

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE GLEN ECHO BUILDING**
3 **ADJACENT TO THE EASTERN GOVERNMENT CENTER AT 3810 NINE MILE**
4 **ROAD, ON THURSDAY, DECEMBER 18, 2008, AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **NOVEMBER 27, 2008 AND DECEMBER 4, 2008.**

7
Members Present: Elizabeth G. Dwyer, Chairman
James W. Nunnally
Robert Witte
R. A. Wright

Members Absent: Helen E. Harris

Also Present: David D. O'Kelly, Jr., Assistant Director of Planning
Benjamin Blankinship, Secretary
Paul Gidley, County Planner
R. Miguel Madrigal, County Planner
Carla Brothers, Recording Secretary

8
9 Ms. Dwyer - Good morning. Welcome to the Henrico County Board
10 of Zoning Appeals meeting. This is December 18, 2008. We'll begin our meeting
11 with the **Pledge of Allegiance to the Flag of Our Country.**

12
13 Mr. Blankinship, would you read the rules of the Board, please.

14
15 Mr. Blankinship - Good morning, Madam Chairman, members of the
16 Board, ladies and gentlemen. The rules for this meeting are as follows. Acting as
17 Secretary, I will call each case—well, *the* case. We only have one case on the
18 agenda this morning. While I'm speaking, the applicant should come down to the
19 podium. We will then ask everyone who intends to speak on that case to stand
20 and be sworn in. The applicant will then have an opportunity to speak, and then
21 anyone else who wishes to speak will be given an opportunity. After everyone
22 has spoken, the applicant, and only the applicant, will be given an opportunity for
23 rebuttal. After everyone has spoken and the Board has asked questions, they will
24 take the matter under advisement, and they will render all of their decisions at the
25 end of the meeting. But there's only one case, so I guess they'll vote as soon as
26 it's over. This meeting is being recorded, so I will ask everyone who speaks to
27 speak directly into the microphone on the podium, state your name, and please
28 spell your last name so we get it correctly in the record. This is a variance case,
29 so I hope that you have had an opportunity to review the staff report. If not, then
30 we'll make sure that you get that opportunity.

31
32 The applicant has requested deferral on case A-019-08 to the February meeting.
33

34 **A-019-08** **VIRGINIA LANDBANK COMPANY** requests a
35 variance from Section 24-9 to build a one-family dwelling at 2421 Hartman Street
36 (Montezuma Farms) (Parcel 801-728-7752), zoned R-4, One-family Residence
37 District (Fairfield). The public street frontage requirement is not met. The
38 applicant has 0 feet public street frontage where the Code requires 50 feet public
39 street frontage. The applicant requests a variance of 50 feet public street
40 frontage.

41
42 Ms. Dwyer - Do we need to vote on the deferral, Mr. Blankinship?

43
44 Mr. Blankinship - Yes, you should. On a withdrawal, we usually don't,
45 but a deferral we do.

46
47 Ms. Dwyer - All right. Case A-019-08, Virginia Landbank Company.
48 Is there a motion on the case?

49
50 Mr. Nunnally - I move we defer it to the February meeting.

51
52 Ms. Dwyer - Okay, do I have a second?

53
54 Mr. Wright - Second.

55
56 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Mr. Wright. All
57 in favor say aye. All opposed say no. The ayes have it; the motion passes.

58
59 After an advertised public hearing, and on a motion by Mr. Nunnally, seconded
60 by Mr. Wright, the Board, per the applicant's request, **deferred** application **A-**
61 **019-08, Virginia Landbank Company's** request for a variance from Section 24-
62 9 to build a one-family dwelling at 2421 Hartman Street (Montezuma Farms)
63 (Parcel 801-728-7752), zoned R-4, One-family Residence District (Fairfield). The
64 public street frontage requirement is not met.

65
66
67 Affirmative: Dwyer, Nunnally, Witte, Wright 4
68 Negative: 0
69 Absent: Harris 1

70
71
72 **A-031-08** **FRANK BLAKESLEE COX, JR.** requests a variance
73 from Section 24-95(b)(6) to build a one-family dwelling at 16 S Cedar Avenue
74 (Highland Springs) (Parcel 821-725-5422), zoned R-4, One-family Residence
75 District (Varina). The total lot area requirement is not met. The applicant has
76 5,000 square feet total lot area where the Code requires 6,000 square feet total
77 lot area. The applicant requests a variance of 1,000 square feet of total lot area.

78
79 Ms. Dwyer - Is there anyone else here to speak to the case?

80 Okay. If you're here to speak to the case, please stand and be sworn.
81
82 Mr. Blankinship - Would you raise your right hands, please? Do you
83 swear the testimony you're about to give is the truth and nothing but the truth so
84 help you God?
85
86 Mr. Burruss - Yes sir.
87
88 Ms. Dwyer - Please state your name, spell your last name, and
89 state your case.
90
91 Mr. Burruss - Members of the Board, my name is Edmond Burruss,
92 land surveyor in Powhatan. I'm here, basically, to represent the owners of the
93 property. If you look at the plat, the footprint allows the dwelling that is being
94 proposed. It's consistent with a case last month that was approved for Sherry
95 McCarthy, case number A-026-08. Basically, it's an area deficiency. This lot was
96 created in 1905. Preceded the ordinances, I'm sure.
97
98 I'll be happy to answer any questions.
99
100 Mr. Nunnally - Who's the owner of this property now, Mr. Burruss?
101
102 Mr. Burruss - Frank Blakesless Cox, Jr.
103
104 Mr. Nunnally - Has he already bought the land?
105
106 Mr. Burruss - That's the current owner. I represent Ridgefield
107 Concepts, the contract purchaser of the property.
108
109 Ms. Dwyer - I realize that we may have approved a similar case,
110 but each case needs to stand on its own.
111
112 Mr. Burruss - Yes ma'am. I just wanted to call your attention to that,
113 yes ma'am.
114
115 Ms. Dwyer - Under the ordinance, which exception are you
116 claiming under the variance ordinance?
117
118 Mr. Burruss - Well, I'm not sure which exception it would be, but the
119 total matter is it has an area deficiency. It's a lot of 5,000 square feet, and the R-
120 4 District requires 6,000 square feet. This lot lies within the R-4 District.
121
122 Ms. Dwyer - Right. But there are certain bases for justifying a
123 variance to our ordinance. My question is under which section of the Code are
124 you claiming a variance?
125

126 Mr. Burruss - I'm sorry. This is my first time representing. I just
127 thought I was here to answer your questions, and represent the particular
128 problems of the property. The ordinance requires a 6,000-square-foot lot in this
129 district, and we only have 5,000 square feet. It's a lot that was created in 1905.
130
131 Mr. Nunnally - Mr. Burruss, if this variance is approved, what type of
132 house are you planning on putting there?
133
134 Mr. Burruss - I have a picture in my file that was given to me.
135
136 Mr. Blankinship - It's crossed in red and says, "Do not use plan." What
137 should we draw from this picture? It hadn't been submitted with the case.
138
139 Mr. Burruss - I don't know. I just represent the contract purchasers.
140 That was in my file. I can't assure you exactly what they will build, but I assume
141 that's what they're looking at.
142
143 Ms. Dwyer - This is really of no value to us. I'd rather not put this
144 in the file.
145
146 Mr. Wright - Looks like to me, Madam Chairman, that we should
147 have somebody here that knows something about the case, and can tell us what
148 we need to know before we approve a variance of this nature.
149
150 Ms. Dwyer - All right. Should we defer this case as well?
151
152 Mr. Blankinship - Should we hear from the other people before we
153 decide?
154
155 Mr. Wright - We could take the testimony of the other folks, so
156 they won't have to come back.
157
158 Ms. Dwyer - All right. Any other opinions on that? Was there
159 anyone else to speak to the case? Okay. I know that you were going to speak,
160 but I thought I may have seen someone over on the other side. Okay. All right.
161 Thank you, Mr. Burruss. Did you have anything else you wanted to say?
162
163 Mr. Burruss - No. I might have some rebuttal.
164
165 Ms. Dwyer - Okay, certainly. All right, you may come forward.
166
167 Ms. Turner - Good morning.
168
169 Ms. Dwyer - Good morning.
170
171 Ms. Turner - Vicki Turner. T-u-r-n-e-r.

172
173 Mr. Haley - I'm Bill Haley. H-a-l-e-y.
174
175 Ms. Dwyer - Thank you.
176
177 Ms. Turner - I'm the owner of 12 South Cedar, right beside that lot.
178
179 Ms. Dwyer - Okay.
180
181 Ms. Turner - It's not a very big lot. The flags are right against my
182 fence, and almost in the middle of my trees where they had marked it off.
183
184 Ms. Dwyer - Is this your home?
185
186 Ms. Turner - Yes.
187
188 Ms. Dwyer - Okay.
189
190 Mr. Haley - The lot is to the left. If you're looking at the front of
191 that house, that lot is to the left right there. If you put a house there, she could
192 almost pass hamburgers out of her window to the next house. Mr. Cox sold her
193 this house four or five years ago. When I went and inspected the house, I
194 couldn't even see where the house should have even been sold. It needs a lot of
195 repairs. The roof has always leaked ever since she bought the home. I can't see
196 a house going there.
197
198 Mr. Wright - Your lot is exactly the same size as the lot in
199 question, isn't it?
200
201 Ms. Turner - Yes, but the house is already there, so I didn't know
202 that.
203
204 Mr. Wright - But it's the same size. You have the same situation in
205 so far as the square footage is concerned.
206
207 Ms. Dwyer - Is it the same size?
208
209 Mr. Wright - Well, you can see it right here on the plat. Ms.
210 Turner's lot is right next to it to the right there.
211
212 Ms. Dwyer - I didn't see a dimension for the side.
213
214 Mr. Blankinship - There's another house on the other side, so it does
215 appear to be a 50-foot lot.
216
217 Ms. Dwyer - It is a 50-foot?

218
219 Mr. Wright - I looks the same to me.
220
221 Ms. Dwyer - Your address is 12 South Cedar?
222
223 Ms. Turner - Yes ma'am.
224
225 Ms. Dwyer - It's lot 16? Is that correct?
226
227 Ms. Turner - Yes.
228
229 Mr. Blankinship - We're going to get tied up on lot numbers and
230 address numbers.
231
232 Ms. Dwyer - I know. We had that last time.
233
234 Mr. Haley - We'll be more than happy to sell Mr. Cox his house
235 back, and then he won't have this problem.
236
237 Ms. Dwyer - Your concern is that another house on this lot
238 requiring a variance would crowd your home.
239
240 Ms. Turner - It would be like really close together.
241
242 Ms. Dwyer - You have, it looks like, almost 13 feet between the
243 edge of your house and the property line. This house, subject to this variance,
244 would have only 7-1/2 feet between the house and your property line, according
245 to the plat that's been submitted.
246
247 Mr. Blankinship - That's the buildable area, so.
248
249 Ms. Dwyer - Oh, that's the buildable area?
250
251 Mr. Blankinship - The house would fit within that. It could be at least 20
252 feet between the two dwellings, possibly more.
253
254 Ms. Dwyer - All right.
255
256 Mr. Wright - How many other houses in this area are on the 5,000-
257 square-foot lots?
258
259 Mr. Blankinship - I think almost every lot in this block was developed—
260 You see it in the aerial photograph there. Looks like at the corner with Read
261 Street, there are a couple of cases where two lots were combined. Then the one
262 that you dealt with last month, the address which is 18. Otherwise, it looks like 3,
263 5, 7, 9, 11, 13, and 15, and then—

264
265 Ms. Dwyer - Are you talking—
266
267 Mr. Blankinship - —8, 10, and 12. I'm reading the address off the aerial
268 photograph.
269
270 Ms. Dwyer - Okay.
271
272 Mr. Blankinship - Then 8, 10, and 12 are each a dwelling on a 50-foot
273 lot.
274
275 Mr. Wright - Five thousand square feet.
276
277 Mr. Blankinship - Yes, yes. Each lot in the block is 50 feet wide and 100
278 feet deep.
279
280 Mr. Wright - Is 18 South Cedar Street 5,000 square feet? That
281 looks larger.
282
283 Mr. Blankinship - That's the one you dealt with last month, and it's
284 actually three lots that were bought, or at least were owned by the same person
285 until last month's meeting. The house at 18 South Cedar straddles the lot line
286 between two lots. You remember from last month, the lot to the rear of that fronts
287 on South Beach, that's the one you granted a variance for last month. So, if you
288 separated that, you're left with a 100-by-100-foot lot, with the house set right in
289 the center.
290
291 Mr. Wright - But that's more than 5,000 square feet.
292
293 Mr. Blankinship - Right. That's 10,000 square feet.
294
295 Mr. Wright - There's no problem with that.
296
297 Mr. Blankinship - Right. Also, it's a pre-existing house. Most of the
298 houses in that block were built prior to 1960.
299
300 Ms. Dwyer - So, the homes were built prior to the ordinance being
301 enacted.
302
303 Mr. Blankinship - Yes ma'am.
304
305 Ms. Dwyer - Mr. Blankinship, I noticed in the staff report you talked
306 about the exception standards.
307
308 Mr. Blankinship - Yes ma'am.
309

310 Ms. Dwyer - Could you just briefly review? My understanding is
311 those standards were enacted to allow smaller lots in cases where lots preceded
312 the ordinance.

313
314 Mr. Blankinship - Right. When the comprehensive rezoning took place
315 in 1960, the County recognized that there were many, many lots throughout the
316 County that had already been developed under different standards—these prior
317 to any zoning. Then some under the 33 zoning ordinance, and some after that,
318 but prior to '60. And the zoning ordinance changed three or four times. The
319 decision was made with the 1960 ordinance to set down the exception standards
320 and say that any lot developed prior to 1960 that met those standards would be
321 treated as a buildable lot on into the future. Not treated as a non-conforming lot,
322 but treated as a lawful, buildable lot.

323
324 Now, this lot does not quite conform to even those exception standards, being 50
325 by 100. If it was 50 by 120, the applicant wouldn't be here today; they would just
326 go get a building permit.

327
328 Ms. Dwyer - So, the exception standards apply to width, depth,
329 and square footage?

330
331 Mr. Blankinship - Yes. The lot width, the lot area, and the setbacks are
332 adjusted in most cases.

333
334 Ms. Dwyer - Okay. So, what's normally required for this lot is
335 what, and then the exception standard allowed.

336
337 Mr. Blankinship - Today, an R-4 lot would require 65 feet of width, and
338 8,000 square feet of area. Under the exception standards, it's 50 feet of width, or
339 6,000 square feet of area.

340
341 Ms. Dwyer - So, we've already made an exception for this lot
342 because it was developed before the 1960 ordinance.

343
344 Mr. Blankinship - Many of the lots in Highland Springs were developed
345 originally at 50 by 120.

346
347 Ms. Dwyer - Right.

348
349 Mr. Blankinship - By setting the exception standard there, all of those
350 lots were rendered buildable, rather than non-conforming.

351
352 Ms. Dwyer - I guess one could argue that the legislature has
353 spoken here in the sense that they recognize that some lots created before 1960
354 were smaller than what they wanted after 1960, so they've made a statute that
355 allows the smaller lots to be developed. In this case, normally we would require

356 a 65-foot lot, and we're only requiring 50. Normally, we're requiring an 8,000-
357 square-foot lot, and we're only requiring 6,000 square feet.

358
359 Mr. Blankinship - Yes ma'am.

360
361 Ms. Dwyer - Okay.

362
363 Mr. Wright - 18 South Cedar Avenue has excessive frontage.
364 Could not this lot be acquired—How much would it need to be within the 6,000
365 square feet?

366
367 Mr. Blankinship - Actually, just 60 feet of frontage. Ten feet would bring
368 it up to 60 by 100, which would be 6,000.

369
370 Mr. Wright - If they could acquire ten feet from the lot next door,
371 they wouldn't be here.

372
373 Mr. Blankinship - Right.

374
375 Mr. Wright - That's one thing that should be explored here,
376 because there is additional area on that lot next door to the left.

377
378 Mr. Blankinship - Yes.

379
380 Mr. Wright - If they acquired ten feet from that lot, it would still be
381 conforming, the next door lot would.

382
383 Mr. Blankinship - Yes sir. It would then be 90 by 100, or 9,000 square
384 feet—90 feet of width and the setbacks—

385
386 Mr. Wright - All they need is ten feet, and they could build it
387 without a variance. These things should be explored, and I don't think the owner
388 has proper representation to explore that.

389
390 Ms. Dwyer - Ms. Turner, Mr. Haley, do you have any other
391 comments you'd like to make?

392
393 Mr. Haley - Yes, I have one concern. Her concern is, you know,
394 whether it's a rental house, whether it's a house for sale, or whether this owner
395 intends to live there. She's a lady that lives with her daughter, and she has those
396 concerns, whether it's going to be a rental house, whether it's going to be
397 property that people move in and a year later down the road, or two years down
398 the road, someone else moves in. There's a little difference when you sell a
399 house or an owner's going to live in it compared to a rental property.

400
401 Mr. Witte - We can ask Mr. Burruss to respond to that.

402
403 Mr. Wright - Are there any other rental properties in that area, or
404 do you know?
405
406 Mr. Haley - Next to Nine Mile Road when you turn off South
407 Cedar, I think there are some properties right there that are rental properties.
408
409 Ms. Dwyer - Okay. Thank you very much. Mr. Burruss, would you
410 like to take time for rebuttal?
411
412 Mr. Burruss - I really don't have any information about whether it
413 will be a rental. I just represent Ridgefield Concepts. We do believe, though, that
414 the property, the fact that it is a recorded lot and it's such an old lot—1905, I think
415 it is—that the merits of the lot itself should stand. I will explore the possibility of
416 about ten feet.
417
418 Mr. Wright - If it could be done, Mr. Burruss, you wouldn't have to
419 be here.
420
421 Mr. Burruss - Right, I understand.
422
423 Mr. Wright - Would you want us to defer the case to give you an
424 opportunity to look into that?
425
426 Mr. Burruss - I certainly wouldn't want you to deny it. If that's the
427 alternative, yes sir.
428
429 Ms. Dwyer - Anything else, Mr. Burruss?
430
431 Mr. Burruss - No, thank you.
432
433 Ms. Dwyer - Okay. That closes the case. Do I have a motion on
434 the case?
435
436 Mr. Witte - I make a motion we defer it.
437
438 Ms. Dwyer - Okay. Motion by Mr. Witte to defer it. Do I have a
439 second?
440
441 Mr. Wright - Second.
442
443 Ms. Dwyer - Second by Mr. Wright. All in favor say aye. All
444 opposed say no. The ayes have it; the motion passes. We will defer the case
445 until January.
446
447 Mr. Blankinship - Let me just mention that in January, we will back in

448 our normal meeting room, which is at the West End Government Center. You
449 will receive another notice. You're more than welcome to come. Your testimony
450 from the record of this meeting will be taken into account.

451
452 After an advertised public hearing, and on a motion by Mr. Witte, seconded by
453 Mr. Wright, the Board, per the applicant's request, **deferred** application **A-031-**
454 **08, Frank Blakeslee Cox, Jr.'s** request for a variance from Section 24-95(b)(6)
455 to build a one-family dwelling at 16 S Cedar Avenue (Highland Springs) (Parcel
456 821-725-5422), zoned R-4, One-family Residence District (Varina). The total lot
457 area requirement is not met.

458
459 Affirmative: Dwyer, Nunnally, Witte, Wright 4
460 Negative: 0
461 Absent: Harris 1

462
463
464 Ms. Dwyer - What is the date of that, Mr. Blankinship?
465
466 Mr. Blankinship - January the 25th, I believe, but it's the fourth Thursday
467 of January.
468
469 Mr. Wright - I'll tell you. I have a calendar right here.
470
471 Ms. Dwyer - All right.
472
473 Mr. Wright - January the 22nd.
474
475 Mr. Blankinship - The 22nd.
476
477 Ms. Dwyer - The 22nd.
478
479 Mr. Blankinship - My mistake.
480
481 Mr. Nunnally - Thank you, sir.
482
483 Ms. Dwyer - Thank you, Mr. Burruss.
484
485 Mr. Wright - January 22nd.
486
487 Ms. Dwyer - All right. That concludes the cases for today. Before
488 we do the minutes—Well, we'll go ahead and do the minutes before we do any
489 other business. Any amendments to the minutes from November?
490
491 Mr. Wright - They looked pretty good to me.
492
493 Ms. Dwyer - I had a change on page 38. Since Ms. Harris isn't

494 here, I'm going to attribute something to her. On line 1714, page 38. I believe
495 that was a conversation that Ms. Harris was having with the applicant. It says
496 Ms. Dwyer; I think that was Ms. Harris.

497
498 Mr. Nunnally - What line is that?

499
500 Ms. Dwyer - 1714. It just says Ms. Dwyer, it was Ms. Harris. Then
501 page 80, line 3626. I think that's l-i-f-t, instead of l-i-s-t. It's inches of lift—l-i-f-t.
502 Talking about the compaction standards. Okay.

503
504 Mr. Wright - Which line was that?

505
506 Ms. Dwyer - I lost it already.

507
508 Mr. Wright - Two six. Right there. Okay.

509
510 Ms. Dwyer - Thirty six twenty six. Anything else? Do we have a
511 motion on the minutes?

512
513 Mr. Wright - I move we approve the minutes as corrected.

514
515 Mr. Nunnally - Second.

516
517 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Nunnally to
518 approve the November minutes as amended. All in favor say aye. All opposed
519 say no. The ayes have it; the motion passes.

520
521 On a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **approved** as
522 corrected the **Minutes of the November 20, 2008** Henrico County Board of
523 Zoning Appeals meeting.

524
525 Affirmative: Dwyer, Nunnally, Witte, Wright 4
526 Negative: 0
527 Absent: Harris 1

528
529
530 Ms. Dwyer - Mr. Blankinship, you sent us some other information
531 in our packet this month.

532
533 Mr. Blankinship - Yes ma'am.

534
535 Ms. Dwyer - What is the procedure for discussing that?

536
537 Mr. Blankinship - I don't know that there is a procedure, or what sort of
538 discussion the Board would like to carry on. As you know, because of your quasi-
539 judicial role, we are a little protective of you Board members, and ask applicants

540 and opponents both not to approach you directly, in order to prevent you from
541 getting into ex parte conversations.

542
543 Ms. Dwyer - Right.

544
545 Mr. Blankinship - When an individual says, "I want this information put
546 before the Board," I feel more of a responsibility—I wouldn't say to that person,
547 "Well, go approach the Board member yourself," as we might with a Planning
548 Commissioner or a Board of Supervisors' member. At the individual's request,
549 who is here this morning, I merely printed out the entire chain of e-mails, and
550 submitted them to you for your review.

551
552 Ms. Dwyer - Any opinions by the Board about how we want to
553 handle this material?

554
555 Mr. Wright - It appears to me it's an issue of fact. First, I want to
556 say I do not appreciate the language that was used in these e-mails. I want to go
557 on record to that. Secondly, I think the only issue is that it's an issue of fact. If
558 the staff has been conducting inspections, and in staff's opinion the applicant has
559 met the conditions, then that's satisfactory to me. If the owner doesn't agree to
560 that, the owner could get some independent body to do inspections, and rebut
561 the staff. We rely on the staff. If the staff indicates that they have done their
562 inspections, and it's satisfactory, then I'll take that.

563
564 Ms. Dwyer - It seems to be it's an issue of compliance.

565
566 Mr. Wright - It's simple.

567
568 Ms. Dwyer - If there's an issue of compliance, what recourse does
569 a citizen have? Obviously, we permit this business to operate under special
570 exception, and we have a complaint that they're not in compliance. So, what is
571 the appropriate course of action? Surely, there is recourse.

572
573 Mr. Blankinship - Right. We have an inspector visit the site. Actually, we
574 haven't even waited for the complaints. We've had an inspector out there every
575 two weeks since the use permit was approved.

576
577 Ms. Dwyer - Right.

578
579 Mr. Blankinship - We have an inspection report and a photograph of the
580 site for every two weeks since the use permit was approved.

581
582 Ms. Dwyer - I understand. But if a citizen has a question about
583 compliance, and they believe that a person is not in compliance with our
584 conditions, is there an appeal, or is there way to be heard? Is there a forum or
585 process to go through to have that considered, reviewed?

586

587 Mr. Wright - Looks like to me there should be some sort of
588 procedure where they could appeal to the Board. If the holder of the use permit
589 is not in compliance, they should have an opportunity to get the Board to decide
590 one way or the other if they're not in compliance, and then what action we should
591 take.

592

593 Ms. Dwyer - Right, I agree. Surely, there's some avenue for us.

594

595 Mr. Blankinship - When we had the complaints about the blasting out at
596 Tidewater Quarry, that was an issue where we as a staff—not just our
597 department, but Building Inspections, Public Works, and other departments—all
598 felt that it was an open question. There was blasting going on. There was
599 damage occurring. None of us felt that we had the expertise to know whether
600 those dots were connected or not. So, we held a show-cause hearing where
601 Tidewater Quarries was notified that we had credible allegations that they were in
602 violation of their use permit, and they were required to come here and show
603 cause why the Board should not revoke their conditional use permit.

604

605 Ms. Dwyer - That was initiated by staff?

606

607 Mr. Blankinship - Yes.

608

609 Ms. Dwyer - Okay.

610

611 Mr. Blankinship - In this case, the staff is confident that the applicant is
612 in compliance with the conditions, but if the Board would like to call a show-cause
613 hearing, we will certainly do so.

614

615 Ms. Dwyer - We could initiate a show-cause, or if the—And I'm just
616 asking this as a procedural matter. If the staff issues a letter to the citizen and
617 says, "We believe the applicant is in compliance," is that an appealable decision?
618 Seems to me that they could appeal that under the appeal procedure.

619

620 Mr. Blankinship - Possibly, I don't know.

621

622 Ms. Dwyer - Okay.

623

624 Mr. Wright - Looks like the property owner next door should have
625 some recourse.

626

627 Ms. Dwyer - Right, I agree. Anybody else have any thoughts about
628 it? It looks like we have two possible procedures. One is the Board could issue a
629 show-cause as to whether the applicant remains in compliance. Secondly, the
630 staff could issue an official decision saying we believe as a staff that the
631 applicant is in compliance, and then that could be appealed. Any Board

632 members have any thoughts? Do we want to issue this show-cause? Do we want
633 to do that, or do we want to ask staff to make the decision?

634
635 Mr. Witte - I personally don't think we need to issue the show-
636 cause. The staff, evidently, is satisfied that they're compliant. Unless there's
637 some additional proof, other than a couple of e-mails, I don't see where it's
638 necessary for us to have that show-cause meeting.

639
640 Ms. Dwyer - Okay. Any other thoughts?

641
642 Mr. Wright - My thought is I agree in that we stand by the staff, but
643 somebody should have a right to appeal that.

644
645 Ms. Dwyer - In light of that, why don't we ask staff to issue an
646 opinion to the complainant, and say in our opinion, the applicant is in compliance.
647 That is a decision which is appealable to the Board under the ordinance.

648
649 Mr. Wright - Then the owner of the use permit would have a right
650 to come in and defend its position.

651
652 Ms. Dwyer - Exactly. So, we would have a hearing on the
653 compliance issue.

654
655 Mr. Blankinship - Right, if the appeal is lodged by the neighbor.

656
657 Ms. Dwyer - Correct.

658
659 Mr. Blankinship - The last time we met on this with the Director of
660 Planning, he did suggest to us a more aggressive protocol, if you will, of
661 inspections. So, we are now inspecting this site three days each week. We've
662 programmed that to continue into January. I think about the 16th of January will
663 be the end of that cycle of inspections. So, I'll speak to the Director about issuing
664 a written report at the end of that period, if that meets with your approval.

665
666 Mr. Wright - Could we send the next door neighbor a copy of those
667 inspections?

668
669 Mr. Blankinship - We certainly will.

670
671 Ms. Dwyer - All right.

672
673 Mr. Witte - Have the owners been notified that the inspection
674 process has changed from the original?

675
676 Mr. Blankinship - Yes.

677

678 Mr. Witte - Do they have any issue with that?
679
680 Mr. Blankinship - Well, they feel like they're being harassed.
681
682 Mr. Witte - Well, I can see that, too.
683
684 Ms. Dwyer - Having looked at the e-mails, let me ask a question
685 about the inspection process. Are the inspectors not permitted to go on site? I
686 know when I was on the Planning Commission, we had blanket authority to enter
687 any site about which a case had been filed. I know the inspectors probably as a
688 matter of course want to be respectful of the landowners, and not just barge in,
689 but what are the limits of what they can do?
690
691 Mr. Blankinship - On the biweekly inspections that I've been describing,
692 we have gone on the site every two weeks. They have walked the site every two
693 weeks.
694
695 Ms. Dwyer - Okay.
696
697 Mr. Blankinship - The concern that was expressed was that we don't
698 want to be going on this property every day, even with their permission.
699
700 Ms. Dwyer - Right.
701
702 Mr. Blankinship - We don't want to get into a position where we're
703 harassing them, especially where we don't see any violation.
704
705 Ms. Dwyer - Okay. So, as a matter of courtesy, we ask permission
706 to come on site.
707
708 Mr. Blankinship - Right.
709
710 Ms. Dwyer - But we don't—
711
712 Mr. Blankinship - The inspections we're doing right now every other
713 day, we're not entering on site every other day. We will continue to enter the site
714 every two weeks, but the others will be conducted from the right-of-way. You can
715 see the entire four-acre pasture fairly well from the right-of-way. You can't see
716 the barn area as well.
717
718 Ms. Dwyer - All right. I don't guess we need to take a vote on this,
719 but we would ask staff—I think it's the consensus of the Board that we ask staff
720 to make an official decision about the state of compliance in this case. And also if
721 you would notify by this letter what the procedures are for appeal.
722
723 Mr. Blankinship - Okay.

724
725 Ms. Dwyer - That is the time limits, and how the appeal process
726 would work for them, if they decide to appeal that decision.
727
728 Mr. Blankinship - Okay. We'll take that up with the Director when we
729 get back.
730
731 Ms. Dwyer - Okay. You will issue the letter in January.
732
733 Mr. Blankinship - Yes. It wouldn't be any sooner than January 16th.
734
735 Ms. Dwyer - Okay. Any other new business to come before the
736 Board this morning? All right. With that, I'll entertain a motion for adjournment.
737
738 Mr. Wright - I move we adjourn.
739
740 Mr. Nunnally - Second.
741
742 Mr. Wright - Maybe one of the shortest meetings on record.
743
744 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Nunnally. All
745 in favor of adjournment say aye. All opposed say no. The ayes have it; the
746 motion passes.
747
748 Affirmative: Dwyer, Nunnally, Witte, Wright 4
749 Negative: 0
750 Absent: Harris 1
751
752
753 There being no further business, the Board **adjourned until the January 22,**
754 **2009 meeting at 9 a.m.**
755
756
757
758
759 Elizabeth G. Dwyer
760 Chairman
761
762
763
764
765
766 Benjamin Blankinship, AICP
767 Secretary