

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE**
3 **COUNTY ADMINISTRATION BUILDING IN THE HENRICO COUNTY**
4 **GOVERNMENT COMPLEX, ON THURSDAY, OCTOBER 19, 2006, AT 9:00**
5 **A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH ON SEPTEMBER 28, 2006 AND OCTOBER 5, 2006.**

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9 **Members Present:** **James W. Nunnally, Chairman**
10 **Richard Kirkland, CBZA, Vice-Chairman**
11 **Elizabeth G. Dwyer**
12 **Helen E. Harris**
13 **R. A. Wright**

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16 **Also Present:** **David D. O’Kelly, Assistant Director of Planning**
17 **Thomas T. Tokarz, Assistant County Attorney**
18 **Benjamin Blankinship, Secretary**
19 **Paul M. Gidley, County Planner**
20 **Ann Cleary, Recording Secretary**

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22 Mr. Nunnally: Good morning, ladies and gentlemen. We welcome you to
23 our October meeting for the Board of Zoning Appeals and we ask you to please
24 stand and join us in the **Pledge of Allegiance to the Flag of Our Country**.
25 Thank you. Be seated. Mr. Blankinship, do you have any deferrals or
26 withdrawals?
27

28 Mr. Blankinship: No, sir. We do not.
29

30 Mr. Nunnally: Mr. Blankinship would you please read the rules for the
31 meeting, please?
32

33 Mr. Blankinship: The rules for this meeting are as follows: Acting as secretary
34 I will call each of the two cases and as I am speaking, the applicants can come
35 down to the podium. We will ask everyone who intends to speak, which, I guess,
36 will be the two of you, to stand and be sworn in. Then the applicant will present
37 their testimony, and after the Board has asked their questions, anyone else who
38 wishes to speak will be given that opportunity. If anyone speaks, the applicant
39 will have the opportunity for rebuttal. The meeting is being tape recorded, so we
40 will ask everyone who speaks to speak directly into the microphone, state your
41 name, please spell your name, and if you are not aware of the conditions that
42 have been recommended to this case, you need to be aware of those, because
43 you will be asked specifically to agree to the proposed conditions.
44

UP-39-2006 **ST. PAUL’S BAPTIST CHURCH** requests a conditional
Varina use permit pursuant to Section 24-116(c)(1) to install a

temporary trailer at 4247 Creighton Road (Parcel 815-732-6107), zoned A-1, Agricultural District (Varina).

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Mr. Nunnally: Is anyone else here interested in this case? All right. Will you raise your right hand and be sworn?

Mr. Blankinship: Do you swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth so help you God?

Mr. Derricott: I do.

Mr. Nunnally: Please state your name for the record and tell us what you are requesting.

Mr. Derricott: Mr. Hamilton Derricott. We are requesting a temporary trailer to be set on site. We at St. Paul's are experiencing exponential growth and one of the areas where we are concerned is finding a consistent place for our new members, and so we feel that bringing this trailer on site until we can go forward with our Phase 2 construction will provide a consistent space for our new members to have meetings at nighttime. We are requesting from the hours of 5:00 p.m. to 9:00 p.m., because that is when most of our new members can come out to our church for meetings, because they all work.

Mr. Kirkland: According to my report here, it says that the proposed trailer will be used as a staff meeting space six days a week between the hours of 5:00 p.m. and 9:00 p.m. These members are not staff.

Mr. Derricott: No. It is for some staff members that have to meet with them, that is what it is for. We have conference rooms and meeting rooms for our staff.

Mr. Kirkland: I was thinking that all of that space you all have over there, you wouldn't need a trailer.

Mr. Derricott: Well, that is the thing, that is why we kind of need the trailer, because what is happening Monday through Friday evenings, you have all of the members of St. Paul's having various meetings, and so for the new members, they are new to the site. So, what happens, for one night there will be a meeting on the second floor, and then the next night there will be a meeting on the first floor, and so these people are coming and they are getting lost and they are missing the meetings, but if we can get a consistent site, then they will all know to meet at the temporary trailer site.

Mr. Kirkland: You are planning on having this trailer for how long, one year?

89 Mr. Derricott: Two years.
90
91 Mr. Kirkland: Two years.
92
93 Ms. Dwyer: And have you read the conditions?
94
95 Mr. Derricott: Yes, ma'am.
96
97 Ms. Dwyer: Do you realize they will not be renewed?
98
99 Mr. Derricott: Yes, ma'am.
100
101 Ms. Harris: Will there be offices in the trailer or is that a classroom
102 setting?
103
104 Mr. Derricott: It is a classroom setting. Yes, ma'am.
105
106 Mr. Nunnally: Any other questions from the Board or staff? Hearing none,
107 that concludes the case.
108
109 **DECISION:**
110
111 Mr. Nunnally: UP-39-2006, St. Paul's Baptist Church.
112
113 Mr. Kirkland: I make a motion we approve it.
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115 Ms. Harris: I second your motion.
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117 Mr. Nunnally: Motion by Mr. Kirkland and second by Ms. Harris that we
118 approve. All in favor say aye. All opposed say no. The case has been
119 approved.
120
121 Mr. Blankinship: Mr. Kirkland, would you make a statement for the record,
122 please?
123
124 Mr. Kirkland: This is a normal permit that we normally pass for a
125 temporary trailer. It is only good for two years. I don't think it interferes with
126 anything, and it is just temporary. I don't know any facts you could use to back
127 this up other than this is just a temporary use.
128
129 Mr. Blankinship: There is no substantial detrimental impact and it is
130 consistent with the zoning and the other uses.
131
132 Mr. Kirkland: Yes, you can add that in there.
133

134 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by
135 Ms. Harris, the Board **granted** application **UP-39-2006** for a conditional use
136 permit pursuant to Section 24-116(c)(1) to install a temporary trailer at 4247
137 Creighton Road (Parcel 815-732-6107), zoned A-1, Agricultural District, (Varina).
138 The Board granted the temporary conditional use permit subject to the following
139 conditions:

- 140
- 141 1. The trailer shall be removed from the site on or before September 30, 2008, at
142 which time this permit shall expire and not be renewed
 - 143
 - 144 2. The trailer shall be sited as shown on the plan submitted with this application.
145 It shall not block any walkways required for handicapped accessibility.
 - 146
 - 147 3. Any sanitary facilities in the trailer shall be connected to a disposal system
148 approved by the health department.
 - 149
 - 150 4. On or before September 28, 2007 the applicant shall submit a report to the
151 Planning Department describing their plans for permanent staff meeting space.
 - 152

153 The Board granted the request because it found the proposed use will be in
154 substantial accordance with the general purpose and objectives of Chapter 24 of
155 the County Code.

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158	Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright	5
159	Negative:	0
160	Absent:	0

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A-39-2006 **MARK W. AND PRISCILLA ROMERS** request a variance
from Section 24-94 to build a front porch at 305 Green
Hollow Lane (Hunters Run) (Parcel 829-714-1666), zoned
R-3, One-Family Residence District (Varina). The front
yard setback is not met. The applicant proposes 34 feet
front yard setback, where the Code requires 40 feet front
yard setback. The applicant requests a variance of 6 feet
front yard setback.

163

164 Mr. Nunnally: Is there anyone else interested in this case? Please raise
165 your hand and be sworn, sir.

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167 Mr. Blankinship: Do you swear the testimony you are about to give is the
168 truth, the whole truth, and nothing but the truth, so help you God?

169

170 Mr. Romers: I do.

171

172 Mr. Nunnally: Please state your name for the record, sir, and tell us what
173 you are requesting.

174

175 Mr. Romers: Mark Romers. I am here on behalf of me and my wife,
176 Priscilla. Is it possible to pass out this piece of paper? Thank you for hearing me
177 today. We bought our home about a year ago in Sandston, almost exactly a year
178 ago. It is a new home in a new neighborhood, brand new neighborhood. We
179 decided this Spring to start to improve our home and in doing that we discovered
180 that our home has been seriously, I guess, burdened. We have large high
181 voltage power lines which are running across the back of my home, with the
182 easement on the power lines directly against the back of my house, and also
183 along the left side of my house, where the driveway and side porch are. We
184 were trying to do something to improve our home, so once we discovered that
185 problem, we went to the front yard and began landscaping, and I built my wife a
186 nice patio that we wanted, and as it was progressing, she asked me if we could
187 make a porch out of it, since we were determining that we could not do much
188 with the back of the house at all, as it would be dangerous to be under the power
189 lines. As we got into the process, I went to the County to ask what was
190 necessary there and discovered that the easement line is right on the very front
191 surface of my home, I mean the front setback lines, the very front wall of my
192 home, and the high voltage power line easement is on the very back wall of my
193 home, and we were kind of in a jam, and so at that point I didn't want to proceed
194 and do anything wrong, so I filed a variance and hope that we can find some
195 relief here on the property so we can enjoy it the way we would like to. At the
196 same time, knowing that this is something that would be a concern to my
197 neighbors, I went around and that document I passed out, I went to each
198 neighbor that could see the front porch, along the front or the sides, or even on
199 the back street, anyone relevant to it, and discussed this with all of them, about
200 exactly what I had run into, and everyone, universally, was supportive of what I
201 wanted to do, and, in fact, felt that it improved the community for their own
202 purpose. So, we are hoping that we can get some relief on our property here,
203 and that is our request.

204

205 Ms. Dwyer: Mr. Blankinship, the staff report says that the Zoning
206 Ordinance allows a four foot extension into the setback.

207

208 Mr. Blankinship: A portion, up to six feet wide can extend up to four feet deep.

209

210 Ms. Dwyer: Could a roof be built? I am not sure how this would look or
211 whether this would even be acceptable aesthetically, but could he build a roof
212 that extended four feet out, even though the porch itself and the base is now six
213 feet?

214

215 Mr. Blankinship: I think as long as the roof was no more than six feet wide,
216 yes.

217

218 Ms. Dwyer: It could extend four feet, then?
219
220 Ms. Harris: Do you have a proposed plan that we could actually see
221 what it is that you wish to build over this stoop?
222
223 Mr. Blankinship: Attached to the petition is a plan.
224
225 Ms. Harris: I saw that.
226
227 Mr. Romers: Do you mean like a front view, ma'am? A picture of kind of
228 what it would look like from the front? I have some examples in my file here, but
229 basically it is going to be a roof, there are similar ones in the neighborhood, all up
230 and down the street there. It would be kind of a hip roof across the entire front,
231 and then there would be nice fluted aluminum columns and aluminum railings
232 down the front. It is just very nice. That is my plan that would be aesthetically
233 pleasing, certainly to my wife. I can tell you what it would look like.
234
235 Ms. Dwyer: Sir, when you filed your application, were you informed by
236 staff that our jurisdiction is limited in these kinds of cases?
237
238 Mr. Romers: Yes, ma'am. That is when I discovered it. It was based on
239 the roof line and the four foot penetration is under the standard setback. It is
240 within the rule and up to six feet wide. What was on there on the house directly
241 beside me is identical to my home. We both have the power line problem on the
242 back, and both of us have the exact same problem, I guess, but it is about a four
243 foot by four foot porch encroach into the easement, if you will.
244
245 Ms. Dwyer: What I wanted to say is that I think you have done a beautiful
246 job on your porch and you've done your homework, as far as the neighbors are
247 concerned. The problem is with this kind of a case, you have reasonable use of
248 your property. We don't have the authority to grant a variance.
249
250 Mr. Romers: I understand that is how the rule reads, ma'am, and in my
251 case, I felt that with the power lines on the back I can't use the back of the
252 property, anything that is under high voltage, a thousand volt power line on the
253 left side of the home. I've only got a small area that I can use, and now I
254 discover that on the front of the home, I can't do anything else, and I felt that in
255 this case that that was a hardship, that that was worthy of coming here today to
256 discuss it.
257
258 Ms. Dwyer - Well, the standard is if you have reasonable use of your
259 home as it is now, then that is sufficient.
260
261 Mr. Romers: I understand that, absolutely. I am sorry. I don't have that
262 file with me that has the building materials of the...but it exceeds the
263 expectations of the neighborhood, for what that is worth.

264
265 Mr. Kirkland: What is the distance from the rear of your house to the
266 power line back there?
267
268 Mr. Romers: The physical center of the power line is 15 feet behind my
269 house. The easement is on both sides of the physical center, it is a triple line
270 actually, so it is actually one line that is closer than that. They are maybe six feet
271 wide. The easement on each side of the power line from Dominion Virginia
272 Power is 15 feet, so the 15 feet from the center of that power line is right to the
273 back of my bay window on the back of the house, exactly to that.
274
275 Mr. Blankinship: And does this plan show that your shed is in that easement?
276
277 Mr. Romers: Yes. That shed was on the property when I bought it. In
278 reality, it is underneath the easement and correctly should be shoved back
279 outside of that, but it is where it was when I bought it. I talked to the power
280 company about moving the power lines and why they are there, and I have been
281 through the whole process, and I guess it is just from fairly poor planning at the
282 time when it was done like that, because they were relocated when the
283 development was done, but no one, the right people, whoever were not involved
284 in moving them to the back of the property line, and they want astronomical
285 money to move these lines. These lines power everything down through Bottoms
286 Bridge. It has nothing really to do with the neighborhood in which we are in. Our
287 neighborhood is underground power.
288
289 Ms. Harris: On the site map, do you have access to that, Mr. Romers?
290 At 401 and 413, I was looking at the footprint there where the porch seems to
291 extend.
292
293 Mr. Romers: What document are you looking at?
294
295 Ms. Harris: The site map.
296
297 Mr. Romers: What I gave you?
298
299 Ms. Harris: No. It goes more to the right. Do you see 401 and 413?
300 Are you familiar with those homes?
301
302 Mr. Romers: I am familiar with those homes. Yes, ma'am.
303
304 Ms. Harris: Do they have what you want to construct? Is that similar to
305 what you have in mind for your home?
306
307 Mr. Romers: Well, looking at 401 and 413 here, I am not completely sure.
308 There are at least six homes on the block there that have the same porch that I
309 want to build, except the building materials used were, let's say, builder grade,

310 and it was that kind of neighborhood at that time, and the materials aren't usually
311 state of the art materials, fluted aluminum columns and that kind of thing, so the
312 physical look, ma'am, to answer your question, is identical. I don't know if 401
313 has it. I know that directly across the street from me, 308, is that a house? The
314 home directly across the street has the exact same porch that I want to build. It
315 is just three quarters width on the house as opposed to full width, and down the
316 street, about 408 or just to the right of 408 is another home that has the exact full
317 width porch identical to what I want to build.

318
319 Ms. Dwyer: But there is no evidence that those porches protrude into the
320 setback?

321
322 Mr. Romers: Oh, I am absolutely sure, ma'am, they don't. You can look
323 at the line up of those two homes, 301 and 305. The power line runs right behind
324 those two homes and then turns in my side yard and goes across the street and
325 after I got into this and realized it, you can go line up beside those two brick walls
326 with the fronts of their house and you won't see any other home down the rest of
327 the street, because they have built to the front of the property right up to the
328 setback, too, I guess, to maximize the size of the home that sits between the
329 easement line and the setback line. No ma'am. No one else, as far as I know, in
330 that neighborhood, would be requiring a variance or violating the setbacks, the
331 ruling that exists today.

332
333
334 Mr. Nunnally: Are there any other questions from the Board or staff?
335 Hearing none, that completes the case. We will let you know in a little bit, sir.

336
337 Mr. Romers: Thank you.

338
339 **DECISION:**

340
341 Mr. Nunnally: All right, A-39-2006, Mark W. and Priscilla Romers. Do I
342 have a motion on that?

343
344 Ms. Dwyer: I move that A-39-2006 be denied because the applicant has
345 reasonable beneficial use of the property without the variance.

346
347 Mr. Wright: I second the motion.

348
349 Mr. Nunnally: We have a motion by Ms. Dwyer and a second by Mr. Wright
350 to deny. All in favor say aye. All opposed say no. The case has been denied.

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353 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
354 Negative: 0
355 Absent: 0

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After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr. Wright, the Board **denied** application **A-39-2006** for a variance to build a front porch at 305 Green Hollow Lane (Hunters Run) (Parcel 829-714-1666), zoned R-3, One-Family Residence District (Varina).

Mr. Nunnally: Now we have the minutes for July 27, 2006. I think that is the one we deferred until this month.

Ms. Dwyer: I have a few changes. Page 5, I think the word should be “some” and that is on line 185 and line 188, and on page 13, the word “a human” should have been “opinion.” That was on line 546, page 13. On page 16, I think Mr. Wright may have made the statement beginning on 715. Mr. Wright, you might want to check that.

Mr. Wright: I had all that stuff and reviewed it at the last meeting, and I don’t know what I did with it.

Ms. Dwyer: Well, you made the motion and that paragraph is part of the motion, and then I seconded it, and it is transcribed and said that I made the supporting statement for the motion and then seconded it.

Mr. Wright: Yes, that does not make any sense.

Ms. Dwyer: Let’s attribute that to him. It is nothing real bad in there. Then on page 22, line 954, I think the word “under” and “use” on that line were erroneously repeated from the line afterwards, so just omit the word under and the word use on line 954. I have just a few more. Page 30, line 1318, “restoring” instead of “storing.” And then on line 1334, “highest use” instead of “logical use.” Then, on page 59, line 2590, “to agree” instead of “in agreement.” That is all I have.

Mr. Nunnally: Does anyone else have any corrections to the July minutes? Do we have a motion on that?

Ms. Dwyer: I move they be approved as amended.

Mr. Kirkland: Second.

Mr. Nunnally: Motion by Ms. Dwyer and seconded by Mr. Kirkland. All in favor say aye. All opposed say no. The minutes of the July meeting are approved.

On a motion by Ms. Dwyer, seconded by Mr. Kirkland, the Board **approved** the Minutes of the **July 27, 2006** Henrico County Board of Zoning Appeals meeting.

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404 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
405 Negative: 0
406 Absent: 0
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409 Mr. Nunnally: The August minutes.
410
411 Mr. Wright: I didn't see anything particularly in error. I move we approve
412 the minutes of the August 24, 2006 meeting.
413
414 Ms. Dwyer: Second.
415
416 Mr. Nunnally: Motion by Mr. Wright, seconded by Ms. Dwyer that the
417 August 24, 2006 minutes be approved. All in favor say aye. All opposed say no.
418 The minutes have been approved.
419
420 On a motion by Mr. Wright, seconded by Ms. Dwyer, the Board **approved** the
421 minutes of the **August 24, 2006** Henrico County Board of Zoning Appeals
422 meeting.
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424
425 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
426 Negative: 0
427 Absent: 0
428
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430 Mr. Nunnally: September minutes.
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432 Ms. Dwyer: I move we approve the minutes.
433
434 Ms. Harris: Second.
435
436 Mr. Nunnally: Motion by Ms. Dwyer, seconded by Ms. Harris that we
437 approve the minutes of the September 28, 2006 meeting. All in favor say aye. All
438 opposed say no. The September 28, 2006 minutes have been approved.
439
440 On a motion by Ms. Dwyer, seconded by Ms. Harris, the Board approved the
441 minutes of the September 28, 2006 meeting of the Henrico County Board of
442 Zoning Appeals.
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445 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
446 Negative: 0
447 Absent: 0

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Presentation by Assistant County Attorney Tom Tokarz on the recent Virginia Supreme Court decision in Cherrystone Inlet, LLC v. Northampton County Board of Zoning Appeals, 271 Va. 670 (2006)

Mr. Nunnally: Now we have Mr. Tokarz. Is that right?

Mr. Tokarz: Yes, sir.

Mr. Nunnally: Good morning, sir.

Mr. Tokarz: Good morning, Mr. Chairman, and members of the Board. I was asked to tell you about the law, so here I am.

Members of the Board, what I have done is sort of summarize for you the facts of this case because I know that in your Board packet the case was sent to you. They are a little confusing so I tried to decode it for you in the statement of facts up there, and rather than read it all, I will give you a second to read it yourself, and then I will tell you what I think the significance of this case is.

Mr. Chairman, I think the significance of this case, now that you have had a chance to read through the facts, this is the Supreme Court's most recent application of the Cochran standard, which Ms. Dwyer referred to in the last case that you heard, because basically the Board of Zoning Appeals, according to the Supreme Court, does not have the authority to grant a variance in any case where the owner has reasonable beneficial use of the property taken as a whole. This particular case is their application of that standard to the situation where after ordinance provisions went into effect, lots were created and a variance was requested on the basis of a lot created after the effective date of the ordinance. The Supreme Court held, and this is one of the most important parts of the case, that if you create the lots after the effective date of the ordinance requirement, the owner may not come to you and ask for a variance for each of the new lots, because those lots were not in existence at the time of the ordinance and the proper application of the Code is to consider all of the lots together, taken as a whole, and in that particular situation because the four lots that were unbuildable under the ordinance at the time of the variance request were part of the entire parcel and that the entire parcel, when taken together, could be used for a residence, the BZA properly denied the variance and, therefore, the Supreme Court upheld the BZA. Now, I think the implication of this is very important, and I think it has bearing on what Ben is going to be talking to you about probably at your next meeting, and that is the time of the creation of the lot is critical, based on this decision, to the determination of the property taken as a whole. And I read this decision to say that you have to evaluate the date of the creation of the lot in relation to the ordinance provision that is being requested for relief in making your determination of the property taken as a whole. I think this has implications, particularly with respect to family subdivisions, and what I have

494 suggested to Ben is that when he comes back with his presentation, that we
495 specifically address family subdivisions as one piece of the analysis, because
496 that is an important part of some of the types of cases that come before you, and
497 I'd like to at least offer you our guidance or our view of the law so that you have
498 the benefit of that in making your decisions. So, that is what I believe the
499 significance of the case is, and this has been one of those questions that needed
500 to come up before the Supreme Court to help flesh out the Cochran case. I think
501 we now know the answer to this piece and there is one remaining question, I
502 think, that is not explicitly stated here, but it is going to have some impact on
503 what you have in some cases that may come before you, and that is what I want
504 to work with Ben on in presenting his presentation and it is this question: What is
505 the effective date of the ordinance that you use to determine whether the lots that
506 occurred before the effective date or after the effective date, and, as you know,
507 the County has had a Zoning Ordinance from at least the 1920s. We know, for
508 example, from the State Fair case that the Zoning Ordinance in effect in 1959
509 was critical in that case. We know from the Hanover Trailer Park case that the
510 Zoning Ordinance in effect in 1941 was critical, and so what I think what this case
511 really stands for is that an additional piece of the analysis that staff will have to
512 do is to say to you, #1, What is the Zoning Ordinance provision for which relief is
513 being granted, and #2, When did that Zoning Ordinance provision come into
514 effect, and then #3, When did the lot for which the variance is requested, when
515 was that created? I think those are now the factors to be considered in applying
516 the taken as a whole test of Cochran and Cherrystone Inlet.

517
518 Mr. Wright: One thing, Mr. Tokarz, that I think this thing also emphasizes
519 is, what is the meaning of reasonable beneficial use.

520
521 Mr. Tokarz: Yes, sir. They quoted this.

522
523 Mr. Wright: It is used as a valuable waterfront amenity and
524 appurtenance construction, so they hung that case on that, and that provided
525 what they considered a reasonable use of the property, so that gives us
526 something we will have to wrestle with as to what is a reasonable use of the
527 property taken as a whole.

528
529 Mr. Tokarz: Well, I think you are right, Mr. Wright, and I think my
530 suggestion is that as that part of the opinion gets read, it gets read in conjunction
531 with the three specific situations that were at issue in the Cochran case, and
532 those, my recollection is and I don't have Cochran right here in front of me,
533 involves putting an accessory building on the property, and in that particular
534 case, the court said you can't put an accessory building on the property in
535 violation of the ordinance requirements because you can have a house and you
536 already have a house on the property. I know there is another case, for example,
537 where there was, that came before you, some months ago, where a garage was
538 built I think 19 feet when the Ordinance only permitted 15 feet, and you denied
539 the variance for that because they had reasonable beneficial use of the property.

540 So, the bottom line is, the way I understand Cochran and Cherrystone and the
541 Statute taken together as interpreted by the Supreme Court is that if the property,
542 as it existed at the time the Ordinance provision that is being requested for relief
543 from, if the property taken together at that particular part, had a reasonable
544 beneficial use, then as an administrative body, the BZA does not have the
545 authority to grant a variance to give relief from that provision. The avenue for
546 relief is properly then to the Board of Supervisors rather than to the Board of
547 Zoning Appeals.

548
549 Ms. Dwyer: That seems almost as radical as Cochran in a sense,
550 because as you point out, they could have had five waterfront lots, yet the
551 Supreme Court says one is enough and instead of the other four lots, you get a
552 lot of space around you and that is enough of a beneficial use to satisfy the court.

553
554 Mr. Tokarz: I will give you another example that you may remember, and
555 it goes back 10 years, so I am not sure, I am not positive whether it came before
556 you or came before the Board of Supervisors, but there was a marina case down
557 in Varina where there was 23 acres of property on the James River, and it is a
558 beautiful piece of property, and the developer came in and requested to put a
559 subdivision on there in violation of the floodplain requirement, and the case was
560 litigated and the court found in favor of the denial of the use permit for the
561 property, because they said, "You can use the property not the way you want it,
562 but you can have use of the property. You can have a tremendous single-family
563 residence down there with the most private of marinas in this protected inlet," and
564 that was sufficient to prevent a taking, and on that basis, they denied the use
565 permit request. That went to the Supreme Court of Virginia and they found no
566 error.

567
568 Mr. Wright: That is my point, because they put emphasis on the
569 definition of what is a reasonable beneficial use of the property taken as a whole,
570 and most of these cases that are facing us now don't have residential on them. It
571 is unimproved property, the face of this property. In other words, could this be
572 used for farm land? Is that a reasonable use of the property? If it is, then we
573 don't have the authority to grant any variance.

574
575 Mr. Tokarz: That is correct, and Mr. Wright, that actually came up in the
576 marina case because that was one of the uses that we identified for the property,
577 and the court in its opinion specifically said as long as there are any uses under
578 the zoning ordinance that are reasonably beneficial uses, even if they are not the
579 uses that the owner would ever consider doing, we have to defer to the Zoning
580 Ordinance and find against the use permit. In that particular case, and really, I
581 think ultimately, the point here of Cochran and Cherrystone is that it is ultimately
582 up to the Board of Supervisors to decide and the Zoning Ordinance what uses
583 they are going to permit, and what requirements they are going to impose, unless
584 they prevent the owner from doing anything that is of value on the property.
585 Now, I will give you the contrast. The contrast is that had the evidence in a

586 particular case shown that the only use of the property was as vacant land, that
587 somebody could enjoy for the enjoyment of nature, that probably would not
588 suffice. But, if the property can be used for agricultural or if it does have a
589 recreational use for putting a marina on there, even though it is in the flood plain,
590 then that is usually going to be deemed to be sufficient under the case law.

591

592 Ms. Dwyer: In Cherrystone, they almost said that. They almost said
593 these four lots, you can enjoy them as vacant property that is an appurtenance to
594 their home and...

595

596 Mr. Wright: That is water front. It has a view. That is the crux of it.

597

598 Ms. Dwyer: I don't think that the waterfront piece of it was...

599

600 Mr. Tokarz: I agree with Ms. Dwyer. I think that is a factor that they
601 considered in there, but had it not been on the waterfront, I think when you look
602 at the other cases that were decided in the Cochran decision, the fact that the
603 property itself could be used for a beneficial use was sufficient. Had this property
604 been in a wooded area and the lots were unable to meet setback requirements,
605 but you still could put the house on it, I think the court would have reached the
606 same result.

607

608 Mr. Blankinship: So, what if the lots had been divided before the regulations
609 came into effect?

610

611 Mr. Tokarz: If the lots had been divided before the regulations came into
612 effect, then what the court would have looked at is under 15.2-2309.2, the
613 language that is in the Statute, the BZA would then be entitled to look at, and
614 here is the Code section, it says, "When a property owner can show that his
615 property was acquired in good faith and where by reason of exceptional
616 narrowness, shallowness, size or shape of a specific piece of property at the time
617 of the effective date of the ordinance, then you go and you go through the factors
618 about hardship and whether you can use the property and that type of thing. So,
619 the answer to your question is if the lots were created prior to the Ordinance,
620 then the BZA would certainly have the authority to consider the variance, using
621 the statutory factors that are in here.

622

623 Mr. Blankinship: And you wouldn't look at Lot 5 as being an appurtenant to
624 Lot 1. You would look at them as separate parcels.

625

626 Mr. Tokarz: Yes. I think you would be able to look at them as separate
627 parcels.

628

629 Mr. Wright: You wouldn't take them as a whole? That is the key.

630

631 Mr. Tokarz: That is correct, if the division occurred prior to the
632 Ordinance, then they are not taken as a whole at that point.

633
634 Mr. Wright: You can't take them as a whole.

635
636 Mr. Tokarz: Right.

637
638 Ms. Dwyer: So staff is then going to, for each of the cases that comes up
639 from now on, staff is going to talk to us about when the Ordinance took effect and
640 how that relates to the particular facts that are presented. Is that right?

641
642 Mr. Blankinship: Yes, and we have usually mentioned that in some way in the
643 report, but it is going to be a major part of the analysis. Now it is important in the
644 Cochran analysis.

645
646 Ms. Dwyer: One of the issues that I see in addition to when the
647 Ordinance took effect is what constitutes the division? In this case, on the tax
648 map these were separate lots, but the Court wasn't persuaded that that was a
649 sufficient division to count, and since we get a lot of cases where somebody has
650 actually had a survey. They have divided the property, and they filed the plat in
651 the Record Room with the County, so if anyone goes to do research, they find
652 that this is Lot 2, this is Lot 3 in the filed plat, even though they haven't had
653 subdivision approval, and then they sell lots and the unwitting buyer thinks
654 they've got a lot that constitutes a lot, but under this case they may not, or may
655 they? I guess that is my question. Does that constitute a division? Let's say that
656 occurred before the Ordinance took effect. They have platted it, but it has not
657 been approved under the Subdivision Ordinance.

658
659 Mr. Tokarz: I am not sure I know the answer, and the court struggled
660 with the question. They said that in the introductory fact, they said they couldn't
661 tell from the chain of title exactly how the divisions occurred. They were shown
662 on the tax map as separate parcels and I think what made this case more simple
663 was the fact that they didn't come in and ask for variances to build on the parcels
664 that were shown on the tax map. They came in and they divided it in an entirely
665 different way, a new way, and they wanted to get variances for the new lots, and
666 the new lots had been created after the Ordinance, so that was a fairly
667 straightforward analysis. What is going to be harder are the ones you are talking
668 about. What about the lots that were created in 1941 down in Varina, and they
669 weren't subdivided because you didn't have to subdivide for the divisions they
670 made back then, and the answer is that Ben is going to have to wrestle with it.

671
672 Ms. Dwyer: So are we.

673
674 Mr. Tokarz: It is like everything else. I think it is going to have to be a
675 case by case analysis to do that, and some of it is going to be hard to seize out,
676 because the chain of title is not going to be clear, but I think what is interesting is

677 the Supreme Court did not treat the tax map parcels as one of them, and part of
678 it, I think, was because if you looked at the description of the different sizes of the
679 parcels, some of them were relatively large and some of them were very small.
680 One of them was .302 of an acre and then another one was 2.301 acres, and the
681 court said in their footnote #1, "These parcels bear no discernable relationship to
682 the lots of which variance was sought." So, what I envision, and I don't have a
683 diagram, a diagram would have been great, is this long strip of land. It had these
684 funny little divisions on the tax map, the developer bought it, and then he said,
685 "Well, I can't sell them like this, so I am going to block them out like regular
686 subdivision lots, and then I am going to get variances for them."

687
688 Mr. Blankinship: And that is the sort of thing we see in our office all of the
689 time, where people buy these older exception lots, these 25 and 35 foot wide
690 lots, and want to know how they can sort of consolidate and re-subdivide, so that
691 is a live question for us.

692
693 Mr. Tokarz: It is a live question, and a family subdivision question is a
694 live question. I will put in my one plug in advance, so you'll hear a lot about this.
695 I believe, based on the statute itself, and the Attorney General's opinion, and his
696 opinion was issued October 6, 1989. I will actually ask Ben to attach this to his
697 little report to you, so you will have the benefit, because this opinion describes
698 the purpose of the family subdivision process, what the intent is, but one of the
699 points is, and I think this is a point that I would hope would not get lost, is that the
700 family subdivision statute is designed to provide an easy and expeditious way for
701 families to divide their property without having to go through the subdivision
702 ordinance process. It does not provide a provision that allows a family
703 subdivision to escape the requirements of the zoning ordinance, and that is a
704 critical distinction, because what comes before you are variances from the
705 Zoning Ordinance, not variances from the subdivision, and so what I think the
706 intent of the legislature is that if you are going to do a family subdivision, that that
707 family subdivision should be done in such a way that the lots created comply with
708 the zoning ordinance if you plan to use them for anything other than agriculture
709 or vacant land. That is my understanding. We will flesh that out for you in the
710 report that Ben gives you on these public road frontage things, because that is
711 one of the questions that comes before you is a lot created in a family
712 subdivision, and it doesn't have public road frontage, can you give it a variance
713 and my thought is that in many cases you probably don't have authority to do
714 that, but we will explore that further, and we will give you those opinions.

715
716 Mr. Wright: Is this something, Mr. Tokarz, that the Board of Supervisors
717 ought to be beginning to look into, because right as we go forward, they are not
718 making any more land. We have got what we have got, and to get the prices,
719 because the County will not extend roads through these current vast areas,
720 especially in Varina. You've got open land and people are buying these little
721 parcels and then coming in and wanting us to give them access to get to these
722 properties of these parcels, and it looks like to me this is a problem that is

723 increasing, every day, and it looks like to me it is something the Supervisors
724 need to really begin to look at.

725

726 Mr. Tokarz: Well, Mr. Wright, one of the things that has occurred on
727 occasions in the past, and those of you who have been around for a while will
728 remember this, that on occasions when the Board of Zoning Appeals is facing a
729 recurring situation where they think that legislative relief may be necessary, they
730 have either adopted a resolution or directed the Secretary to request the
731 Planning Office to bring it to the attention of the Planning Commission and the
732 Board of Supervisors, and that certainly may be something you want to do after
733 we have a discussion about the public road frontages at the next meeting and the
734 meeting after that. The issue becomes - there is obviously a tension between the
735 desire for families to do divisions for the family members to use their land, and
736 the desire of the Supervisors and the populous as a whole to have good land use
737 planning, and so you have controversies about things like flag lots. You have
738 controversies about public road frontage. There is a whole host of planning
739 issues that end up getting resolved in the Zoning Ordinance, but if you are seeing
740 recurring problems come before you, that you think need to be addressed, that
741 certainly is appropriate for you to ask the Planning Commission and Board of
742 Supervisors to give that another look.

743

744 Mr. Wright: Yes, most of our agenda these days is made up of zero front
745 setbacks.

746

747 Mr. Blankinship: Those are the only variances left.

748

749 Mr. Wright: Yes. We don't have anything else.

750

751 Mr. Tokarz: And, of course, the Board of Supervisors in enacting the
752 Ordinance and amending the Ordinance can promulgate any regulations that
753 they want to, and if they want to give relief as a general matter, they certainly
754 have the opportunity to do that, and that would leave you all with an agenda
755 where you all come and bang the gavel and...

756

757 Ms. Dwyer: At least have a special exception.

758

759 Mr. Tokarz: That is right.

760

761 Ms. Harris: We really would not need the Board. Let me ask this
762 question. Who created the problem? Do you think the developer created the
763 problem by...?

764

765 Mr. Tokarz: In Cherrystone? Absolutely. And I understand. You know, I
766 have done this for 15 years now. I understand how the developers find a piece
767 of land, excessively unusable or having great value because of waterfront
768 property. What is interesting in this set of facts is, as I understand it, is that

769 because of erosion that the water line often covers the entire property. So it may
770 have been that in this particular situation the developer said, "I will find a way to
771 develop this property. All I have to do is go and divide these lots into parcels that
772 can be built upon and then go and get a variance." Prior to Cochran, that would
773 have been a lot easier to do. After Cochran, it is a lot harder to do, but if you
774 read Cochran and read the prior cases to Cochran and case law nationwide
775 about variances, really the variances are only designed to provide relief from
776 unconstitutional takings. They have been granted in case law far more than what
777 the original purpose of the variance process was for. It was really just to provide
778 a way of preventing a confiscation of somebody's property, which is different
779 from letting people do just what they want to do.

780

781 Ms. Harris: So you don't think that the Ordinance will cause overlapping
782 setbacks, or everything to do with it, because that is the Code, but could there
783 have been even more cases where overlapping setbacks would have created
784 situations similar to this?

785

786 Mr. Tokarz: Well, as I understand the facts, the situation in Northampton
787 was caused by the Chesapeake Bay Preservation Act Regulations. We faced
788 the same thing in Henrico when we adopted the Chesapeake Bay Preservation
789 Act Program in December of 1991. We spent probably two years drafting the
790 Ordinance, and what we had to do was comply with good zoning, the existing
791 Zoning Ordinance, the Subdivision Ordinance, Erosion and Sediment Control
792 Ordinance, and the Chesapeake Bay Statute and the Chesapeake Bay
793 Regulations. And, if you read 24.106.3, which is our Ordinance, you see that
794 there are 14 different exceptions put into the Ordinance at the time because we
795 realized that when we adopted the Ordinance it would have an impact on people
796 who already have existing lots or pending applications. So, that is a long way of
797 saying when you have new requirements to come in here, and this case will
798 protect water quality in the Chesapeake Bay, there are always going to be
799 concerns about the impact it is going to have on those lots and properties that
800 get swept in there. Sometimes they are grandfathered in if the Statute will allow
801 and other times you really can't do anything about it, because the General
802 Assembly didn't want those lots to be developed, and that is what this particular
803 case was. I don't think they had any choice given what the General Assembly
804 had enacted and the Act itself.

805

806 Ms. Harris: Getting back to the landlocked lots that we have just in the
807 Varina District, are we expecting individual families to construct public roads or at
808 least pay for part of public road construction in order to use their lot?

809

810 Mr. Tokarz: I don't know the answer to that. I think that goes to a
811 question of road policy and I really think that, Ben that might be something as a
812 factual matter you can research and include. It is a good question, and I don't
813 know the answer.

814

815 Ms. Dwyer: Maybe have someone from Public Works either come or
816 give some input about how, I would like to know how they view some of these
817 lots that have been created and built on in Varina that have no road frontage,
818 because do we need maybe a more detailed Thoroughfare Plan? Do we need a
819 different policy in that part of the County where there are so few roads and so
820 much patchwork development going on? I think that is a huge issue, because
821 my concern is that 20 years down the road we are going to have houses where
822 roads need to be, and we are not going to be able to get the roads we need.

823
824 Tom, I am intrigued by this, taken as a whole concept, because what that means
825 is from now on, if somebody comes in with a lot they want to build on, they are
826 going to have to look behind that lot and see, because that may not be the parcel
827 that is "taken as a whole." That parcel if it was divided or subdivided from a
828 larger piece of property last year may be just part of the property should be taken
829 as a whole under this law, so we are going to have to look behind those
830 individual parcels and determine where they came from and when they were
831 divided to determine the law.

832
833 Mr. Tokarz: I think that is correct, in fact, in Ben's first draft of what I've
834 seen of the Public Roads Frontage Report to you. That is one of the criteria, one
835 of the questions to be asked, and how you do your analysis and that he proposes
836 to you as a critical factor. I think that is true.

837
838 Mr. Blankinship: The trick is, and Tom and I were discussing this briefly
839 before the meeting, it may not have been divided last year. It may have been
840 divided in 1961, but the Ordinance that restricts it may have taken effect in 1960,
841 so you might have a 45 year old lot that has been valid for 45 years, and people
842 have always thought of it for two generations as a buildable lot, but it is not.
843 Those are going to be the tough ones.

844
845 Mr. Tokarz: They will be tough questions. There is one other thing, if I
846 could, before Mr. Silber gets up. I know Randy wants to say something, but I do
847 want to talk to you during this discussion about Cochran. Also, I want to mention
848 one other thing and that is there was a case that the BZA considered a couple of
849 months ago in which there was a discussion about the reasonable use standard,
850 and there was also a discussion in the minutes of the highest and best use, and
851 discussion about what the proper standard is. I would only suggest to you that
852 particularly with respect to Cherrystone, affirming what Cochran has said, the
853 highest and best use is not the standard. The standard is whether there is any
854 reasonable use and that is regardless of the zoning, and regardless of the use
855 that the owner wants to put into it. The question is whether any land owner could
856 make any reasonable beneficial use of the property, and I think that is the test
857 that needs to be applied. I just put that one last statement in, and I will let Mr.
858 Silber talk.

859
860 Mr. Nunnally: Good morning, Mr. Silber.

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Mr. Silber: Good morning. I don't know if you want to hear from me, but I thought I might want to elaborate on Mr. Wright's question that he had about former divisions. I came here today not to speak whatsoever. I wanted to hear what Tom had to say on the Cherrystone case, but I thought maybe I could add a few comments or thoughts relative to family divisions of land and the public street frontage information that Mr. Blankinship is going to present. Again, I am Randy Silber, the Director of Planning.

The County Administration and the Board of Supervisors is keenly aware of the situation of variances being granted or requested for zero road frontage or variances for the public street requirement. Obviously, the Code has been in place for quite some time and required all residential properties and lots to have public road frontage. We continue to feel that that is a very important requirement. We do understand, though, that there will be circumstances where families will want to divide properties and allow for divisions of property for family members. However, when those divisions of property are allowed and do take place, they are creating some very serious complications on a daily basis involving the future development of land. Each time those variances are granted, you are also providing parcels of land that don't have public road frontage and easements are being provided whereby people are obtaining access through these easements. When property around it comes in to be subdivided, we are having to deal with these private easements, having to deal with these properties that don't have public road frontage and it is becoming a real challenge to deal with these from a legal standpoint, access standpoint, be it a relationship of homes that may not be homes fronting on a public street, and sometimes they are fronting in the back of houses. It is becoming a real challenge. As the County continues to develop, it is becoming more of a challenge, and we have these all over the County. There have been situations in the West End that we've had to work around with private easements, so I would suggest to you that, Mr. Wright, you were saying that maybe this may lead to something that has to be dealt with legislatively and maybe we need to have the Board of Supervisors look at this. I think the Board of Supervisors will tell you, and certainly the County administration will tell you, we think the Code is appropriate the way that it is. We would prefer the Board of Zoning Appeals look very seriously at each and every one of these requests and be very concerned about the granting of these, because each of these can become a nightmare later on as land develops around them. We do intend to put together some criteria, a check list and some information that will help you in looking at these variance requests for family divisions. Occasionally, it may be appropriate to grant those, but I think you need to look at them more closely.

Mr. Wright: My concern, Mr. Silber, we have got to balance this all with allowing people to use their property or some idea of that we can't let you do that, because 100 years from now, the County might want to do something. It looks like to me that it would be incumbent upon the County to proceed to have some

907 sort of Land Use Plan in effect to give some idea of what the use was for this
908 property. Then, you would have some guidance.

909
910 Mr. Silber: You are exactly right. We don't want to tell someone they
911 can't use their property forever, because at some point in time some property
912 might develop and could cause some problems later on. My point is the County
913 does have a Land Use Plan which tells everybody what is intended to be
914 developed on the property. Secondly, we have a Major Thoroughfare Plan that
915 has a network of roads that need to be built, and each and every time one of
916 these family divisions come up, they need to be looking at the future land use
917 and they need to be looking at what the Major Thoroughfare Plan says, and that
918 really should be in our report, sir, going to you.

919
920 Mr. Wright: That is my point. We don't have that information.

921
922 Mr. Silber: In addition, I think you need to keep in mind that you have a
923 Subdivision Ordinance Requirement and Policy, and that is when someone
924 wants to develop this piece of property, they are supposed to build a public road
925 for that piece of property. So, while it might be a family division, staff needs to
926 look at this and advise you, because in many cases there is a remedy, and that is
927 to build a public road to that property and provide and meet the Ordinance
928 requirements and provide for a better division of land that makes more sense.
929 Keep in mind, also, that providing the services to these situations where they are
930 having to use private easements for fire stations, for police, mail delivery, there
931 are a lot of public services issues that come up when you are dealing with private
932 easements and unkempt driveways and things like that. It is a big issue. It is a
933 very serious concern. I have had conversations with the County Manager
934 regarding the issuance of variances for family divisions, so it shouldn't be taken
935 lightly. I appreciate you hearing me out this morning.

936
937 Ms. Dwyer: Another thing, too, Randy, when I look at these lots that
938 don't have road frontage, land is not created equal. Land and lots have certain
939 advantages. Some might have waterfront, and some have disabilities. They
940 might have poor drainage or an unusual elevation or lots of problems and defects
941 associated with the land, and I really do think if you have a lot without road
942 frontage, that is a lot with a defect. That is not a lot that you are entitled to
943 develop without regard to the law. The fact that it doesn't have road frontage is a
944 defect associated with that land and it is not necessarily that we are depriving
945 people of the right to develop something that they could otherwise develop; it is
946 land that has a defect. This might be a piece that has a lake on it or some high
947 elevation that could prevent the development, and that is kind of a natural defect.
948 So, this is a legal defect that the lot has. You are not obligated to remedy it
949 necessarily.

950
951 Mr. Silber: I would agree with you on that. I would also maybe take that
952 a step further. There may be some property, as you said, not all property is the

953 same, there may be some property that is very difficult to get a public road
954 through. It may mean even having to cross a floodplain or wetland, and maybe it
955 is because of the configuration. You can't really develop this it in accordance
956 with the County's requirements because of physical characteristics because of
957 the characteristics of the land. In those circumstances, that might be where a
958 variance is appropriate, but if it is just someone who is wanting to carve four
959 more pieces off that doesn't have road frontage, and they can do it very
960 inexpensively by just extending this private driveway, and that is going to cause a
961 problem later on. If a public road could have been built, that could have
962 remedied that situation. So, I think it has to be reviewed on a case by case
963 basis, but I think that the County has been very generous in granting these types
964 of variances, and I think we may need to take a real close look at that, and staff
965 needs to do a better job in advising Board of Zoning Appeals on where we think
966 those issues exist and where we have long-range plans, it might help to guide
967 you in those situations. But I really think, from a legislative standpoint, as you
968 say, you might need some help from the Board of Supervisors and I am not so
969 sure they feel their help is needed. They feel like the Code has been provided. It
970 requires public road frontage and whenever possible, you can be requiring that
971 and denying some of these requests for zero public road frontage.

972

973 Mr. Nunnally: So, Mr. Blankinship, the future staff reports will include the
974 future subdivisions that have been approved around properties that we are
975 looking at and the land use designation around that property. Correct?

976

977 Mr. Blankinship: We will come back to you at the next meeting, hopefully with
978 written guidelines completed. That may be helpful. And they may have already
979 been applied to a couple of cases.

980

981 Ms. Dwyer: And also, the rule we were just discussing, what particular
982 problem might ensue if a variance is granted to allow access to property that
983 doesn't have road frontage. Sort of a staff analysis of that issue, because we
984 don't necessarily know.

985

986 Mr. Silber: We might be able to pull some requests in the past and
987 show how a variance could be granted, but if it was denied, here is a way that it
988 can be divided in the future if the public road has been constructed and
989 everybody comes out in a win-win situation. We could probably give you some
990 examples of how things could have been done.

991

992 Mr. Nunnally: I would imagine that Mr. Blankinship is going to be asking for
993 additional equipment in his office.

994

995 Mr. Blankinship: It is a good thing we have fewer variance requests.

996

997 Ms. Harris: Or additional salary, or something. I do have one question.
998 I am expecting it now and I think the onus of – we have got to be careful that we

999 don't favor developers over individual land owners. I can see that this requiring
1000 that we look at the Future Land Use Plan, the Thoroughfare Plan, the public
1001 service issues and whatever else tells me that naturally the developer, who can
1002 afford to construct whatever of the roads that we want or we need, or we require,
1003 would have the advantage over an individual land owner. The property may
1004 have been in the family since 1840, so I think that we are still going to have to
1005 look at some things aside from these factors I mentioned.
1006

1007 I have one quick question. The project at Rocketts Landing, is that Henrico
1008 County?

1009
1010 Mr. Silber: Part of it is in Henrico County and part of it is in the City of
1011 Richmond.

1012
1013 Ms. Harris: Thank you. They are not in the floodplain?

1014
1015 Mr. Silber: A portion of the property is in the floodplain. Yes, ma'am.

1016
1017 Ms. Harris: I don't understand how you get around things like that.
1018

1019 Mr. Silber: A portion of the property in the flood portion is not being built
1020 on. There is a marina that will be in the flood plain, and some open space and
1021 park land and some paths and trails and things. Buildings and structures are out
1022 of the floodplain. They are up on the bluff and away from all of the floodplain.
1023 The ordinance says that no residential dwellings can go in the floodplain. You
1024 can build commercial structures in the floodplain, but you have to have the
1025 bottom floor at least one foot above the minimum flood elevations. Commercial
1026 buildings can be put in the floodplain, but the floor has to be built above the flood
1027 elevations. Residential cannot be built in the floodplain. I do not believe that in
1028 Rocketts Landing that anything is being built in the floodplain except the marina,
1029 parks and walkways. I hope I answered your question. If you need more
1030 information, I will be glad to show you the plans.
1031

1032 Ms. Harris: Thank you.
1033

1034 Mr. Nunnally: Any other questions of Mr. Silber? Thank you for coming,
1035 sir.
1036

1037 Mr. Silber: Thank you.
1038

1039 Mr. Nunnally: Thank you, Mr. Tokarz.
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1041 Mr. Wright: I move we adjourn.
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1043 Ms. Dwyer: Second.
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1045 Mr. Nunnally: Motion by Mr. Wright and seconded by Ms. Dwyer. All in
1046 favor please stand.

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1048 There being no further business, and on a motion by Mr. Wright, seconded by
1049 Ms. Dwyer, the Board adjourned until **November 16, 2006**, at 9:00 a.m.

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James W. Nunnally, Chairman

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Benjamin Blankinship, AICP
Secretary

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