I heard people. There was discussion about this  
24 property and City Council met all of the legal  
25 requirements for adopting ordinances.

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1 MR. YORK: No, BZA doesn't.

2 MR. HALL: No. I'm representing him, not these  
3 guys.

4 MS. HOGUE: So there are some fine points of law

5 that we have been presented by Mr. Gordon and by

6 Mr. Condlin and by Ms. Roth that are confusing.

7 I do think that the fact that the zoning

8 administrator did respond on March 24, 2017, that he

9 was not going to do further investigation, I do think

10 that opened a door. And not being an attorney, I do

11 think that 15.2-2311, Mr. Gordon pointed out a few

12 things that city code does ask the zoning

13 administrator to put best efforts forth to detect

14 correctness.

15 I never attend these meetings without asking if

16 the neighborhood has gotten their day of being able

17 to say what they want to say. And they did in

18 November 2015, but we did not know the 1953.

I think

19 I would have voted differently if I had known some of

20 the information that Ms. Driggs had uncovered.

I'm

21 not sure that I would have voted the same.

22 The Seminary doesn't seemingly -- has not

23 fostered a positive sense of community to the

24 neighborhood and that bothers me given that they're

25 supposed to be our role models for how to get along

1 and how to foster community spirit.

2 I will use a child. A child only knows what a  
3 child knows. They don't know that they need glasses.  
4 They don't know until somebody identifies that they  
5 can see or not see well.

6 The neighborhood didn't know. They came to the  
7 meetings. They asked the Seminary in good faith to

8 work with them and that has not happened. I don't

9 think -- I totally agree with Mr. York. We do not

10 have the resources to decide if there has been a  
11 grieving -- a grievance against any particular  
12 neighbor that have brought this case because I don't  
13 think any of us bring the legal ability or the  
14 engineering ability to know specifically because a  
15 lot of houses flood when it rains in Richmond.

16 But I do want to hear the neighborhood's  
17 thoughts because I think they did a lot of history  
18 and a lot of homework. And there were over a hundred  
19 people in this room that I tried to count.

20 And I understand the fine legal points, but I  
21 also have questions about which legal points are  
22 correct or which legal points are not correct. And

23 so I'm just bringing up those points to make sure  
24 that we do have a narrow field, but going back to  
25 what we said we were going to look at, I do think

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1 that the door was open for -- to take a look at this  
2 given the March 24th letter that the zoning  
3 administrator said and I do question what  
4 Section 15.2-2311 means for the neighborhood.

5 MR. PINNOCK: Other discussion or comments?

6 I'm going to agree with my colleague, Mr. York,  
7 and I think for me it is just a simple question of  
8 did the zoning administrator err in his judgment or  
9 his decision? And, unfortunately, I think that, as  
10 Mr. Carver stated in his testimony, the law is very  
11 clear and it is in black and white.

12 As all of my colleagues have said, our  
13 parameters are very narrow, and I do not risk  
14 judgment on anyone as to where they stand or not, but  
15 it is quite clear that I believe that our zoning  
16 administrator did his job and what he was supposed to  
17 do.

18 So motion is seconded.

19 Any further discussion?

20 All those in favor of the motion to deny the  
21 appeal, please raise your hand. Say "aye."

22 All those against?

23 MS. HOGUE: Against.

24 MR. PINNOCK: Any abstentions other than  
25 Mr. Poole?

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The appeal is denied.

And I want to thank all of you for coming out. 3

(Whereupon, this proceeding was concluded at 5:25 p.m.) 5



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 were thereafter transcribed under my direction; and that the

10 foregoing contains a true and correct verbatim transcription of  
11 all portions of the proceedings.

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 \_\_\_\_\_, 2017.

18 My commission expires September 30, 2017.

19 Notary Registration No. 7275579.

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\_\_\_\_\_  
JACQUELIN O. GREGORY-LONGMIRE

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RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that an appeal by Rev. Ben Campbell, Win & Roger Loria, Katherine Wetzel, Pierce Homer, Mary Swezey, William T. Van Pelt, Ruth Eggleston, Tim & Stephanie Socia, Bruce B. Stevens, Sarah Driggs based on Virginia Code Section 15.2 2286(4), Richmond Code Section 30-1000.1 and Richmond Code Ordinance No 53-21-31 (1953) of the Zoning Administrator's March 24, 2017 determination that a decision rendered on May 16, 2012 cannot be changed, modified or reversed based on Virginia Code Section 15.2-2311 & City Code Section 30-1040.1:1 for property identified by the appellants as Tax Map No 000-1230-001 (N000-1230-001); Westwood Tract be denied based on the record before the Board.

ACTION OF THE BOARD: Denied (4-1)

Vote to Deny

affirmative: Winks, Pinnock, York, Samuels

negative: Hogue

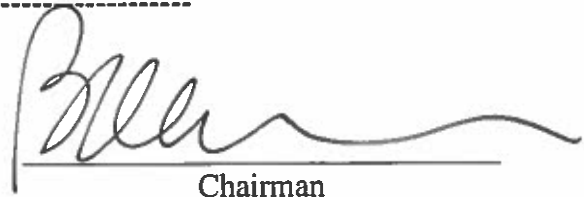
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Upon motion made by Mr. York and seconded by Ms. Hogue, Members voted (5-0) to adopt the Board's May 3, 2017 meeting minutes.

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The meeting was adjourned at 4:30 p.m.

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Chairman

  
Secretary

