



CITY OF RICHMOND

DEPARTMENT OF
PLANNING AND DEVELOPMENT REVIEW
BOARD OF ZONING APPEALS

BOARD OF ZONING APPEALS

MEETING MINUTES

WEDNESDAY, MAY 2, 2018

On Wednesday, May 2, 2018, the Board of Zoning Appeals held a public hearing in the Fifth Floor Conference Room, 900 East Broad Street, at 1:00 p.m.; display notice having been published in the Richmond Legacy Newspaper on April 18 and 25, 2018 and written notice having been sent to interested parties.

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

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

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

CASE NO. 14-18

APPLICANT: Walter and Karen Emroch

PREMISES: 205 LOCKGREEN COURT
 (Tax Parcel Number W022-0295/066)

SUBJECT: An appeal of Walter and Karen Emroch that an October 19, 2017 decision of the Zoning Administrator to withdraw a June 14, 2017 Notice of Violation and approve the landscaping contained in the buffer area at 205 Lockgreen Court was in error. The specific Ordinances referenced in the appeal are Ordinance No. 85-138-130 (Lockgreen CUP Ordinance); Ordinance No. 89-212-201 (Amendatory Lockgreen CUP Ordinance).

APPEAL was filed with the Board on November 1, 2017, based on Section 17.20(a) of the City Charter.

APPEARANCES:

For Applicant: Karen Emroch
David Thomas
Dick Bennett
Charles L. Menges
Phillip Memitt
David S. Cohn

Against Applicant: Julie Kerr
Glenn Moore

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

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that an appeal of Walter and Karen Emroch that an October 19, 2017 decision of the Zoning Administrator to withdraw a June 14, 2017 Notice of Violation and approve the landscaping contained in the buffer area at 205 Lockgreen Court was in error. The specific Ordinances referenced in the appeal are Ordinance No. 85-138-130 (Lockgreen CUP Ordinance); Ordinance No. 89-212-201 (Amendatory Lockgreen CUP Ordinance) be denied based on the record before the Board.

ACTION OF THE BOARD: Denied (4-1)

Vote to Deny

affirmative: Pinnock, York, Samuels, Sadid

negative: Hogue

CASE NO. 15-18

APPLICANT: Christopher, Robert & Judith Hope

PREMISES: 1603 PARK AVENUE
(Tax Parcel Number W000-0665/010)

SUBJECT: A building permit to construct a one-story addition (6.86' x 12.25') on the rear of a single-family (detached) dwelling.

DISAPPROVED by the Zoning Administrator on March 9, 2018, based on Sections 30-300, 30-412.5(1)b, 30-412.6. & 30-620.1(c) of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential District), the side yard (setback) and lot coverage requirements are not met. A side yard of three feet (3') is required; 0.5' is proposed. A maximum lot coverage of fifty-five percent (55%) is permitted. A current nonconforming lot coverage of approximately seventy percent (70%) exists and the proposed addition would increase the lot coverage to 74.3%. Lot coverage of 1,025 square feet is permitted; 1,302.8 square feet (70%) exists and 1,384.7 square feet (74.3%) is proposed.

APPLICATION was filed with the Board on March 9, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Robert Hope

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicants, Christopher, Robert and Judith Hope, have requested a variance to construct a one-story addition on the rear of a single-family detached dwelling for property located at 1603 Park Avenue. Mr. Robert Hope testified that he purchased the single-family dwelling in January of 2016. Mr. Hope noted that they were moving in this coming Thursday. Mr. Hope stated that the lot is irregular in shape and is the smallest lot in the block. Mr. Hope explained that due to the location of the dwelling on the lot that there was no potential to extend the dwelling to the rear. Mr. Hope explained that the proposed addition was to provide adequate kitchen facilities thereby modernizing the dwelling to reflect current livability standards. Mr. Hope pointed out that the proposed kitchen addition represents an extension of the existing house line. Mr. Hope indicated that the neighbor to the east who is most directly affected by the proposed addition is Kuba Kuba. Mr. Hope stated that his neighbors were in support of the

requested variance. Mr. Hope concluded by stating that the size and irregular shape of the lot poses a hardship.

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. Mr. Hope stated

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a variance from the side yard (setback) and lot coverage requirements be granted to Christopher, Robert & Judith Hope for a building permit to construct a one-story addition (6.86' x 12.25') on the rear of a single-family (detached) dwelling.

ACTION OF THE BOARD: (5-0)

Vote to Grant

affirmative: Pinnock, York, Samuels, Hogue, Sadid

negative: None

CASE NO. 16-18

APPLICANT: The Maggie Walker Community Land Trust

PREMISES: 211 WEST HOME STREET
(Tax Parcel Number N000-0369/001)

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

DISAPPROVED by the Zoning Administrator on March 15, 2018, based on Sections 30-300, 30-412.5(1)a & 30-630.1(a) (1) of the zoning ordinance for the reason that: In an R-6 (Single-Family Attached Residential District), the front yard (setback) requirement is not met. A front yard of fifteen feet (15') is required along Greenwood Avenue; 11 feet ± is proposed.

APPLICATION was filed with the Board on March 15, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Jonathan Knopf

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Maggie Walker Community Land Trust, has requested a variance to construct a new single-family detached dwelling for property located at 211 W. Home Street. Mr. Jonathan Knoph, representing the applicant, testified that they were a nonprofit 501C3 developer of affordable single-family homes. Mr. Knoph stated their objective was to create home ownership opportunities and that they purchased the subject lot from the Housing Authority at the end of 2017. Mr. Knoph explained that the target market is a low to moderate income buyer. Mr. Knoph noted that there was a home located on the premises that was constructed in the early 1900s but was demolished in 2011. Mr. Knoph stated that the proposal is to construct a home that is similar in nature to the old historic home that was located on the lot. Mr. Knoph explained that due to the lotting pattern that front yards are required along West Home Street and Greenwood Avenue. Mr. Knoph further explained that the variance was being requested along the Greenwood Avenue frontage. Mr. Knoph noted that a 15 foot front yard is required and that 11 feet are being proposed. Mr. Knoph indicated that the proposed dwelling is consistent with the architectural character of Barton Heights and that reducing the house size would not be sympathetic to the surrounding neighborhood which reflects housing widths in the upper 20s. Mr. Knoph noted that the vacant lot represented a missing tooth in the block frontage. Mr. Knoph stated that the surrounding neighbors as well as the Southern Barton Heights Neighborhood Association were in support of the proposed project.

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) requirement be granted to The Maggie Walker Community Land Trust for a building permit to construct a new single-family detached dwelling, subject to substantial compliance with the elevation plans submitted to the Board including provision of a cementitious siding.

ACTION OF THE BOARD: (5-0)

Vote to Grant Conditionally

affirmative: Pinnock, York, Samuels, Hogue, Sadid

negative: None

CASE NO. 17-18

APPLICANT: Cava Capital LLC

PREMISES: 611 CHEATWOOD AVENUE
(Tax Parcel Number N018-0480/009)

SUBJECT: Building permits to divide an existing lot into three (3) lots and to construct a new single-family detached dwelling on each of the vacant lots.

DISAPPROVED by the Zoning Administrator on March 16, 2018, based on Sections 30-300, 30-410.4 & 30-410.5(2) of the zoning ordinance for the reason that: In an R-5 (Single-Family Residential District), the lot area, lot width, and side yard (setback) requirements are not met. Lot areas of six thousand square feet (6,000 sq ft) and lot widths of fifty feet (50') are required. For zoning purposes, one (1) lot having an area of 16,250 square feet and a lot width of one hundred and twenty-five feet (125') currently exists; lot areas of 4,875 and lot widths of 37.5 feet are proposed for each 609 and 607 Cheatwood Avenue. Five foot (5') side yards are required; side yards of 3.8' are proposed for each 609 and 607 Cheatwood Avenue.

APPLICATION was filed with the Board on March 16, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

APPEARANCES:

For Applicant: Kelly Henderson

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, Cava Capitol LLC, has requested a variance to divide an existing lot into three lots and to construct a new single-family detached dwelling on each of the vacant lots for property located at 611 Cheatwood Avenue. It was explained that 607, 609 and 611 Cheatwood Avenue are considered as one lot having a lot area of 16,250 ft.² and a lot width of 125 feet. Ms. Kelly Henderson, representing the applicant, testified that the existing house on 611 Cheatwood Avenue is being renovated and the proposal is to construct new single-family homes on 607 and 609 Cheatwood Avenue. It was further explained that 607 and 609 Cheatwood would have lot areas of 4875 ft.² and lot widths of 37.5 feet. The lot width and lot area for 611 Cheatwood Avenue would be 50 feet and 6500 ft.². Ms. Henderson explained that the proposed lot widths are more consistent with those in the neighborhood than the current lot width of 125 feet. Ms. Henderson stated that the intent of Cava Capitol LLC is to provide affordable housing. Ms. Henderson stated that there was no objection to the project from the surrounding neighbors.

In response to question from Mr. York, Ms. Henderson explained that if only one additional house were to be constructed that it would encompass a lot width of 75

feet which is significantly larger than those in the neighborhood. Mr. Davidson stated that it appeared as if lots were originally platted as 25 foot wide lots.

In response to a question from Mr. Pinnock, Ms. Henderson stated that the house would include a full porch and cementitious siding.

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 lot area, lot width, and side yard (setback) requirements be granted to Cava Capital LLC for building permits to divide an existing lot into three (3) lots and to construct a new single-family detached dwelling on each of the vacant lots, subject to substantial compliance with the elevation plans submitted to the Board including provision of a full front porch and cementitious siding.

ACTION OF THE BOARD: (5-0)

Vote to Grant Conditionally

affirmative: Pinnock, York, Samuels, Hogue, Sadid

negative: None

CASE NO. 18-18

APPLICANT: City of Richmond Department of Public Works

PREMISES: 601 NORTH 39th STREET and 3800-H EAST RICHMOND ROAD
(Tax Parcel Number E000-1658/001 & E000-1660/001)

SUBJECT: A building permit to construct a new police equestrian center (5,892 SF) with accessory parking.

DISAPPROVED by the Zoning Administrator on March 16, 2018, based on Sections 30-300, 30-410.1 & 30-402.1(2) of the zoning ordinance for the reason that: In an M-1 (Light Industrial District) & R-5 (Single-Family Residential District), the proposed use is not permitted. Uses required for the performance of governmental functions, primarily intended to serve residents of the adjoining neighborhood, are permitted. The proposed use by the Police Department services the entire City of Richmond.

APPLICATION was filed with the Board on March 16, 2018, based on Section 17.20(c) of the Charter of the City of Richmond.

APPEARANCES:

For Applicant: Lacy Salomone
Greg Nelson

Against Applicant: None

FINDINGS OF FACT: The Board finds from sworn testimony and exhibits offered in this case that the applicant, City of Richmond Department of Public Works is requesting a special exception to construct a new police equestrian with accessory parking for property located at 601 N. 39th Street and 3800-H E. Richmond Road. Ms. Lacey Salomone, representing the applicant, testified that application is being made under §17.20 (c) of the City Charter. Ms. Salomone explained that the project consists of designing and constructing a new equestrian center for the Richmond Police Department's mounted unit. It will replace the aging and operationally deficient stable currently located at 801 Brooke Road. The new building will consist of a wood frame structure with metal wall and roof panels and associated site amenities. The proposed new building will include a main floor level to accommodate an administration area for the mounted officers and a stable area for horses and related functions such as a tack room, wash bays,

laundry room and farrier area. Site amenities will include a parking area for visitors, staff, police vehicles and horse trailers.

Speaking in support, Mr. Greg Nelson with the Timmons Group stated that in accordance with §17.20 (c) of the City Charter the proposed equestrian facility will adequately safeguard the health safety and welfare of the occupants of the adjoining and surrounding property, will not unreasonably impair an adequate supply of light and air to adjacent property, will not increase congestion in the streets and will not increase public danger from fire or otherwise affect public safety. Mr. Nelson noted that the project had been approved by the Urban Design Committee and Planning Commission. Mr. Nelson indicated that the project was supported by the Fulton Hill and Church Hill neighborhood associations. Mr. Nelson stated that they had reached out to 28 surrounding property owners and there was no opposition to the proposed project. Mr. Nelson noted that the Police Department went door-to-door explaining the nature of the project.

The Board finds that evidence shows that the proposed equestrian facility will adequately safeguard the health safety and welfare of the occupants of the adjoining and surrounding property, will not unreasonably impair an adequate supply of light and air to adjacent property, will not increase congestion in the streets and will not increase public danger from fire or otherwise affect public safety and as such complies with the requisite provisions of §17.20 (c) of the City Charter.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS that a request for a special exception from the permitted use be granted to the City of Richmond Department of Public Works for a building permit to construct a new police equestrian center (5,892 SF) with accessory parking.

ACTION OF THE BOARD: (5-0)

Vote to Grant

affirmative: Pinnock, York, Samuels, Hogue, Sadid

negative: None

CASE NO. 19-18 (CONTINUED TO THE JUNE 6, 2018 MEETING WITHOUT FEE)

APPLICANT: Carver Homes LLC

PREMISES: 808 ½ and 810 WEST CLAY STREET
(Tax Parcel Number N000-0352/030 & 016)

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

DISAPPROVED by the Zoning Administrator on March 21, 2018, based on Sections 30-300 & 30-413.5(1) of the zoning ordinance for the reason that: In an R-7 (Single-And Two-Family Urban Residential District), the lot area and lot width requirements are not met. Lot areas of three thousand six hundred square feet (3,600 SF) and lot widths of thirty feet (30') are required. For zoning purposes, one (1) lot having a lot area of 6,038.94 square feet and a lot width of sixty feet (60') currently exists; lot areas of 2,946.97 square feet (#808 1/2) and 3,073.97 square feet (#810) and a lot width of 29.65 feet (#808 ½) are proposed.

APPLICATION was filed with the Board on March 16, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

CASE NO. 20-18 (WITHDRAWN BY APPLICANT)

APPLICANT: Elizabeth W. Hawthorne

PREMISES: 3134 and 3136 PARKWOOD AVENUE
(Tax Parcel Number W000-1404/043 & 044)

SUBJECT: A building permit to construct a new single-family detached dwelling (#3134).

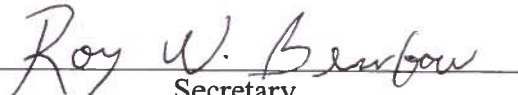
DISAPPROVED by the Zoning Administrator on March 20, 2018, based on Sections 30-300, 30-412.4(1), 30-412.5(1)b & 30-630.1(a) of the zoning ordinance for the reason that: In an R-5 (Single-Family Residential District), the lot area, lot width and side yard (setback) requirements are not met. Lot areas of six thousand square feet (6,000 SF) and lot widths of fifty feet (50') are required. For zoning purposes, one (1) lot having a lot area of 6,000 square feet and a lot width of 50.0 feet currently exists; lot areas of 3,048 square feet (#3136) and 2,952 SF (#3134) and lot widths of 25.4 feet (#3136) and 24.6 feet (#3134) are proposed. Five foot (5') side yards are required; 3.0 (existing dwelling #3136), none for the existing rear metal garage (#3136) along the eastern property line and 3.1 feet (proposed vacant lot #3134) are proposed.

APPLICATION was filed with the Board on March 16, 2018, based on Section 15.2-2309.2 of the Code of Virginia.

Upon motion made by Mary Jane Hogue and seconded by Roger York, Members voted (4-0) to adopt the Board's April 4, 2018 meeting minutes.

The meeting was adjourned at 3:30 p.m.


VICE Chairman


Secretary

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V I R G I N I A :

ORIGINAL

CITY OF RICHMOND
BOARD OF ZONING APPEALS

CASE NO. 14-18

LAND USE ADMINISTRATION
900 EAST BROAD STREET, FIFTH FLOOR
RICHMOND, VIRGINIA

MAY 2, 2018

1:00 P.M.

REPORTED BY:
GRACE F. LENGMUELLER, RPR, CCR
COURT REPORTER/NOTARY PUBLIC

A P P E A R A N C E S

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Board Members:

Burchell Pinnock, Chairman

Roger York

Kenneth Samuels

Mary J. Hogue

Susan Sadid

Roy W. Benbow, Secretary

Zoning administrator - William Davidson

C O N T E N T S

	PAGE
1	
2	
3	PRELIMINARIES 4
4	
5	STATEMENT BY KAREN EMROCH 7
6	STATEMENT BY DAVID THOMAS 12
7	STATEMENT BY PHILLIP MERRITT 17
8	STATEMENT BY WILLIAM DAVIDSON 19
9	
10	QUESTIONS FROM THE BOARD 25
11	
12	STATEMENT BY DAVID S. COHN 31
13	STATEMENT BY CHARLES L. MENGES 34
14	STATEMENT BY DICK BENNETT 38
15	STATEMENT BY GLENN MOORE 39
16	STATEMENT BY JULIE KERR 41
17	STATEMENT BY WILLIAM DAVIDSON 50
18	
19	QUESTIONS FROM THE BOARD 51
20	
21	DELIBERATIONS 70
22	DECISION 75
23	REPORTER'S CERTIFICATE 76
24	
25	

P R O C E E D I N G S

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3 MR. PINNOCK: Good afternoon, ladies and
4 gentlemen. This is a regular monthly meeting of the
5 Board of Zoning Appeals of the City of Richmond. The
6 board is comprised of five of your fellow citizens who
7 are appointed by the circuit court and serves without
8 compensation. Three affirmative votes are required to
9 approve any variance or grant an appeal.

10 The board is assisted by a secretary who has
11 no voting power. The zoning administrator and his
12 assistant are also present but do not vote. The
13 board's powers are very limited and are set forth in
14 the Code of Virginia, the City Charter, and Richmond
15 City Code. The board does not have the power to rezone
16 property but may only grant variances from specific
17 zoning requirements as they apply to a particular
18 property or grant appeals from decisions of the zoning
19 administrator or grant certain exceptions to the zoning
20 regulations.

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

1 applicant, then others who wish to speak in favor of
2 the case, then finally from persons in opposition. In
3 the case of a variance or special exception request,
4 the applicant, proponents, or persons aggrieved under
5 Section 15.2-2314 of the Code of Virginia shall be
6 permitted a total of six minutes each to present their
7 case.

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

14 In the case of an appeal of the decision of
15 the zoning administrator, the appellant or appellant's
16 representative and the zoning administrator shall be
17 permitted a total of ten minutes to present their
18 case-in-chief and their rebuttal. The appellant or
19 appellant's representative and zoning administrator
20 shall be required prior to beginning their presentation
21 to declare to the board how many of their allotted
22 minutes shall be devoted to their case-in-chief and
23 their rebuttal.

24 Following the presentations of the appellant
25 and zoning administrator, other interested parties

1 shall be permitted a total of ten minutes to present
2 their views. Interested parties are defined as a
3 property owner other than -- other than the appellant
4 whose property is the subject of an appeal and the
5 neighborhood constituency consisting of neighbors and
6 neighborhood associations.

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

14 Case No. 19-18, 808 1/2 and 810 West Clay
15 Street has been continued, so if you're hear for that
16 case, it will not be heard at this time.

17 And Case No. 20-18, 3134 and 3136 Parkwood
18 Avenue has been withdrawn.

19 Okay. The first case, Case No. 14-18, an
20 appeal of Walter and Karen Emroch, that an
21 October 19th, 2017, decision of the zoning
22 administrator to withdraw a June 14th, 2017, notice of
23 violation and approve the landscaping contained in the
24 buffer area at 205 Lockgreen Court was an error. The
25 specific ordinances referenced in the appeal are

1 Ordinance No. 85-138-130, the Lockgreen CUP ordinance,
2 and Ordinance No. 89-212-201, the amendatory Lockgreen
3 CUP ordinance.

4 Everyone expecting to testify in this case
5 please stand and raise your hand, the right one.

6 (All participants to testify were sworn.)

7 MR. PINNOCK: Thank you all.

8 So we will start this with the zoning
9 administrator.

10 MR. BENBOW: The appellant.

11 MR. PINNOCK: No. Sorry. You sure?

12 MR. BENBOW: Uh-huh.

13 MR. PINNOCK: Okay. So the appellant.

14 And if you would like to let us know how you
15 plan to use the ten minutes.

16 MS. EMROCH: I ...

17 MR. THOMAS: Nine -- nine and one, sir.

18 MR. PINNOCK: Oh, okay. Thank you, sir.

19 MR. THOMAS: We'll reserve one minute,
20 please.

21 MS. EMROCH: I'm a little nervous.

22 Thank you for letting me speak today. I'm
23 Karen Emroch, and the following is our chronological
24 history with the CUP ordinance, which predates the
25 purchase of our purchase -- of our current home at

1 402 Old Locke Lane.

2 When Lockgreen was developed -- developed and
3 was approved by the city in 1985, we were neighboring
4 residents in Hillcrest and understood the CUP ordinance
5 guaranteed a 50-foot screening buffer on Lockgreen lots
6 backing up to surrounding properties. That guarantee
7 was part of what made us comfortable buying our current
8 home.

9 When the purchase of our property in 1989 --
10 when we purchased our property in 1989, we felt secure
11 that our privacy and property values were protected by
12 the 50-foot screening buffer along the northern side of
13 our property, the side that borders Lockgreen. The
14 same year, the CUP ordinance was amended by a proper
15 notice and hearing procedures, and no changes were made
16 in the 50-foot requirements.

17 On January 15th, 1999, we received a letter
18 from senior planner, Roger H. York, Jr. The letter,
19 among other items, described a possible change that
20 could affect our property, specifically the following:
21 Consideration is being given to the elimination of the
22 requirement that additional plannings be provided to
23 affect a more opaque visual screen.

24 I called Mr. York. He came to our house on
25 January 21st, 1999, and at 1:30, we toured along the

1 buffer on all three of the adjacent lots to Lockgreen,
2 and I told him that we were opposed to eliminating the
3 buffer. We thank Mr. York for following the procedures
4 to properly uphold the ordinance.

5 The buffer screening change was not approved.
6 This was 19 years ago. The CUP ordinance is still in
7 effect and should be followed until 2035. My point in
8 bringing up the amendment and the letter is to remind
9 everyone there is a process that exists to change an
10 ordinance. If the Kerrs objected to the CUP
11 requirement, there was a procedure for changing the
12 ordinance before their improper and devastating
13 clearing.

14 In late November of 2015, we asked the Kerrs
15 why they were clearing the 50-foot CUP buffer and when
16 they would replant. They informed us that they had
17 permission from Lockgreen Homeowners Association and a
18 permit from the city to clear. I next contacted Philip
19 Adams, management administrator for Lockgreen, and he
20 led me to believe that the Kerrs did have a permit.

21 So then on December the 11th, 2015, I went to
22 the zoning department at city hall to see the permit,
23 and while there, obtain details on replanting plans.
24 Mr. Davidson told me that the Kerrs were, and I quote,
25 in violation of everything. And there was no permit to

1 clear, only a permit to encroach their house into the
2 RPA. This is when I learned that the Kerrs had never
3 asked zoning for permission to clear. The Kerrs only
4 asked DPU for permission to clear to the chain-link
5 fence.

6 I point out the Julia Kerr request letter to
7 DPU you received in your brief filed with BZA,
8 Exhibit 7. It included that portion of the 50-foot CUP
9 buffer that extended to a chain-link fence, which was
10 10 to 15 feet into that 50-foot CUP buffer.

11 On December the 23rd, 2015, Mr. Davidson did
12 issue a warning to the Kerrs, but they had already
13 cleared 10 to 15 feet along the 425-plus linear feet of
14 the CUP buffer bordering on our property so that the --
15 at the time, the CUP buffer was already reduced from a
16 depth of 50 feet to a depth of 35 to 40 feet. And
17 Mr. Davidson never addressed this. It was 18 months
18 before Mr. Davidson issued the violation on June 14th,
19 2017.

20 We were extremely distressed throughout this
21 18-month period because clearing continued in the
22 50-foot CUP buffer. That's Exhibit 23 and 24. The
23 Kerrs continued clearing to their property line a
24 portion of which is on our side of the creek while
25 under a warning. It was even more baffling and also

1 disheartening when four months after the June 14th
2 violation was issued, Mr. Davidson on October 19th,
3 2017, decided the Kerrs had met the CUP ordinance
4 requirement for type and number of trees when no more
5 trees had been added during those four months, and
6 the -- many of the trees that Mr. Davidson counted were
7 not even evergreens.

8 Mr. Davidson failed to consider the impact
9 the loss of the improperly removed screening had and
10 would have on our property. We now have a gash in
11 screening on our northern border that creates the look
12 and feel that our backyard is another Lockgreen common
13 area and that we are living in a development. The
14 height of the former screening buffer is shown on
15 Exhibits 5 and 6 is gone. It's not there anymore.

16 In closing, when Mr. Davidson counted trees,
17 he did not consider screening. And when he decided the
18 Kerrs had planted enough, he either wittingly or
19 unwittingly enabled the Kerrs to sidestep the process
20 required by law to change a CUP ordinance. The CUP
21 ordinance was to protect us as adjoining property
22 owners, but we never got the promise and agreed-upon
23 protections.

24 And since I referred to a letter that was not
25 in your files, if anybody wants a copy, I have my

1 original copy from 1999, and I have five copies if
2 anybody wants to --

3 MR. BENBOW: If you have your presentation,
4 I'd like it, because I can use that later on. You read
5 from it.

6 MS. EMROCH: Okay.

7 MR. BENBOW: If you have a copy.

8 MS. EMROCH: Let me get you -- well, it's the
9 only -- where did I put it?

10 MR. THOMAS: We have extra copies.

11 MS. EMROCH: Oh, okay.

12 MR. THOMAS: Thank you. My name is David
13 Thomas, representative of the Emrochs, and I'll be as
14 quick as I can on this.

15 The CUP buffer exists -- it basically has two
16 requirements. And what makes this an interesting and
17 frankly somewhat easy case for the question before
18 you -- and there's no real argument that the decision
19 of the zoning administrator doesn't comply with the
20 ordinance. The ordinance requires that the buffer
21 areas be supplemented with a minimum of 10 evergreen
22 trees and a maximum of 20 such evergreen trees per
23 100 linear feet. The buffer area here is 423 linear
24 feet, which means that an acceptable plan, whatever
25 else it has to have, has to have at least 42 and no

1 more than 85 evergreen trees, and the Howeth plan
2 relied on by the administrator to withdraw the notice
3 of violation doesn't. There's simply no way to count
4 it that gets you up to the minimum number of trees
5 required.

6 But the ordinance also contains a -- what
7 I'll call a normative requirement to repair and replace
8 the kind of screening that existed before, for exactly
9 this reason. When you put a development like Lockgreen
10 in the middle of an otherwise existing neighborhood,
11 you have to minimize the impacts on the neighbors, and
12 the CUP ordinance was designed to do that, to
13 supplement the existing trees, to enhance the screening
14 effect -- this all -- language is all directly from the
15 ordinance -- to protect the adjoining properties and to
16 eliminate any potential adverse impact. When you build
17 a development, you have to make sure your impact on the
18 neighbors is minimal.

19 This is what the Emrochs had before. These
20 pictures are from a while ago, and -- but you can see
21 the level of screening that exists even in the middle
22 of winter. Deciduous trees and a mix of evergreens
23 provide a clear space. And just for reference, this is
24 where the house next door is going to end up down the
25 road.

1 And this is the view from the other
2 direction. This is the view facing from the Kerrs'
3 house back to the Emrochs. And what you can see is
4 only a sliver is currently visible. This is the
5 screening that was in place prior to clearing.

6 Unless you think or be told that it's because
7 of the development, the building itself, that's simply
8 not the case. This is an aerial view of -- this is the
9 Kerrs' house, Emrochs' property here, the grass at the
10 south. After the house is completed, this is what tree
11 cover and canopy was in place. The house is done. The
12 clearing is done. Except it's not because at some
13 point eight months later, you go from a full canopy to
14 this is the ground. And side-by-side shows you just
15 how -- wow. How stark it becomes. This is all
16 intentional clearing by the property owner at the time.
17 And on the ground, you can see the effects of manually
18 clearing the buffer.

19 So I'm going to introduce Mr. Merritt, and
20 he's going to come up here and talk to you about what
21 is actually necessary. But, as I mentioned, this is
22 the Howeth plan, and there's no way to get to 42
23 evergreen trees. Now, what you'll hear from
24 Mr. Merritt is that 42, the minimum number, isn't going
25 to provide the second requirement, the screening

1 required, the enhancement required, which is why we're
2 asking the board to consider essentially ordering this
3 be adopted. Overturn the decision of the zoning
4 administrator and to remand with instructions --

5 MR. PINNOCK: You have one minute.

6 MR. THOMAS: -- to adopt this. Yes, sir.

7 And I think you all have heard this, but how
8 do we know the Howeth plan is insufficient? Because
9 the Kerrs themselves have already planted far more
10 trees than what's called for, including delivering a
11 dozen loblolly pines Monday evening with this appeal
12 imminent.

13 So with that, Mr. Merritt.

14 MR. BENBOW: Can we turn the clock off for
15 just one second. I've got a question I need to get for
16 the record.

17 MR. PINNOCK: Sure.

18 MR. BENBOW: Those pictures that you showed
19 where the property had been cleared, what were the
20 dates on those pictures? I didn't see one on the
21 photos.

22 MR. THOMAS: Yes, sir. They should be --

23 MR. BENBOW: Can you pull those --

24 MR. THOMAS: Pulled them out of --

25 MR. BENBOW: -- back up again?

1 MR. THOMAS: -- the presentation.

2 MR. PINNOCK: They're in the package.

3 MR. BENBOW: But is there dates on them?

4 MR. THOMAS: Yes. Let me just -- I'll
5 identify them by exhibit number so that the record is
6 clear.

7 So this is a --

8 MR. BENBOW: Not that one. It's the
9 side-by-side pictures. I just need the date.

10 MR. THOMAS: Oh, yeah. So this is a cut-out.
11 This is --

12 MR. BENBOW: That's not it.

13 MR. THOMAS: -- Exhibit -- it's Page No. 34.
14 It's October 8th --

15 MR. BENBOW: Okay. That --

16 MR. THOMAS: -- 2014.

17 MR. BENBOW: That's not the one.

18 MR. THOMAS: Yes. Actually, it is. I just
19 zoomed in so you can see --

20 MR. BENBOW: Okay. What I'm trying to see --

21 MR. THOMAS: -- visually --

22 MR. BENBOW: -- is the side-by-side pictures
23 where they cleared.

24 MR. THOMAS: This one?

25 MR. BENBOW: That one, yeah.

1 MR. THOMAS: That is --

2 MR. BENBOW: What's the date on that?

3 MR. THOMAS: April 5, 2016. It's the
4 following exhibit in the packet and --

5 MR. BENBOW: Okay.

6 MR. THOMAS: -- presentation.

7 MR. BENBOW: Got it. Thank you.

8 That doesn't count against you.

9 MR. PINNOCK: So I have 35 seconds left.

10 MR. MERRITT: Good afternoon. My name is
11 Phillip Merritt. I'm a landscape architect with
12 HG Design Studio here in Richmond. I've been engaged
13 by the Emrochs to evaluate the state of the required
14 tree buffer abutting their property and to design an
15 evergreen tree mitigation plan that fully meets the
16 requirements of the Lockgreen community development
17 ordinance.

18 Based on several site visits to the property,
19 it is my opinion such a mitigation plan should require
20 at least the maximum number of evergreen trees called
21 forth in the ordinance, which is 20 trees per
22 100 linear feet. I've come to this conclusion for the
23 following reasons. The Emrochs have suffered a
24 long-term loss with the clearing of the existing
25 buffer, and no matter what trees are installed, their

1 screening effect will not be fully effective for two or
2 more decades. Therefore, the more trees that are
3 planted now, the faster the buffer will recover.

4 MR. PINNOCK: Okay.

5 MR. MERRITT: Now, the buffer that HG Design
6 Studio is proposing calls for a planting of 12.5
7 evergreen trees per 100 linear feet.

8 MR. PINNOCK: We've reached the -- the ten
9 minutes.

10 MR. MERRITT: Okay.

11 MR. PINNOCK: Thank you.

12 MR. THOMAS: Anticipating this, the balance
13 of Mr. Merritt's remarks we'll just ask be submitted
14 for the record.

15 MR. PINNOCK: Thank you.

16 And now, the zoning administrator has ten
17 minutes.

18 MR. DAVIDSON: I guess I'll do ten minutes.

19 MR. PINNOCK: How would you like to use your
20 ten minutes?

21 MR. DAVIDSON: Yes.

22 MR. BENBOW: Do you -- are you going to split
23 your time? I didn't hear it.

24 MR. DAVIDSON: Do eight minutes.

25 MR. BENBOW: Eight and two.

1 MR. DAVIDSON: All right. I agree with
2 everything said, mostly regarding, yes, clearing
3 occurred. We've got pictures of before. We've got
4 pictures of after. I think if you look at the -- the
5 side-by-side, you'll also note that one's in full
6 canopy, and the other looks like it's in the
7 wintertime. So keep that in mind.

8 Yeah. The CUP was adopted by council in '85,
9 and it had this preservation of trees and buffer areas.
10 It also said there was an extensive topographic survey
11 that was conducted to locate the existing trees and
12 plants. And a lot of this was in -- in direct relation
13 to I think where the entrance was. And, actually,
14 there was a replanting and wall constructed along that
15 neighborhood along with Charmian Road to deal with that
16 part. I've never seen an extensive survey in the file
17 or anywhere. So I end up with a site or sites that I
18 don't know what's there. This also happened in 1985,
19 so obviously, things have changed since '85.

20 The buffer area starts specifically shown as
21 50 feet, that's correct, along this property we're
22 talking about. And it says they will be supplemented
23 with a minimum of the 10 and a maximum of 20, as
24 determined on the basis of need. So this presumes
25 there's existing vegetation along the buffer area, and

1 soon there was some determination made that whatever
2 was there was okay, I'm presuming, other than where
3 they replanted and put the wall on Charmian. It also
4 says you can remove underbrush, fallen, diseased, dead,
5 and obviously, between '85 and 2015, '16, some have
6 died, and some has been cleared. A lot of it was
7 cleared from -- from the site.

8 A buffer is a -- is defined as something that
9 serves as a protective barrier. And a buffer zone, a
10 neutral area separating conflicting forces, broadly, an
11 area designated to separate.

12 The planning application I've always noted as
13 being distance-related and also visual -- visually
14 screen. It's not listed in the CUP as a screening
15 buffer. It's listed as a buffer. There's some
16 discussion about it being utilized to enhance
17 screening. Certainly. However, obviously, when this
18 was written, whoever wrote it obviously has -- enforces
19 the ordinance. It's very vague.

20 Sorry. I lost my train of thought.

21 The vague language of the enforcement is --
22 specifically talked about the basis of the provision.
23 Obviously, as zoning administrator, I have to make that
24 decision. It's not the Emrochs. It's not anybody
25 else. It's me because I'm the one that has to enforce

1 it. So my opinion today may be totally different from
2 somebody -- some other zoning administrators previous
3 to me or after me.

4 But what does enhancing the screening mean?
5 What does it contemplate? Aside from the requirement
6 that's actually in the ordinance, the only thing that's
7 in the ordinance is you've got to have the evergreens,
8 you've got to have it at a certain distance between
9 them at a certain height. Well, how much -- how much
10 is needed? I mean, who determines other than me that
11 it's good enough or I got to have -- I got to add
12 trees?

13 It also doesn't say what type of evergreen
14 we're talking about. But the most complicated part is
15 where do you establish this basis for need of
16 application? Am I at the top of the hill? Am I at the
17 bottom of the -- bottom of the property next to the
18 screen? Or do I have to contemplate them all? Can I
19 be in the second-story bedroom window looking out and
20 say, oh, I can see that property over there. And
21 exactly, what am I buffering? Am I buffering the
22 playground of the kids? Am I buffering the house? Am
23 I buffering their backyard? I just don't know what --
24 what this is getting to.

25 So, again, the 50-foot -- the 50-foot buffer

1 gives you a distance, but it's not all visual that
2 we're talking about. There's no question that
3 vegetation was removed, but unfortunately, I'm kind of
4 stuck in the quandary of, you know, what was there
5 before, and this never contemplated somebody taking
6 stuff out. It just said what's there exists, and it --
7 you think it's not enough, then you got to put pine
8 trees or evergreen trees.

9 Now, they're showing a plan how they want it
10 remediated. Well, they're looking at the entire length
11 of the property, 400-and-some feet. I've never said
12 that the area to the south ever needs additional
13 planting. They do. I don't.

14 The major area that needs the planting is
15 about 200 feet long, that main part, and based on the
16 plan that was submitted, which I never initially
17 approved because they were saying they're going to be
18 four- to six-foot-high trees, so that's why I never
19 approved it. It wasn't until I actually went to the
20 property and saw the planting in, which I didn't know
21 had gone in, that they were of the requisite height.
22 And that's when I wrote the letter saying that it was
23 acceptable.

24 So last thing is that, you know, they're
25 talking about the pine trees and evergreens and

1 everything else. But they don't talk about any of the
2 other vegetation that's been planted or exists.
3 They're -- and if you look at -- I think it's
4 Exhibit 18. They're just showing the evergreen trees,
5 the loblollies. They're not showing anything else. If
6 you look in, I think, Exhibit 21, that show -- oh,
7 that's just their plan. But if you look at the plan
8 that Howeth submitted, that has all of the other trees
9 in it that identifies it, even the undergrowth. So
10 that's where I'm coming from.

11 I have the presumption. I think it's
12 reasonable. Yes, it's not going to grow immediately,
13 but the CUP provision that's in here doesn't even
14 contemplate that happening. So if I put a six-foot
15 pine tree up -- or put it in the ground, because it's
16 not screened enough, how long is that going to take?
17 But the ordinance -- that's the requirement of the
18 ordinance, so ...

19 As an aside, other than the -- I did go to
20 the site yesterday. And, yes, other planting has been
21 done. And I got two copies of a number of photos taken
22 from different parts of the property, and you see
23 visions from the top of the hill --

24 MR. BENBOW: Hey, Chuck.

25 MR. DAVIDSON: -- from the Kerrs' property.

1 MR. BENBOW: Let them have one, and give one
2 to Mr. Thomas, would you.

3 MR. DAVIDSON: Well, one's black and white
4 and one's color.

5 MR. THOMAS: And I guess -- sorry --

6 MR. BENBOW: Mr. Thomas --

7 MR. THOMAS: -- Mr. Chairman, I know we don't
8 strictly adhere to Rules of Evidence here, but we were
9 told that we were not allowed to use materials that
10 weren't submitted in advance of the hearing, so I'm
11 only, for whatever purposes, objecting on the basis
12 I've never even seen these to respond to.

13 MR. YORK: But Chuck's decision is not based
14 on this at all. Your decision is based on last year.

15 MR. DAVIDSON: Yes. Right.

16 MR. YORK: Yeah. And so this is -- this is
17 irrelevant.

18 MR. DAVIDSON: Okay.

19 MR. YORK: I mean, it means that you've got
20 another opportunity to reevaluate it, but it's not
21 before us.

22 MR. DAVIDSON: So, again, that -- that's how
23 I was looking at the -- at the approval or the
24 withdrawal of the zoning violation letter because I
25 felt that it met -- it met the standards of the CUP. I

1 did actually measure the distance 200 feet, and I
2 counted the number of trees that they were showing on a
3 plan, and I said it was okay.

4 MR. YORK: Don't go away.

5 Are we going to hear from anybody else before
6 we ask questions?

7 MR. PINNOCK: Are there -- other interested
8 parties have --

9 MR. BENBOW: You can ask questions if you
10 want at this point.

11 MR. PINNOCK: Go for it.

12 MR. YORK: I have a couple of questions. One
13 is you stated that you're only concerned about the --
14 the efficacy of the buffered area within a 200 feet
15 stretch opposite the property, but not necessarily
16 further down the edge of the property. Why did you
17 make that determination?

18 MR. DAVIDSON: Because I didn't think that
19 the additional evergreens were required as the basis of
20 need, as far as screening of whatever they were
21 supposed to be screening.

22 MR. YORK: Well, assuming that even if it's
23 not -- in other words, if this were -- let's suppose
24 this were a buffer screen and it was a vacant lot and
25 somebody came along and illegally cleared it out, would

1 you cite it as a violation? But there was no --
2 nothing developed on the lot?

3 MR. DAVIDSON: If they cleared it out?

4 MR. YORK: (Nodding head.)

5 MR. DAVIDSON: Certainly, yes.

6 MR. YORK: And what would you -- what would
7 your remedy be?

8 MR. DAVIDSON: Well, I mean, they'd have to
9 restore it with -- with some vegetation or make up
10 vegetation on either --

11 MR. YORK: But would it apply to the whole
12 length of the buffer?

13 MR. DAVIDSON: For that section that was now
14 visible.

15 MR. YORK: They cleared?

16 MR. DAVIDSON: Yeah.

17 MR. YORK: The other question I had --

18 MR. DAVIDSON: You can't screen something
19 that you can't see. I mean, that --

20 MR. YORK: I'll ask Mr. Thomas the same
21 question.

22 These buffer areas that were planted,
23 et cetera, et cetera, et cetera, as determined on the
24 basis of need to enhance the screening effect. Do you
25 interpret that to mean that the spacing requirements in

1 the ordinance for the supplemental screening in and of
2 themselves, if there were nothing else there, would
3 meet the buffer requirement?

4 MR. DAVIDSON: well, I think -- I mean --

5 MR. YORK: In other words, if this were --

6 MR. DAVIDSON: I don't think it's saying you
7 have to do them every 10 feet. I mean, I think you
8 need the -- you could concentrate on one area if that's
9 the basis --

10 MR. YORK: If this were --

11 MR. DAVIDSON: -- you need.

12 MR. YORK: If this whole area that we're
13 talking about was 100 percent clear, would you consider
14 the remedy of the staggered six feet high -- you know,
15 the provision, the ordinance?

16 MR. DAVIDSON: The six to eight-footers?

17 MR. YORK: Yeah. If they were to plant those
18 within a completely barren area, would you consider
19 that to be in compliance with the ordinance?

20 MR. DAVIDSON: well, I think what the CUP
21 says is minimum of, maximum of. So it says minimum 10,
22 maximum 20.

23 MR. YORK: So you don't feel.

24 MR. DAVIDSON: So I think that's a fallacy of
25 the language of the ordinance.

1 MR. YORK: well, that's another story
2 altogether.

3 MR. DAVIDSON: I mean, if you have no
4 screening and you're planting six- to
5 eight-foot-high --

6 MR. YORK: So you're saying you don't feel --
7 even if this were a 200-foot strip of absolutely
8 nothing, you don't feel you're required more than 20
9 supplement six to eight-foot trees?

10 MR. DAVIDSON: If it existed as that, I would
11 say yes. I mean, how would -- what would you do if a
12 fire came through and burned everything down? I mean,
13 all that says is that you will -- you'll plant it back
14 so you have a buffer. But there's no other guidance.

15 MR. YORK: Yeah. I'm getting to the question
16 about whether 20 such trees within a hundred-foot
17 stretch meet by themselves the screening requirement of
18 the ordinance.

19 MR. DAVIDSON: well, I understand. In fact,
20 there was another -- there was another case along
21 Charmian where -- where they built the wall and where
22 they planted trees. I think they planted them on
23 10-foot centered or something to that effect.

24 MR. YORK: I remember.

25 MR. DAVIDSON: So when initially they went in

1 and they grew to a -- say a 15-, 20-foot height, great,
2 no problem, screened beautifully. But, you know, these
3 plants grew a whole lot taller, and as they aged, all
4 the other stories started dying out. That screened
5 effect was no longer there.

6 In fact, if you go over to Semmes Avenue by
7 the Overnite -- the old Overnite, there was a
8 requirement in the ordinance about evergreen screening
9 for parking areas. Well, when they planted them, they
10 were, you know, six feet high. Couldn't see a car.
11 Well, now, they're 30 feet high, and everything
12 underneath is --

13 MR. YORK: But in both cases --

14 MR. DAVIDSON: -- and you can see the cars.

15 MR. YORK: -- it's your determination that
16 they're in compliance?

17 MR. DAVIDSON: Correct.

18 MR. YORK: Thank you.

19 MR. DAVIDSON: Well, and -- you know, and
20 that's taking into account, you know, you do have
21 existing vegetation. You've got bamboo. You've got,
22 you know, a whole lot of other things growing there
23 that you won't see on any plan. And the plan does show
24 that there are other -- other trees remaining. Stuff
25 has been added, undergrowth and otherwise, but you also

1 have a number of other trees, deciduous and evergreen,
2 that will have canopies of, you know, 30 feet high and
3 canopies 25 feet, 30 feet wide. I mean -- so it's
4 not -- you can't just look at the tree issue as the
5 evergreens. You're going to have other things growing
6 and filling in the things that they're saying you
7 can't -- can't screen with.

8 MR. YORK: Okay.

9 MR. PINNOCK: Other questions?

10 All right. Are there other interested
11 parties that are not --

12 MR. BENBOW: You have -- you have rebuttal
13 from Mr. Thomas and then again from Mr. Davidson if
14 they choose to.

15 MR. PINNOCK: He used all his ten minutes.

16 MR. BENBOW: Pardon me? Did he use all his
17 ten?

18 MR. PINNOCK: He did, yeah.

19 MR. BENBOW: I didn't know that. I
20 apologize.

21 MR. YORK: Well, we can extract testimony in
22 the questions.

23 MR. PINNOCK: Sure.

24 Are there other members who are not
25 appellants who wish to speak in this matter? And

1 there's a total of ten minutes.

2 MR. BENBOW: Do they know to divide it up
3 amongst themselves? Do they know that?

4 MR. PINNOCK: So --

5 MR. BENBOW: Usually we do that.

6 MR. PINNOCK: Yeah. Can I ask how many folks
7 expect to --

8 MR. BENBOW: Okay. We -- we need to know
9 which side you're on, because each side gets ten.

10 MR. THOMAS: On behalf of the appellant,
11 there's one, two, three.

12 MR. PINNOCK: Yes. I'm asking on behalf of
13 the appellant, how many people? There are three.

14 MR. BENBOW: Three.

15 MR. PINNOCK: Would you like to just evenly
16 divide up this time?

17 (Simultaneously speaking.)

18 MR. COHN: I only need three minutes.

19 MR. PINNOCK: Okay.

20 MR. BENBOW: Okay.

21 MR. COHN: Thank you. My name is David Cohn,
22 C-O-H-N. I'm here representing myself. And I'm here
23 really in two contexts. One, I live at 4708 Charmian
24 Road, which is directly across the street from
25 Lockgreen. And, secondly, in 1985 -- and I've lived

1 there since 1982. In 1985, I was one of the three
2 people for Westmoreland Place who negotiated these
3 restrictions that are in the community in the plan, so
4 I'm here to give some background.

5 The developer when it originally came to the
6 affected neighborhoods -- which were Hillcrest,
7 Westmoreland Place, and Windsor Farms -- had a proposal
8 to develop between five and seven estate lots. He
9 changed his mind very quickly after that and came back
10 to the neighborhoods with the idea of having much more
11 dense development. At that time, the three
12 neighborhoods had in Lockgreen around the perimeter of
13 this property extensive plantings. And the problem
14 with the developer's proposal for extensive dense
15 development was that the rears of homes that he would
16 be developing would face the fronts of homes in
17 Westmoreland Place. In addition to that, there was a
18 similar effect on the properties on the other three
19 sides of the development.

20 In response to that, there were extensive
21 negotiations. And negotiations resulted in
22 representations that were made by the developer to the
23 planning commission, which ended up in this case, and
24 those representations also ended up in the community
25 unit plan itself, the very proposal that you're looking

1 at.

2 And if you focus on what was represented and
3 what ended up in the community unit plan, it was very
4 clear -- and I'm reading from the proposal -- that
5 there would be enhancement of the screening effect of
6 existing vegetations. And we took that as meaning that
7 the vegetation around the perimeter of this property,
8 except where it was diseased or unsightly, would remain
9 and would be supplemented by these evergreens. And the
10 distance from the property line in which this would
11 happen would be 50 feet.

12 And in the case of Westmoreland Place, there
13 was one additional requirement to create harmony among
14 the neighborhoods, and that was that a wall would be
15 constructed. The wall was constructed, the buffer was
16 put in place, the existing foliage was supposed to be
17 in place, remain there forever, except where it needed
18 to be replaced because of disease, and finally, there
19 would be supplemental.

20 This ended up being critical because when the
21 development actually was constructed, it was primarily
22 on the perimeter of the property. If you go out to
23 Lockgreen, the whole center is a common area which is
24 wide open. I'm worried about the precedential effect
25 on the buffer in the rest of the area. It effects the

1 other neighborhoods, and I ask that you focus again on
2 the enhancement of existing screening and this -- the
3 evergreens that are being planted.

4 But the problem is toothpaste is out of the
5 tube right now, and the question is how do we get back
6 to where we had been had this original screening not
7 been removed? Thank you.

8 MR. PINNOCK: Thank you.

9 MR. MENGES: Mr. Chairman and members of the
10 Board of Zoning Appeals, my name is Charlie Menges.
11 I'm a resident of Westmoreland Place. I'm here on
12 behalf of Westmoreland Place Association to speak to
13 this issue.

14 Many of you will already know that we've been
15 here before before the Board --

16 MR. BENBOW: Excuse me.

17 MR. MENGES: -- of Zoning Appeals.

18 MR. BENBOW: Do we have your --

19 MR. MENGES: Oh, I'm sorry.

20 We've been here before at least on two
21 different occasions when attempts were made to encroach
22 into the buffer area on the northern end of Locke Lane
23 along Charmian Road. In both of those cases, the
24 zoning administrator had determined that violations
25 would occur if the developer of the lots were allowed

1 to do what they proposed to do in terms of encroaching
2 into the buffer area.

3 That decision was appealed. And in both
4 cases, this Board of Zoning Appeals upheld the zoning
5 administrator's decision that the buffer is inviolate
6 and cannot be torn out. It cannot be violated. It
7 must be maintained in its natural state in addition to
8 some of the other things we talked about.

9 So our reason to be here is not because I can
10 see this particular property, but this buffer is
11 extremely important, that the integrity of the buffer
12 being maintained all around Lockgreen, because if it's
13 not maintained on this side, then we're going to have
14 property owners in Lockgreen talking about how they're
15 not going to maintain their buffer as well.

16 As David Cohn indicated, this goes back to an
17 original agreement between the developers calling their
18 own of Lockgreen and the neighborhood here, which it
19 was agreed as to how this buffer would work. That
20 agreement, that compact, was set forth in the community
21 unit plan, and it's up to the zoning administrator to
22 uphold that compact on behalf of all the other property
23 owners.

24 Remember, the buffer is a 50-foot wide
25 buffer. It's not just planting a few trees in a row

1 here, and that takes care of it. The entire 50-foot
2 buffer in its natural state was to be maintained. And
3 so what's happening -- what happened, as a practical
4 matter, is as each lot was developed, a house is put on
5 there. Then the issue was, okay, does anything need to
6 be done to enhance the buffer -- now that there's a
7 house here, you can see.

8 This is one of the lots -- it may be the last
9 lot to be developed in Lockgreen. And, initially,
10 nothing was done to the buffer, but that would have
11 been the appropriate time to look at it and see whether
12 or not even the natural vegetation was adequate.
13 Because the natural vegetation was not -- is not all
14 that the CUP specifies. It's natural vegetation and
15 what is needed in order to enhance the screening effect
16 of the buffer.

17 That's not a decision the zoning
18 administrator makes as to what he believes subjectively
19 is needed. It's an objective test. What is needed to
20 provide a visual screen? Because, as David Cohn
21 indicated, visual screen is critical for all the homes
22 on the adjoining neighborhoods that faced Lockgreen,
23 and now we're looking at the backs of all these houses
24 that hadn't been there before.

25 So -- so what happened in this case? Well,

1 we all know it was the most egregious violation of the
2 buffer that -- that has happened, and they just totally
3 clear-cut everything, just bulldozed down everything
4 down to the dirt in the buffer area in just wanton
5 disregard.

6 Now, I'm not saying they did it because
7 they -- they knew they were violating it. I'll -- I'll
8 give them the benefit of the doubt that they didn't do
9 it knowingly violating the law. But now that we have
10 what we have, how do we restore it? And that's the
11 decision that's before this board.

12 The zoning administrator has proposed a plan
13 which is called a partial landscaping plan. I've never
14 heard a better name for it because it is as partial as
15 it possibly can be. There's nothing complete about
16 that plan in terms of doing two things. One, restoring
17 the natural vegetation as much as you can restore it,
18 and two, enhancing what was there originally so that it
19 provides a screening effect. It doesn't do any of
20 that.

21 What's required is for the entire 50-foot
22 buffer -- again, not just one line of trees, but the
23 entire 50-foot buffer be veg -- to be planted with
24 vegetation which is going to have the effect of
25 providing a natural screen. That doesn't mean loblolly

1 pines. We've got those along Charmian Road, and
2 somebody's indicated they grow up, and suddenly, you
3 don't have any screening at all.

4 There are lots of trees, though, that can be
5 chosen that will provide a true screening effect; cedar
6 trees, holly trees, and the like. That's what this
7 plan needs to take into account as well as many, many
8 more trees that has been provided.

9 So we would respectfully request on behalf of
10 Westmoreland Place Association that this board grant
11 this appeal and send this back for an actual
12 remediation plan that will provide the screening effect
13 that the ordinance was intended to do. Thank you.

14 MR. PINNOCK: All right.

15 MR. BENNETT: Good afternoon. My name is
16 Dick Bennett. I live at 4808 Charmian Road in
17 Hillcrest, and I'm appearing on behalf of Hillcrest
18 Civic Association.

19 we're obviously concerned about these
20 buffers. We have approximately ten lots in Hillcrest
21 that adjoin Lockgreen on the western side of the
22 property, and these buffer areas are very, very
23 important because they -- generally, the Hillcrest lots
24 are lower on that side of Lockgreen.

25 We certainly would support this appeal. It's

1 obvious from looking at the property -- and I've been
2 to look at it -- that what was done here was a complete
3 destruction of what was a very pretty natural buffer.

4 And I might add the Emrochs' house used to be
5 the old Thalhimer house, and it was -- I think it's the
6 most spectacular lot in the city of Richmond. And it's
7 really been destroyed view-wise by what's happened
8 here. So I would encourage you to look seriously at
9 this appeal, and let's do the proper thing and
10 reestablish a full and complete buffer. Thank you.

11 MR. PINNOCK: Anyone else to speak?

12 MR. THOMAS: Mr. Chairman, I have a letter
13 from John West who's at 317 Charmian Road and couldn't
14 be here today, that he asked just be submitted in favor
15 as well. Thank you.

16 MR. PINNOCK: Okay. So is there anyone here
17 to speak in favor of the zoning administrator's
18 decision?

19 How many of you are there?

20 MR. MOORE: Two.

21 MR. PINNOCK: Two.

22 MR. MOORE: Mr. Chairman, members of the
23 board, my name is Glenn Moore. I'm president of the
24 Lockgreen Owners Association, and our association would
25 like to request that you affirm the zoning

1 administrator's decision with respect to the Kerrs'
2 efforts to restore the buffer area on their property.
3 And Dr. Kerr will speak following me. She's the
4 property owner, and I'm sure you'll have some questions
5 for her.

6 I think the -- in addition to being the
7 president of the Lockgreen Owners Association, I also
8 was on the attorney team for the applicant when this
9 rezoning occurred, so I have a little experience with
10 it from that perspective as well.

11 I think the language in the ordinance -- or,
12 actually, it's in the applicant's report that was
13 incorporated into the ordinance by reference -- is a
14 little confusing, and I -- whereas it talks about a
15 minimum of 10 evergreen trees, a maximum of 20. Then
16 it says "or as determined on the basis of the need for
17 such evergreen trees to enhance the screening effect of
18 existing vegetation."

19 So I think -- I don't want to put words in
20 Mr. -- in Chuck's -- Mr. Davidson's mouth, but I think
21 what -- the way this has been interpreted on his
22 behalf, I think the way I would do it is you go out,
23 you make a determination as to what's necessary, and I
24 think that's what he's done. I think it's his job to
25 do that. And I would ask that you affirm his decision.

1 I would also let -- want to report to you
2 that the Kerrs did ask for the approval of the
3 Lockgreen Owners -- or, actually, the architectural
4 control committee of the Lockgreen Owners Association
5 for their plan, which was granted. And I don't believe
6 any other approvals is actually necessary. That's all.
7 Thank you.

8 MS. KERR: Hi. I'm Julie Kerr.

9 MR. BENBOW: Can I get the form.

10 MR. PINNOCK: The yellow sheet.

11 MS. KERR: Yes.

12 MR. PINNOCK: Thank you.

13 MR. BENBOW: Thank you.

14 MS. KERR: We moved our family to Richmond in
15 2012. I served this country for 18 years, and my
16 husband served for 26 years in the U.S. Army. It
17 saddens me that I'm standing here today and I'm looking
18 at this appeal before the board that contains numerous
19 false allegations in addition to misleading information
20 and photos. There is not enough time to address every
21 allegation and misleading photo, but the ones I find
22 most poignant are presented here.

23 We purchased in 2013 this lot that had
24 428 linear feet of CUP buffer. Prior to our purchasing
25 the lot, 200 feet -- linear feet were poorly

1 screened -- and I have notes of this -- due to
2 decimation of vegetation by invasives. The remaining
3 228 linear feet was well-screened and remains as such
4 today with preexisting vegetation from which a tree has
5 never been removed. There is no clear-cutting of the
6 CUP buffer on this property.

7 Our neighbors mislead the board into
8 believing that 428 linear feet of the CUP buffer has
9 been clear-cut and thus calculations for possible CUP
10 interpretation of evergreens needed to screen the lot
11 will be based upon the 428 linear feet. This is not
12 the case, and I will show you photos. In addition, our
13 neighbors falsely allege that we cleared the CUP
14 buffer. Mr. Davidson has verified this is not the case
15 with inspection of the property. 228 linear feet are
16 preserved to the depth that they originally were.

17 Our neighbors that have made these
18 allegations live at the top of the hill, and we live on
19 the up-slope of a hill opposite their residence. The
20 CUP buffer is in a ravine. It would have been wise for
21 our neighbors to address the CUP buffer recommendations
22 for screening in 1985 when they moved into their home
23 and noticed that there were gaps in screening,
24 especially in the wintertime, as I show in photos. No
25 owner of the lot since 1985 planted evergreens to

1 enhance the areas of poor screening since the inception
2 of the CUP until we arrived. If our neighbors had
3 addressed it then, then the trees would be mature
4 enough to today to help shield their view of our home
5 that was built in 2015.

6 In 2014, we presented a proposal for removal
7 of this noxious growth and the dead trees in -- to the
8 DPU, city arborist, and our HOA. And we provided a
9 proposed replanting plan with healthier vegetation.
10 This area involved 200 linear feet of the 428 linear
11 feet of the CUP. The proposed removal and replanting
12 plan were both approved were -- in 2014.

13 Our neighbors allege that we never had
14 authorization to even go far -- so far as to include a
15 memo that a for -- city forester never walked our
16 property. This has since been rescinded by the
17 forester, for as of last week, I phoned him, and he
18 verified with an e-mail that all of his prior
19 correspondence was his, and it shows that he indeed did
20 go to our property and annotate dead versus live trees.

21 Over the course of three years, we have
22 removed from the CUP only two, but dead but standing
23 deciduous trees as well as the invasive wisteria. And
24 in October 2016, we replanted the CUP and purposely
25 allowed for any potential CUP buffer recommendations

1 and interpretations.

2 For city purposes, our landscape engineer in
3 January 2017 drew up a landscape plan to depict these
4 plantings that were already in place. These plans were
5 submitted to Department of Zoning. In accounting for
6 200 linear feet involved in the CUP buffer, we
7 replanted 20 evergreen, 25 deciduous trees, and 79
8 shrubs. Despite this submission, in June of 2017, we
9 received a notice of violation from Department of
10 Zoning requesting a copy of the replanting plan that
11 has since been rescinded after inspection of the lot as
12 well as reviewing the landscape plan that had been
13 submitted already.

14 I feel that our neighbors have appealed this
15 decision because it is not their own replanting plan.
16 In fact, even after October 2016 and prior to our
17 neighbor's completed appeal to the Board of Zoning in
18 January of 2017, we actually planted additional
19 evergreens and shrubs such that there were now 42
20 evergreens, 96 shrubs, and 25 deciduous trees in the
21 200 linear feet of concern of the CUP buffer. Yet our
22 neighbors falsely allege that there were no additional
23 plantings in the CUP buffer and only 19 loblollies to
24 account for the evergreens.

25 what they state is not true. They have

1 always -- we -- there have always been additional
2 plantings, and the number of evergreens exceeds the 19
3 they claim to be on the lot, and the 20 to 40 that
4 might be recommended depending on how you determine the
5 CUP ordinance. Yet, despite this massive planting, our
6 neighbors are still not pleased and have filed this
7 appeal with false allegations. It appears to me as
8 though they want full control of landscaping our lot
9 that had been untouched -- their untouched vista for over
10 30 years.

11 Since October of 2016, we actually now have
12 in the CUP buffer 87 evergreens, 40 deciduous trees,
13 and 96 shrubs. This is far greater than any potential
14 interpretation of the CUP ordinance. Despite this, I
15 stand before you today because, for three and a half
16 years, our neighbors, I believe, have worked their way
17 through departments of the City of Richmond as well as
18 the state of Virginia to issue us erroneous notices of
19 violations to promote their own personal agenda of what
20 they want our landscaping to look like. They did this
21 at first under the premise of a resource-protected area
22 being established on our lot and a CUP buffer.

23 To promote their personal agenda, they first
24 started with the Department of Zoning in 2015 but did
25 not get anywhere. They then went on to the DPU. They

1 did not get anywhere. They then proceeded to the DEQ
2 to try to promote their most absurd replanting plan,
3 which would have entailed planting a forest as well as
4 thousands -- tens of thousands of rootlets and
5 seedlings up to the foundation of our home such that
6 eventually you wouldn't be able to open a basement door
7 without hitting a mature tree.

8 our neighbors manipulated and pushed so hard
9 that attorneys to represent us as well as the state and
10 the City of Richmond had to become involved.
11 Ironically, whilst pushing so hard to have their
12 desired landscaping plan forced upon our lot, which
13 would convert our lot that had been established prior
14 to the Chesapeake Bay Act into a forested resource
15 protected area, something that our lot is actually
16 exempt from, our neighbors themselves with a similar
17 lot have done nothing to improve the RPA with plantings
18 on their lot, yet it was so important to establish
19 those plantings on our lot. I believe that they had no
20 concern for the actual environment, rather to further
21 their personal agenda. In January 2017, their proposed
22 planting plan failed, and their actions cost the city
23 and state hundreds of man hours and money, and it was
24 all to promote their personal agenda.

25 After our neighbors failed to get their way

1 through the DPU and DEQ, I believe they have now
2 returned to the Department of Zoning to still try to
3 control plantings on our lot. They are pursuing the
4 Department of Zoning and now the Board of Zoning
5 Appeals with baseless complaints and false allegations
6 and misleading statements to now instate a different
7 landscaping plan from their initial one. They can no
8 longer utilize their prior landscaping plan as the
9 Department of Zoning does not oversee the RPA and thus
10 their initial desired landscaping plan cannot be
11 enforced. They are now against spending countless man
12 hours and recourses and time and money of the city to
13 promote their personal agenda.

14 To get the Department of Zoning's attention,
15 they resubmitted a letter a year after its initial
16 submission by the president of westmoreland, Rick
17 Gates. Nobody from westmoreland has bothered -- or
18 Hillcrest -- to come to our home, look at photos, look
19 at our lot and see what we have done with this piece of
20 ground.

21 Mrs. Valentine said to us before we even
22 started building, "I can't believe somebody bought that
23 lot. All that stuff needed to be burned to the
24 ground." We did as much as we could to preserve what
25 was needed on that lot and was healthy for the lot.

1 Mr. Davidson found that the planting plan
2 that was submitted in January of 2017 and subsequently
3 inspected the lot, saw that it fulfilled any CUP buffer
4 interpretations and withdrew any violation notice that
5 had been sent in June of 2017. He saw the 20
6 evergreens for the 200 linear feet of poorly screened
7 CUP as well as the 79 shrubs and 25 deciduous trees,
8 and he also saw the 228 linear feet of --

9 MR. PINNOCK: You have about a minute left.

10 MS. KERR: -- preexisting screening of the
11 CUP to still be intact. This is in stark contrast to
12 what our neighbors state is present on the lot, 19
13 loblollies. And they state they we clear-cut the
14 entire buffer, added no additional plantings. All
15 lies.

16 Our plantings in 2016 were actually purposely
17 designed to avoid any meeting such as the one that we
18 are all attending today. Mr. Davidson's inspection
19 agrees with this interpretation of the CUP buffer's
20 recommendations. Yet, here we stand. I am dumbfounded
21 that an attorney can present these false allegations
22 such as cleared an entire CUP buffer, offered no
23 additional plantings, only has 19 evergreens planted,
24 forcing a citizen to appear to prove them wrong.
25 There's no basis for this appeal. All of these --

1 these plantings, 42 evergreens, were in prior to their
2 final submission of their appeal. There's no basis for
3 this appeal, and we request that the approval issued in
4 the fall of 2017 by Mr. Davidson stand without further
5 consideration.

6 MR. PINNOCK: Five seconds.

7 MS. KERR: Whatever the ruling today, no
8 party wins in this abhorrent situation. None of us
9 will ever get back the hours, the money, and resources
10 utilized today. The only way to win in this situation
11 is to shake hands and to be good neighbors. The new
12 plantings in place will grow and currently provides
13 screening over six feet --

14 MR. PINNOCK: Okay.

15 MS. KERR: Currently are providing screening
16 over six feet in height.

17 MR. PINNOCK: Thank you, Ms. Kerr.

18 MS. KERR: It's more than what was there when
19 we moved in.

20 MR. PINNOCK: Thank you.

21 Okay. Questions before, starting with
22 Mr. Thomas.

23 MR. BENBOW: I'd like two things.
24 Reporter -- the notes that -- that you used. And,
25 Ms. Kerr, do you have the notes that you just read

1 from? We'd like copies of those, if we'd please get
2 those. I can have someone make them if you'd like.
3 Yeah. I want copies of that.

4 Brian, make copies of that. Ms. Kerr. And I
5 need -- need what she read from. Just please hand
6 it -- I'm going to have copies made now before we go
7 further.

8 MR. YORK: Let's take a couple-minute break.

9 MR. PINNOCK: Ladies and gentlemen, we're
10 just going to take a couple-minute break here.

11 (Recess, 1:54 p.m. to 2:02 p.m.)

12 MR. PINNOCK: I apologize, ladies and
13 gentlemen. The zoning administrator still has two
14 minutes of rebuttal time left.

15 MR. DAVIDSON: All right. It's more of a
16 statement. You know, obviously, a number of people
17 have testified for and against the decision, and -- as
18 far as like neighbors and representatives of
19 organizations. They obviously have different
20 perceptions of what happened in 1985, what the reasons
21 of the CUP were, what the conditions of the CUP were.

22 You know, as I said earlier, this is poorly
23 written as far as probably the administrative
24 standpoint because the condition actually references
25 back to an applicant's report. And if you read all of

1 the conditions other than, you know, the six to
2 eight-foot high, the 50-foot on the plan and 44-foot on
3 the plan depth of the buffer, it's all vague
4 information. You know, basis of need and to enhance
5 the screening effect and, you know, what specifically
6 does that mean? And I -- I thought I have alluded to
7 that earlier, but we have three different opinions and
8 different words used by three different people who
9 supposedly were all involved in this of what the intent
10 of it was. And, unfortunately, I'm the poor guy that
11 needs to determine what the intent of that is, and I've
12 made my decision.

13 MR. PINNOCK: Thank you, sir.

14 Okay. So now, I'm going to open up to the
15 board for questions.

16 MR. THOMAS: Yes, sir.

17 MR. YORK: It's been a while since I asked
18 these questions of Mr. Davidson, but you remember them.
19 I'd like to hear your answers to them.

20 And let me elaborate a little bit on one of
21 them. These buffer areas that you said planted with a
22 minimum of 10 evergreen trees at six to eight feet
23 height with a maximum of 20 such evergreen trees with
24 100 linear feet of such buffer area. As determined on
25 the basis of need to enhance the screening effect, do

1 you believe that the zoning administrator can require
2 more than 20 evergreen trees based as indicated to
3 enhance the buffer area?

4 MR. THOMAS: If the existing buffer were
5 still in place, no.

6 MR. YORK: If it were completely clear --

7 MR. THOMAS: Correct.

8 MR. YORK: -- would you require more than
9 those 20 trees per hundred feet?

10 MR. THOMAS: Yes, sir. And I'm going to
11 answer both visually and orally because --

12 MR. YORK: But I want to hear the legal basis
13 for why you say that.

14 MR. THOMAS: Yes, sir. If you go down -- and
15 that's why I was just going to put it up here so we can
16 all see the wording of the ordinance itself, so it
17 wasn't a he said/she said on the ordinance.

18 The ordinance does contemplate what happens
19 if existing vegetation has to be cleared. If it's
20 removed for any reason -- it's right down here at the
21 bottom. If it's removed, additional plantings are to
22 be added. Because of what Mr. Menges said, in 1985,
23 there was an existing buffer between Lockgreen, which
24 is on the far side, and the neighborhoods that surround
25 it, and it looked like this, and it's a mix of

1 evergreen and deciduous.

2 And so the -- the ordinance says careful
3 attention has been pay -- has been paid to maintaining
4 and supplementing the existing trees and plantings, and
5 so it's to this that the zoning administrator can --
6 can require the addition of no less than 10 and no more
7 than 20 as determined on the basis of need for such
8 evergreen trees to enhance the screening effect of
9 existing vegetation. That's the direct quote. If
10 there is no existing vegetation to enhance, then yes,
11 the zoning administrator can, and I believe must,
12 require that whoever took down the existing vegetation
13 has to replace it to where it was and then supplement
14 it with the evergreen trees.

15 MR. YORK: what if there was never any
16 vegetation there? what would he -- what -- what would
17 be the standard he would use?

18 MR. THOMAS: I don't know the answer to that
19 question because it wasn't what was presented at the
20 time Lockgreen was developed. This existed all the way
21 around the existing Lockgreen parcel, so I don't think
22 it was contemplated by the ordinance because it wasn't
23 a condition that existed at the time.

24 MR. YORK: Now, with respect to the issue of
25 the portions of the buffer that are off to the sides of

1 the lot that -- opposite which there isn't anything
2 except, you know, open space, are you saying that
3 the -- that those -- that those areas that are off to
4 the sides --

5 MR. THOMAS: Down here.

6 MR. YORK: Exactly. That the supplemental
7 requirements apply to those areas as well?

8 MR. THOMAS: They do, because -- and it's not
9 up here in the -- in this, but it is in the
10 presentation is that while there is a part of the
11 buffer that directly faces the Kerrs' house -- here
12 what I'll call the eastern end just on the picture.
13 It's not actually east, but the right side of the
14 picture. As Exhibit 18 makes clear, the left side
15 actually shows the houses -- you can just see here,
16 that line, the left side of the picture. And in this
17 case, the Emrochs' house is essentially here. So the
18 entire buffer screens not just the Kerrs' house, but
19 the rest of the Lockgreen development that abuts the
20 property.

21 And so the answer -- the direct answer to
22 your question is yes, I think the reason it's written
23 the way it is is because there was an existing screen
24 of the entirety of the property line and all the way
25 around Lockgreen, and this is what was designed to be

1 maintained and as needed supplemented with a mix -- and
2 that's to the extent the board would like to hear it,
3 that was basically the thrust of Mr. Merritt's
4 presentation as to why essentially you can't do that by
5 just planting a bunch of loblollies every five feet on
6 a staggered count.

7 MR. YORK: So the burden is on the Kerrs to
8 have to provide screening for property they don't own?

9 MR. THOMAS: The burden is on the Kerrs to
10 maintain the screening in place at the time they built
11 their house, and that's why I thought -- you know, we
12 can talk about whether or not there was clear-cutting
13 or not. I think this is one of those cases where a
14 picture is worth a thousand words. This is 2014. This
15 is 2016. And --

16 MR. PINNOCK: When in 2014? I'm sorry.

17 MR. THOMAS: It's Octo -- I'm sorry. October
18 of 2014 and April of 2016, not the dead of winter.
19 That would be a correction to what the zoning
20 administrator said. And you can see, however, that
21 whole swaths of it have, in fact, simply been clear --
22 I don't -- when I say "clear-cutting," I don't think I
23 was engaging a hyperbole. I'm a lawyer. I'm not
24 opposed to engaging in hyperbole -- especially with my
25 wife, but I don't know any other way to -- to call that

1 than to show you what it looks like on the ground.

2 And so the answer is the Kerrs aren't
3 required to put up a screening just to benefit the
4 Emrochs or any other neighboring property owner. The
5 reason we're here today is because they made it worse,
6 and all we're looking for is a return to status quo
7 ante. And that's what I think the ordinance requires
8 because that's the deal under which Lockgreen got
9 developed in the first place.

10 MR. YORK: So your opinion is that -- and
11 there are a lot of people in this room that were around
12 and involved in this, including myself, and we all
13 maybe have slightly different ideas of either what the
14 effect was or how it did or didn't get translated into
15 proper language, but are you -- I guess to summarize
16 your position, are you saying then that the extent to
17 which the buffer area existed at the time Lockgreen
18 development occurred is a -- is a status that needs to
19 be maintained?

20 MR. THOMAS: Yes, sir.

21 MR. PINNOCK: Can I --

22 MR. THOMAS: Yeah. And that's -- to quote
23 the ordinance, yes, that's the existing vegetation.
24 That's why it's written that way.

25 MR. PINNOCK: And I have a question just on

1 that subject. So is a survey of existing landscape
2 required either to identify what's existing in a
3 screening or to address what needs to be supplemented,
4 or is this a best judgment sort of approach?

5 MR. THOMAS: So the -- I hate that I have to
6 do this because it's the old lawyer joke. On the one
7 hand; on the other. It's both.

8 In this case, the zoning administrator does
9 have available to him evidence of what the screening
10 was. You heard Ms. Emroch that they moved in in 1989,
11 and the pictures are dated in the presentation, but all
12 of these pictures are post 1989. So this is after.

13 So -- so the zoning administrator has
14 evidence of what the screening was in full bloom, in --
15 I think this is very early spring, if I'm remembering
16 the date right. And then the judgment call that the
17 zoning administrator is to make -- unlike the normal
18 sort of unfettered discretion zoning administrators
19 gets, the CUP ordinance circumscribes that a little
20 bit, and it says you've got to have this, you've got to
21 maintain this, because this is what's in place. But
22 you may require it to be supplemented with evergreen
23 trees if you think that in the wintertime this
24 screening is insufficient to screen the house that's
25 going to be built right here. All right? I mean, the

1 house does exist.

2 Yes.

3 MR. PINNOCK: So, basically, the answer to my
4 question is no, there is no -- there's no requirement
5 for an actual survey of existing landscaping anywhere
6 in the CUP?

7 MR. THOMAS: In terms of -- and I guess maybe
8 I -- I apologize. I must have misunderstood.

9 MR. PINNOCK: Okay.

10 MR. THOMAS: In terms of the administrator
11 saying this -- the plan you submitted to Kerrs does not
12 qualify because it doesn't replicate what was there
13 based on an existing survey. I don't think there's a
14 formal requirement for a survey. I do think there's a
15 requirement for the administrator to justify the
16 decision by saying, does it do at least this?

17 MR. PINNOCK: Okay.

18 MR. THOMAS: Having been clear-cut.

19 MR. YORK: I believe the zoning administrator
20 testified that he was under the impression that a
21 survey was done in 1985, but he hasn't been able to
22 track down to see -- of the whole property.

23 MR. DAVIDSON: Want me to respond to that?

24 MR. BENBOW: No. Not -- he can bring it up.

25 MR. PINNOCK: Other questions for Mr. Thomas?

1 No?

2 MR. BENBOW: I have one.

3 MR. PINNOCK: Yes.

4 MR. BENBOW: If I might ask, just for the
5 record. You mentioned April is the date that the
6 picture was taken. We can see right now trees -- the
7 deciduous trees generally will leave out about the
8 third week in April. So can you say precisely when in
9 April that picture was taken? Because if it was taken
10 in the beginning of April, those deciduous are going to
11 be bare. Whether it's January or the beginning of
12 April, they're going to look exactly the same.

13 MR. THOMAS: Right. And I can -- this is
14 hard, right? Because what I know about trees could
15 fill about --

16 MR. BENBOW: I'd just --

17 MR. THOMAS: -- that much.

18 MR. BENBOW: I'd just explain the facts.

19 MR. THOMAS: The date's April 6th, so I do
20 know definitely when the picture was taken.

21 MR. BENBOW: Well, I can tell you definitely,
22 on April 6th, deciduous trees have not leaved out, as a
23 rule.

24 MR. THOMAS: Absolutely, sir. And that's why
25 there's a requirement for 10 to 20 evergreens to allow

1 for screening of things that didn't exist at this time
2 when you are in that --

3 MR. BENBOW: I understand. I just --

4 MR. THOMAS: -- November to April.

5 MR. BENBOW: I'm just -- I just want to be
6 sure the board understands when you say the property
7 had been clear-cut and you portrayed a picture of it
8 that that was taken on April 6th.

9 MR. THOMAS: Yes, sir. And I guess what I
10 would say is I don't think it matters whether it's
11 June, April, May, July, November, December --

12 MR. BENBOW: That's their decision.

13 MR. THOMAS: -- these can't be in bloom.

14 MR. PINNOCK: Okay. Other questions?

15 MS. HOGUE: I have a question for Mrs. Kerr.

16 MS. KERR: Yes.

17 MS. HOGUE: You said that your photos --

18 MR. BENBOW: Wait. Let her come up.

19 MS. KERR: Yes. I have plenty of photos.

20 MS. HOGUE: Were different than these photos.

21 MS. KERR: Yes, I do. And, actually, that
22 giant area of clear-cutting, only about 7,000 square
23 feet of the 23,000 square feet of CUP buffer is part of
24 that area that was not --

25 MS. HOGUE: And you -- I just want to -- for

1 us to see --

2 MS. KERR: So --

3 MS. HOGUE: -- the photos.

4 MS. KERR: -- these are photos in the
5 wintertime of what the screen was.

6 MS. HOGUE: And what are the dates?

7 MS. KERR: This was in -- okay. Here is --
8 right after they had started on the house, so
9 probably ...

10 MS. HOGUE: Oh, so before you started
11 building your house?

12 MS. KERR: Yes.

13 MS. HOGUE: Okay.

14 MS. KERR: And then --

15 MS. HOGUE: But photos of --

16 MS. SADID: Of today?

17 MS. KERR: These --

18 MS. HOGUE: Of today.

19 MS. KERR: I have photos of today too.

20 MS. HOGUE: Yeah.

21 MS. KERR: Yeah. Let me get those.

22 These are actually photos of -- these are
23 when Mr. Davidson first came out. And then this photo
24 here, this shows --

25 MS. HOGUE: And when were these photos taken?

1 MS. KERR: These were done very shortly after
2 the plantings went in.

3 MS. HOGUE: And where's your house?

4 MS. KERR: Our house is here.

5 MR. YORK: We're looking towards the Emrochs'
6 property?

7 MS. KERR: We're looking at the Emrochs'
8 property. Here, we're looking towards Emrochs'
9 property. This is part of the 253 linear feet that was
10 never touched over there. And if you look, this is
11 a --

12 MS. HOGUE: And when were these photos taken?

13 MS. KERR: These were done after all of our
14 plantings went in, which went in October 2016. So
15 these were probably right around -- when might first
16 bloom would be. April -- April or May of 2017. And
17 then this is what that looked like in the summertime.

18 MS. HOGUE: Then before you built the house?

19 MS. KERR: Yep. And then I do have -- this
20 is also what it looks like in the wintertime, though.
21 And the screening just did not exist along 200 linear
22 feet. Because realize our CUP goes -- our property is
23 beyond this fence. This fence cuts off a great deal of
24 our property. Our property goes beyond it, so these
25 are ours, but they don't provide much screening, and we

1 don't have the wisteria bloom.

2 MR. BENBOW: This is really difficult to get
3 court reporting on, folks.

4 MR. YORK: So --

5 MS. KERR: And this is --

6 MR. BENBOW: Roger, this is very difficult.

7 MR. PINNOCK: I'm going to ask you to hand
8 these to Mr. Benbow.

9 MS. KERR: Oh, okay.

10 MR. BENBOW: It would be helpful if we had
11 dates. Can you --

12 MS. KERR: Can I organize them for you?

13 MR. BENBOW: Yeah. Organize and put dates --

14 MS. HOGUE: Befores and afters.

15 MR. BENBOW: -- on them and submit them to
16 the record.

17 MS. KERR: Okay.

18 MR. THOMAS: And I'm sorry. Again, because
19 there is a record, these were all submitted to you
20 prior and distributed for public viewing? Because we
21 were told that we could not use any materials that
22 weren't made available to the public so that there
23 could be a full and fair response to whatever was
24 submitted. I just want to make sure Mr. Benbow had had
25 that conversation with Ms. Kerr as well.

1 MR. BENBOW: I don't know who's seen the
2 pictures. Have you seen any pictures, Mr. Davidson?

3 MR. DAVIDSON: Have I seen them?

4 MS. KERR: He has, yes.

5 MR. DAVIDSON: Yes, sir.

6 MR. BENBOW: He just said he has.

7 MS. KERR: He's seen them before.

8 MR. YORK: She says you have.

9 But Mr. Davidson has been out there recently.

10 MR. PINNOCK: Are there other questions from
11 the board for any of the witnesses?

12 I have a question for Ms. Emroch, if I could.

13 MS. EMROCH: Yes.

14 MR. THOMAS: Go up there. Go up.

15 MR. PINNOCK: You testified that when you --
16 one of your first meetings with Dr. Davidson, his
17 response to you was there are violations all over the
18 place. Was he explicit in terms of what violations
19 were all over the place?

20 MS. EMROCH: Yes. Sort of. I wish I
21 prepared more for this, but ...

22 MR. PINNOCK: It's okay.

23 MS. EMROCH: On that day, he told me that
24 they were in violation of the DPU. Well, first of all,
25 he was never going to see me. I went downtown, and I

1 called for a week and a half, two weeks to get a
2 meeting with you and was unable to get it. Then I went
3 downtown just to see if I could meet with him, and I
4 was just trying to see, do they have -- where is the
5 plan? Because we believed in the CUP, that you
6 couldn't be cutting in there without a permit. And if
7 they said they had a permit, I believed they had a
8 permit, and I wanted to see it. And nobody could --
9 you know, even Lockgreen, Mr. Phillip Adams was unable
10 to produce anything. He -- he said he hadn't seen it
11 either.

12 So I went down there to see the permit. A
13 young woman at the desk was talking with me about who I
14 should see, and since she -- they weren't going to tell
15 me whether Mr. Davidson was there or not. And she
16 said, oh, well, this last to the DPU. I gave her our
17 address and the address of the Kerrs. So she pulled up
18 this sheet -- and I wish I brought the sheet because I
19 still have it. It -- and just -- and she was telling
20 me that I needed to go to DPU, when all of a sudden,
21 Mr. Glen Wilkins came in the door. And Mr. Wilkins
22 worked for DPU.

23 I showed it to him. He sat me down, went
24 back and got Mr. Davidson and was there five or ten
25 minutes. They came out, and they -- that's when you

1 said they were in violation of everything. And he
2 could not find the building permit, the certificate of
3 occupancy, and so -- and the -- I learned later on that
4 the reason he couldn't -- he couldn't find the -- well,
5 Mr. -- he didn't have a copy. He didn't have a copy of
6 the permit that said they could go into the DPU. And I
7 have a copy of that permit here if you'd like to see
8 it.

9 MR. PINNOCK: No. I was just interested in
10 your recollection --

11 MS. EMROCH: And it has --

12 MR. PINNOCK: -- of your encounter with
13 Mr. Davidson.

14 MS. EMROCH: -- everything on it that the
15 Kerrs promised to do and didn't do. This is your file,
16 your -- this is the permit, and this is why he couldn't
17 find it. See this permit here? It's got a number
18 here.

19 MR. PINNOCK: It's a building permit, yes.

20 MS. EMROCH: I know. Well, that's the
21 building permit. But then the water permit said they
22 could go into the DPU was this number. This number had
23 a digit missing, so when he went to look for the
24 building permit, he couldn't get in. Well, the --

25 MR. PINNOCK: Okay.

1 MS. EMROCH: -- Kerrs had gotten in their
2 house without a building permit. They'd been there for
3 several months without it. So if you look at this over
4 here -- these are your -- I got this from you. He
5 helped me get this so that I could understand what
6 happened. The Kerrs, in order to put their house into
7 the D -- into the D ...

8 MR. PINNOCK: You're okay.

9 MS. EMROCH: Into the RPA. This is her
10 house. They encroached it in the RPA. They agreed to
11 give up this land. This says upper limits of just --
12 just the orange is upper limits of disturbance, and
13 this green is how far up the vegetation came. Now,
14 that might not have been all trees, but there was lots
15 of vegetation, heavy vegetation, up in -- up this far.
16 The house was going to go here.

17 MR. PINNOCK: Uh-huh.

18 MS. EMROCH: They wanted to encroach in the
19 RPA. This permit was allowing them to do -- to -- if
20 they would give this land back.

21 MR. PINNOCK: I understand.

22 MS. EMROCH: These figures on here that say
23 these were existing trees were not as it shows. There
24 were a lot more in there than that. This also really
25 was -- you know -- this is the -- and they agreed to

1 undisturbed buffer. The Kerrs promised when they got
2 this permit that they were not going to be in ...

3 MR. PINNOCK: Okay. I understand. Thank
4 you. You've answered my question.

5 MR. YORK: I have one very quick question for
6 the zoning administrator. When you -- you were --
7 you've been out there recently?

8 MR. DAVIDSON: I was out there yesterday.

9 MR. YORK: Your -- is it your determination
10 that the -- that they are still in compliance with what
11 you previously had determined was legal?

12 MR. DAVIDSON: They were absolutely more in
13 compliance --

14 MR. YORK: But Nevertheless --

15 MR. DAVIDSON: -- with the permit.

16 MR. YORK: -- they are -- you -- in other
17 words, their status has not regressed?

18 MR. DAVIDSON: This --

19 MR. YORK: That's all I want to know.

20 MR. DAVIDSON: This does not exist.

21 MR. YORK: And I have one final quick
22 question for Mr. Thomas. The picture that you showed
23 at the beginning that the Emroch -- that's the Emrochs'
24 of what it looked like when they bought the property,
25 that picture right there, that was taken when?

1 MR. THOMAS: I believe it's 1990.

2 MR. YORK: So --

3 MR. THOMAS: Immediately after.

4 MR. YORK: -- are some of the trees that are
5 in that photograph beyond the buffer? They must be.

6 MS. EMROCH: A lot of those are our trees.

7 MR. THOMAS: Yeah. I mean, this is both the
8 Emroch side of the property and what became the Kerr
9 side of the property.

10 MR. YORK: But, nevertheless, the -- the
11 testimony that we got was -- and from pictures that we
12 got, there was a lot of vegetation that was beyond the
13 buffer strips they were legally permitted to remove it.
14 And wouldn't that enhance that view?

15 MR. THOMAS: You're referring to some of the
16 trees that might be back in here?

17 MR. YORK: Yes.

18 MR. THOMAS: The answer to your question, I
19 don't know which of those trees were there in 1990 and
20 which were -- I guess nothing would have been planted
21 in the --

22 MR. YORK: Anyways, the picture shows what
23 the view was before the site was developed. That's
24 what I'm asking.

25 MR. THOMAS: Yes, sir. It shows the view at

1 the time the ordinance was adopted. Yes, sir.

2 MR. YORK: Okay. Thank you.

3 MS. EMROCH: Well, the ...

4 MR. PINNOCK: Are there other questions?

5 So, ladies and gentlemen, we're going to
6 suspend our normal rules. I have no objection from the
7 board and go ahead and deliberate this case now so we
8 don't have to keep our court reporter here, which I'm
9 saving the city as much money as I can. So if anybody
10 needs a break, it's ...

11 MR. BENBOW: Anyone want a break? Anyone
12 want a break?

13 MR. PINNOCK: Okay.

14 MR. BENBOW: You sure?

15 MR. PINNOCK: So Case No. 14-18, an appeal --

16 MR. BENBOW: Can we wait a second?

17 MR. PINNOCK: -- of the Emrochs. I'm looking
18 for a motion.

19 MR. BENBOW: Wait. Do you want to see these
20 or not?

21 MR. PINNOCK: An appeal of Walter and Karen
22 Emroch. I'm looking for a motion.

23 MS. HOGUE: I will propose for the Emrochs.
24 The Kerrs purchased the property. It seems like some
25 of the pictures that were shown, some of the trees came

1 down in 2016 even though the city -- Mr. Davidson said
2 no in May of 2015. Again in June 2017. He did reverse
3 himself in October 2017.

4 I live in the neighborhood, so I do remember
5 in 1985 and 1989 when the Westmoreland, Hillcrest came
6 about when this development of Lockgreen came about.
7 It -- it was meant to protect the other neighborhoods,
8 the -- for their property values and their yards. So
9 the fact that the BZA has a precedent of two previous
10 like cases coming before us and we protected again
11 Hillcrest and Westmoreland, I think we should go with
12 the precedent because it really will be sad for
13 Westmoreland and Hillcrest and the Windsor Farms area
14 because if we set a precedent that everyone can
15 obliterate the buffer, more people will do it.

16 MR. PINNOCK: Motion to uphold the appeal
17 moving to overturn the decision of the zoning
18 administrator.

19 Is there a second?

20 (No audible response.)

21 Hearing none.

22 Do I have a new motion?

23 MR. YORK: I'd suggest that, at least for the
24 purposes of the discussion, we need a motion to uphold
25 the decision of the zoning administrator. For the

1 purposes of discussion, which I will do.

2 MR. SAMUELS: I'll ...

3 MR. BENBOW: I didn't hear. Did you second,
4 Mr. Samuels?

5 MR. PINNOCK: Do you second?

6 MR. SAMUELS: Yes. I will second that
7 motion.

8 MR. BENBOW: Okay.

9 MR. YORK: I don't like this case at all. By
10 the way, those two previous cases didn't involve
11 anything like this. They had to do with whether a
12 driveway could be --

13 THE COURT REPORTER: I need him to speak up.

14 MR. BENBOW: Huh?

15 THE COURT REPORTER: He needs to speak up.

16 MR. BENBOW: Roger --

17 MR. PINNOCK: You need to speak up.

18 MR. BENBOW: -- you need to lean forward,
19 please.

20 MR. YORK: The other two cases that we had
21 really weren't relevant to this issue at all. I mean,
22 we did take a position in support of the adjacent
23 neighborhood, but they really weren't pertinent to this
24 case. The problem here is we have language in the
25 ordinance or referenced in the applicant's report that

1 in my opinion doesn't really adequately deal with what
2 the issue was supposed to have been.

3 And the problem we have here, regardless of
4 how I may feel personally about this -- is I'm reading
5 from 15.2-2309 of the Code of Virginia -- the
6 determination of the administrative officer, zoning
7 administrator, shall be presumed to be correct. At a
8 hearing or an appeal, the administrative officer shall
9 explain the basis for his determination after which the
10 appellant has the burden of proof to rebut such
11 presumption by a correct -- by a preponderance of the
12 evidence. That means that he has to be clearly wrong.
13 Not just sort of, you know, maybe/maybe not wrong.

14 And because of that, even though I'm not
15 crazy about the zone, I don't -- I think we have to go
16 along with the zoning administrator's determination
17 because of that. I don't think he was clearly wrong
18 based on the awkward language that he had to deal with.
19 Clearly, the solution here is to reevaluate the
20 ordinance, the two Westmoreland and Lockgreen
21 associations to get together and redraft the language,
22 and that is a solution that has been proposed by
23 myself, by a whole lot of other people --

24 MR. PINNOCK: In the past.

25 MR. YORK: -- and the secretary -- in the

1 past over and over and over, it's never gotten
2 anywhere. That's how this should be resolved as
3 somebody, as Ms. Kerr said, the idea of getting
4 together and shaking hands and try to work this out
5 clearly is what makes the most sense rather than having
6 to -- every time somebody cuts down a dead tree, you
7 have the potential of having to deal with another issue
8 like this.

9 And I feel sorry for the zoning
10 administrator. I think it's unfortunate he's been put
11 in this situation, but I -- I don't know what our
12 alternative is.

13 MR. PINNOCK: Is there further decision?

14 MS. HOGUE: Well, to counter Mr. York, the
15 zoning administrator December 23rd, 2015, before the
16 vegetation and trees were taken down, said, in no
17 instance was clearing authorized in the buffer area.
18 In addition, it appears that in print it may also be
19 located within the buffer and are not permitted. The
20 inspection revealed that the buffer had been disturbed
21 and compromised and shall be a need to supplement the
22 existing landscape conditions.

23 MR. YORK: He has made a determination that
24 what the Kerrs have done to remedy that --

25 MS. SADID: Right.

1 MR. YORK: -- meets the requirements of the
2 ordinance. That's the bottom line.

3 MS. HOGUE: But he didn't do that till
4 October 2017, and all of this happened in 2016.

5 MR. YORK: Well, nevertheless, he did it.
6 And, of course, you know, there's another whole new
7 situation going on up there because --

8 MR. PINNOCK: Which is not part of this case.

9 MR. YORK: Which is not part of this case.

10 MR. PINNOCK: Thank you.

11 Is there further discussion?

12 Showing there's a motion to uphold the
13 decision of the zoning administrator and a second.

14 All those in favor of that motion, say aye.

15 (Simultaneously responding "aye.")

16 MR. PINNOCK: Opposed?

17 MS. HOGUE: Opposed.

18 MR. PINNOCK: And the decision is upheld.

19 Ladies and gentlemen, thank you for spending
20 the time with us.

21

22 (Meeting concluded at 2:31 p.m.)

23

24

25

CERTIFICATE OF COURT REPORTER

ORIGINAL

1
2
3 I, Grace F. Lengmueller, RPR, CCR, do hereby
4 certify that the proceedings in the herein matter were
5 taken at the time and place therein stated; that the
6 proceedings were reported by me and were thereafter
7 transcribed under my direction; that the foregoing
8 contains a true and correct verbatim transcription of
9 all portions of the proceedings.

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

15 Given under my hand this 11th of May, 2018.
16
17

18
19 
20 _____
Grace F. Lengmueller, RPR, CCR
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