

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, MARCH 25, 2010, AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH MARCH**
6 **4, 2010 AND MARCH 11, 2010.**
7

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

Member Absent: James W. Nunnally

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

8
9
10 Ms. Dwyer - Good morning. The March 24, 2010 session of the
11 Henrico County Board of Zoning Appeals will now come to order. Please rise for
12 the **Pledge of Allegiance**.
13

14 Good morning, Mr. Blankinship. I see that we are one short today on the Board.
15 Mr. Nunnally is not here today due to illness. We do have four voting members
16 present today. Would you please review the rules of the Board?
17

18 Mr. Blankinship - Good morning, Madam Chairman, members of the
19 Board, ladies and gentlemen. The rules for this meeting are as follows. Acting
20 as secretary, I will call the case and as am speaking, the applicant should come
21 on down to the podium. We will ask everyone who wishes to speak on that case
22 to stand and be sworn in. Then the applicant will present their testimony. Then
23 anyone else who wishes to speak will be given the opportunity. After everyone
24 has spoken, the applicant and only the applicant will have an opportunity for
25 rebuttal. After hearing the case and asking questions, the Board will take the
26 matter under advisement and they'll make all of their decisions at the end of the
27 meeting. If you wish to know their decision on a specific case, you can either
28 stay until the end of the meeting, or you can check the Planning Department
29 website this afternoon, or you can call the Planning Department this afternoon.
30

31 This meeting is being recorded, so we'll ask everyone who speaks to speak
32 directly into the microphone on the podium, state your name, and please spell
33 your last name so we get it correctly in the record. Out in the foyer there are two
34 binders that contain the staff report for the case, including the conditions that

35 have been recommended by the staff. Particularly for the applicants in use
36 permit cases, you need be familiar with those conditions because you'll be asked
37 whether you agree with them.

38
39 As Ms. Dwyer mentioned, the Board is one member short this morning. There is
40 a provision in State law that requires that three affirmative votes are required for
41 any action to be approved by the Board. If, for example, one of the four members
42 were to abstain and you had a two to one vote in favor, that would still count as a
43 denial. There have to be at least three affirmative votes for the Board to pass on
44 anything. So if you would like to wait until next month and hope to have a full
45 Board seated at that time, just let the Board know that. You certainly have that
46 right to be heard by the full five-member Board.

47
48 The first case is deferred from the January meeting.

49
50 **UP-021-09** **RICHMOND RUGBY FOUNDATION** requests a
51 conditional use permit pursuant to Sections 24-52(a) and 24-12(b) to build a
52 picnic shelter and restrooms at 514 Whiteside Road (Parcel 833-710-5988),
53 zoned A-1, Agricultural District (Varina).

54
55 Ms. Dwyer - Is there anyone else here to speak to the case? No
56 one else? Please sir, raise your right hand and be sworn.

57
58 Mr. Blankinship - Do you swear the testimony you're about to give is
59 the truth and nothing but the truth so help you God?

60
61 Mr. Sweet - I do.

62
63 Ms. Dwyer - Please state your name and your case.

64
65 Mr. Sweet - Pete Sweet—S-w-e-e-t. I'm chairman of the
66 Richmond Rugby Foundation.

67
68 Ms. Dwyer - Good morning.

69
70 Mr. Sweet - Good morning. This was deferred from the previous
71 month—I'm not sure, I think it was November—in order to give us and staff time
72 to review the recommendations of staff, review them and agree to them. We
73 submitted a revised plan. I had our engineer do a revised plan and staff gave us
74 a couple of changes. I think the only one I can recall is they don't want us to park
75 that close to the road. Other than that, we agree to and comply with everything
76 there.

77
78 Mr. Wright - So you are in accord with all of the new conditions
79 that have been proposed.

81 Mr. Sweet - Yes I am

82
83 Mr. Wright - As for paving the parking lot and so forth?

84
85 Mr. Sweet - The first recommendation said that only the
86 improvements as shown on the plan are going to be done. That part is what I
87 agree with. The first suggested condition is only the improvements on the
88 revised site plan. The engineer said that graveling the drive lanes and the heavy
89 grass area wouldn't produce any erosion.

90
91 Mr. Wright - I'm looking at condition number five: Designated
92 onsite parking areas shall comply with Section 24-98, parking lot requirement
93 regulations of the Henrico County Code, which may require the parking area and
94 drive aisles be paved with bituminous material. Mr. Blankinship may want to
95 explain what that could mean. I just want to make sure that you understand what
96 the situation is. That may be something we have to decide today. With the word
97 *may* in there, that leaves it up in the air.

98
99 Mr. Blankinship - Yes. This is a question on which staff would very
100 much like to have the Board's direction. The code provides that any public
101 parking lot for over six vehicles must be paved. When this application first came
102 in back in 1998, it was a small club having their own private activities there. We
103 deemed at that time that it was not a public parking lot for the purpose of 24-98.
104 But we've discussed all along with Mr. Sweet that as their activities grow, as their
105 popularity grows, as the site becomes developed, there are improvements, like
106 paved parking, that are going to have to be caught up with at some point. So a
107 question that I would like to put before the Board this morning is have they
108 reached that point with this application. Has the amount of traffic generated or
109 allowed by this application turned this from a private parking lot to a public
110 parking lot such that the club would need to pave it.

111
112 Mr. Wright - I take it that would impose quite a financial burden on
113 you to have to pave that whole parking lot.

114
115 Mr. Sweet - Sir, that would be an impossibility. We would have to
116 just pull stakes and go. I think staff's recommendation originally was on
117 perceived use because we have permission to use the field for practice on
118 Tuesday and Thursday, which we've never done, and two weekends. So what
119 we did was we submitted our actual use in 2009, which is just once a month.
120 Thirteen times is all. Hopefully at some point we're out there using it full steam—
121 practicing there, playing there, and have more games. That's what we anticipate,
122 but it's not there yet. And some time in the future when we're using that two or
123 three times a day, it would maybe need paving. At that point, our membership
124 would probably be big enough to support it. But that's a long ways off for us,
125 which is why I had the engineer to submit this plan. It's not open to the public.
126 That parking lot is going to be gated off, so it's only open when we're out there

127 using it. We've gone out there to try to improve it, to try to anticipate the sight
128 line. You can see there where we cleared off everything that was growing in the
129 front that was blocking the sight line. We received some suggestions from
130 Security to open that all up and that's what we're going to do as soon as we get
131 the go-ahead from you. We'll go back and submit a plan in detail to put plants
132 back in there that would not interfere with the sight line, put a fence along the
133 front, and put a gate back in.

134
135 Mr. Wright - Is this the parking lot we're looking at now?

136
137 Mr. Sweet - Yes sir.

138
139 Mr. Wright - What happens when you have heavy rains and a lot
140 of mud?

141
142 Mr. Sweet - We just had the wettest year I'm seen and it hasn't
143 been a problem yet.

144
145 Mr. Wright - Pretty solid?

146
147 Mr. Sweet - That grass is very thick out there. What we're looking
148 at now is where the pines are and we're looking at it at the worst part of the year.
149 That's the parking and that was taken, I guess, last month when we had the
150 wettest winter we've ever had. But we're not out there in the winter. We've been
151 out there once so far this year, which was last Saturday. I take that back; it might
152 have been twice. I think they have three more uses this spring and that's it—one
153 Saturday and two Sundays. It has not been a problem. If it ever becomes a
154 problem, then we'd have to address it. I think we're offering a compromise, or our
155 engineer did. We're prepared to go out there and pave the driving lanes and
156 restructure this parking a little bit so that if it does come up, we can handle it.

157
158 Mr. Wright - How many cars at one time do you anticipate having?

159
160 Mr. Sweet - I would say 50 to 75 would be a normal game day
161 situation.

162
163 Mr. Wright - They can park in there because you don't have it
164 marked off or anything? They can park in there without a lot of confusion?

165
166 Mr. Sweet - That's not even crowded. I gave a number trying to
167 help the County control any future—in case they got too big—based on what I
168 have seen there as a maximum. The math would show you could fit 150 cars in
169 there easy in the space, if it were a paved, marked parking lot. On a typical
170 Saturday, I guess whenever the next home match is, you can go out there and
171 you'll see less than 75 cars there.

172

173 Ms. Dwyer - But you had submitted 130 cars? How many vehicles
 174 did you submit?
 175
 176 Mr. Sweet - Again, that was me trying to control overuse. What we
 177 did originally was per event. If there's one event after another event after another
 178 event, the County has no way to, I guess, recognize that. I was trying to give the
 179 County some fuel to recognize that no matter how many events you have in a
 180 row, you cannot have over 130 cars. I guess I'm still not articulating that because
 181 I still see that staff says 130 per event. I'm not going to argue with that, but.
 182
 183 Mr. Wright - That's coming and going.
 184
 185 Mr. Sweet - In my interpretation, if there are more than 130 cars,
 186 we're violating.
 187
 188 Mr. Wright - That's condition number 16, no more than 130
 189 vehicles.
 190
 191 Mr. Blankinship - Should be there at any one time.
 192
 193 Mr. Sweet - Correct. Yes sir.
 194
 195 Mr. Wright - Instead of event?
 196
 197 Mr. Blankinship - Yes.
 198
 199 Mr. Wright - Change that to read "at one time"? Is that what we're
 200 suggesting here?
 201
 202 Mr. Blankinship - Yes.
 203
 204 Ms. Dwyer - But you're expecting 50 to 75 cars per event.
 205
 206 Mr. Sweet - Typically. There are events that aren't typical. If they
 207 have a tournament or they have a couple of events in a row when people want to
 208 hang around, I'm trying to give the County fuel to limit that.
 209
 210 Ms. Dwyer - The typical event, then, would be 50 to 75 cars. I'm a
 211 little concerned about something, and maybe I misinterpreted what I heard you
 212 say, but when Mr. Wright asked you if you had read and agreed to the
 213 conditions, you said yes, that the first condition said nothing other than what was
 214 on the plan submitted would be built, and that seemed to encompass everything
 215 that was required of you in your mind. But there are 16 other conditions that you
 216 would be obligated to comply with if this were passed, including possibly paving
 217 the parking lot, submitted sediment and erosion control plans, landscaping,

218 lighting, and a number of other conditions. I just want to double-check and make
219 sure that you read all of those and agree to all of those.

220

221 Mr. Sweet - Yes ma'am, I have. The one we're still discussing
222 here and looking for some guideline is the "may" in the parking.

223

224 Mr. Wright - It doesn't say it shall, it says it may. So that leaves it
225 up to this Board to determine today whether to take that last phrase out.

226

227 Ms. Dwyer - I just wanted to make sure you read all the other
228 conditions.

229

230 Mr. Sweet - I have, yes ma'am.

231

232 Mr. Blankinship - We actually had a meeting with staff and Mr. Sweet to
233 go over each condition to make sure.

234

235 Mr. Wright - This is a growing process. I've had a lot of experience
236 with this because I was with Tuckahoe Little League since 1958. We built our
237 facility and then built a new facility. We weren't required to pave that then; it is
238 now. It's paved now because it's grown to that point. You're in the growing
239 stage. I doubt if you use these facilities as much as the Tuckahoe Little League
240 used theirs. During the summertime, they were out there every day.

241

242 Mr. Sweet - I hope I live long enough to see it used as much as
243 Tuckahoe does, but it's not happening now by a long shot.

244

245 Ms. Harris - Mr. Sweet, realistically, how often is it used now?

246

247 Mr. Sweet - We counted 13 times in all of 2009.

248

249 Ms. Harris - That's usually on what days of the week?

250

251 Mr. Sweet - I believe there were 12 Saturdays and 1 Sunday.

252

253 Ms. Harris - I need you to look at the aerial photo where we have
254 your highlighted area. Whiteside Road, I need to ask you about a couple of
255 structures that are here.

256

257 Mr. Sweet - Yes ma'am.

258

259 Ms. Harris - What is the property there across the street? I think
260 it's 509. What is that, do you know?

261

262 Mr. Sweet - I can't see it.

263

264 Ms. Dwyer - Looks like a house to me. It's what?
 265
 266 Mr. Wright - This is the church site.
 267
 268 Ms. Harris - 509 is a church. And what about 520? No, that's a
 269 church. Have you all been in touch with your neighbors? I'm concerned about
 270 the Rugby Foundation being a good neighbor.
 271
 272 Mr. Sweet - Yes ma'am. You weren't here last meeting, Ms.
 273 Harris. Mr. Nash came here and in his exact words, we are good neighbors. He
 274 owns the land across the street. In addition, I submitted correspondence from
 275 the next door neighbor who suggested that we be approved for this picnic
 276 shelter. I had also written a letter to the pastor of the church across the street to
 277 let her know what we were going to do, and also letting her know that that would
 278 be there, and if it's approved and we have the picnic shelter, they'd be welcome
 279 to use it.
 280
 281 Ms. Harris - I'm looking at what we have in the conditions that the
 282 Sunday schedule will be from 11 a.m. until 8:30 p.m. And you can have decibels
 283 up to how many? I'm trying to find the condition.
 284
 285 Ms. Dwyer - Sixty-five.
 286
 287 Mr. Blankinship - It's number 15.
 288
 289 Ms. Harris - I'm just concerned with the noise during church
 290 service time.
 291
 292 Mr. Sweet - We originally asked for limited Sunday use basically if
 293 weather interrupts Saturday play. They would schedule no more than once or
 294 twice a year on a Sunday. We don't typically have any kind of PA system at our
 295 games. I keep these fellows very well aware that we're the new kids on the block
 296 out there. So far, we've had nothing but good relationships with everyone out
 297 there.
 298
 299 Ms. Harris - From the reading, I understand you plan these
 300 activities to be stepped up a bit, you expect it to be thriving. I just want to be sure
 301 that we don't box ourselves into a situation where you have a lot of complaints.
 302 Okay, I have another question. In the background report it says that a
 303 landscaping buffer—in other words, you have removed most of the trees that
 304 provided a landscaping buffer along the front of the lot. Why did you do that?
 305
 306 Mr. Sweet - A couple of reasons. Mostly it was ugly garbage that
 307 had just grown up. It was about 30 feet thick and we couldn't see through it. It
 308 wasn't planted, it was just—we let it grow to create a buffer. We had been
 309 asked—actually, I had received a telephone call from someone in that church

several years back asking if we could cut those trees down. Then we received this report from the security of Henrico County suggesting that part of it is we have a clear visual sight. So we got out there and got to work. If you see those seven pines there, those are the seven pines we left because that's the name that they chose for the rugby park, Seven Pines Rugby Park. We're going to go back and plant actual landscaping along there. In the proposal there's a little fence. I believe if it's under 36 inches, it doesn't have to have a permit. We just want an open-rail fence that someone could see through. It was looking bad out there and we wanted to improve the neighborhood. That's our plan, to go back.

Ms. Harris - Did you notice that condition seven states you're supposed to submit a detailed landscaping and lighting plan?

Mr. Sweet - Yes ma'am.

Ms. Harris - It would not be in piecemeal fashion, just putting a fence up here or something there. It's a complete plan that would improve the landscaping area.

Mr. Sweet - Yes ma'am. We had a sign up there before, but it was non-permitted. I think the height and the size were a little bigger than it needs to be without a permit.

Ms. Harris - I think this is my last question. I notice in this report that we have a memo from the police department with quite a few conditions. Is this par for the course or have they had problems with this rugby group that would cause them to give all these conditions?

Mr. Blankinship - That's a standard reply that we get from the Division of Police.

Mr. Sweet - It was very much appreciated because I was just guessing at what to do out there. That gave us some good guidelines.

Mr. Blankinship - I don't know that there have been any incidents of crime or anything else reported out there. I believe there's been mention of some unauthorized parking on the property at night, but that was the only thing.

Mr. Sweet - That's another reason. The sight line is what caused that, so we've done away with that. So now anything that pulls back there can be seen by the neighbor and that's what we were trying to accomplish.

Mr. Witte - You said that was suggested by Henrico security?

Mr. Sweet - This interoffice memorandum she just referred to, that's what they said to do. That's one of the suggestions they had.

356
 357 Mr. Blankinship - It says, "Provide natural surveillance throughout the
 358 site, especially the parking areas, buildings, building entrances, walkways,"
 359 etcetera.
 360
 361 Ms. Dwyer - Last year you had, by my count, 15 events, meaning
 362 15 competitive games. In addition to that, you had practice times at the field. Is
 363 that correct?
 364
 365 Mr. Sweet - I thought it was 13. We had no practice out there.
 366 We're not using that to practice. We have permission to use it, but we can't.
 367 Lighting is one of the reasons they can't and the other is they're still using other
 368 areas. I hope to migrate them here at some point, but it may never happen. So
 369 far we've never, to my knowledge, used that Tuesday and Thursday.
 370
 371 Ms. Dwyer - Okay. So you had six days in the spring and nine
 372 days in the fall of 2009.
 373
 374 Mr. Sweet - Okay.
 375
 376 Ms. Dwyer - I just wanted to establish the frequency of use. So
 377 that's 16 times a year. That's really infrequent, especially if you're not using it for
 378 practice. You're practicing still on the County fields?
 379
 380 Mr. Sweet - I don't keep up with them.
 381
 382 Ms. Dwyer - Wherever. They're not practicing here.
 383
 384 Mr. Sweet - No ma'am.
 385
 386 Ms. Dwyer - But they could.
 387
 388 Mr. Sweet - I wish they would, but they won't.
 389
 390 Ms. Dwyer - All right. Mr. Blankinship, paving with bituminous
 391 material. What is that?
 392
 393 Mr. Blankinship - That's paving, a hard surface.
 394
 395 Ms. Dwyer - Now it's not graveled?
 396
 397 Mr. Sweet - Except for the driveway coming in, it's all grass. What
 398 our engineer is proposing is that we gravel the driving lanes.
 399
 400 Ms. Dwyer - But not the parking area?
 401

402 Mr. Sweet - Yes ma'am.
 403
 404 Ms. Dwyer - The driving lanes in the parking area, then, would be.
 405
 406 Mr. Sweet - Yes ma'am.
 407
 408 Ms. Dwyer - But the spaces would not.
 409
 410 Mr. Sweet - In the engineer's narrative, he just didn't feel it was
 411 necessary, but it's something we're offering to try to appease staff
 412 recommendation.
 413
 414 Ms. Dwyer - Any other questions by Board members? Anyone else
 415 here to speak to the case? That will close the case; thank you.
 416
 417 Mr. Sweet - Thank you.
 418
 419 **[After the conclusion of the public hearings, the Board discussed the case**
 420 **and made its decision. This portion of the transcript is included here for**
 421 **convenience of reference.]**
 422
 423 Ms. Dwyer - Is there a motion on the case?
 424
 425 Mr. Wright - Yes. I move we approve this. I want to take a look at
 426 these conditions to ensure that we have the proper conditions. Condition #5, I
 427 would recommend that we strike that last phrase, "which may require the parking
 428 area and drive aisles to be paved."
 429
 430 Ms. Dwyer - Strike from "which"?
 431
 432 Mr. Wright - Yes. Right after the word, "code," and put a period.
 433
 434 Ms. Dwyer - All right.
 435
 436 Mr. Wright - I think there's a typo in #10. It reads, "The right-of-
 437 way to all allow."
 438
 439 Mr. Blankinship - You're right. "All" should be struck there.
 440
 441 Mr. Wright - That's just a typo. And condition #16, strike "one
 442 event," and put, "at any time." I think that's what Ben said.
 443
 444 Mr. Blankinship - Yes sir, that's correct.
 445
 446 Ms. Dwyer - All right. There's been a motion made with three
 447 suggested amendments to the conditions. Is there a second on the motion?

448
 449 Mr. Witte - Yes, I second.
 450
 451 Mr. Wright - I would state my reasons for this.
 452
 453 Ms. Dwyer - Okay.
 454
 455 Mr. Wright - This will not affect the health, safety, or welfare of
 456 persons on the premises or in the neighborhood. It will not unreasonably impair
 457 an adequate supply of light and air to adjacent property, nor increase congestion
 458 in the streets, nor increase public danger from fire or otherwise unreasonably
 459 affect public safety, nor impair the character of the district or adjacent districts,
 460 be incompatible with the general plans and objectives of the official land plan,
 461 not be likely to reduce or impair the value of buildings or property in surrounding
 462 areas, and will be in substantial accordance with the general purpose and
 463 objectives of this chapter.
 464
 465 Ms. Dwyer - Thank you, Mr. Wright. We have a motion by Mr.
 466 Wright, second by Mr. Witte. Any discussion?
 467
 468 Ms. Harris - Yes. Although I plan to vote for the motion, I do have
 469 a concern that—well, I should say I'm concerned with how good a neighbor will
 470 this foundation be. I do hope they will conform to all of the conditions and prove
 471 themselves a good neighbor. That's my only reservation, that they may not be a
 472 good neighbor with all the things that are going on.
 473
 474 Mr. Wright - Ms. Harris, there's one good thing about this. As you
 475 know, if there are complaints and they come back to this Board, we can require
 476 them to come back and change it, amend it, or terminate the use.
 477
 478 Ms. Harris - Exactly.
 479
 480 Mr. Wright - We have that backup, that safety.
 481
 482 Ms. Harris - We give the use permit for two years. If there is a
 483 complaint—
 484
 485 Mr. Wright - That's the other safeguard.
 486
 487 Ms. Harris - That's the other safeguard.
 488
 489 Mr. Blankinship - This will last until they want to change it again.
 490
 491 Ms. Harris - I noticed that we did not have that in the conditions.
 492
 493 Mr. Wright - This is a different type of use permit.

494
 495 Ms. Harris - As long as they're compliant, I think things will work.
 496
 497 Mr. Wright - As long as they're compliant with the conditions,
 498 everything will be fine.
 499
 500 Ms. Dwyer - Right. If they're not compliant, then we have the
 501 authority to come back and revoke it.
 502
 503 Mr. Wright - Revoke it if necessary.
 504
 505 Ms. Dwyer - I understand your concern and appreciate your
 506 concern because this is a group use within a sort of rural and somewhat
 507 residential neighborhood. The YMCA is just a quarter of a mile away and I know
 508 that those are usually very intensively used, certainly much more than this if this
 509 is only used 16 times a year. All indications are that they have made efforts to
 510 contact their neighbors and be in communication with them. And we've had no
 511 complaints at all. It seems well on that front.
 512
 513 I wanted to maybe engage in some discussion about this parking area and drive
 514 aisle. While we may not want to require them to pave it, what about graveling the
 515 parking spaces. I'm wondering if that would be advisable. Right now they're
 516 going to improve it by putting gravel on the drive aisles in the parking area, but
 517 not—
 518
 519 Mr. Wright - I think that what happens here, Ms. Dwyer, is that
 520 they do what's necessary. This is a very limited use. It's not an every-week use.
 521 That's what I've found with these other organizations that I've been involved with.
 522 We tried to do what was necessary. If the conditions became so they needed to
 523 do it, I would hope that they would do it. If they didn't and it came to our
 524 attention, we could call them back in and require it.
 525
 526 Ms. Dwyer - What will probably happen is as they increase the
 527 intensity of the use, they will come back to us for more requests and at that
 528 time—
 529
 530 Mr. Wright - When they do that, then we can request that.
 531
 532 Ms. Dwyer - All right. Any other comments, discussion? All right,
 533 there has been a motion. All in favor say aye. All opposed say no. The ayes
 534 have it; the motion passes. The motion carried 4 to 0.
 535
 536 After an advertised public hearing and on a motion by Mr. Wright, seconded by
 537 Mr. Witte, the Board **approved** application **UP-021-09, Richmond Rugby**
 538 **Foundation's** request for a conditional use permit pursuant to Sections 24-52(a)
 539 and 24-12(b) to build a picnic shelter and restrooms at 514 Whiteside Road

(Parcel 833-710-5988), zoned A-1, Agricultural District (Varina) The Board granted the use permit subject to the following conditions:

1. Only the improvements shown on the revised Site Plan (dated March 4, 2010) added to the application may be constructed pursuant to this approval. The improvements include: the existing rugby pitch, visitor parking area, storage shed, and the proposed picnic shelter with restrooms, grilling station and seating, septic system, and well. This approval does not authorize construction of a second rugby pitch, a clubhouse, pitch lighting, grandstands, or a communication tower (alluded to in the revised site plan submitted for case number UP-017-08). Any substantial changes or additions may require a new conditional use permit.

2. The applicant shall submit construction plans for administrative review of the proposed improvements to the Planning Department.

3. Prior to any land disturbing activity, the applicant shall obtain approval of an Erosion and Sedimentation Control Plan in accordance with Henrico County Code, Chapter 10, Environment. The applicant shall also submit an Erosion Control Bond, which must remain active until released in writing. Throughout all land disturbing phases necessary for construction of the proposed improvements, the applicant must satisfy the Department of Public Works Environmental Section that erosion and sediment control is inspected and maintained in accordance with the approved plan and Environmental Section policy.

4. Approval of this request does not imply that a building permit will be issued. Building permit approval is contingent on Health Department requirements, including, but not limited to, soil evaluation for a septic drainfield and reserve area, and approval of a well location.

5. [AMENDED] The designated on-site parking area shall comply with Sec. 24-98, Parking Lot Regulations of the Henrico County Code.

6. The proposed parking lot layout shall be modified so that it is located outside of the front 50 foot setback area and all parking shall be clustered together (north of the entry drive).

7. A detailed landscaping and lighting plan shall be submitted to the Planning Department with the building permit for review and approval.

8. The applicant shall comply with the recommendations (Inter-Office Memorandum dated December 8, 2009) of the Community Policing Unit within the Division of Police for Crime Prevention Through Environmental Design (CPTED).

9. A stop sign meeting County standards shall be maintained at the entrance onto Whiteside Road.

10. The applicant shall install and maintain an entry gate to control access on to the site. The entry gate shall be setback a minimum of 50 feet from the right-of-way to allow vehicular queuing on-site.

11. The applicant shall provide an adequate number of trash receptacles adjacent to the rugby pitch, parking areas, and picnic shelter. The applicant shall also install an enclosed and screened trash receptacle (dumpster) for collection of refuse generated at the site. The site shall be maintained liter free at all times.

12. The applicant shall remove all tree piles, logs and stumps from the site prior to the issuance of a building permit and in accordance with an approved Erosion and Sedimentation control plan.

13. A landscaped buffer meeting the requirements of transitional buffer 25 as defined in Chapter 24 of the Henrico County Code shall be maintained between the parking area and adjacent properties flanking to the north and south. All landscaping shall be maintained in a healthy condition at all times. Dead plant materials shall be removed within a reasonable time and replaced during the normal planting season.

14. Hours of operation shall be limited to 3:30 pm to 8:30 pm Monday through Friday, 9:00 am to 8:30 pm Saturday, and 11:00 am to 8:30 pm Sunday.

15. Public address and sound amplification equipment shall not exceed 65 dB at the limits of the property.

16. No more than 130 vehicles shall be permitted at any time.

Affirmative:	Dwyer, Harris, Witte, Wright	4
Negative:		0
Absent:	Nunnally	1

[At this point, the transcript continues with the public hearing on the next case.]

UP-006-10 **JASON SCHYMANSKI** requests a conditional use permit pursuant to Section 24-95(i)(4) to build a detached garage in the side yard at 2444 Crowncrest Drive (Westminster) (Parcel 741-754-1133), zoned R-3, One-family Residence District (Tuckahoe).

Ms. Dwyer - Good morning. Is there anyone else here to speak to this case? No one. Please raise your right hand to be sworn.

632
633 Mr. Blankinship - Do you swear the testimony you're about to give is
634 the truth and nothing but the truth so help you God?
635
636 Ms. Dwyer - Please state your name and your case.
637
638 Mr. Schymanski - Jason Schymanski. S-c-h-y-m-a-n-s-k-i. We want to
639 build a detached garage on the side of the house as opposed to in the backyard.
640 That's why I'm applying for a conditional use permit.
641
642 Ms. Dwyer - Why not build it in the backyard?
643
644 Mr. Schymanski - For a couple of reasons. One, it reduces how much
645 surface area has to be saved. It saves a tall tree that's in the backyard that
646 provides southern shade to the house. It allows more backyard space that's
647 usable for recreation as opposed to the side yard space, which you can't really
648 play around in.
649
650 Ms. Dwyer - Wouldn't you need to remove at least one of these
651 trees if you built it in the side yard?
652
653 Mr. Schymanski - Yes. This one right here would have to be cut down.
654
655 Ms. Dwyer - Not that large one to the left of it?
656
657 Mr. Schymanski - No. That one is close enough to the street that the
658 driveway will stay where it is and then the space will open up after the roots from
659 that tree.
660
661 Ms. Dwyer - As I was reading your plan, it appeared that the front
662 face of the garage would be equal to the portion of your house where the porch
663 is.
664
665 Mr. Schymanski - Yes. It's equal to the back plane of the porch. If I can
666 draw it on this diagram right here, it's actually up in this area. From the photo,
667 the way that land goes downhill, it's hard to tell.
668
669 Ms. Dwyer - So you have the space in the rear yard.
670
671 Mr. Schymanski - There's enough space in both places, yes.
672
673 Ms. Dwyer - Mr. Blankinship, if I'm correct, if the garage is behind
674 the plane of the rear of the house, then it's considered in the backyard.
675
676 Mr. Blankinship - Yes ma'am, that's correct.
677

678 Mr. Schymanski - There were some conditions that were recommended
679 and I'm agreeable to all those conditions.
680

681 Mr. Wright - If you built it in the backyard, you'd have to change
682 your steps from your deck, wouldn't you.
683

684 Mr. Schymanski - Yes.
685

686 Mr. Wright - You'd have to tear those down and locate them
687 somewhere else.
688

689 Mr. Schymanski - Yes sir. They would have to be shifted somewhere.
690

691 Ms. Harris - Are there anymore detached garages built in the side
692 yard in your neighborhood?
693

694 Mr. Schymanski - Not close by. I haven't surveyed too far outside of
695 where I live.
696

697 Ms. Dwyer - I didn't see any when I drove through. There are
698 some attached. There's one that's two or three houses away that has a fairly
699 large detached garage in the rear yard.
700

701 Mr. Wright - I don't see a whole lot of difference in attached and
702 detached as long as there's ample area to put it and enough space between the
703 garage and the adjoining property.
704

705 Ms. Dwyer - My concern is with it being in that location, it seems to
706 me that it would crowd the street as I look at the two houses together, that it
707 would have an impact on the neighboring house. And if it were attached, it
708 would have to be farther away from the property line, it would have to comply
709 with the standard side yard setback.
710

711 Mr. Schymanski - In this situation, there will be 28 feet between the side
712 of the garage and the neighbor's house.
713

714 Ms. Dwyer - How far between the side of the garage and your
715 property line?
716

717 Mr. Schymanski - Five feet.
718

719 Ms. Harris - What was your reason for not attaching it?
720

721 Mr. Schymanski - It's hard to make it flow very well with the house. As
722 you can tell from the picture, there are two south-facing windows that are both on

723 the first floor. We would lose at least one of those two and possibly the other one
724 if you attach it.

725

726 Mr. Wright - You have two windows there that would be a factor,
727 too. Is that what you're saying?

728

729 Ms. Harris - Yes, he is.

730

731 Mr. Schymanski - If it was attached, yes. With the plans for a very low
732 profile garage, there will still be visibility out of these windows.

733

734 Ms. Dwyer - It will be a front-loading garage, obviously.

735

736 Mr. Schymanski - Yes.

737

738 Ms. Dwyer - Most of the cases in which we have allowed side yard
739 detached buildings have been ones in which the lot is on a corner and perhaps
740 the house was oriented so that the front door was actually the legal side yard, or
741 where there was quite a bit of acreage. The last one we had there was a curve in
742 the road so that even though it was technically the side yard, it appeared to be in
743 the rear yard. I do have a concern about having a large building toward the front
744 of the lot in this case. I think it would appear to have a lot of building crowding
745 the street, which I think is what this ordinance is designed to prevent, to have
746 these kinds of detached, fairly large dwellings in the rear yards, not up close to
747 the road giving the impression of almost another house in line with the other
748 house.

749

750 Mr. Wright - This is only a 17-foot-wide garage. It's not a typical
751 double garage.

752

753 Mr. Schymanski - There will be no second floor.

754

755 Ms. Dwyer - One and a half?

756

757 Mr. Wright - One and a half?

758

759 Ms. Dwyer - Right.

760

761 Mr. Schymanski - And it will have a very low pitched roof. It's over 50
762 feet from the street.

763

764 Ms. Dwyer - It's the maximum you could build width-wise because
765 it has to be ten feet away from the house.

766

767 Mr. Witte - Would pushing it back affect the stairs to your deck?

768

769 Mr. Wright - Yes, he said that. He'd have to tear them down or
770 change them and put them back in the back.

771
772 Ms. Dwyer - Or build behind the stairs.

773
774 Mr. Schymanski - The stairs would need to be reconfigured.

775
776 Ms. Dwyer - Any other questions by Board members? Anything
777 else?

778
779 Mr. Schymanski - No, that's it. Thank you.

780
781 Ms. Dwyer - Anyone else to speak to the case? No one else. That
782 closes the case. We'll render our decision at the end of the meeting.

783
784 **[After the conclusion of the public hearings, the Board discussed the case**
785 **and made its decision. This portion of the transcript is included here for**
786 **convenience of reference.**

787
788 Ms. Dwyer - I'm going to make a motion to deny the case. I think
789 the zoning ordinance was put in place to prevent buildings that have the
790 appearance of being in line with—well that are in fact in line with the other
791 houses. As I looked at the site and looked at the surrounding neighborhood and
792 the houses adjacent to this one, it seemed to me that it would be very much an
793 overcrowding of the façade of houses along the roadway. I think this is a case in
794 which the zoning ordinance is right on point, that this size building should be in
795 the rear yard and not to the side, creating almost the impression of yet another
796 house along the road. For that reason, I think that it would overcrowd the
797 buildings along the street; it would impair the character of the district that that
798 particular zoning ordinance was designed to protect. It would impair the value of
799 the surrounding properties. For these reasons, I would make the motion to deny.
800 Also, there are options. This can be easily placed in the rear yard with fairly
801 minimal intrusion into existing development. That concludes my motion.

802
803 Ms. Harris - I second the motion. I really feel that the owner has
804 other options that conform to code.

805
806 Ms. Dwyer - Motion by Ms. Dwyer, second by Ms. Harris. Any
807 discussion.

808
809 Mr. Wright - I'll say this, if you could attach this garage, your
810 observations may be, but it would still be valid, wouldn't it? I believe so. It would
811 take up the same space. I can't understand.

812
813 Ms. Dwyer - It would be attached to the house so it would be a
814 different appearance, I think having an attached versus a detached structure, it

815 would create a different appearance. It would be slightly farther away from the
816 property line as well. I think it would be a more cohesive look to have a single
817 house as opposed to house, space, garage, space, house. It does make a
818 difference in the aesthetics of the neighborhood. In looking at this space, it
819 seems to me it would, in fact, impair the district.

820

821 Mr. Witte - I also think it could be attached to the house with a
822 three-foot walkway.

823

824 Ms. Dwyer - He could do a lot of things, I guess, to attach it.

825

826 Mr. Witte - Ruin the aesthetics. I think it would be much better
827 off, rather than trying to move it back 24 feet or attach it with a passageway.

828

829 Ms. Dwyer - If he attached it, it would have to be farther away from
830 the property line, which is part of the point.

831

832 Mr. Witte - Right. How far would that be? What would the
833 setback have to be from the side yard?

834

835 Mr. Blankinship - Ten feet or twelve feet. There is a different
836 requirement for detached versus attached.

837

838 Mr. Wright - What is the detached?

839

840 Mr. Blankinship - I'm looking.

841

842 Mr. Wright - It's more, isn't it?

843

844 Mr. Blankinship - If it were attached to the dwelling, it would have to be
845 12 feet.

846

847 Ms. Dwyer - From the property line.

848

849 Mr. Blankinship - The sum of the side yards would have to be 30.

850

851 Ms. Dwyer - One of the reasons, I think, that there is only a five-
852 foot requirement between detached dwellings and the property line is because
853 the code generally requires those structures to be in the rear yard. Because
854 those structures are typically in the rear yard, you're only required to have that
855 five-foot setback from the side yard. When we bring it forward so that from the
856 street it is in line with the house, I think that five-foot separation is insufficient.

857

858 Mr. Wright - How far would this one be?

859

860 Ms. Dwyer - Five feet from the property line. Did we decide it was
861 12, Ben, at a minimum 12?

862
863 Mr. Blankinship - Twelve, yes.

864
865 Ms. Dwyer - Any more discussion? The motion has been made
866 and seconded to deny the case. All in favor say aye. All opposed say no.

867
868 Voting on the motion to **deny** the case:

869
870
871 Affirmative: Dwyer, Harris 2
872 Negative: Witte, Wright 2
873 Absent: Nunnally 1

874
875
876 Ms. Harris - In setting the rules for this meeting, you did mention
877 that the owners could withdraw the case because this could happen.

878
879 Mr. Blankinship - Heard next month.

880
881 Mr. Wright - Maybe a lot of times the public doesn't understand. I
882 move we defer the case.

883
884 Ms. Dwyer - Is there a second to the motion to defer?

885
886 Mr. Witte - I'll second.

887
888 Ms. Dwyer - Motion has made to defer the case. All in favor say
889 aye. All opposed say no.

890
891 Voting on the motion to **defer** the case:

892
893
894 Affirmative: Witte, Wright 2
895 Negative: Dwyer, Harris 2
896 Absent: Nunnally 1

897
898
899 Ms. Dwyer - Mr. Blankinship, the case stands as denied?

900
901 Mr. Blankinship - I guess that's the best way to look at it. It's certainly
902 not approved or deferred.

903
904 Mr. Wright - They can come back and file again.

905
906 Mr. Blankinship - They'd have to wait a year.

907
908 Ms. Dwyer - Maybe we need to look at that to let the applicant
909 know. The applicant will need to contact the Planning Office to determine the
910 procedural outcome of the failure to approve. That's after consulting with the
911 County Attorney's Office.

912
913 Mr. Wright - It hardly seems fair to me for the applicant not to get
914 the full Board. It's not their fault that [recording fading in and out with blank
915 sections]

916
917 Based on advice received from the County Attorney's Office it was determined
918 the Board **denied** application **UP-006-10, Jason Schymanski's** request for a
919 conditional use permit pursuant to Section 24-95(i)(4) to build a detached garage
920 in the side yard at 2444 Crowncrest Drive (Westminster) (Parcel 741-754-1133),
921 zoned R-3, One-family Residence District (Tuckahoe).

922
923
924 **[At this point, the transcript continues with the public hearing on the next**
925 **case.]**

926
927 **A-003-10** **ROY L. CARTER** requests a variance from Section
928 24-95(c) to allow a dwelling to remain at 3810 Austin Avenue (Timberlake)
929 (Parcel 800-736-8928 (part)), zoned R-4, One-family Residence District
930 (Fairfield). The least side yard setback and total side yard setback are not met.
931 The applicant has 2 feet minimum side yard setback and 9 feet total side yard
932 setback where the Code requires 7 feet minimum side yard setback and 15 feet
933 total side yard setback. The applicant is requesting a variance of 5 feet minimum
934 side yard setback and 6 feet total side yard setback.

935
936 Ms. Dwyer - Is there anyone else here to speak to this case?
937 Please raise your right hand to be sworn.

938
939 Mr. Blankinship - Do you swear the testimony you're about to give is
940 the truth and nothing but the truth so help you God?

941
942 Mr. Robert Carter - I do.

943
944 Mr. Roy Carter - I do.

945
946 Ms. Dwyer - Please state your name and your case.

947
948 Mr. Robert Carter - Robert Carter.

949
950 Mr. Roy Carter - Roy Carter. C-a-r-t-e-r. We're brothers.

951
952 Ms. Dwyer - I need you tell us what you're here for.

953
954 Mr. Roy Carter - Tell what we're here for. His hearing is terrible.
955

956 Mr. Robert Carter - The room on the side of the existing house is too
957 close to the side line. To make the lot next to it a buildable lot it was said that
958 that room would have to be removed to meet the side setbacks. I did a drawing
959 that's in the pack just to kind of give an idea of what I had in mind. On the
960 drawing I did, there are several scenarios like a two-story, a rancher, Cape Cod
961 that could go on that lot. Since I did this drawing, I think Roy and I had decided
962 that a rancher is no good and a two-story is no good. We want the best possible
963 aesthetics for the neighborhood. I don't want to sell the lot and have a contractor
964 come in and build something that's just out of whack for the block. I think we're
965 going to put in the deed that a Cape Cod has to be built. There's a Cape Cod on
966 either side of this lot. The two-story and the rancher, disregard. We're going with
967 the Cape Cod.
968

969 What I did is I was showing how on the vacant lot the new dwelling could be
970 shifted to the left. It can be shifted 11 feet; it can be shifted 12 feet; it can be
971 shifted 13 feet. I just put 11 in there because it worked out for 30 by 30, which is
972 a nice number. The room in question was an office and it's paneled with eight-
973 inch-wide tongue and groove boards all the way around the wall, ceiling crown
974 molding, and hardwood floors. It's a very, very expensive room. It's not just
975 sheetrock with carpet. The ceiling is done with this paneling and all the walls are
976 done with individual boards, not four by eight sheets. It's a very expensive room
977 and I just hate to see that much equity of the old house just thrown in the
978 dumpster.
979

980 The house to the left of this new house, his side yard setback is ten feet. The
981 new one would be seven feet. So that puts 17 feet on the left side. On the right
982 side, if we left the room, we have the 2 feet, plus 11, which is 13. But it could be
983 14, could be 15, could be 16. That 30 feet could go to be 25 feet, which 25 by 25
984 is 625, and a story and a half, that would be almost a thousand square feet,
985 which is just perfect for that block. Those 11 feet could be varied to get the
986 aesthetics, to keep the distances really almost equal all the way down the block.
987

988 We have received to prices to have that removed. When you remove it, then
989 you have to put new siding back up over the part that you remove. They gave
990 \$3,000 to \$5,000 to pull it down and put up new siding where they pulled the old
991 one off. I don't know if you remember us from January, but the unemployment
992 situation is still the same. Three to five thousand when you're not working is a lot
993 more than when you are working. Plus you lose the equity in the house by
994 tearing off this nice room. Like I said, again, it's not just sheetrock and carpet. It's
995 a lot of expense to put up and a lot of labor cost. Again, those 11 feet can be
996 moved. We can all the way up to 16 feet, if you want to, if that would make the
997 Board happy.
998

999 Mr. Wright - You mean you would put a condition in this, if this
 1000 were granted, that the house that's on the other lot would have to be set back
 1001 that far from the sideline? Is that what you're saying?
 1002
 1003 Mr. Robert Carter - I didn't hear. I'm sorry.
 1004
 1005 Mr. Wright - What I'm saying is, what assurance—you're saying
 1006 you could have 11 feet. What assurance do we have that you would have that?
 1007
 1008 Mr. Robert Carter - The 11 or 12 feet? You tell me what you want and I'll
 1009 put in the deed.
 1010
 1011 Mr. Wright - That's what I'm saying.
 1012
 1013 Mr. Robert Carter - I'll put it in the deed. We're going to put some things
 1014 in the deed so this—we've had two builders come and look at it. One of them
 1015 asked what the setback was. I told him that the setback is going to be the same
 1016 as the house on either side. We're not going to let somebody come in and put
 1017 the house six feet back or seven feet up. We're going to have them put it in line.
 1018 I've built houses, I've renovated houses. You can put things in the deed that
 1019 they have to go by. We're going to put the Cape Cod, we would put this side
 1020 line, and we're going to put the house has to be in line with the house on either
 1021 side. Again, we want what's best for the block. My brother, hopefully, is going to
 1022 stay there. I wouldn't want to put something next to his house that's going to
 1023 take value away. We want the best possible fit for the block, plus we know the
 1024 neighbors also.
 1025
 1026 Ms. Harris - Mr. Carter, what are the dimensions of this extra room
 1027 that you have attached, your office? What are the dimensions?
 1028
 1029 Mr. Roy Carter - Pretty close to 8 by 14.
 1030
 1031 Mr. Robert Carter - Again, those 11 feet can be changed if you want
 1032 more.
 1033
 1034 Mr. Roy Carter - It's actually 11 feet by—
 1035
 1036 Mr. Robert Carter - Right now, the way I have it drawn, it would put 13
 1037 feet between, which is very close—wouldn't Zoning approve seven on each
 1038 side?
 1039
 1040 Mr. Roy Carter - Seven is the minimum.
 1041
 1042 Mr. Robert Carter - Seven minimum. Zoning would approve 14 and I
 1043 have 13 there now. I can make that 11 or 12 just as easy and have the 14 feet,
 1044 or leave it at 11. I just picked 11 because 30 by 30 was just a pretty number for

1045 the house. That would give 1350 square feet for the Cape Cod. Again, all of that
1046 is right in line with the neighborhood, which is what we're going to put in. No
1047 matter how it goes, we're going to put in the deed the best possible aesthetics for
1048 that lot.

1049

1050 Ms. Harris - My question is are we dealing with that lot or are we
1051 dealing with the part of your house that will be in the set back area? I thought
1052 that we approved the variance for the lot the last time we were together. Now in
1053 making a decision about your house, you're going to try to put a restriction on the
1054 lot next to it?

1055

1056 Mr. Blankinship - Yes ma'am. When the variance was granted last
1057 month for the lot to the left, the one that's labeled "New Lot" on this drawing, a
1058 condition was included in that that the structure on this lot—what's labeled
1059 "Carter House" on the drawing—had to be brought into compliance before they
1060 could get a building permit or convey the new lot. There are possible ways to
1061 bring it into compliance. One is to tear the room off the house; another was to
1062 get an additional variance on that lot. That's why they're back today. If you don't
1063 grant the variance, they'll have to tear that room off. If you do grant an additional
1064 variance, then they can sell the lot that was approved last month without tearing
1065 the addition off this one.

1066

1067 Ms. Harris - Yes, I understand that. If we do approve this variance
1068 and require that they build this new house on the new lot, we will be connecting
1069 our—in other words, I wonder why we did not deal with the structure of the house
1070 at our last meeting with them. In view of the way you explained it, there is a
1071 definite connection. I see the connection. It seems like we're going to have to
1072 backtrack a little bit, and see their plans, and be sure that they have at least 11
1073 feet or more between the yards.

1074

1075 Mr. Blankinship - It would have been better to dispose of both cases
1076 last month, but they hadn't applied for this variance last month.

1077

1078 Mr. Robert Carter - I was thinking that by putting in the variance that the
1079 new house can't be built any closer than 11 feet or 12 feet to that line, we would
1080 have the aesthetics of it being just right. Plus, we wouldn't have to lose that
1081 expensive room. Plus we wouldn't have to pay the \$3,000 to \$5,000 to pull it
1082 down.

1083

1084 Ms. Dwyer - I'm not sure since this case deals with one lot that we
1085 can impose an obligation for another parcel of property that's not part of what's
1086 before us today.

1087

1088 Mr. Wright - We did last time.

1089

1090 Ms. Dwyer - Well, last time we gave the variance for this.

1091
1092 Mr. Wright - Yes, but we said we had to bring—
1093
1094 Ms. Dwyer - I'm not sure we had the right to do that either, but.
1095 And I voted against it.
1096
1097 Mr. Wright - You have the same owner.
1098
1099 Ms. Dwyer - Yes you do. That's part of the issue.
1100
1101 Mr. Wright - You have the same owner, and he's before the
1102 Board, and he's agreeable to it. I don't see why we couldn't do it.
1103
1104 Ms. Dwyer - If the neighbor next door—on our plat its labeled
1105 Parcel C, which was the parcel for which the variance was granted in January. If
1106 that person puts up a fence—
1107
1108 Mr. Robert Carter - I don't know what she's asking. I can't hear her.
1109
1110 Ms. Dwyer - If that person puts up a fence, then there would be
1111 literally two feet between the fence and your house on Parcel B. Is that correct?
1112
1113 Mr. Robert Carter - If somebody put up a fence? You mean—
1114
1115 Ms. Dwyer - If there were a fence put between the two houses,
1116 you would only have two feet between the fence and the house. Is that correct?
1117 I know what you're saying, that from the street, if you look at it, if you add a little
1118 extra space on the house next door it'll look better. But not if they put a fence or
1119 any kind of plantings. In that case, you would only have two feet between the
1120 wall of the house and a fence, if one were put up next door, which they would be
1121 entitled to do.
1122
1123 Mr. Robert Carter - I don't know if we can put too many restrictions in the
1124 deed. I can say what's there now. They just do the backyard, which would be
1125 away from the room. Up front, everybody so far has kept the front open. If they
1126 put up a fence in the backyard, it would not be anywhere near the room. That's
1127 what's been done.
1128
1129 Ms. Dwyer - In our packet of information it says that because the
1130 house is so close to the property line, you'd have to tear down that exterior wall,
1131 and get rid of the window, and put some kind of fire-rated wall there. Did you
1132 know about that?
1133
1134 Mr. Robert Carter - If you removed the room you mean?
1135
1136 Ms. Dwyer - No, no, no. To keep the room. The way I read this.

1137
1138 Mr. Blankinship - Yes, that's correct. If there is a building within two feet
1139 of the property line, you'd have to be fire rated.
1140
1141 Ms. Dwyer - As I read this, that means the County would require
1142 you to take away the window and replace the wall with new materials that would
1143 be fire safe.
1144
1145 Mr. Roy Carter - It would be something like HardiPlank or brick that
1146 would have to go on that outside wall.
1147
1148 Mr. Blankinship - There are Building Code requirements that if a
1149 building—any building, whether it's a shed, or a garage, or house—is within five
1150 feet of the property line, it has to have fire-rated materials so that if the building
1151 catches fire, it doesn't cause that fire to spread to the neighbors. Up to this point,
1152 that property line has been treated as if it were not there. Now that that property
1153 line is there, if the room is going to stay there, you're going to have to make
1154 changes to it to bring it into compliance with the Fire Code.
1155
1156 Mr. Wright - Did you read condition number two? That's what
1157 we're talking about. If we approve this, I just want to make sure you understand
1158 condition number two.
1159
1160 Mr. Robert Carter - I don't know where it is.
1161
1162 Mr. Wright - Number two.
1163
1164 Ms. Dwyer - It doesn't say exactly what that means, but in our
1165 report it tells you what that means, which means the window would have to be
1166 taken out.
1167
1168 Mr. Wright - When it says meet Building Code requirements—
1169
1170 Mr. Robert Carter - Are you talking about cinderblock?
1171
1172 Mr. Blankinship - Not necessarily.
1173
1174 Mr. Wright - That's what we were trying to explain here. Maybe
1175 Mr. Blankinship could go into it in more detail. I wouldn't know what that was
1176 unless I looked at the Building Code.
1177
1178 Mr. Robert Carter - Fire rated.
1179
1180 Mr. Roy Carter - You can use HardiPlank siding.
1181

1182 Mr. Robert Carter - Oh, okay. That's good. That would be good. We
 1183 would just remove the aluminum and put the HardiPlank up. That would be very
 1184 easy.
 1185
 1186 Mr. Wright - Does the window have to go?
 1187
 1188 Mr. Blankinship - It said so in the report. I presume that's accurate.
 1189 That's a Building Code requirement.
 1190
 1191 Mr. Robert Carter - Just remove a window and do the HardiPlank?
 1192
 1193 Mr. Blankinship - Building Inspections would explain all that.
 1194
 1195 Mr. Robert Carter - Yes, that would be very easy.
 1196
 1197 Ms. Dwyer - I just wanted to make you aware that something
 1198 would be required.
 1199
 1200 Mr. Blankinship - And that's something this Board has no control over.
 1201
 1202 Mr. Robert Carter - Right, right. That sounds a whole lot better than
 1203 tearing—I mean to do the outside.
 1204
 1205 Mr. Roy Carter - Are you saying within five feet?
 1206
 1207 Mr. Blankinship - Yes. Any building within five feet of the property line.
 1208
 1209 Mr. Roy Carter - Right, right. Well, the building is going to be—
 1210
 1211 Mr. Robert Carter - Even though the house is slid over—
 1212
 1213 Mr. Blankinship - The property line.
 1214
 1215 Mr. Roy Carter - Oh, the property line. It's not the actual dwelling.
 1216 Okay, okay. We didn't know that. That's fine.
 1217
 1218 Mr. Wright - That's a code. We have no control over that.
 1219
 1220 Mr. Robert Carter - Thank you for telling me. That's very simple to do.
 1221 You had me shaking here for a minute.
 1222
 1223 Ms. Dwyer - Again, we're not the Building Inspections Department.
 1224
 1225 Mr. Robert Carter - Yes ma'am, yes ma'am. I believe you.
 1226
 1227 Ms. Dwyer - Okay, well.

1228
1229 Mr. Gidley - [Off microphone; inaudible.]
1230
1231 Mr. Roy Carter - All the way up to the gable, Paul?
1232
1233 Mr. Robert Carter - That's fine.
1234
1235 Ms. Dwyer - Any other questions by Board members?
1236
1237 Mr. Robert Carter - No matter how it goes, we thank you for the decision
1238 in January. It meant more to us than you know.
1239
1240 Ms. Harris - Let me ask this question. The plan that the Carter's
1241 submitted to us does not need to be a condition, it just becomes a part of the
1242 presentation? Are they obligated to leave 11 feet, according to this plan?
1243
1244 Mr. Blankinship - Let me read the condition that—
1245
1246 Mr. Wright - We would have to put a new condition in to cover
1247 that, Ms. Harris. If we were going to go with that, we would have to put in a new
1248 condition that we require the house on Lot 4 to be 11—or whatever it is—12 feet
1249 from the sideline and you would have to define which sideline we're talking
1250 about.
1251
1252 Ms. Harris - Mr. Carter, are you aware that we're speaking of what
1253 you submitted to us. Which side will you have the 11 feet?
1254
1255 Mr. Robert Carter - East?
1256
1257 Mr. Blankinship - It's south.
1258
1259 Ms. Dwyer - South?
1260
1261 Mr. Blankinship - We can work all that out.
1262
1263 Mr. Robert Carter - You can put the wording in, whether it's north, south,
1264 east, or west.
1265
1266 Mr. Wright - Or we could say the sideline which is adjacent to
1267 house on Lot 3.
1268
1269 Mr. Robert Carter - Yes.
1270
1271 Ms. Harris - You would have no objections to our adding this as a
1272 condition, that you must construct the new house so many feet from your house.
1273

1274 Mr. Robert Carter - Yes ma'am. It'll be in the deed to the builder that
1275 builds there, yes. We're going to put more in the deed than just that. We're
1276 going to put the kind of house, where it's going to be sitting, etcetera, etcetera.
1277
1278 Ms. Harris - But you have no objections to our making this a
1279 condition.
1280
1281 Mr. Robert Carter - Yes, 11 feet or 12 feet.
1282
1283 Mr. Wright - Whatever, yes.
1284
1285 Mr. Robert Carter - That's fine.
1286
1287 Ms. Dwyer - This is a variance, so we can impose the conditions
1288 without prior agreement. Any other questions by Board members? Anything
1289 else you'd like to add?
1290
1291 Mr. Robert Carter - Thank you.
1292
1293 Mr. Roy Carter - Thanks very much.
1294
1295 Ms. Dwyer - That will close the case.
1296
1297 **[After the conclusion of the public hearings, the Board discussed the case**
1298 **and made its decision. This portion of the transcript is included here for**
1299 **convenience of reference.]**
1300
1301 Ms. Dwyer - Do I have a motion on the case?
1302
1303 Ms. Harris - I move that we approve this variance, adding
1304 condition #3 that the new construction on vacant lot #4 that is adjacent to the
1305 Carter home be constructed at least 11 feet from that dwelling.
1306
1307 Mr. Wright - Eleven feet from the side line.
1308
1309 Ms. Harris - From the side line of that dwelling.
1310
1311 Mr. Wright - And we get two more feet so it will be 13 feet.
1312
1313 Ms. Harris - I think if we deny this variance, we would be
1314 unreasonably restricting the use of the Carter home in this particular case. Also,
1315 when we look at the exception standards, I understand that these lots that were
1316 set up during that time were 50-foot lots. The 48-foot lot occurred because of
1317 granting two feet to the adjacent lot, which we sometimes encourage. We
1318 sometimes ask parties if they will give some of their footage to other parcels. I
1319 don't know how this happened, but it did happen. Since the owner, Mr. Carter,

owns both his home and Lot 4, I think that this can be rectified with the construction maintaining that distance, the side line difference.

Ms. Dwyer - Is there a second.

Mr. Witte - I'll second it.

Ms. Dwyer - Motion by Ms. Harris, seconded by Mr. Witte to approve the case. Any discussion? I have a concern about whether this case passes muster under Cochran. I think the applicant has the reasonable use of the house and the property without the additional room. So a variance is not required under the Cochran case. I also have a concern as a legal matter as to whether this is a self-created hardship, therefore, because the applicant had a parcel of property that satisfied all of the zoning requirements and then chose to divide it into two, neither of which complies. Any more discussion?

All right. Motion by Ms. Harris, seconded by Mr. Witte. 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 Ms. Harris, seconded by Mr. Witte, the Board **approved** application **A -003-10, Roy L Carter's** request for a variance from Section 24-95(c) to allow a dwelling to remain at 3810 Austin Avenue (Timberlake) (Parcel 800-736-8928 (part)), zoned R-4, One-family Residence District (Fairfield). The least side yard setback and total side yard setback are not met. The Board granted the variance subject to the following conditions:

1. This variance applies only to the minimum and total side yard setback requirements for the existing dwelling only. All other applicable regulations of the County Code shall remain in force. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements may require a new variance.

2. Prior to the conveyance of Lot 4 or the issuance of a building permit for that lot, whichever comes first, the applicant shall ensure the southernmost wall of the existing dwelling meets Building Code requirements for fire safety.

3. [ADDED] At the time of the conveyance of Lot 4, the applicant shall record a restriction on the deed to that lot prohibiting the construction of a dwelling within 11 feet of the common lot line with Lot 3.

Affirmative:	Harris, Witte, Wright	3
Negative:	Dwyer	1
Absent:	Nunnally	1

1366

1367

1368 **[At this point, the transcript continues with the public hearing on the next**
1369 **case.**

1370

1371 **A-004-10**

1372 **KAREN M. WHITE** requests a variance from Section
1373 24-94 to build a one-family dwelling at 502 Wilmer Avenue (Chamberlayne
1374 Estates) (Parcel 790-746-5807 (part)), zoned R-4, One-family Residence District
1375 (Fairfield). The lot width requirement is not met. The applicant has 53 feet lot
1376 width, where the Code requires 65 feet lot width. The applicant is requesting a
variance of 12 feet lot width.

1377

1378 Ms. White - Hi. My name is Karen White.

1379

1380 Ms. Dwyer - Wait just a minute. Is there anyone else here to
1381 speak to this case? Please stand and raise your right hand to be sworn.

1382

1383 Mr. Blankinship - Do you swear the testimony you're about to give is
1384 the truth and nothing but the truth so help you God?

1385

1386 Ms. White - I also have some pictures. Can I pass those—

1387

1388 Ms. Dwyer - Hand those to Mr. Blankinship.

1389

1390 Ms. White - The house is in the area. I'm here today—

1391

1392 Ms. Dwyer - Your name?

1393

1394 Ms. White - Karen White. My last name is spelled W-h-i-t-e.
1395 There are two lots, Lot 8 and Lot 9. They were originally purchased in 1956
1396 when my father purchased them as two separate lots. I have two separate
1397 deeds. I'm seeking a variance to sell the lot so a person could build a one-story
1398 family dwelling at 502 Wilmer Avenue, which is the vacant lot. It currently does
1399 not meet the lot standards of 65 feet width. So I'm seeking a variance. I have 53
1400 feet and I'm requesting a variance of 12 feet in width. It does meet the exception
1401 standards of 6,000 square feet and current standards of 8,000 square feet. The
1402 lot is currently 8,300 square feet. In doing this, the home on Lot 9 does not meet
1403 the setback requirements. It did when it was built at the time. So to address this,
1404 I'm proposing to relocate the property line between the two lots seven feet to the
1405 west, resulting in Lot 9 having a 67-foot lot width and Lot 8 having a 53-foot
1406 width.

1407

1408 Ms. Dwyer - May I just ask you a question for confirmation here.
1409 The current exception standard for lot width for these lots is 50 feet. That's the
1410 exception standard. The problem is that once you start monkeying around with
1411 the property line—we had this in the last case in January. Once you change the

1412 property line, then it's no longer eligible for the exception standard of 50 feet; it
1413 has to meet the current standard of 65. But if we didn't have to move the
1414 property line, these lots would conform in terms of lot width requirements.

1415
1416 Ms. White - Right. I just noticed—I was reading the information
1417 that I was supplied by Planning—that there are also two lots in the neighborhood
1418 that are 50 feet in width.

1419
1420 Ms. Harris - But those lots came under the exception standards,
1421 right? When you decide to move your lines, you then have to go by the current
1422 code.

1423
1424 Ms. White - Now is there any way that I could get around moving
1425 without adjusting the property lines to make them conform to the code?

1426
1427 Mr. Blankinship - The problem is that the dwelling is built right at the
1428 property line. If you leave the property line there, it's going to create more
1429 problems than moving it.

1430
1431 Ms. White - Okay. In addition to that, the shed on Lot 9 would be
1432 demolished, be taken down.

1433
1434 Ms. Dwyer - Thank you. Any questions by Board members of Ms.
1435 White?

1436
1437 Mr. Wright - These lots have been carried on our records as
1438 separate lots since the beginning in 1956?

1439
1440 Ms. White - Yes sir. And I also have the deeds today. I have two
1441 separate deeds.

1442
1443 Mr. Wright - The problem is when you built the house on Lot 9,
1444 that really created a problem. Can you move it?

1445
1446 Ms. White - No sir.

1447
1448 Mr. Wright - Get a giant crane and pick it up?

1449
1450 Ms. White - It would take that, wouldn't it. It can be done, but it
1451 would be more trouble than it would worth, I think. The reason why I do want to
1452 sell the lot—let me just interject this, if I could. My mother has lived in the home;
1453 my father's deceased. She's living in the home but she's in very bad health. In
1454 order to help with her ongoing healthcare—she's in long-term care right now—I
1455 thought maybe if we could sell that lot, it would kind of help her financially. From
1456 my benefit, it's not going to benefit me. I would prefer maybe to keep the lots as
1457 they are, but for her, it would help her. That's why I'm here today.

1458
1459 Ms. Harris - Let me ask a question. Are you finding that if this
1460 variance were granted that it would not be a substantial detriment to adjacent
1461 properties?
1462
1463 Ms. White - I don't think it would, no ma'am. If I sold the lot to a
1464 builder, I would make certain that the home that he proposed to build would be
1465 right in line with what's in that neighborhood.
1466
1467 Mr. Witte - Are you aware that with your proposed property line,
1468 the concrete driveway still encroaches on the other property?
1469
1470 Ms. White - No sir, I wasn't.
1471
1472 Mr. Witte - It shows on the plat. It appears to be two or three
1473 feet that it encroaches.
1474
1475 Ms. White - So that would have to come up as well. Okay. I
1476 wasn't aware of that, but thank you.
1477
1478 Ms. Dwyer - Any other questions by Board members? Do we
1479 have another speaker? Please come forward. If you would state your name,
1480 please.
1481
1482 Ms. Paterson - My name is Pasha Paterson. That's P-a-t-e-r-s-o-n.
1483 I'm the owner and resident at 503 Wilmer Avenue, which is the house directly
1484 across the street. We have no objection, of course, to Ms. White doing with her
1485 property what she wishes and I don't object to the building plans. I also had the
1486 opportunity walking around the neighborhood to speak to the resident at 506,
1487 who is also looking at the lot. She said that it seems to be no issue with the
1488 neighborhood. There are several lots in the same area that are very narrow and
1489 have houses on them. Some of them are old and some of them seem to be more
1490 recent, but still on lots of about the same size. As Ms. White said, as long as the
1491 house that's eventually built there fits in line with the neighborhood, there's
1492 certainly no objection from our side as a resident.
1493
1494 My one concern in this plan is that—this street is wide enough for street parking.
1495 It's not marked in any way, but people park on the street as well as in driveways.
1496 My one concern is that with a narrow lot, there wouldn't be very much room to
1497 put a parked car in front. But there's certainly sufficient room to fit back from the
1498 street to have a driveway and possibly a garage on the eventual house. If there
1499 was a way to possibly add a condition that the house at least be back and have
1500 ample driveway space for at least one car to release the burden on the street
1501 parking in that area. My one concern is that the street parking in that area would
1502 become too congested if there's not a driveway or a driveway and garage on the

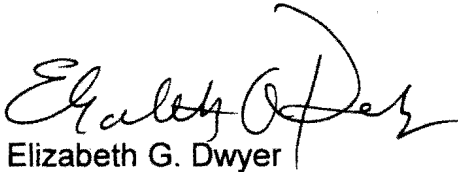
1503 eventual house. If there's a way to add a condition for the eventual builder, that
 1504 would be appreciated.
 1505
 1506 Mr. Blankinship - That is a requirement of the code. They have to be
 1507 set back 35 feet and they have to provide one off-street parking space.
 1508
 1509 Mr. Wright - That's already in the law.
 1510
 1511 Ms. Dwyer - Thank you, Ms. Paterson. Any questions of Ms.
 1512 Paterson?
 1513
 1514 Ms. Harris - I just want to point out to Ms. Paterson that the
 1515 reason those houses are already built is because they did conform to the
 1516 exception standard. They didn't have to come to us for a variance because they
 1517 were in accord with the ordinance for the County of Henrico.
 1518
 1519 Mr. Wright - The only problem we have here is they changed the
 1520 property line.
 1521
 1522 Ms. Dwyer - All right. Any other questions? Anything else you'd
 1523 like to say, Ms. White?
 1524
 1525 Ms. White - Thank you very much.
 1526
 1527 Ms. Dwyer - That will close the case. The Board will take a five-
 1528 minute break.
 1529
 1530 FIVE-MINUTE BREAK
 1531
 1532 BOARD RETURNS FROM FIVE MINUTE BREAK
 1533
 1534 Ms. Dwyer - We'll consider the cases from the beginning
 1535
 1536 **[After the conclusion of the public hearings, the Board discussed the case**
 1537 **and made its decision. This portion of the transcript is included here for**
 1538 **convenience of reference.]**
 1539
 1540 Ms. Dwyer - All right. Next case, A-004-10, request for a variance
 1541 to build a one-family dwelling on Wilmer Avenue. Is there a motion on the case?
 1542
 1543 Ms. Harris - I'm going to move that we approve this case. This
 1544 case is causing me a lot of concern, probably the reason why I asked for a
 1545 recess. I see our setting a precedence for lots all across the County like this.
 1546 However, in view of the fact that they did have complying lots during the
 1547 exception standard years, I feel that the appearance of the neighborhood would
 1548 not be adversely affected and it should not have any immediate adverse effect

1549 on the adjacent property. This is a vacant lot that would not otherwise be
 1550 buildable. So my motion is to approve this variance.
 1551
 1552 Ms. Dwyer - Is there a second to the motion?
 1553
 1554 Mr. Wright - Second.
 1555
 1556 Ms. Dwyer - Motion by Ms. Harris, seconded by Mr. Wright. Any
 1557 discussion?
 1558
 1559 Mr. Witte - Yes. I'd like to add in that the existing driveway
 1560 encroaching across the proposed property line be removed so that it's not
 1561 encroaching. And also the shed or outbuildings that are going to adversely
 1562 adverse the property line be removed also.
 1563
 1564 Mr. Wright - I thought one of those was in the present conditions;
 1565 maybe I'm wrong.
 1566
 1567 Mr. Blankinship - I'm sorry. I was conferring with other staff.
 1568
 1569 Mr. Wright - About moving the shed.
 1570
 1571 Mr. Blankinship - Oh, the shed. Yes, she did state that the shed would
 1572 be removed.
 1573
 1574 Mr. Wright - Yes, but we don't have it in a condition.
 1575
 1576 Ms. Dwyer - It's not a condition.
 1577
 1578 Mr. Blankinship - Do you want to require that the driveway be taken off,
 1579 because there are other ways that property owners can work that out among
 1580 themselves.
 1581
 1582 Mr. Witte - A private easement could be included with the—
 1583
 1584 Mr. Wright - Well, if the new owner puts a driveway in, they might
 1585 use that part of that driveway.
 1586
 1587 Mr. Blankinship - Does it affect the granting of the variance? If it does,
 1588 then let's put a condition in.
 1589
 1590 Mr. Witte - I'll retract that. But I still think the outbuildings need to
 1591 be removed.
 1592
 1593 Mr. Blankinship - Condition 3?
 1594

1595 Mr. Witte - Condition 3, yes sir.
1596
1597 Ms. Dwyer - Ms. Harris, do you agree to that?
1598
1599 Ms. Harris - I agree.
1600
1601 Ms. Dwyer - The motion, then, is amended to include condition #3,
1602 which requires removal of the shed. Any more discussion? I think what makes
1603 this case unique is the fact that both lots that are created meet the current
1604 standards for lot width. There's a significant difference in this case as opposed
1605 to many of the cases that we do see. I think it's exceptionally narrow. That
1606 reason for the variance applies, as well as the fact that it would alleviate a clearly
1607 demonstrable hardship in this case, the hardship being that the case, in fact, has
1608 the required lot width. The only reason that it's an issue is because the property
1609 owner is adjusting a property line to account of an existing dwelling. I think this is
1610 precisely the kind of case where a variance is in order.
1611
1612 Any more discussion? All right. A motion to approve the case has been made.
1613 All in favor say aye. All opposed say no. The ayes have it; the motion passes.
1614
1615 After an advertised public hearing and on a motion by Ms. Harris, seconded by
1616 Mr. Wright, the Board **approved** application **A-004-10, Karen M. White's**
1617 request for a variance from Section 24-94 to build a one-family dwelling at 502
1618 Wilmer Avenue (Chamberlayne Estates) (Parcel 790-746-5807 (part)), zoned R-
1619 4, One-family Residence District (Fairfield). The Board granted the variance
1620 subject to the following conditions:
1621
1622 1. This variance applies only to the lot width requirement for one dwelling only.
1623 All other applicable regulations of the County Code shall remain in force.
1624
1625 2. The dwelling shall not exceed one and one-half stories in height.
1626
1627 3. [ADDED] A certificate of occupancy for the proposed dwelling shall not be
1628 approved until and unless the accessory building straddling the relocated
1629 property line has been removed.
1630
1631
1632 Affirmative: Dwyer, Harris, Witte, Wright 4
1633 Negative: 0
1634 Absent: Nunnally 1
1635
1636
1637 **[At this point, the transcript continues with the rest of the Board meeting.]**
1638
1639 Ms. Dwyer - Let's look at the minutes. Any amendments,
1640 corrections to the February minutes?

1641
 1642 Ms. Harris - I move that the minutes be approved as presented.
 1643
 1644 Mr. Wright - I'll second.
 1645
 1646 Ms. Dwyer - Motion by Ms. Harris, seconded by Mr. Wright to
 1647 approve the minutes. All in favor say aye. All opposed say no. The ayes have it;
 1648 the motion passes.
 1649
 1650 On a motion by Ms. Harris seconded by Mr. Wright, the Board **approved as**
 1651 **presented the Minutes of the February 25, 2010**, Henrico County Board of
 1652 Zoning Appeals meeting.
 1653
 1654 Affirmative: Dwyer, Harris, Witte, Wright 4
 1655 Negative: 0
 1656 Absent: Nunnally 1
 1657
 1658 Ms. Dwyer - Any new business?
 1659
 1660 Mr. Blankinship - I'll just point out, Madam Chairman, that I gave each
 1661 of you this morning a copy of the Variance and Conditional Use Permit Criteria
 1662 that we worked on last month in the work session.
 1663
 1664 Ms. Dwyer - Thank you.
 1665
 1666 Mr. Blankinship - I appreciate the time everyone invested in that.
 1667
 1668 Ms. Dwyer - I noticed that we'll have a chance to look at it and give
 1669 any feedback.
 1670
 1671 Mr. Wright - Already used it.
 1672
 1673 Ms. Dwyer - Please give Ben a call if you have any other
 1674 comments to make. I thought it was a very fruitful meeting and I'm glad we were
 1675 able to do that. We should probably do that once a year to just talk about issues
 1676 that come up.
 1677
 1678 Motion to adjourn.
 1679
 1680 Mr. Witte - You got it.
 1681
 1682 Ms. Harris - Second.
 1683
 1684 Ms. Dwyer - Motion by Mr. Witte, seconded by Ms. Harris. All in
 1685 favor of the motion, please rise.
 1686

1687 There being no further business, the Board adjourned until the April 22, 2010
1688 meeting at 9 a.m.
1689
1690
1691

1692 
1693 Elizabeth G. Dwyer
1694 Chairman
1695
1696
1697

1698 
1699 Benjamin Blankinship, AICP
1700 Secretary
1701
1702
1703