

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**
4 **SPRINGS ROADS, ON THURSDAY, JUNE 25, 2009, AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH JUNE 4,**
6 **2009 AND JUNE 11, 2009.**

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

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
Angela Edmondson, Recording Secretary

8
9 Ms. Dwyer - Good morning. The June 25th session of the Henrico
10 County Board of Zoning Appeals will now come to order. Please rise for the
11 **Pledge of Allegiance.**

12
13 Mr. Blankinship, would you like to read the rules for the meeting?

14
15 Mr. Blankinship - Good morning Madam Chairman and members of the
16 Board, ladies and gentlemen. The rules for this meeting are as follows. Acting
17 as Secretary, I will call each case, and while I'm speaking, the applicant should
18 come down to the podium. We will then ask everyone who intends to speak on
19 that case to stand and be sworn in. The applicant will present their case, and
20 then anyone else who wishes to speak will be given an opportunity. After
21 everyone has spoken, the applicant, and only the applicant, will have an
22 opportunity for rebuttal. After the Board hears the case and asks questions, they
23 will take the matter under advisement, and they will render all of their decisions
24 at the end of the meeting. If you wish to know their decision on a specific case,
25 you can either stay until the end of the meeting, or you can check the Planning
26 Department website this afternoon, or you can call the Planning Department later
27 this afternoon. This meeting is being recorded, so I will ask everyone who
28 speaks to speak directly into the microphone on the podium, state your name,
29 and please spell your last name so we get it correctly in the record. Finally, there
30 are two binders out in the foyer that contain the staff report for each case. It's
31 very important, particularly for the applicants on use permit cases, that you be
32 familiar with the conditions that have been recommended by the staff.

33
34 We do not have any requests for withdrawal or deferral this morning.

35
36 Ms. Dwyer - Call the first case.

37
38 **A-004-09** **HILTON RUBIN** requests a variance from Section 24-
39 94 to build a one-family dwelling at 9312 Three Chopt Road (Parcel 752-749-
40 7078 (part)), zoned R-3, One-family Residence District (Three Chopt). The lot
41 width requirement is not met. The applicant proposes 62 feet lot width where the
42 Code requires 80 feet lot width. The applicant requests a variance of 18 feet lot
43 width.

44
45 Ms. Dwyer - Good morning, Mr. Rubin. We have heard this case
46 at length in a previous meeting, so I think we're here now to hear from you about
47 any updates—

48
49 Mr. Rubin - Absolutely.

50
51 Ms. Dwyer - With particular attention to the historic preservation
52 issues.

53
54 Mr. Rubin - I'm only going to talk about updates and historic
55 preservation.

56
57 Hello, my name is Hilton Rubin—R-u-b-i-n. I'm the owner of the historic
58 Blackburn House at 9312 Three Chopt Road. With me today is Mark Baker to
59 assist with any technical questions that might come up. First of all, I'd like to re-
60 thank the Board and the rest of the Planning Department for sharing my
61 concerns about the old house and being sensitive to its preservation. It's always
62 nice when developers and the Planning Department can work together with
63 similar objectives. So, let's get down to business.

64
65 Here's a short update on the progress since I applied for the variance. First of all,
66 as promised, I've made an application to the Virginia Department of Historic
67 Resources to begin the process of placing the house on the State and national
68 registry. The entire paperwork process from start to finish is estimated to take six
69 to eight months, that is if the house is successfully accepted onto the historic
70 register. Some paperwork that I recently obtained from the State archives
71 indicated that the house had recently been updated on their records, and I was
72 pleased to see a note in part of their file about recommending the house into the
73 register. It's that little highlighted thing; it might be difficult to read.

74
75 By the way, if the house isn't yet on a registry, there is a very good chance that
76 my renovations or restorations will be deemed eligible for State tax credits, and
77 I'll discuss that in a few moments.

78
79 That's a copy of the variance.

80

81 Secondly, numerous discussions and ideas have been exchanged between me
82 and the Planning Department over the last two months. While we were hoping to
83 find a perfect solution, we have been unable to come to a resolution on the plan
84 that would not in some way harm the house. So we're all still here looking for an
85 acceptable variance to be granted.

86
87 Thirdly, I've had several hours of research concerning the Planning Department's
88 recommendations that a historical easement be placed on the property, and I'll
89 share those pertinent details with you momentarily.

90
91 Fourthly, we've discovered that it would be prudent to enlarge the property area
92 for the Blackburn House, as mentioned in the staff report, and hence the new
93 drawing.

94
95 For the fifth item, I just wanted to note that this process of trying to save the
96 historic house has been continuing since late January when I received the letter
97 from the Planning Department stating that, in fact, I could bulldoze the house
98 and split the property per my original plans. I continued to put the entire three
99 acres, including two houses, on a perpetual holding pattern at my personal
100 expense in order to help save the house from being a tear-down project. I really
101 need us to resolve this issue as soon as possible, and I hope it's not going to be
102 a wasted effort.

103
104 The sixth and last item. I received the newest and revised suggested variance
105 conditions from the staff this week, from Paul Gidley, and it makes sense to
106 make a quick comment about them. I'm going to hand the microphone over to
107 Mark Baker for a moment.

108
109 Mr. Baker - Good morning. Mark Baker, Baker Development
110 Resources. I've been helping Mr. Rubin through this process, and I think I get the
111 easy part today in discussing the conditions. Mr. Rubin's generally in agreement
112 with the spirit and intent of the conditions. There are two outstanding points and
113 that is in regard to Condition #4 and Condition #8. Condition #4 is related to
114 delineation of gravesites; Condition #8 is related to the historic preservation
115 easement. Mr. Rubin is going to be following up, hitting the historic preservation
116 easement issue in a moment, but I wanted to briefly discuss Condition #4.

117
118 This was discussed at the April meeting, although I think it got lost in the greater
119 discussion and perhaps the more important discussion of the historic easement
120 issue. We had a concern about the condition as it stood and that maybe it was a
121 little bit open-ended, and it didn't clarify the expectation for both the applicant
122 and the Director in terms of how the gravesite would be delineated. What we
123 propose to do—I'll go ahead. The idea would be to create two alternatives for
124 how those gravesites would actually be delineated, so we had a baseline, some
125 sort of understanding of what we're looking for. Then we would also retain the
126 ability of the Director to review something different. So, the way it would read

127 would be that, "Access to the gravesite shall be preserved in accordance with
128 State law. Identified gravesites shall be delineated by one of three methods."
129 The first would be fencing provided by the developer per the attached illustration.
130 The illustration on that you may all have by now. The second would be by
131 planting shrubs. At the expense of the developer, the landscape package would
132 exceed \$400 in cost. And then finally any other alternative solution can be
133 approved by the Director of Planning, which is what was suggested in the original
134 condition. But again, it gives the developer some sense of what they're getting
135 into in terms delineation of the gravesites now rather than waiting for the Building
136 Permit to find out.

137
138 Mr. Wright - So your proposal would be that this would be for #4.

139
140 Mr. Baker - Yes, that's right.

141
142 Mr. Wright - For the one that's in the materials.

143
144 Mr. Baker - That's right. I think it still accomplishes the same
145 thing; it just gives a little more definition what the sort of minimum understanding
146 is.

147
148 Ms. Dwyer - Any questions about this proposed change?

149
150 Ms. Harris - The statement that says, "shall be delineated by one
151 of three methods." If we select A, then we would not select B nor C.

152
153 Mr. Baker - The idea is to allow all three of those to move forward
154 with the idea that one of those three things would happen. It would either be
155 delineated by the fence that's shown, or there would be a landscaping package
156 of a minimum of \$400, or if at the time of building permit it's desired to handle it a
157 different way, the Director of Planning still has the ability, the latitude to accept
158 that, which is what the existing condition says.

159
160 Ms. Dwyer - Has staff seen this proposal before?

161
162 Mr. Blankinship - No ma'am. We've discussed the issue before, but not
163 seen this proposal.

164
165 Ms. Dwyer - Does staff have any comments on this proposal?

166
167 Mr. Witte - I have a little concern about the planting of shrubs
168 because shrubs can often die. Not only can they die, but they can hide the site
169 and block access to it.

170
171 Mr. Baker - That is actually one of the reasons for wanting the
172 flexibility as well. They're also underneath a walnut tree, which we understand

173 creates an issue from a soil standpoint in accommodating plants. We definitely
174 didn't want to have that as the only option.

175
176 Mr. Witte - Actually, I'd be more comfortable with A and C.
177

178 Ms. Dwyer - Mr. Blankinship, is there staff comment or have you
179 had a chance to think about that?
180

181 Mr. Blankinship - This isn't an issue that we deal with routinely, so we
182 don't really have a set pattern for handling them. I don't really have strong
183 feelings one way or the other. I don't really understand the applicant's hesitancy
184 to just say the Director of Planning will approve it. The Director certainly doesn't
185 have a history of being unreasonable in what he approves or requires. This
186 particular design I think would be approved by the Director.
187

188 Ms. Dwyer - I guess the only difference is that if the developer
189 chose to use either the fencing or the landscaping, then there would be no
190 approval by the Director of Planning.
191

192 Mr. Blankinship - Assuming that B is struck, then yes, they could do this
193 fencing without any further approval.
194

195 Ms. Dwyer - Does the Director of Planning typically approve
196 gravesite delineation or?
197

198 Mr. Blankinship - Again, I don't really have a lot of experience in
199 handling these. Mr. O'Kelly has probably seen more of them in subdivision
200 review than he has on the BZA.
201

202 Ms. Dwyer - Is delineation required by state law?
203

204 Mr. Blankinship - You have to preserve access.
205

206 Mr. Rubin - I have to preserve access.
207

208 Mr. Blankinship - If you move it, there's a process to go through for
209 that.
210

211 Mr. Rubin - [Off mike.] The Planning Department has requested
212 that I inform them and the Department of Recreation and Parks [unintelligible]
213 purposes.
214

215 Mr. Blankinship - You're off mike, Hilton.
216

217 Mr. Rubin - Oh, I'm sorry. I forgot what I just said, but.
218

219 Mr. Blankinship - The Planning Department.
220
221 Mr. Rubin - The Planning Department has asked me, this is a
222 recommendation of theirs to delineate them. By right, if we weren't having this
223 discussion, I could move them, or let them become overgrown, or not delineate
224 them.
225
226 Mr. Blankinship - I think they're part of the historic setting of the house.
227
228 Mr. Rubin - Yes. We're trying to preserve a historic—I mean, the
229 house is going to be preserved, presumably. This is part of the preservation
230 process.
231
232 Mr. Wright - The fencing you've proposed is delineated here.
233
234 Mr. Rubin - That's a picture and an example of what I would put
235 around the gravesites.
236
237 Mr. Wright - It would be what is shown on this.
238
239 Mr. Rubin - Absolutely. Pressure treated 4 by 4. I guess they're
240 probably 6 by 6 and chain, about 18 inches high.
241
242 Mr. Wright - So either it's a matter of whether the Planning
243 Department says this is acceptable or not if we approve this. This would be the
244 type of fencing it would be.
245
246 Mr. Rubin - It would be that or something else acceptable to
247 Planning.
248
249 Mr. Blankinship - If that's acceptable to the Board, then I think you
250 would say we'll approve this, or we'll authorize the Director of Planning to
251 approve something else. That's more the way I would understand it.
252
253 Ms. Dwyer - What was staff's reasoning in delineating the
254 gravesites?
255
256 Mr. Blankinship - As I mentioned briefly, I think it's part of the historic
257 setting of the house, the gravesides, particularly the two that are not actual
258 headstones but more of a plaque almost. They appear to be very old; I couldn't
259 read dates on them. They appear to be very old.
260
261 Mr. Rubin - Late 1800's.
262
263 Mr. Blankinship - To me, they are part of the historic setting of the
264 house. If we're trying to preserve that historic home, then whatever we can do to

265 preserve the historic setting around it adds to it. But it's not a make-or-break
266 issue for us.

267

268 Ms. Dwyer - In imagining the site, I'm thinking it would be better
269 not to have a delineated, not to have these.

270

271 Mr. Rubin - I think as long as the site is maintained, I would prefer
272 not to have a delineation at all, just because I think—I mean, it's a whole setting
273 out there, but I don't—Planning has asked for a delineation and we tried to come
274 up with an idea that would be a creative delineation. If you want to strike the
275 whole delineation, I think it's appropriate, but that's up to you.

276

277 Ms. Harris - I will wait until the presentation concludes, and then I
278 have a question.

279

280 Ms. Dwyer - Those are your statements about Condition 4.

281

282 Mr. Rubin - Condition #4. I'm going to speak on the last condition,
283 Condition #8, when we decide to move on. Okay? Good enough. I get the hard
284 one.

285

286 Now for the biggest issue at hand. In regards to historical easements—that's
287 going to be item #8; I'll show it in a second—the Virginia Department of Historical
288 Resources has a comprehensive checklist of nine factors that must be satisfied
289 before they will accept the expense of stewardship for an easement. These
290 factors are a very common-sense approach to the issues of historical
291 easements, and they reflect the philosophy of their organization, as well as other
292 national organizations such as the American Institute of Architects. I've had
293 multiple discussions with the State about the matter. It is clear that they will not
294 accept a historical easement, nor would they recommend a historical easement
295 for this house based on their criteria. The Blackburn House actually fails their
296 criteria list on a number of items. For the most part, the State only accepts
297 easements on large buildings open to the public. In fact, until two years ago, they
298 made it a policy not to accept any small private houses into their easement
299 program. This makes sense, if you look at their philosophies about historical
300 easements. Here's an example.

301

302 One of the nine criteria states that the Department will consider the likelihood of
303 the property being able to maintain economic viability if placed under an
304 easement. As I mentioned in our last meeting, the house is technically only a
305 one-bedroom home, and Henrico County's Planning and Zoning office has
306 determined that no additions can be made to the property because of the limiting
307 setbacks. Under the State easement program, all historic fabric—and we're
308 talking about all the parts of the home that were built over 50 years ago—must
309 be protected. That's including the interior walls. Nearly the entire house is in
310 original fabric in our situation. In other words, there is no way to improve the use

311 of the house. In regard to economic viability, the rent on a one-bedroom will not
312 sustain the maintenance required for the home. In fact, the prior owner
313 discovered this to be the case, and closed up the house, and ceased to rent it for
314 several years until I purchased it. The house has no heat; it has no air
315 conditioning; and we don't know whether the plumbing functions. Now while the
316 house has weathered fairly nicely, considering it's been vacant for this long
317 period of time, the supporting buildings have become a mess. This is one of the
318 outbuildings that the owner called the smokehouse. So, on to item #8 that is in
319 your packet.

320
321 This is recommendation item #8, recommending this historical easement. We
322 need to talk about this for a moment. While most of the Virginia Department of
323 Historical Resources' conditions favor placing easements on large public
324 buildings or large tracts of land, such as a battlefield, one hard fact remains
325 that's indisputable in this case—they will not accept an easement that is in direct
326 conflict with a proposed public works project. They simply will not accept this
327 house regardless of whether you can make any other arguments with the other
328 criteria. You can argue there are other acceptance criteria, but they absolutely
329 will not accept the legal expenses, costs of maintenance, or responsibility for the
330 Blackburn House under these circumstances because it is a public record that
331 Three Chopt Road will eventually be widened to an 80-foot width. It probably
332 won't be in our lifetime; they don't have exact engineering drawings or anything
333 designed quite yet for the road. But Henrico's preliminary plans would put the
334 curb of the road approximately through the front door of the house, and it's
335 simply not a smart idea, even from a conservationist standpoint, to put a house
336 with these circumstances under an easement. And by the way, under the State's
337 Historical Easement Plan, they absolutely will not allow the house to be moved
338 or relocated in the future. That defies their purposes for a historical easement.
339 They were specific about this. If you're saving historic fabric, you're saving the
340 foundation, and the wood underneath and such, so they will not allow a building
341 to be moved.

342
343 So, this entire situation leaves us in a less than perfect situation. While I agree
344 with the Planning staff's good intentions about item #8 from the staff report's
345 recommendations, that item needs to be removed because it's impossible to
346 perform, nor would it make sense to complete such a task.

347
348 But here's some good news about the future prospects of the house. This is
349 something I discovered recently. As a builder developer, I'd be fortunate to
350 accept the State or federal tax credits for renovating and restoring the house,
351 and depending on the available credits, there are 5- maybe 10-year stipulations
352 on maintaining the new improvements. That will, in essence, protect the house
353 from being a teardown. And, of course, five or ten years from now we'll need
354 new paint, and new air conditioning, and new carpets, and new appliances, and
355 then the whole tax credit situation with preservation stipulations will start all over
356 again. This is one way that the government helps encourage the perpetual

357 historical preservation of historical buildings. This house currently has no
358 functional mechanical systems, and hasn't been restored since 1925, so I'm
359 highly motivated to seek the preservation of this historical house in trade for a
360 financial benefit from the government.

361
362 Finally, that leaves the concern that Board Chairman Elizabeth Dwyer made at
363 our first meeting. I'm a paraphraser; I hope I don't kill this quote: "It would be
364 much easier to grant this easement if the Committee knew that the house could
365 be preserved forever." Well, today's vote on a variance will probably not solve
366 our problems perfectly with an absolute lifetime guarantee, but I think the
367 variance should be passed because it does manage to accomplish and control a
368 number of factors. Number one, it protects trees that were previously
369 unprotected. Number two, it protects gravesites that were previously
370 unprotected. Number three, it actually adorns the gravesites that were previously
371 unprotected. It places a level of architectural review on the future house to be
372 built. Number five, it ensures that the dilapidated buildings must be removed.
373 Six, it makes good use of the landlocked property in the rear. And seven, and
374 lastly and most importantly, at least for the foreseeable future, it protects the
375 historical home by allowing the property its rightful split or division without
376 someone hiring a bulldozer. After the land is split per our variance, there is no
377 reasonable financial purpose to destroy the house. And, of course, after the
378 variance, the house, with renovations, should be able to remain financially and
379 functionally sustainable from that point and forever. And that's before the
380 potential tax credits add an additional level of State and federal protection. So,
381 given the alternative of selling this project out to another developer—because I
382 promise you I'm not going to destroy the house; I will not take a bulldozer to it—
383 this proposal for a variance takes care of our problems today and for a very, very
384 long time. Meanwhile, for the lifetime of the Blackburn House, we can hope that
385 Henrico will eventually pass some ordinance that will protect structures like this
386 for ever and ever.

387
388 Unless Mark has anything to add—he says no. I'd like to thank you guys for your
389 consideration, and we'll be happy to answer any questions, if you have any.

390
391 Mr. Wright - What you're telling us is you could not renovate it
392 under the Virginia Historic Resources, they wouldn't accept it.

393
394 Mr. Rubin - I can renovate it; I cannot get an easement. They will
395 not restore it or pay for or recommend a historical easement. It has the potential,
396 and you saw a recommendation from one inspector, to be placed on a registry,
397 but that's a six- to eight-month process. The process has started, the
398 paperwork, and quite a bit of it has already been dropped off at the Department.

399
400 Ms. Dwyer - Describe the registry.
401

402 Mr. Rubin - When I'm talking about registries, we're talking about
403 two of them. There's the National Register and then there's the State registry.
404 They both have the same criteria. The State and the federal governments use
405 the registries for different reasons. The federal for federal tax grants and federal
406 protection, and the State for state protection and State tax credits and other
407 things. But those are the pertinent ones for our discussion.

408
409 Ms. Dwyer - If they're accepted into the registry, what limits does
410 that place on future development or changes?

411
412 Mr. Rubin - Surprisingly enough, it doesn't place any restrictions
413 on me because they're trying to encourage me to place it on the registry. It
414 actually protects the house from government agencies. In other words, if I'm put
415 on the federal registry, if the federal government wants to put an interstate
416 through the house, then they need to discuss that with the registry people.

417
418 Ms. Dwyer - But you could tear it down.

419
420 Mr. Rubin - Yes. Unfortunately, the registration process is not a
421 protective process. It is protective in the sense that if you renovate, if you
422 restore and you apply for tax credits, then they put stipulations. You can't
423 renovate a house and then bulldozer it within a certain period of time.

424
425 Mr. Blankinship - The tax credits are the carrot.

426
427 Mr. Rubin - Yes, yes.

428
429 Mr. Blankinship - If you accept the tax credits, then you have to
430 follow—

431
432 Mr. Rubin - Yes, exactly.

433
434 Ms. Dwyer - The tax credits are tied to the status as—

435
436 Mr. Rubin - The tax credits, I don't quite understand all the
437 ramifications of the tax credits. I believe that if it passes the preliminary review—
438 There are a few steps in the State process of getting it into a registry. I do know
439 that it doesn't have to meet the Virginia Register requirements to become eligible
440 for tax credits; it just needs to "be eligible" for tax credits. I believe this house is
441 eligible, but it hasn't been approved. There are a few different layers that the
442 State goes through as the house is evaluated.

443
444 Ms. Dwyer - If we eliminate Condition 8, then there is no
445 commitment riding or forcible commitment, as far as we're concerned, that the
446 house will be preserved. I understand your intentions; I'm not questioning that.

447

448 Mr. Rubin - Yes, I understand. There is no way—I mean, we've
449 been battling this around with Planning now for several months, since the end of
450 January. There is no way that we've been able to come up with, without harming
451 the house, to guarantee that forever and ever and ever there is any kind of
452 government regulating or any kind of permanent legislative way to save the
453 house forever and ever. I'm proposing here sort of a commonsensible approach
454 to the situation that it's not worth bulldozing if we can split the property. Once the
455 land is split, it makes no financial sense. The problem here is that the land
456 underneath the house is more valuable than the house. If we split the land in
457 two, there are no more splits left, unless we come to a Board of Zoning Appeals
458 meeting, and the land split is not worth as much as the house. That will allow me
459 to renovate it. It sort of makes sense. It's not a guarantee; it's just a
460 commonsense approach to save the house.

461
462 Mr. Wright - Suppose we put a condition in here to require the
463 applicant to renovate the Blackburn House?

464
465 Ms. Dwyer - I'm not as concerned about the renovation as I am
466 about the eventually—about the destruction of it, the destruction of its historic
467 character.

468
469 Mr. Wright - He would not demolish it.

470
471 Mr. Rubin - I don't mind saying I won't demolish it. And I don't
472 even mind saying in a deed that I won't demolish it. But to place—I mean not in a
473 deed that I won't demolish it, but to place a restriction that says this house will
474 not be demolished, is essentially putting a historical easement on the house.

475
476 Mr. Wright - That's what I'm saying. Couldn't we say this house,
477 the Blackburn House will not be demolished and it will be renovated. Wouldn't
478 that protect this? That's what you're concerned about, demolishing it. We could
479 say he would not demolish it, and furthermore, he would renovate it.

480
481 Ms. Dwyer - Would it make sense to tie it to the National Registry,
482 to say that it will be maintained in accordance with the requirements of the
483 National Registry?

484
485 Mr. Rubin - Yes. I don't mind maintaining the house under the
486 maintenance conditions of the National Registry. The National Registry doesn't
487 say anything about me bulldozing or not bulldozing the house. That's part of the
488 problem.

489
490 Ms. Dwyer - We could add that, but also beyond that we—I'm
491 interested in the house not being bulldozed, but I'm also interested in [blank].

492
493 Mr. Rubin - Right.

494
495 Ms. Dwyer - So how to say that in a way that comports with your
496 intent, which is to renovate it and maintain its historic character.

497
498 Mr. Rubin - I can tell you that in order to receive tax credits, they
499 put on their own stipulations. I don't get tax credits for adding an extra bedroom
500 to the house; the tax credits are only applied to restoration and renovation of
501 historical property. They don't give historic tax credits for anything that's not
502 historical in character. If I wanted to redo the façade of the house, they would
503 allow—Not redo; excuse me, restore, replace the columns in like kind or
504 something like that, then they would give me a credit for that. If I want to put a
505 whole new porch on the house, they will not accept that unless I'm doing a
506 special re-creation.

507
508 Ms. Dwyer - It might be workable to say that the house will not be
509 destroyed and that it will be preserved in accordance with some standard that is
510 set by the National Registry and tax credit standards. Is that doable?

511
512 Mr. Rubin - I don't understand the "destroyed" part. What I don't
513 want to do is put any kind of easement—call it historical or not—that the house
514 will not be destroyed. I can't swear it's not going to need to be moved when they
515 decide to widen Three Chopt Road. I can't swear that it's not going to make
516 financial sense to move it and add a bedroom to it. We can't add a bedroom to it
517 today. We can't add an addition to it. My intention is to actually do some
518 alternation upstairs and create an extra bedroom or two so that it can become
519 financially feasible. That's not something they would give me a credit for.

520
521 Mr. Wright - But would they give you a credit for the other part of
522 it?

523
524 Mr. Rubin - Yes they would. Well, that's a decision for another
525 board on the registry; that's not my decision. I can't—

526
527 Ms. Dwyer - Would they deny your credit if you made those
528 additions?

529
530 Mr. Rubin - No. The answer simply is not necessarily, and I can't
531 speak for them.

532
533 Ms. Dwyer - Let me just speak for myself, and that is I think we
534 need something. I'm not comfortable with eliminating #8 and having nothing
535 there relating to preservation of the property. I think we need to have something
536 there. I've floated some ideas today, including not destroying the house,
537 however that could be phrased to mean not bulldozed, and tying it, perhaps, to
538 some application and acceptance by the Historical Registry and/or tax credits.
539 Those are possible hooks to hang our hat on. I feel like we need something and

540 I'm happy to do what you have proposed as far as how to word that. If you'd like
541 to take some time and get back to us at the end of the meeting or something.

542
543 Mr. Rubin - I have two problems. I don't have the information that
544 I could provide that wording to you today. That's a lot of preparation and a lot of
545 people to talk to. Secondly, as I've said, I was going to bulldoze the thing. This is
546 killing me. I've been paying rent, and I'm paying mortgage, and cutting grass and
547 such. I know that's coming out of your pockets, but it hurts me. And this is
548 frustrating. I guess I'll ask you. Is there any way we don't have to—While I'd like
549 to give you an answer while we're at this meeting, I can't do it. I really don't want
550 to wait another month and have somebody ask another question and wait
551 another month. Is there any way we can resolve this between now and the next
552 BZA meeting? I don't mind doing my due diligence, this is just painful and this
553 was not my intention when I bought the property. We're all on the right page
554 here, but I have feed my child and my wife.

555
556 Mr. Baker - [Off mike.]

557
558 Mr. Rubin - What Mark is suggesting is that we take a few
559 moments and let other people speak on other topics and get back to you during
560 the meeting. Is that okay with you guys?

561
562 Ms. Dwyer - That's fine.

563
564 Ms. Harris - I do have a question before you do that. In #3 where
565 we say that scale, design, and materials of the dwelling proposed for this lot shall
566 not detract from the Blackburn House. Could we add, "it shall not detract nor
567 destroy"?

568
569 Mr. Blankinship - That condition is speaking to the proposed house that
570 he's going to build next door.

571
572 Ms. Harris - I know, but I'm wondering could we include the non-
573 destruction of the Blackburn House in this particular issue? I have concerns, too,
574 about how can we, as a Board, legally—we have two attorneys here, so I'm sure
575 they'll let me know—mandate that property owners not destroy their property?

576
577 Mr. Wright - That's we've been talking about here for the last ten
578 minutes. They were going to try to work something up that we could put in there
579 to protect that.

580
581 Ms. Harris - Let me reword this.

582
583 Mr. Wright - I don't think we should put that in #3; that's a
584 separate issue.

585

586 Ms. Harris - Okay. But can we mandate owners to maintain their
587 property?
588
589 Mr. Blankinship - The Board has the power to deny the variance.
590
591 Ms. Harris - Yes.
592
593 Mr. Blankinship - So included within that power, you have the authority
594 to add conditions that are reasonable. The only reason that staff would
595 recommend approval of the variance is because it would lead to preserving the
596 house. Otherwise, they wouldn't need the variance. I think it is directly enough
597 related that we can defend that condition.
598
599 Ms. Harris - Yes, but I was just thinking that sometimes a property
600 is destroyed for a number of reasons.
601
602 Mr. Blankinship - Right.
603
604 Ms. Harris - I don't understand how we can mandate someone not
605 destroy, or their property not be destroyed.
606
607 Mr. Blankinship - That's why we've been—
608
609 Mr. Rubin - That really is the problem. I'm hopeful that in the next
610 ten minutes, Mark and I can come up with an answer. I've been in Ben's office
611 several times, Paul's office. I've been to the State. We had speakers here, Mr.
612 Nuckols and Dr. Nelson. We've had long, lengthy discussion how can we do this
613 that makes sense, and that's why we're here. As I said, we've been through this
614 route. I don't have a perfect answer. Just simply don't have a perfect answer; we
615 have a good answer, but not a perfect answer.
616
617 Ms. Harris - Okay. And I have one other question from before this
618 discussion even began. The four reasonably consistent lots, as referred to in the
619 staff report, would be carved out of the landlocked parcel that you own?
620
621 Mr. Rubin - The landlocked parcel actually isn't even necessary to
622 create four lots; it was just a suggestion from the staff report. And it's a good
623 suggestion that makes sense. What we're doing, essentially, with this variance
624 is solving one more additional what's called a poor planning issue by cutting it up
625 in a way that makes sense for Planning.
626
627 Ms. Harris - Would any of these four lots that could be
628 constructed about the Blackburn House and create the same type of—
629
630 Mr. Rubin - Yes. Basically, I have the right to—Well, no, let me
631 take that back. In order to create the four lots without a variance, the Blackburn

632 House gets bulldozed. Otherwise, it's three lots. That's why we're here, it
633 doesn't make financial sense from a developer standpoint to keep the house.

634

635 Ms. Harris - So there will be three lots that will not need a
636 variance.

637

638 Mr. Rubin - Yes, yes.

639

640 Ms. Harris - You have public street frontage with these three.

641

642 Mr. Rubin - If I bulldoze the house, there will be four lots with
643 public access, street access. If I do not bulldoze the house, then there will be,
644 essentially, three properties, and a landlocked parcel, for that matter, that we will
645 discuss at a later date.

646

647 Mr. Gidley - [Off mike.] If I may clarify, I think that the point of that
648 in the staff report, is we don't want to leave a landlocked parcel out there all by
649 itself that is not buildable, absent another variance.

650

651 Mr. Rubin - Right.

652

653 Mr. Gidley - [Off mike.] From a planning perspective it makes
654 sense to extend the four proposed lots all the way back to the civic organization's
655 site and in the process eliminate this landlocked lot.

656

657 Mr. Rubin - Yes.

658

659 Mr. Gidley - [Off mike.] Two of those proposed lots are
660 acceptable under this variance; however, we can't address the westernmost two
661 lots under this case.

662

663 Mr. Rubin - That's basically a concession on my part, as Paul and
664 I discussed. I have the right to divide this into four pieces and then come back to
665 the Board and say I have a landlocked parcel we want to turn into a flag, or we
666 need an easement to get onto the property. That was just a concession on my
667 way. Paul said this is good planning to do it this way, and I said okay, fine, I'll
668 concede that, and let's decide now how to divide that property up.

669

670 Ms. Dwyer - Just for information, the other lots, is that 9314?

671

672 Mr. Rubin - 9314. There is already a house on it.

673

674 Ms. Dwyer - Behind it?

675

676 Mr. Rubin - The lot behind it is the landlocked parcel. The land
677 directly to the left of 9314 would be another home site.

678
679 Ms. Dwyer - The landlocked parcel, your plan is to do what with
680 that?
681
682 Mr. Rubin - My landlocked parcel under this variance is to
683 contribute the locked portion behind these two lots that we're talking about, just
684 add it on so that we don't end up with some flag-shaped parcel.
685
686 Ms. Dwyer - And then what's left of that.
687
688 Mr. Rubin - What's left of it, essentially I'll do the same thing, but
689 that's not stated in—
690
691 Ms. Dwyer - I just want to make sure we're not building in another
692 problem.
693
694 Mr. Rubin - No, no, no, no, no. In fact, from a zoning standpoint,
695 you're creating—I think Paul agreed that you're creating a better zoning plan.
696
697 Ms. Dwyer - All right. Well, we will table this case until later in the
698 meeting so you can have a chance to—In all fairness, this is the same issue that
699 we were dealing with originally.
700
701 Mr. Rubin - It has, and I've been dealing with it with everybody.
702 We'll see if we can come up with another idea here in the next few minutes.
703
704 Ms. Dwyer - Thank you, Mr. Rubin. We will table this case until
705 later in the meeting.
706
707 **CASE TABLED, THEN CONTINUED ON PAGE 27**
708
709 **UP-009-09** **DOMINION WEST END APARTMENTS** requests a
710 temporary conditional use permit pursuant to Section 24-116(c)(1) to allow a
711 temporary office trailer at 3900 Acadia Lane (Parcel 745-759-3247), zoned R-5C,
712 General Residence District (Conditional) (Three Chopt).
713
714 Mr. Duggan - Good morning. My name is Greg Duggan. I
715 represent—
716
717 Ms. Dwyer - I'm sorry. Your name?
718
719 Mr. Duggan - Greg Duggan.
720
721 Ms. Dwyer - Duggan? Mr. Duggan, please raise your hand to be
722 sworn. If there is anyone else here to speak to this case, please raise your hand
723 and be sworn.

724
725 Mr. Blankinship - Do you swear the testimony you're about to give is
726 the truth and nothing but the truth so help you God?
727
728 Mr. Duggan - I do.
729
730 Ms. Dwyer - Okay. State your case, please, Mr. Duggan.
731
732 Mr. Duggan - I represent UDR, Inc., formerly known as United
733 Dominion Realty Trust. It's a publicly-traded real estate investment trust with long
734 deep-seeded roots in the Richmond area.
735
736 The property in question is a 350-unit apartment complex with amenities, among
737 them a leasing office and club room. The property was built in 1987. It is, in our
738 opinion, a prime candidate for modernization, and we have developed some
739 plans for the property, one of which is a full interior and exterior renovation of the
740 clubhouse, leasing office, and the amenities that go with it.
741
742 In order to do that, we have staff that would need somewhere else to operate out
743 of for purposes of serving the existing residents, and also for continuing leasing
744 operations. What we've proposed is to place, as we have in other
745 circumstances, a temporary structure. It's about 1400 square feet, give or take
746 what's going to be available at the time that we do draw up the order. We would
747 equip this as a leasing office. It would not be one that would contain any
748 amenities or be open to evening activities by residents or other folks. It would be
749 used simply to maintain our leasing operation at the property. The drawings
750 show you some relative scale, and where and how the temporary structure would
751 be placed. I believe the report has some other certain aspects and
752 recommendations. In reviewing them, I didn't see anything that was
753 objectionable, as far as some of the staff concerns or recommendations
754 regarding reasonable landscape, things of that nature. So we place this for your
755 consideration.
756
757 Mr. Wright - Are you sure you could remove this by May 15, 2010?
758
759 Mr. Duggan - Yes sir. The entire prospect is to have the leasing
760 office work completed by that time so that it coincides with opening the pool over
761 the Memorial Day of 2010.
762
763 Ms. Dwyer - Your leasing office is currently located in the
764 clubhouse?
765
766 Mr. Duggan - Yes.
767
768 Ms. Dwyer - Any other questions?
769

770 Mr. Duggan - Okay, thanks.
771
772 Ms. Dwyer - Just a minute; I'm sorry. Mr. Duggan, no one asked
773 you if you had reviewed the conditions.
774
775 Mr. Wright - He just said he did.
776
777 Ms. Dwyer - Oh, he did? Okay.
778
779 Mr. Duggan - Yes. I didn't see anything objectionable. The skirting,
780 some landscaping, showing where the lighting is located, the ADA access, things
781 of that nature, we were fine.
782
783 Ms. Dwyer - So the conditions are acceptable to you. Thank you.
784

785 **DECISION**
786

787 Mr. Wright - I move that we approve this application. I think that it
788 will be pursuant to the Code and will not affect traffic and will not cause difficulty
789 with surrounding properties.
790

791 Mr. Nunnally - Second.
792

793 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Nunnally. Any
794 discussion? All in favor say aye. All opposed say no. The ayes have it; the
795 motion passes.
796

797 After an advertised public hearing and on a motion by Mr. Wright, seconded by
798 Mr. Nunnally, the Board **approved** application **UP-009-09, Dominion West End**
799 **Apartments'** request for a temporary conditional use permit pursuant to Section
800 24-116(c)(1) to allow a temporary office trailer at 3900 Acadia Lane (Parcel 745-
801 759-3247), zoned R-5C, General Residence District (Conditional) (Three Chopt).
802 The Board approved the temporary conditional use permit subject to the
803 following conditions:
804

805 1. Only the improvements shown on the plot plan and building design filed with
806 the application may be constructed pursuant to this approval. Any additional
807 improvements shall comply with the applicable regulations of the County Code.
808 Any substantial changes or additions to the design or location of the
809 improvements may require a new Board of Zoning Appeals hearing.
810

811 2. The applicant shall install a minimum 4 foot wide concrete sidewalk leading
812 from the parking lot to the temporary office building. Pedestrian access to the
813 trailer (from the parking lot) shall be ADA compliant.
814

815 3. The office building shall be skirted on all sides with a durable material as

816 required by the building code for a permanent installation.

817

818 4. A detailed landscape and lighting plan shall be submitted to the Planning
819 Department with the building permit application for review and approval.
820 Approved landscaping shall be installed around the perimeter of the modular
821 office to lessen the visual impact of the structure. The landscaping shall be
822 installed prior to the issuance of a certificate of occupancy. All landscaping
823 materials shall be maintained in a neat and healthy condition at all times. Dead
824 plant materials shall be removed within a reasonable time and replaced during
825 the normal planting season.

826

827 5. The applicant shall obtain all of the necessary permits including those required
828 by the Building Inspections Department and the Health Department.

829

830 6. The applicant shall obtain a sign permit for any temporary traffic directional
831 signage leading to the modular office (temporary leasing office). Directional signs
832 shall comply with section 24-104(e)(1)b.5 of the zoning ordinance.

833

834 7. The trailer shall be removed from the property on or before May 15, 2010, at
835 which time this permit shall expire.

836

837

838 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5

839 Negative: 0

840 Absent: 0

841

842

843 **UP-010-09** **RICHMOND ENERGY, LLC** requests a conditional
844 use permit pursuant to Section 24-116(c)(3) to construct a renewable energy
845 facility at 1851 Charles City Road (Parcel 808-712-0741), zoned M-2, General
846 Industrial District (Varina).

847

848 Mr. Wetzel - Good morning. My name is Tony Wetzel—W-e-t-z-e-l.

849

850 Ms. Dwyer - Mr. Wetzel, please raise your hand to be sworn.

851

852 Mr. Blankinship - Do you swear the testimony you're about to give is
853 the truth and nothing but the truth so help you God?

854

855 Mr. Wetzel - I do.

856

857 Ms. Dwyer - Mr. Wetzel, please state your case.

858

859 Mr. Wetzel - Thank you. Again, my name is Tony Wetzel. I'm with
860 Fortistar Methane Group. We are the parent corporation of Richmond Energy,
861 the applicant here today. I want to thank the Board, and the general public here,

862 and members of the staff for this opportunity. The intent of my presentation is to
863 very quickly give you an overview of the Fortistar project, certain aspects of the
864 project, and, finally, the benefits we believe are associated with the project.

865

866 First and foremost I should mention I do have some handouts that go along with
867 my presentation. If I may, I'll just pass those up here for the Board. I apologize
868 for not having an electronic presentation; I'm filling in for someone here today
869 who has taken his family on vacation. A well-deserved vacation, by the way.

870

871 If I may, I'll jump right in. Again, Fortistar Methane Group is today the largest
872 owner and operator of landfill gas-to-energy projects in the United States. We
873 have 50 electricity projects where we take landfill gas and convert it into
874 electricity, found throughout 13 states in the United States. We produce about
875 230 megawatts of electricity. For comparison, a megawatt is enough, roughly, to
876 power about 750 homes. We additionally have five other projects that clean up
877 the landfill gas and sell in industrial applications. Fortistar has a number of
878 projects here locally. We have two in Virginia, one in Richmond at the Richmond
879 Landfill, a couple miles away from the proposed site. We also have another site
880 in Prince William County at the Prince William County Landfill. Again, total
881 number of projects, about 50.

882

883 As far as Richmond Energy, the project proponent, it will be located at the Old
884 Dominion Landfill, which comes in off Charles City Road. The project will be 6.4
885 megawatts. It will be using landfill gas that is being collected and flared off today
886 at the landfill. So we are going to be taking a wasted resource and using it for the
887 production of clean, renewable energy. We will use four state-of-the-art
888 Caterpillar 3520 engines that will produce about 48,000 megawatt hours a year.
889 The project will last about 25 to 30 years. It may go longer. The landfill is an
890 open landfill, it is still receiving waste today. If the landfill is extended and our
891 lease is extended in turn with the landfill owner, the project could continue
892 thereon after.

893

894 There are basically four major components. It's very simple. We have a gas
895 cleanup skid. The landfill gas has water and particulates in it. We'll clean that
896 gas up somewhat. The gas is then directed to the generator sets where the
897 engine combusts the gas and turns a generator. The hot water from the engines
898 goes to a radiator located outside the building, and the exhaust from the engines
899 is sent out through silencers which are located, again, outside the building.

900

901 I want to now just talk on some of the aspects of the project that are often
902 questioned by folks such as yourself and the general public. Number one is the
903 sound aspect, the noise aspects of a project such as this. The facility will run 24
904 hours a day, 7 days a week. It is what's called a base-load operation. The
905 reason for that is the landfill gas comes out of the landfill on a constant basis.
906 We need to then do something with that landfill gas on a constant basis. So, the
907 engines run constantly. What we will, and we generally do on our projects, is to,

908 number one, we will use a higher-grade muffler or silencer—it's a hospital-grade
909 silencer—so that the sound of the exhaust is mitigated. Number two, in this
910 particular case, we will locate the silencers behind the building so that the sound
911 is attenuated by the actual building structure away from the residences, of which
912 there are two in the local proximity. One is approximately 600 to 700 feet away.
913 Number three, the generator sets themselves, as any engine does, makes some
914 noise. We are going to put the generator sets into an enclosed metal building.
915 That metal building will additionally be insulated to block the sound further.
916 Lastly, we will be putting the air intakes and the exhaust for the air on the roof of
917 the building so that the sound will go up instead of out.

918
919 As far as visual aspects, the building itself will be roughly 100 feet by 50 feet. We
920 will paint it a tan color so it blends into the background. The peak of the roof is
921 at 22 feet. The air intakes will take that up slightly to about 29 feet. In our review
922 of the site, and looking from Darbytown Road, the building will largely be visually
923 blocked by the topography of the site, as well as the vegetation that exists there
924 today.

925
926 Another aspect of projects such as this is traffic. We will have minimal traffic
927 impact. The project will have one full-time employee although the facility is
928 designed to operate in automatic mode. That employee will enter and exit the
929 property through the landfill entrance on Charles City Road. So there will be no
930 traffic impact on Darbytown Road. We may, on occasion, have a contractor in, a
931 mechanic or whatnot. Again, that person will enter and exit through the landfill
932 entrance where there is a much higher predominance of traffic flow.

933
934 Other aspects of our project. Water. We have already received a [unintelligible]
935 from the Department of Environmental Quality as far as our wetlands impact. We
936 are awaiting our final permit from the Virginia Department of Environmental
937 Quality as far as air emissions. Our project is designed to exceed the emissions
938 criteria that will be imposed on us. Again, we expect that permit by the end of
939 August. We will additionally be filing a storm water prevention plan with
940 construction. There is limited use of water at the site, basically the radiators. We
941 will be getting service from Richmond City water, and any gray water will go out
942 through the local sewer system. Again, as I mentioned on the air permit, we're
943 expecting a final permit in August.

944
945 Lastly, I just want to touch on the benefits of this project. Again, as I mentioned,
946 the landfill gas today is simply being collected and flared. It's a wasted resource.
947 Landfill gas, by the way, is about 50% methane. One hundred percent methane
948 is natural gas. So the decomposition of waste in a landfill produces 50%
949 methane, about 45% CO₂ and other constituents. So this, again, in our minds,
950 is a valuable resource that can be used.

951

952 Number two, it's our intent, then, to sell this power to Dominion Virginia, and
953 therefore help Virginia Power meet newly established renewable portfolio
954 standard goals for renewable energy here in Virginia.

955

956 Number three, there are significant air emission improvements from a project like
957 this; I've noted those in my handout. Most particularly, there are savings of over
958 200,000 metric tons per year of carbon equivalent savings by doing a project
959 such as what we're proposing here today.

960

961 Lastly and most importantly there is the job creation. Although, again, these
962 plants are designed to run in automatic mode, we will be hiring a local operator
963 to act as both an operator and mechanic.

964

965 That's, again, as I mentioned, just a very quick overview of our project. We're
966 very excited about this project here. There is a desire in our company to do
967 further work in the Southeast, most particularly here in Virginia. I would hope that
968 someday in the future we'll have the opportunity to do so again.

969

970 Mr. Nunnally - In other words, you're saying that there's not a lot of
971 traffic from there, just the people that you employ there, right?

972

973 Mr. Wetzel - Yes, sir, that is correct.

974

975 Mr. Nunnally - How about these buildings? Are you going to build the
976 same type of building they've got at Trinity Oak?

977

978 Mr. Wetzel - Yes sir. It will be a metal-sided building exactly like
979 our last construction there. That's right.

980

981 Mr. Nunnally - And the equipment and all is the same, too?

982

983 Mr. Wetzel - Yes. That's a 3520 generator built by Caterpillar here
984 in the United States. We're very big on Caterpillar units; they work very well.

985

986 Mr. Witte - How many employees will there be at the facility at
987 any one time?

988

989 Mr. Wetzel - We will have an operator/mechanic at the site most
990 days for an eight-hour period. The rest of the time the equipment works in
991 automatic mode. So just one operator there a day, five days a week. They are
992 on call, I will note. When equipment goes down for emergency purposes, they
993 will have to come back in, but that's it, just one.

994

995 Mr. Wright - Have you read the suggested conditions?

996

997 Mr. Wetzel - Yes sir, I have, and we accept them.

998
999 Mr. Wright - Did you meet the 65 decibel requirement?
1000
1001 Mr. Wetzel - Staff has obviously done their work. We have
1002 experience that 65 dB's can be obtained about 400 feet away, so we feel that
1003 with 600 to 700 feet away, we'll clearly be able to meet that.
1004
1005 Ms. Dwyer - This is from the corner of your property, not the
1006 closest home where we're measuring the decibels.
1007
1008 Mr. Wetzel - That's one thing I did want to check on was exactly
1009 what the measurement criteria was going to be, from the corner of our building to
1010 the nearest residence or from the corner of our building to the nearest residential
1011 district? I wasn't certain about that.
1012
1013 Mr. Blankinship - I meant the corner of the landfill property. I don't think
1014 we're concerned with how much they put onto the landfill site since they're
1015 making a lot more noise than this anyway.
1016
1017 Ms. Dwyer - So it would be measuring from your building the force
1018 of the noise to the edge of the landfill property that is closest to the residences.
1019
1020 Mr. Wetzel - Edge Hill Lawn.
1021
1022 Mr. Blankinship - It's about 400 feet, I think.
1023
1024 Mr. Wetzel - That should be obtainable to be 65 dB. What we had
1025 measured was the distance from the building to the nearest residential district.
1026
1027 Mr. Blankinship - Same.
1028
1029 Mr. Wetzel - Is it roughly the same? Okay. I didn't know what your
1030 measurement was. If they're one in the same, we should be fine.
1031
1032 Ms. Dwyer - I'm just curious. Is the cost of producing this electricity
1033 equal to the price at which you can sell it, or do attached credits and other
1034 incentives make that economically viable?
1035
1036 Mr. Wetzel - It's an excellent question. The price of electricity
1037 today is insufficient to cover the cost. However, there is a renewable attribute,
1038 the fact that we are using a renewable fuel versus a fossil fuel that can be
1039 monetized in the marketplace. So there is a stimulus in the marketplace to help
1040 cover the cost. And lastly, there are, at times, investment tax credits at the
1041 federal tax level.
1042

1043 Ms. Harris - Excuse me. You may have already said this, but who
1044 grants permits to monitor the storm water or air emissions? Is that an
1045 environmental agency?
1046
1047 Mr. Wetzel - Yes. It's the Department of Environmental Quality
1048 here in Virginia.
1049
1050 Ms. Harris - Does anyone monitor gas emissions, or do you have
1051 any type of a gas emanating from that site?
1052
1053 Mr. Wetzel - Again, the Department of Environmental Quality will
1054 be monitoring the gas, as it were, coming out of the engine, the emissions from
1055 the engine, yes. DEQ also monitors the landfill. They do the landfill gas
1056 collection.
1057
1058 Ms. Harris - Generally speaking, how clean is the process? Very
1059 clean?
1060
1061 Mr. Wetzel - Yes ma'am, it's very clean. Basically, it's taking a
1062 very large engine, almost like out of a truck—obviously, a little bit bigger—and
1063 placing it in a building. There is minimal outfall from that.
1064
1065 Ms. Harris - Maybe staff can answer this. The location of Edge
1066 Hill Lawn was mentioned a couple of times in the report. Where is that located?
1067
1068 Mr. Blankinship - The nearest subdivision is just about due west of the
1069 property. That's Edge Hill Lawn where the cursor is pointing now.
1070
1071 Ms. Harris - What are the streets there? Is that Edgelawn?
1072
1073 Mr. Blankinship - Yes ma'am. Edgelawn, Louisa, Amherst.
1074
1075 Ms. Harris - Okay, I see.
1076
1077 Ms. Dwyer - Any other questions?
1078
1079 Ms. Harris - One other one. How new is this process? How long
1080 has this been operating? How long have you been doing this type of thing?
1081
1082 Mr. Wetzel - Actually, the process has been around since the '80's.
1083 Capturing landfill gas, it gained a lot of momentum in the mid '90's. We have
1084 facilities that have been in operation, again, since the mid '80's. Using
1085 reciprocating engines like this for low BTU fuel, such as that at a wastewater
1086 treatment plant or at a landfill, again, has been around certainly for the last 20
1087 years. Anything else? Very good. Thank you all for your time this morning.
1088

1089 **DECISION**

1090

1091 Mr. Nunnally - I move we approve it. It will not affect the health,
1092 safety, or welfare of persons residing or working on the premises. It will not bring
1093 any additional traffic. I think it will be a good thing for everybody concerned.

1094

1095 Mr. Wright - Second.

1096

1097 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Mr. Wright. Any
1098 discussion?

1099

1100 Ms. Harris - I have no objection against this from the standpoint
1101 that there are enough controls, I believe, to catch anything that's harmful to the
1102 community such as emissions, be it gas or air pollution. I think we have enough
1103 controls to monitor this. So I would be in favor of this.

1104

1105 Mr. Witte - I agree. I think they're probably going to emit fewer
1106 emissions than just burning the gas off there as it is now. And we get the benefit
1107 of the additional energy from a wasted resource.

1108

1109 Ms. Dwyer - Motion has been made and seconded. All in favor
1110 say aye. All opposed say no. The ayes have it; the motion passes.

1111

1112 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
1113 Mr. Wright, the Board **approved** application **UP-010-09, Richmond Energy,**
1114 **LLC's** request for a conditional use permit pursuant to Section 24-116(c)(3) to
1115 construct a renewable energy facility at 1851 Charles City Road (Parcel 808-712-
1116 0741), zoned M-2, General Industrial District (Varina). The Board approved the
1117 conditional use permit subject to the following conditions:

1118

1119 1. Only the improvements shown on the plans filed with the application may be
1120 constructed pursuant to this approval. Any substantial changes or additions to
1121 the design or location of the improvements may require a new use permit.

1122

1123 2. The applicant shall submit detailed site construction plans for administrative
1124 review and approval by all applicable County agencies.

1125

1126 3. All exterior lighting shall be shielded to direct light away from adjacent
1127 property and streets.

1128

1129 4. Noise from the plant shall not exceed 65 decibels at the corner of the landfill
1130 property nearest Edgehill Lawn subdivision.

1131

1132 5. Prior to operation of the plant, the applicant shall secure all necessary permits
1133 from the US Environmental Protection Agency and the Virginia Department of
1134 Environmental Quality.

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6. All access to the plant shall be from the established entrance on Charles City Road.

Affirmative:	Dwyer, Harris, Nunnally, Witte, Wright	5
Negative:		0
Absent:		0

UP-011-09 **THOMAS P. MEAD** requests a conditional use permit pursuant to Section 24-95(i)(4) to build a 3-car garage at 10428 Farm Meadow Drive (Meadow Farms) (Parcel 764-767-3642), zoned R-2C, One-family Residence District (Conditional) (Brookland).

Ms. Dwyer - Anyone here to speak to the case, please stand and be sworn.

Mr. Blankinship - Have you spoken to the applicant?

Mr. Gidley - [Off mike.] I e-mailed him about whether or not they had obtained homeowners association approval; however, I never received a response back from him.

Ms. Dwyer - Suggestions by Board members?

Mr. Wright - We can continue it to the next meeting. Give them the benefit of the doubt. They may have had an accident or something.

Ms. Dwyer - Is there anyone here to speak to the case? What is the pleasure of the Board?

Mr. Witte - I'm going to make a motion that we continue this until the next meeting.

Ms. Harris - Second.

Ms. Dwyer - Motion by Mr. Witte to defer to the case until our July meeting, seconded by Ms. Harris. All in favor say aye. All opposed say no. The ayes have it; the motion passes.

After an advertised public hearing, and on a motion by Mr. Witte, seconded by Ms. Harris, the Board **deferred** application **UP-011-09, Thomas P. Mead's** request for a conditional use permit pursuant to Section 24-95(i)(4) to build a 3-car garage at 10428 Farm Meadow Drive (Meadow Farms) (Parcel 764-767-3642), zoned R-2C, One-family Residence District (Conditional) (Brookland).

1181			
1182	Affirmative:	Dwyer, Harris, Nunnally, Witte, Wright	5
1183	Negative:		0
1184	Absent:		0

1185
1186

1187 **A-004-09, HILTON RUBIN: CASE REOPENED FOR DISCUSSION FROM**
1188 **PAGE 16.**

1189

1190 Ms. Dwyer - All right. Do we have staff out in the hallway speaking
1191 with Mr. Rubin or?

1192

1193 Mr. Blankinship - I don't believe there's any staff out there, no.

1194

1195 Mr. Wright - They're coming back in now.

1196

1197 Ms. Dwyer - I think they can hear us.

1198

1199 Mr. Blankinship - Yes, I think the mikes are out there.

1200

1201 Ms. Dwyer - We'll reopen case A-004-09, Hilton Rubin.

1202

1203 Mr. Rubin - I think Mark will be able to discuss this without the
1204 emotional attachment that I have, so I'm going to let him talk for a while.

1205

1206 Mr. Baker - I'm not sure if we did much more than confuse
1207 ourselves further. This is a tough issue with regards to—And it all has to do with
1208 the uncertainty of what Mr. Rubin's going to be able to do with this piece of
1209 property once the approval is put in place. If you suggest that you're going to
1210 retain the house, what we would hope is that we would be able to move forward
1211 and utilize—he's already made application for the National Register—utilize
1212 historical tax credits, meeting the Department of Interior standards to allow for
1213 the upgrade of the house to meet today's standards. Then it's a viable property
1214 and you would have the opportunity to rent it, to sell it in the future, that sort of
1215 thing.

1216

1217 Mr. Blankinship might help me with this, but as I understand it, the existing
1218 zoning requirements don't allow any expansion in terms of an addition.

1219

1220 Mr. Blankinship - Right.

1221

1222 Mr. Baker - Is that correct? So if he wants to upgrade the
1223 upstairs, if he wants to pick up another bedroom, he's likely looking at altering
1224 the roofline, as least in the rear of the house, and he just doesn't know at this
1225 point to what extent. That's going to be a process, getting on the Register, and
1226 then getting your application in, and having a review of that application according

1227 to Department of Interior standards. So he's just not certain to what extent he's
1228 going to be able to meet the requirements. That's the economic incentive that
1229 makes it work, along with the tax credits, and that helps to pay for the renovation
1230 of the property, and it helps to overcome the performance issues.

1231
1232 If you are in a situation where you get the BZA variance adopted, you're retaining
1233 the house, and you move forward and you're not able to meet the requirements
1234 of the Department of the Interior, their standards, then you're in a situation where
1235 you aren't gaining that economic incentive. Yet you have conceded to keeping
1236 the house and you are in a situation where zoning doesn't allow you to expand
1237 significantly, you're still having to go up. Perhaps that's still not as sensitive to
1238 the house or perhaps it doesn't work from a performance standpoint without the
1239 incentive of the tax credit. It's difficult to know how that's going to play out now.
1240 The question is how can you get the flexibility that you need through this
1241 approval now for something that's going to happen six to eight months, or maybe
1242 closer to a year down the road?

1243
1244 So we threw out some ideas. Obviously, I think anything that really is going to
1245 deal with—Other than removing the condition, which would allow for this to move
1246 forward—Again, he's already shown a lot of good faith in terms of—You don't
1247 contact the historic societies and groups and organizations, the resources that
1248 he's contacted, and bring them into the game if you're not going to follow
1249 through. Certainly, you don't make application to the National Register if you're
1250 not interested in pursuing the tax credits. Obviously, removing #8 allows it to
1251 move forward with the idea that he can pursue those, and if it works out, which is
1252 what he intends, then he's able to accommodate everyone and retain the house,
1253 and he has the economic incentive. If it doesn't, he has some flexibility to do
1254 some things that he would prefer not to, but which he can also do by right as it
1255 stands. But by getting the variance, he has the opportunity to pursue that
1256 process and perhaps at some point in the future hopefully get that incentive and
1257 be able to have a sensitive renovation of the property and retain it.

1258
1259 The alternative would be to try to start to roll in some additional conditions that
1260 might better address the situation, but it seems that's going to get very
1261 complicated and could result in continuances and re-advertising and all sorts of
1262 things. We had suggested that if you retain the house, you might be able to
1263 come up with a condition that's properly excluded so that you have a retention of
1264 house, but potentially if there was a fire, if there was a natural disaster, or some
1265 act of God that damaged the building over, say, 60% of its value, that he would
1266 be able to take it down rather than build it back. I guess the question is what
1267 does *retention* mean. If there's a fire on the property and it's damaged over
1268 50%, over 60%, does that mean he still has to build it back, or does that mean
1269 he can dispense with it and go on with by-right development? What happens if
1270 Three Chopt is widened? If that calls for the demolition of the building, does he
1271 have the ability to build something there then by right, or does this variance allow
1272 him as an option to move the house and locate it elsewhere on the site?

1273

1274 I think the other thing is would the variance be able to—it doesn't now—be
1275 written in a way where it contemplated the building to make an addition other
1276 than an upwards expansion, something that might require a side yard or rear-
1277 yard variance—the side yard. We have an issue of easement at the rear of the
1278 building. If it would allow for that, maybe pick up some additional square footage
1279 for an additional bedroom, make it a more useable, a more saleable property
1280 that meets today's standards, but doesn't require you going up from the existing
1281 footprint.

1282

1283 That's essentially the issue. It's a little bit of a nebulous situation; there is a lot of
1284 uncertainty. He wants to do the right thing. He wants to have the ability to pursue
1285 the tax credits and alternately renovate the house, but there are a lot of things
1286 hanging out there that could lead to a situation where he's forced to retain a
1287 house that he doesn't get tax credits for, and that potentially isn't a viable
1288 development.

1289

1290 Ms. Dwyer - So, do you have an alternative to 8, or are you still—

1291

1292 Mr. Baker - Well, it's either remove 8, which is, obviously, that
1293 would be the preference. Again, if we get back and look at the context, which is
1294 that he can do this by right, if he wanted to bulldoze it, he'd be doing it already.
1295 He's been waiting months to not bulldoze it. So, that's obviously preferable, and I
1296 think that works, and it's neat, and you can do it today. The alternative would be
1297 to delay further, try to create some—Again, the application would have to reflect
1298 the ability to expand the building, otherwise, if he doesn't get the tax credits and
1299 isn't able to—Well, even if you got the tax credits, you'd likely need the ability to
1300 expand other than upwards. That would be his intention, but it's not clear at this
1301 stage in the process whether he's going to get the right to do that. Again, you
1302 could retain the house; you can condition it such that you haven't excluded him
1303 from damage where he'd be able to remove the house if it was damaged over a
1304 certain percentage. You could exclude it based on the Three Chopt widening,
1305 where he'd be able to remove it at that point. You could provide him the flexibility
1306 to move it in conjunction with the Three Chopt widening, and then provide
1307 flexibility to remedy the setback issues on potential further expansion so he
1308 could—Really, the variance, if the goal is to keep the building, you need to place
1309 it in a condition where it can be made a saleable property that meets today's
1310 standards so he's either going to be able to rent or sell in the future.

1311

1312 Mr. Witte - Instead of adjusting the roofline, couldn't he add off
1313 the back of the house where there's plenty of room?

1314

1315 Mr. Baker - He has an easement that runs across the back.

1316

1317 Mr. Rubin - [Off mike.] But even so—

1318

1319 Mr. Blankinship - You're off mike, Hilton.
1320
1321 Mr. Rubin - I'm sorry. I'll try to do this without getting emotional
1322 again. There's an easement, an overhead line directly behind the house about,
1323 say, maybe ten feet behind the house. Then secondarily, even if I could remedy
1324 moving all those telephone poles—Ben and I have had numerous discussions—
1325 it's still in front of the forward setback of the building line. In Henrico County,
1326 short of coming to a BZA meeting, there is no legal way to add to that house
1327 sideways in any direction. Is that right, Ben?
1328
1329 Mr. Wright - If we add a condition in lieu of #8, in place of #8 that
1330 the Blackburn House will be renovated and maintained in accordance with the
1331 requirements of the National Register, would that be acceptable?
1332
1333 Mr. Blankinship - The only problem I would see with that is that we
1334 can't bind the National Register or the Department of Interior to accept it.
1335
1336 Mr. Wright - No, no, no, no. I'm not saying it has to be part of it, I
1337 just said—
1338
1339 Mr. Blankinship - Oh, okay.
1340
1341 Mr. Wright - It would be maintained in accordance with their
1342 requirements.
1343
1344 Mr. Blankinship - Oh, okay.
1345
1346 Mr. Wright - That wouldn't have to be part of it. I would prefer to
1347 have "not demolished," but if we take that out and just say it will be renovated
1348 and maintained, it's achieving the same result. That's what you said you could
1349 do.
1350
1351 Mr. Baker - I guess the only thing that's a little bit of it—it's still
1352 speculative on the developer's part in that he doesn't fully understand what the
1353 substantive renovations are going to be. In other words, as it stands today, he
1354 doesn't find the property to be marketable, and there are some issues with
1355 regards to access issues and those such things, you know, on the second floor.
1356 It's going to have to go through a review process. What he would like to do—
1357 and the zoning requirements would dictate as well—is he's going to have to
1358 make some improvements to the upstairs. Again, the whole idea is he's hoping
1359 to move forward, he's hoping to use the tax credits. He's hoping to get that
1360 process so that it would make sense, provided that they're willing to—again, we
1361 can't really dictate that they're going to allow him to renovate consistent with
1362 what he's hoping to do. Again, that would be expanding the upstairs to provide,
1363 what, two bedrooms.
1364

1365 Mr. Rubin - Let me simplify. Let me explain to what my intentions
1366 are. I would like to somehow put a window, an access window or an access door
1367 on the upstairs rooms; they're called Garrett rooms. They have windows about
1368 this big; you can't climb out of them; they're not considered bedrooms. You can
1369 sort of see the picture. Yeah. That little tiny window there. Somehow or another
1370 we need to make those rooms, even bedrooms, there needs to be egress. I'm
1371 not sure that the State or the National Register, if I went and asked them and
1372 said can I cut a hole in the side of my house for egress, and by the way, I'll take
1373 care of everything else and make it historic, I don't know whether I'll get the
1374 answer yes or no. If the answer is no, then I don't have bedrooms up in the attic.
1375 I mean, that's all we're talking about in terms of making the upstairs viable or not.
1376 It's egress windows. Maybe the prudent thing is to go ahead and cut a hole in
1377 the wall, then go to the State after the hole's been cut and say I'd like to preserve
1378 the house from here on out. If you're okay with that, then I'm okay with that.

1379
1380 Ms. Dwyer - Mr. O'Kelly, did you have something?

1381
1382 Mr. O'Kelly - I've been trying to draft a condition which, obviously,
1383 we can't address every aspect, but what I've come up with is something along
1384 these lines: "The applicant shall not intentionally demolish the Blackburn House,
1385 and shall use best efforts to restore it in accordance with State and federal
1386 historic guidelines."

1387
1388 Mr. Rubin - I agree with the spirit of it. I just don't know if some—I
1389 mean, if it proves that things aren't viable, if some reason I can't get bedrooms
1390 and I can't add on to it, and I can't do anything with it, then yes, I will intentionally
1391 take it down. Well, I won't, I'll sell it to a developer and they'll intentionally take it
1392 down because it won't be a viable property. I don't know whether you worded it
1393 to not—if you can word around that situation such that somebody in the future
1394 can say this house just doesn't simply work from a financial standpoint anymore.
1395 If you can word it that way, then fine. There are six or seven brains working on
1396 this right now in this room, and I can't tell you how many other people from the
1397 historical—people who deal with this every day at the historical societies and the
1398 Department of Historic Resources. There are dozens of people that I've talked
1399 to about this that do this every day, and we haven't come up with the answer yet.
1400 That's frustrating for me. I know it's frustrating for you, too, obviously.

1401
1402 Mr. Wright - Let me summarize something I've been thinking
1403 about. If we grant this variance without #8, then you would have the legal right to
1404 build a house on the lot for which the variance was granted.

1405
1406 Mr. Rubin - Yes.

1407
1408 Mr. Wright - That line [blank] a fix dividing the properties and so
1409 forth?

1410

1411 Mr. Blankinship - Yes sir.
1412
1413 Mr. Wright - Then you couldn't do anything else with the other
1414 parcel, could you?
1415
1416 Mr. Blankinship - Not without demolishing the house.
1417
1418 Mr. Wright - If we grant the variance and he builds on parcel 2,
1419 could he demolish the house and still build on parcel 1?
1420
1421 Mr. Blankinship - Yes. He could demolish the house and build a new
1422 one on parcel 1.
1423
1424 Mr. Wright - Without a variance.
1425
1426 Mr. Rubin - In the rear behind the—
1427
1428 Mr. Blankinship - Behind that overhead—
1429
1430 Mr. Wright - I see.
1431
1432 Ms. Dwyer - The lot width is sufficient at—
1433
1434 Mr. Rubin - Yes. That's part of the reason we widened it is that
1435 we need to make this viable—add a two-car garage to it, create enough space
1436 that somebody would find this a useful property. Not just for the sake that it
1437 looks good from a planning situation, but from a financial situation, we widened
1438 the lot so at least I know I can get a two-car garage in the back of the property,
1439 and get some garden spaces, and put up a play set, and things that would make
1440 it a more useful property. But if the bottom line is if it's only one bedroom, or,
1441 you know, if it becomes fashionable to have six bedrooms in a house down the
1442 road, I have no remedy for that.
1443
1444 Mr. Wright - What I'm trying to get is what have we got to lose? If
1445 we deny the variance, or if you just withdraw the request because you don't need
1446 it—
1447
1448 Mr. Rubin - And I don't need it.
1449
1450 Mr. Wright - —you could go ahead and demolish the house
1451 without a variance. In other words, if we were to take #8 out and grant the
1452 variance, that still would not prohibit you from ignoring the variance and going
1453 ahead and doing what you could do initially, right?
1454
1455 Mr. Rubin - Yes. The bottom line, as I understand it, is that I still
1456 have the right to do what the original plan showed.

1457
1458 Mr. Wright - Yes.
1459
1460 Mr. Rubin - My suggestion from earlier this morning is that we
1461 have about 10 or 15 control items, things that we didn't have before, and that we
1462 do as you're saying.
1463
1464 Mr. Wright - We're tilting at windmills here. If we grant the
1465 variance, you still could go ahead and do what you could have done to begin
1466 with.
1467
1468 Ms. Dwyer - If we grant the variance, even without Condition 8,
1469 what we're doing it giving some impetus to Mr. Rubin to make whatever
1470 preservation efforts he chooses to make. Without it, he can't make those
1471 preservation efforts because—
1472
1473 Mr. Rubin - That's financially true.
1474
1475 Ms. Dwyer - —he basically has a lot that—
1476
1477 Mr. Wright - I think we're not looking at the whole picture. If we
1478 grant the variance with #8—
1479
1480 Ms. Dwyer - I've come to that conclusion as well.
1481
1482 Mr. Wright - See where I'm coming from?
1483
1484 Ms. Dwyer - I agree with you.
1485
1486 Mr. Wright - The variance with #8 in there, and he could say, "I'm
1487 going to go ahead and do what I legally can do anyhow," and he could go ahead
1488 and demolish the house, and build on his four lots. I think he has that legal right.
1489
1490 Mr. Rubin - I didn't want to be mean about and say that to you,
1491 but that's where my standing is.
1492
1493 Mr. Wright - If we take #8 out and grant the variance on his good
1494 faith, aren't we making a step forward because we are relying on him as it stands
1495 anyhow?
1496
1497 Mr. Witte - I think he's shown great faith in all the efforts and time
1498 he's put in there.
1499
1500 Mr. Wright - He's spent several months.
1501
1502 Mr. Witte - Absolutely. At his own expense of time and money.

1503
1504 Mr. Rubin - It's about \$10,000.
1505
1506 Mr. Wright - I've come around to believe that—
1507
1508 Mr. Witte - I commend you for—
1509
1510 Mr. Wright - —it's in Rubin's hands anyhow. He's protected either
1511 way we move. The only hope we have to protect the house is to grant the
1512 variance without #8 in it and rely on his good faith.
1513
1514 Ms. Dwyer - It's our way of saying go forward and do the best you
1515 can. We certainly hope you'll—
1516
1517 Mr. Rubin - I appreciate that. I would like to go forward without
1518 having to worry about whether this house is going to sustain.
1519
1520 Mr. Wright - We could talk about it two more hours, but we're not
1521 going to get any further on this.
1522
1523 Mr. Rubin - Please no two more months.
1524
1525 Ms. Dwyer - Any other questions about this case?
1526
1527 Mr. Rubin - I recommend that you strike #8 and add #4 as a final
1528 solution to our situation here.
1529
1530 Ms. Dwyer - All right. Any other questions? All right.
1531
1532 Mr. Rubin - Thank you. Thank you very much.
1533
1534 Mr. Wright - There's still that one case that we haven't disposed
1535 of, the last one.
1536
1537 Ms. Dwyer - No one was here.
1538
1539 Mr. Wright - But what are we going to do with it? Oh, okay.
1540
1541 Mr. Blankinship - Wait a minute.
1542
1543 Ms. Dwyer - About what, this case? Certainly, come forward.
1544 You'll need to be sworn.
1545
1546 Mr. Blankinship - Raise your right hand please. Do you swear the
1547 testimony you're about to give is the truth and nothing but the truth so help you
1548 God?

1549
1550 Ms. Lantz - Yes I do. I'm Polly Lantz. I live right across the
1551 street.
1552
1553 Ms. Dwyer - Would you spell your last name, please?
1554
1555 Ms. Lantz - L-a-n-t-z. I live at 9307 Three Chopt Road.
1556
1557 Ms. Dwyer - Okay.
1558
1559 Ms. Lantz - I'm also a member of the Henrico Historical Society.
1560 We have been talking with Dr. Nelson about this property, and we're interested in
1561 preserving it, but there are several things I think we need to point out. The road
1562 that he's planning to put here is coming right in between the historical house and
1563 the cemetery, which I think would decrease the value of it, but on the other hand,
1564 if the property is preserved and the house is not moved. On our side of Three
1565 Chopt, the street has been widened, and it would have to be widened eventually
1566 on the other side, which would mean that Blackburn House would have to be
1567 moved back or moved. If a variance is given, there wouldn't be any room, I don't
1568 think, to move the house. I appreciate your considering this.
1569
1570 Ms. Dwyer - I'm not sure which road you're talking about.
1571
1572 Ms. Lantz - The access to the property and the house that he
1573 plans to build.
1574
1575 Ms. Dwyer - For the new house?
1576
1577 Ms. Lantz - It would be in between the cemetery and the
1578 Blackburn House. It's sort of a bank that would have to be cut there; the
1579 property is high. Thanks for your attention.
1580
1581 Ms. Dwyer - Thank you.
1582
1583 Mr. Witte - Yes ma'am.
1584
1585 Ms. Dwyer - Thank you, ma'am. Did you have anything to add,
1586 Mr. Rubin?
1587
1588 Mr. Rubin - Yes. I, too, am a member of the same society that
1589 she is. I've had Dr. Nelson out here speaking, as you know, and a member of a
1590 number of other historical societies. People have written letters on your
1591 application.
1592
1593 She speaks of a driveway. We must have, by Code, a driveway, and it must
1594 enter off of Three Chopt Road somewhere in that 59-foot access space. Actually,

1595 I believe for Public Works, the driveway needs to be pushed back an additional
1596 five feet from the property line, at least at the entrance. By right, the driveway
1597 needs to be there, by zoning code. By right, even with or without this variance,
1598 we have the right to put a driveway there anyway for access for farm use or
1599 whatever we might want an access, a driveway for. While I understand her
1600 concerns that this may not be as sightly from her front yard to have a driveway
1601 within this space, a driveway is certainly allowed there now before the variance,
1602 and after the variance.

1603

1604 Secondly, she addressed the issue of the bank. The bank probably sits three or
1605 four feet above the road. There are two driveways to the left of the Blackburn
1606 House that have addressed the bank issue. I don't know whether we have any
1607 pictures. You guys know better than I do that Public Works is going to mandate
1608 how that bank is handled. The erosion settlement and control people will
1609 mandate how that bank is handled. Public Works has already been out there, by
1610 the way. It's going to require a 30-inch culvert and gravel, and some dirt on top of
1611 that culvert to create a new driveway. There's the bank, the picture in front of
1612 you. I said it's three or four feet; it's probably two feet above the road. That can
1613 be accomplished, and it's already been designed by Public Works for the 30-inch
1614 culvert.

1615

1616 Mr. Witte - For the Blackburn House, hasn't that bank been cut
1617 down for its driveway?

1618

1619 Mr. Rubin - To the left you can just a little bit. Right there—Yes,
1620 where that little hand is, you can see where the bank have been cut for that one.
1621 That bank goes several hundred feet to the left. The tri-level next to it, which is
1622 also mine that's been vacant now for a while, that has a bank similar that's been
1623 cut down. Yes, the bank has been cut down. Well, the Blackburn House was
1624 there before Three Chopt Road was there. There is going to be an incline up, as
1625 there always is. Per Public Works, as I understand it, you always need to go up
1626 before you go down when you go across a bank so that the water from your
1627 property is not shedding on the road. I guess all I can say is this is a pretty
1628 common situation for building is to cross a bank with a culvert pipe and gravel. I
1629 don't think the variance has much to do one way or the other with driveways,
1630 although I respect her opinion about not wanting to see one there.

1631

1632 Mr. Wright - While you're up, I want to get clarified on #4. What
1633 did we come up with on #4?

1634

1635 Mr. Rubin - That sheet of paper that Mark gave you minus the
1636 landscaping. I really don't think we're going to be lucky finding landscaping. If
1637 you don't want it, that's fine. It's tough to find something to go under a walnut
1638 tree. Any more questions?

1639

1640 Mr. Witte - Thank you.

1641

1642 Mr. Rubin - Okay, thanks.

1643

1644 Ms. Dwyer - I believe that closes the case, unless anyone has any
1645 more questions, or anyone from the audience wants to speak. All right, we'll
1646 close the case, and we'll take up this case for decision. Do I have a motion on
1647 the case?

1648

1649 **DECISION**

1650

1651 Mr. Wright - I move we approve it, approve the variance on the
1652 grounds that we have a special condition here. If we didn't approve it, it would
1653 mean an unnecessary hardship. My reason for this is the variance would
1654 alleviate this demonstrable hardship approaching confiscation. But I'd like to
1655 amend the conditions, taking out #8 and modifying #4 in accordance with this
1656 revision that has been submitted by deleting B and making it A, B.

1657

1658 Ms. Dwyer - C as submitted would become B.

1659

1660 Mr. Wright - Yes. C will become B.

1661

1662 Mr. Witte - I second that.

1663

1664 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Witte. Any
1665 discussion? I agree with you, Mr. Wright. Once we have it in proper perspective,
1666 we realize, obviously, that there is no need for a variance in order for this
1667 property to be developed. But by granting the variance, it is more likely than it
1668 otherwise would be that this historic property will have an opportunity to be
1669 preserved.

1670

1671 Mr. Wright - Right.

1672

1673 Ms. Dwyer - Unfortunately, the County doesn't have an historic
1674 preservation ordinance. One was proposed many years ago and it was rejected.
1675 Perhaps that would have solved this situation for everyone, but given that we
1676 don't have one, I think it's appropriate for us to issue a variance on this case.
1677 And under our statute, one of the purposes of the Zoning Ordinance is to protect
1678 against the destruction of historic properties. So, I find support for the motion
1679 also. Any other questions?

1680

1681 A motion has been made and seconded. All in favor say aye. All opposed say
1682 no. The ayes have it; the motion passes unanimously.

1683

1684 Thank you, sir, for all of your work, and we hope this will speed you on your
1685 process.

1686

1687 After an advertised public hearing and on a motion by Mr. Wright, seconded by
1688 Mr. Witte, the Board **approved** application **A-004-09, Hilton Rubin's** request for
1689 a variance from Section 24-94 to build a one-family dwelling at 9312 Three
1690 Chopt Road (Parcel 752-749-7078 (part)), zoned R-3, One-family Residence
1691 District (Three Chopt). The Board approved the variance subject to the following
1692 conditions:

1693
1694 1. This variance applies only to the lot width requirement for one dwelling only.
1695 All other applicable regulations of the County Code shall remain in force.

1696
1697 2. Only the improvements shown on the plot plan filed with the Planning
1698 Department on June 15, 2009, may be constructed pursuant to this approval.
1699 Any additional improvements shall comply with the applicable regulations of the
1700 County Code. Any substantial changes to the location of the improvements may
1701 require a new variance.

1702
1703 3. The scale, design and materials of the dwelling proposed for this lot, shall not
1704 detract from the Blackburn House. Compliance with this condition shall be
1705 determined by the Director of Planning.

1706
1707 4. [AMENDED] Access to the existing gravesites shall be preserved in
1708 accordance with State law. The gravesites shall be delineated by fencing as
1709 shown on the illustration submitted at the hearing, or other delineation approved
1710 by the Director of Planning.

1711
1712 5. The applicant shall make a reasonable effort during development of the
1713 property to preserve the existing trees. This does not include dead or dying
1714 trees.

1715
1716 6. The dilapidated barn located at the rear of the parcel shall be removed prior
1717 to the issuance of a certificate of occupancy.

1718
1719 7. That portion of the landlocked parcel (GPIN 752-749-7896) immediately
1720 behind the lot shall be incorporated into the lot, as shown on the plat filed with
1721 the Planning Department on June 15, 2009. A deed combining the described
1722 parcels shall be recorded prior to the issuance of a certificate of occupancy.

1723
1724
1725 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5
1726 Negative: 0
1727 Absent: 0

1728
1729
1730 Ms. Dwyer - I think that closes the case portion of our meeting.
1731 The next item on the agenda is the approval of the minutes. Are there any
1732 changes to the minutes as presented?

1733
1734 Ms. Harris - I have a correction on page 16, line 701 where we
1735 have the dash. I want to use the word "compliant," become compliant. That's
1736 page 16, line 701.

1737
1738 Ms. Dwyer - Any other amendments?

1739
1740 Mr. Witte - On page 38, line 1689. I believe Mr. Blankinship
1741 made that statement welcoming Kate to the meeting. Probably should change
1742 that to Mr. Blankinship.

1743
1744 Ms. Dwyer - Anything else? Page 16 as well, line 675, at the end
1745 of the line, "no distant." It should be, "no distance." Any other changes? Motion
1746 on the minutes?

1747
1748 Ms. Harris - I move that the minutes be accepted as corrected.

1749
1750 Mr. Witte - I'll second that.

1751
1752 Ms. Dwyer - Motion by Ms. Harris, seconded by Mr. Witte that the
1753 minutes be approved as amended. All in favor say aye. All opposed say no. The
1754 ayes have it; the motion passes.

1755
1756 On a motion by Ms. Harris, seconded by Mr. Witte, the Board **approved as**
1757 **amended the Minutes of the May 28, 2009** Henrico County Board of Zoning
1758 Appeals meeting.

1759
1760 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5
1761 Negative: 0
1762 Absent: 0

1763
1764 Ms. Dwyer - Any new business? A motion for adjournment.

1765
1766 Mr. Nunnally - I move.

1767
1768 Mr. Wright - Second.

1769
1770 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Mr. Wright. All
1771 in favor of the motion stand.

1772
1773 There being no further business, the Board adjourned until the July 23, 2009
1774 meeting at 9 a.m.

1775
1776
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1778


Elizabeth G. Dwyer
Chairman

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1783


Benjamin Blankinship, AICP
Secretary