

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, SEPTEMBER 24, 2009, AT 9:00 A.M.,**  
5 **NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**  
6 **SEPTEMBER 3, 2009 AND SEPTEMBER 10, 2009.**  
7

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

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

8  
9 Ms. Dwyer - Good morning, and welcome to the September 24,  
10 2009 meeting of the Henrico County Board of Zoning Appeals. Please rise for  
11 the **Pledge of Allegiance**.

12  
13 Good morning, Mr. Blankinship. Would you please review the rules of the Board  
14 for those in attendance.

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

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Madam Chairman, we do not have any requests for deferral or withdrawal this month.

Ms. Dwyer - Thank you, Mr. Blankinship. Would you call the first case, please?

**UP-015-09** **INGENCO** requests a conditional use permit pursuant to Section 24-116(c)(3) to operate a renewable energy facility at 10600 Fords Country Lane (Parcel 753-772-2123), zoned A-1, Agricultural District (Three Chopt).

Ms. Dwyer - Thank you. Is there anyone else here to speak to the case? If you think you might speak, please stand and be sworn in.

Mr. Blankinship - Raise your right hands, please. Do you swear the testimony you're about to give is the truth and nothing but the truth so help you God?

Mr. Hecmanczuk - I do. Madam Chairman, Tom Hecmanczuk for INGENCO. Hecmanczuk. H-e-c-m-a-n-c-z-u-k.

Ms. Dwyer - Thank you.

Mr. Hecmanczuk - We're requesting a conditional use permit for a power plant to put on the landfill in Henrico County. The existing use is Agriculture A-1. We would like to build this power plant to use the methane gas generated by the landfill right now, which is flared. We will bring it into our plant, into our engines, and create electricity we'll sell on the grid.

Ms. Dwyer - Do you have other facilities like this in the County?

Mr. Hecmanczuk - We do. I have a quick little PowerPoint, which I'll go through. It explains kind of who we are.

INGENCO is a local company. We've been around since 1989 and are in the independent power-producing business. We have about 150 megawatts of capacity right now in 17 different plants, 10 of which are landfill gas, which is exactly what we intend to do here. Most of plants are in Virginia, North Carolina, Maryland, and Pennsylvania. We have a new plant in Washington State, which is a new venture for us. Most of our plants are local, and we sell upon the PJM.

Our technology uses a standard Detroit diesel engine and we inject landfill gas into the turbo charger and get about 93% gas fraction. So about 93% of the power coming out of the engine is directly from the landfill gas. Landfill gas, by the way, is generated from rotting garbage. It produces methane, usually within

82 the 50% range and 50% other stuff like nitrogen, hydrogen sulfide, carbon  
83 dioxide. We burn it all in that engine so we destroy it in that manner.

84  
85 Mr. Witte - The other 7%?

86  
87 Mr. Hecmanczuk - Is #2 fuel oil. We do not use a spark-ignited engine,  
88 so we use that fuel oil to carry the flame to make sure we don't get detonation  
89 from the gas, and to make sure it burns evenly.

90  
91 Mr. Wright - What would happen to this gas that's coming out of  
92 the landfill if you didn't dispose of it in this manner?

93  
94 Mr. Hecmanczuk - Right now, the landfill is required by the EPA to  
95 destroy it in a flare. They burn it. So there's not a beneficial use right now.  
96 Specifically on this project, we intend to install four megawatts of installed  
97 capacity, of which we think we can get about 3 or 3-1/2 megawatts of electricity  
98 directly from that landfill gas. That's based on how much gas the garbage  
99 produces, how much is flowing, and our 93% gas fraction. To do that, we'll put in  
100 a 52 by 75-foot pre-engineered metal building, standard metal building. Inside  
101 that building will contain all the engines. We'll have a few pads, supports pads  
102 outside in a fuel farm with secondary containment to contain the tanks of #2 fuel  
103 oil. We make a direct gas connection downstream of the existing landfill blower  
104 collecting system so it will not affect the way they collect gas now. We just take it  
105 after they collect it. That's significant because the landfill operates under an EPA  
106 permit to, in fact, destroy that methane gas. So we would not affect that permit.  
107 They would still maintain the criteria of that permit; we would just take the gas  
108 after that point.

109  
110 Mr. Wright - So you'd take it rather than their burning it.

111  
112 Mr. Hecmanczuk - That's right. Instead of putting it to their flare, we  
113 would take it to our engines and generate electricity.

114  
115 Mr. Witte - So there's a flare on the property already.

116  
117 Mr. Hecmanczuk - There is a flare on the property already, yes.

118  
119 Mr. Witte - So you don't need any additional lines?

120  
121 Mr. Hecmanczuk - No. They've been required to burn that methane for  
122 several years. We would put operators around the clock in there. We hire about  
123 four people, but there would be one operator on the clock. So we would not load  
124 the road at all. The existing traffic patterns and all that would remain the same.  
125 The plant is near the center. The plan is to put the plant near the center of the  
126 landfill, and I believe in the packet you have a picture of exactly where that would

127 be. We expect to produce useable electricity for 20 to 25 years, depending on if  
128 you continue to fill the landfill, when it closes, and that kind of thing.

129  
130 Ms. Harris - What is the date of this use permit? Is there an  
131 expiration date?

132  
133 Mr. Blankinship - No ma'am, not normally.

134  
135 Ms. Harris - And what type of conduit are you going to use to get  
136 the gas from point A to point B?

137  
138 Mr. Hecmanczuk - From your existing flare to our plant will be—If we  
139 locate the plant where we have laid it out, it's a very short run, so we would  
140 probably use a metallic pipe, probably stainless steel. The gas is collected now  
141 in a plastic, or what's known as HDPE. Throughout the landfill, and up to the  
142 header, and up to the existing flare is a plastic pipe.

143  
144 So the green benefits are that this is classified as, and is, in fact, a renewable  
145 energy source. So, Henrico County will be contributing to a renewable energy  
146 source.

147  
148 Mr. Wright - I've heard over the years that at some projected date  
149 this landfill might be closed, I guess filled up. What happens when that date  
150 comes? How long after the period that it would be closed would this continue to  
151 operate?

152  
153 Mr. Hecmanczuk - It depends a lot on what's put in the landfill, and how  
154 it's packed, and all that kind of stuff, but usually you can get 15 years of good  
155 gas after it closes, sometimes 20. So if it were to close tomorrow, we're very  
156 confident that we would have at least 15 years of gas.

157  
158 Right now, we talked about the landfill gas being burned. We would put it to a  
159 beneficial use. Right now it has no beneficial use. As I said, we think we can get  
160 about 3-1/2 megawatts worth of electricity, which is the equivalent of about a  
161 million barrels of oil a year—the energy equivalent of about a million barrels of  
162 oil. It's about enough gas to electrify 2,500 homes.

163  
164 Mr. Wright - For a year?

165  
166 Mr. Hecmanczuk - Yes sir.

167  
168 Mr. Blankinship - Each year?

169  
170 Mr. Hecmanczuk - Yes. Sure. For 20 years. Methane is one of the  
171 primary greenhouse gases that the EPA is after about destroying and controlling.  
172 Landfills are a primary contributor to methane greenhouse gas. So, in effect,

173 when we put it into electricity, we'll lower Henrico County's carbon footprint,  
174 making it a greener County. It also produces a revenue stream for Henrico  
175 County, as we buy the gas from the County landfill, we generate electricity, and  
176 sell electricity.

177  
178 Mr. Nunnally - You'll only have that one building for that generator?

179  
180 Mr. Hecmanczuk - We will have one building, yes.

181  
182 Mr. Nunnally - What size was it again?

183  
184 Mr. Hecmanczuk - Fifty-two by seventy-five.

185  
186 Mr. Nunnally - And one person on the property at all times?

187  
188 Mr. Hecmanczuk - Yes sir, 24/7.

189  
190 Mr. Wright - How much noise does this create?

191  
192 Mr. Hecmanczuk - Inside the building, obviously a diesel engine creates  
193 quite a bit of noise. But we have taken many steps to control that noise. Our  
194 building is sound insulated. The entire building is sound insulated. We use sound  
195 doors and sound windows. Immediately outside the building we typically get  
196 between 60 and 65 decibels. Immediately outside the building. So as you get  
197 greater distance, it falls well below that.

198  
199 Mr. Wright - I notice in the conditions it has that it shall not exceed  
200 65 decibels at the corners of the property.

201  
202 Mr. Hecmanczuk - Right. The corners of the property are at a minimum  
203 of 2,000 feet away. We should be 65 decibels standing immediately outside the  
204 building, so I don't think there will be any issue.

205  
206 Mr. Wright - Mr. Blankinship, what is the equivalent of 65  
207 decibels? I don't really know how that relates to practical application.

208  
209 Mr. Blankinship - That's actually a conversation. Somebody standing  
210 right next to you. Sitting right next to you speaking, I'm putting out about 65  
211 decibels.

212  
213 Mr. Hecmanczuk - So immediately outside our building you can have a  
214 normal conversation. That's about how loud it is. Now, the plant we built on the  
215 West Coast, we had a little bit more stringent sound requirements that they  
216 ordered at the property line of the landfill, and we're getting 39 to 50 dB at that  
217 property line.

218

219 Mr. Witte - That noise is like a constant hum, it's not like banging.  
220  
221 Mr. Hecmanczuk - That's true.  
222  
223 Mr. Witte - So it's more like white noise.  
224  
225 Mr. Hecmanczuk - That's true. There aren't any resonant frequencies  
226 that travel far and that are annoying to the human ear.  
227  
228 Mr. Witte - Okay, good.  
229  
230 Mr. Hecmanczuk - Of our ten plants, we don't have any noise complaints  
231 on any of those ten plants.  
232  
233 Ms. Harris - You have residents at those other plants living within  
234 2,000 feet of the building?  
235  
236 Mr. Hecmanczuk - We do at some. Some are rural; some are not. The  
237 other thing that will help in this instance is the plant will be located in a little bit of  
238 a valley behind a hill, so the 2,000 feet is not a flat 2,000 feet. The landfill is in  
239 between, so that should dissipate any sound that's out there.  
240  
241 Ms. Harris - Regarding safety, have you had any flare-ups or any  
242 type of safety mishaps?  
243  
244 Mr. Hecmanczuk - We've had no significant safety mishaps. We did  
245 have a diesel fuel release to the environment many years ago before we used  
246 secondary containment. We now put everything in secondary containment so if  
247 we had a tank a leak, it wouldn't go to the environment.  
248  
249 Mr. Blankinship - Explain briefly secondary containment.  
250  
251 Mr. Hecmanczuk - The tank sits in a swimming pool.  
252  
253 Mr. Blankinship - The tank is your primary containment.  
254  
255 Mr. Hecmanczuk - The tank is the primary containment. It's sitting inside  
256 a concrete basically swimming pool with four-foot walls. So if a tank was to  
257 rupture and leak, it would go into this swimming pool and you would know it and  
258 remediate it before it got to the environment.  
259  
260 Ms. Dwyer - Have you read the suggested conditions that have  
261 been proposed?  
262  
263 Mr. Hecmanczuk - I have, yes.  
264

265 Ms. Dwyer - Are you in agreement with those?  
266  
267 Mr. Hecmanczuk - Yes ma'am.  
268  
269 Ms. Dwyer - I noticed one of the conditions requires you to build  
270 only the improvements shown on the plans filed. Then as I look at the  
271 equipment plan it says the plan layout and dimensions are approximate, the plan  
272 layout is conceptual and preliminary. Is there any intent to deviate from the plan  
273 as presented to us this morning?  
274  
275 Mr. Hecmanczuk - There is not. That's our standard layout. That's kind  
276 of safety language in case the EPA or the DEQ requires something unusual,  
277 Sometimes they require unusual things for the air permit or something like that.  
278 But we don't see any reason we would have to deviate from this. We've built  
279 many like this.  
280  
281 Ms. Dwyer - Also the location of the plant. I think it's important that  
282 it is in the middle of the property, and that it is bounded by the quarry and the  
283 many natural and manmade boundaries there. Is there any indication that that  
284 will change?  
285  
286 Mr. Hecmanczuk - No. We have discussed this with Solid Waste, and  
287 they're okay with that location. That is where the flare is currently located, so  
288 obviously we want to be as close to that flare as we can because that's our  
289 source of gas. I don't see any reason that would change.  
290  
291 Ms. Harris - The other plants that you have, the flare does not  
292 create a safety hazard, the gas that is burning now?  
293  
294 Mr. Hecmanczuk - The existing flare is run by the landfill, and no, I would  
295 say it is not a safety hazard. When we take the gas into our engines, we will not  
296 have a flare, so we will turn their flare off. We'll have some automatic valves and  
297 some controls that will turn their flare off and give us all the gas, in which case  
298 there will be no flare.  
299  
300 Ms. Harris - The fuel deliveries will come in as one to two fuel  
301 deliveries a week by truck?  
302  
303 Mr. Hecmanczuk - That's correct.  
304  
305 Ms. Harris - How many trucks?  
306  
307 Mr. Hecmanczuk - One to two trucks a week. And we'll use the existing  
308 access and landfill entry and all that kind of stuff. So, there shouldn't be a heavy  
309 load on deliveries either.  
310

311 Mr. Wright - Mr. Blankinship, didn't we approve a similar request  
312 for a landfill in Eastern Henrico?

313  
314 Mr. Blankinship - Yes sir. The only difference really between this case  
315 and that one is that the County is getting revenue from this one.

316  
317 Mr. Wright - That one was much closer to residences.

318  
319 Mr. Blankinship - It was about 600 feet from the nearest residence, if  
320 memory serves, and this is about 2,000.

321  
322 Ms. Dwyer - Any more questions of Mr. Hecmanczuk? Is there  
323 anything else you'd like to add to your presentation?

324  
325 Mr. Hecmanczuk - No ma'am, not unless there are more questions.

326  
327 Ms. Dwyer - Anyone in opposition? I'll ask again. Anyone else  
328 who wants to speak to the case? That closes the case.

329  
330 Mr. Blankinship - Madam Chairman, the landfill is operated by the  
331 Department of Public Utilities, and the director of that department is here if  
332 anyone has any questions for him.

333  
334 Ms. Dwyer - Any questions by Board members for the County  
335 representative?

336  
337 Ms. Harris - I do have one question. When we notified the  
338 residents of this hearing, did we notify the people who were affected by  
339 Tidewater Quarry?

340  
341 Mr. Blankinship - Yes ma'am, we did. We went way beyond the  
342 requirement on this case. Because it's a County-related project and it's on  
343 County property, the administration just felt a little extra sensitivity was  
344 appropriate. I'm sure that anyone who might have an interest [inaudible; blank]. I  
345 believe we sent 300 notices.

346  
347 Ms. Dwyer - Does anyone on the Board want to ask a question of  
348 the County representative?

349  
350 Mr. Hecmanczuk - Thank you.

351  
352 **DECISION**

353  
354 Ms. Dwyer - Can I have a motion on the case?

355



356 Mr. Wright - I move that we approve this application for a use  
357 permit. It will not adversely affect the health, safety, or welfare of persons  
358 residing or working on the premises, or in the neighborhood. It will not  
359 unreasonably impair an adequate supply of light and air to adjacent properties,  
360 nor increase congestion in the streets, nor increase public danger from fire or  
361 otherwise unreasonably affect public safety, nor impair the character of the  
362 district or adjacent districts, nor be incompatible with the general plans and  
363 objectives of the official Land Use Plan of the County, and it will not impair the  
364 value of buildings or property in the surrounding areas.

365 Ms. Harris - Second.

366 Ms. Dwyer - Motion by Mr. Wright, seconded by Ms. Harris. Any  
367 discussion? All in favor say aye. All opposed say no. The ayes have it; the  
368 motion passes.

369  
370  
371  
372 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
373 Ms. Harris, the Board **approved** application **UP-015-09**, **INGENCO's** request for  
374 a conditional use permit pursuant to Section 24-116(c)(3) to operate a renewable  
375 energy facility at 10600 Fords Country Lane (Parcel 753-772-2123), zoned A-1,  
376 Agricultural District. The Board approved the use permit subject to the following  
377 conditions:

378  
379 1. Only the improvements shown on the plans filed with the application may be  
380 constructed pursuant to this approval. Any substantial changes or additions to  
381 the design or location of the improvements may require a new use permit.

382  
383 2. The applicant shall submit detailed site construction plans for administrative  
384 review and approval by all applicable County agencies.

385  
386 3. All exterior lighting shall be shielded to direct light away from adjacent  
387 property and streets.

388  
389 4. Noise from the plant shall not exceed 65 decibels at the corners of the landfill  
390 property near Opaca Lane and Winterberry subdivision.

391  
392 5. Prior to operation of the plant, the applicant shall secure all necessary permits  
393 from the US Environmental Protection Agency and the Virginia Department of  
394 Environmental Quality.

395  
396 6. All access to the plant shall be from the established entrance on Fords  
397 Country Lane

398  
399 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5

400 Negative: 0

401 Absent: 0



448 Mr. Wright - I take it you're thoroughly familiar with the dwelling.  
449  
450 Mr. Thornburg - Yes sir.  
451  
452 Mr. Wright - Is there any way that this dwelling could be modified  
453 at that corner to eliminate the variance?  
454  
455 Mr. Thornburg - If about three feet of that corner were taken off. It's  
456 brick; it's the bathroom. It's not feasible. I don't know whether it would be  
457 impossible, but it's not feasible.  
458  
459 Mr. Wright - This is a two-story house, of course.  
460  
461 Mr. Thornburg - Yes sir. It's a Cape Cod style. That's actually a full  
462 bathroom there in that corner.  
463  
464 Mr. Blankinship - It's not really like a porch or something that sticks out  
465 on one side; it's integral.  
466  
467 Mr. Wright - So that is the corner of the house that's affected that  
468 we see there.  
469  
470 Mr. Thornburg - Yes sir.  
471  
472 Mr. Blankinship - The fence on the right side of the screen is near the  
473 property line. We can't say that it's on the property line. My hunch is that that's  
474 what created the problem, that the fence was built not exactly on the property  
475 line, and then the builder came out and pulled his tape from the fence rather  
476 than from the property line. But that's just a guess. All this happened 28 years  
477 ago.  
478  
479 Mr. Wright - Is this a current picture?  
480  
481 Mr. Thornburg - Yes sir.  
482  
483 Mr. Wright - I notice a lot of screening, like trees.  
484  
485 Mr. Thornburg - Yes sir. There's a new development. Chapel Ridge,  
486 part of the Wyndham development that is adjoining it. And there's a buffer.  
487  
488 Mr. Wright - That buffer, that's what I want to address, too. That  
489 buffer is about—How wide is the buffer?  
490  
491 Mr. Thornburg - I seem to recall it was 20 feet. I'd like to make that  
492 subject to verification.  
493

494 Mr. Blankinship - I believe 20 feet is correct.  
495  
496 Mr. Wright - I see it, yes. So, there's a buffer between the property  
497 line of this property—What is this, Chapel Ridge?  
498  
499 Mr. Thornburg - Yes sir.  
500  
501 Mr. Wright - What's in that buffer?  
502  
503 Mr. Thornburg - Nature. Just shrubbery, grass.  
504  
505 Mr. Wright - It's not an open area or a road?  
506  
507 Mr. Thornburg - No sir. That adjoins the backyard, the very rear of the  
508 backyards of some homes.  
509  
510 Mr. Wright - So it appears from this photo information, that this  
511 house is hardly visible from the homes in Chapel Ridge.  
512  
513 Mr. Thornburg - When the leaves are on the trees, yes sir.  
514  
515 Ms. Dwyer - Not only is this house not oriented the way that it was  
516 when the variance was granted in the '80's, but it's also too close to the property  
517 line. The orientation is always of concern when we have these substandard lots  
518 because, in this case, we have a very large lot with a house bumped up so close  
519 to the property line that it violates another ordinance in addition to the lack of  
520 road frontage ordinance. Also, the front of this house is facing the backyard of  
521 the subdivision, of the houses in the subdivision. Correct?  
522  
523 Mr. Thornburg - No, not quite. It actually faces the driveway of—  
524 Chapel Road. It actually faces Chapel Road. That 31.88-foot line, if you can see  
525 that in the northern corner, that is still part of Chapel Road. That's the end of  
526 Chapel Road. So it does face that as well as the rear of the property. I think you  
527 just indicated a variance in the '80's. I'm not aware of any variance prior to this  
528 request today.  
529  
530 Mr. Blankinship - There was a variance in 1979 that allowed the  
531 dwelling to be built on a lot that did not have public street frontage. Two years  
532 later, the dwelling was actually built. So, apparently the plat that was submitted  
533 with the variance was somewhat schematic in nature.  
534  
535 Ms. Dwyer - It was schematic, except that it did give specific  
536 distances—  
537  
538 Mr. Blankinship - Yes ma'am.  
539

540 Ms. Dwyer - —and stated that the house would be 80 feet from  
541 this property line, when, in fact, it's 17 feet.  
542  
543 Mr. Wright - I notice that this lot contained 2.295 acres. Is that  
544 correct? That's what this plat shows here.  
545  
546 Mr. Thornburg - The tax records show something a little different.  
547  
548 Mr. Wright - This is 1981. Did they take some off for Chapel Road  
549 or something?  
550  
551 Mr. Blankinship - No sir. Chapel Road is still a private road.  
552  
553 Mr. Thornburg - The least amount I see was 2.295.  
554  
555 Mr. Wright - Whatever. But describe the entire lot. Is it open, or  
556 heavily wooded, or what?  
557  
558 Mr. Thornburg - It's all wooded except for a small area in the front  
559 yard and a substantial area behind the house that is fenced for the dog.  
560  
561 Mr. Wright - This lot, therefore, would not be desirable to be used  
562 as farmland?  
563  
564 Mr. Thornburg - It would have to be cleared; it's wooded. Yes sir.  
565  
566 Mr. Witte - How long has Mrs. Caplan owned this property?  
567  
568 Mr. Thornburg - Less than four years.  
569  
570 Mr. Witte - Okay. So she wasn't by any means the original owner  
571 of the property.  
572  
573 Mr. Thornburg - That's correct.  
574  
575 Mr. Witte - Okay.  
576  
577 Ms. Dwyer - Can we go back to the photograph that was taken  
578 from the corner of the house? Okay. I'm sorry; the one that shows the fence.  
579 That fence is actually on or near the property line. Is that correct?  
580  
581 Mr. Thornburg - I've measured it and it was exact. If that fence were to  
582 be extended, it appears to be exact.  
583  
584 Ms. Dwyer - Okay. So, that's the property line. And then there's  
585 another one that showed the view, I think, of the buffer. All right. The one you

586 just had. Right. So, that's the house, as best as I can determine, that is on  
587 Chapel Ridge Place. That's the backyard and the back of the house.

588  
589 Mr. Thornburg - Yes ma'am, that's correct.  
590

591 Ms. Dwyer - So this house is not directly facing because it's not  
592 square, but it's generally facing—This is what I meant when I said the house is  
593 generally facing the rear yards—

594  
595 Mr. Thornburg - Oh, okay.  
596

597 Ms. Dwyer - —of the houses on Chapel Ridge Place. This is the  
598 backyard of the subdivision and this house is facing it and 17 feet from the  
599 property line.  
600

601 Mr. Thornburg - It appears to me somebody took that picture from the  
602 corner of the house, but not from it facing towards the front.  
603

604 Ms. Dwyer - I think that gives us perspective of just how close this  
605 house is to the property line and how it is oriented to the rear lots of the  
606 neighborhood.  
607

608 Mr. Thornburg - Yes ma'am.  
609

610 Ms. Harris - Is it absolutely impossible to acquire four feet on the  
611 other side of this fence?  
612

613 Mr. Thornburg - The 20-foot buffer is what's next, and I don't know  
614 what the process would be. It would be up to the County if they would allow that  
615 and Chapel Ridge if they would go along with it.  
616

617 Mr. Blankinship - It's common area owned by the Wyndham  
618 Association. You would have to negotiate with the Wyndham Association. If they  
619 were willing to sell, then we would have to amend the subdivision plat because  
620 it's not just a lot line; it's also a subdivision boundary between this property and  
621 the other. It's a somewhat cumbersome process, but possible.  
622

623 Mr. Thornburg - One other comment. The house, when Ms. Caplan  
624 bought it, the previous owner hooked into the public sewer system at that exact  
625 same time, less than four years ago. I'm surprised they didn't run into this  
626 challenge at the time, but it wasn't brought up.  
627

628 Mr. Blankinship - I see in the staff report we're calling it a 30-foot buffer,  
629 so it may be 20 or it may be 30.  
630

631 Ms. Dwyer - I notice in your statement, Mr. Thornburg, that you  
632 say it's not feasible to rezone the property. Why is that?

633  
634 Mr. Thornburg - It's zoned agricultural around it. I asked questions of  
635 the Planning Department, and they said it would not be likely that zoning would  
636 be approved because of those circumstances. I think it had something to do with  
637 the density, proposed density in that particular area.

638  
639 Ms. Dwyer - Mr. Blankinship, can you comment?

640  
641 Mr. Blankinship - Well, the 2026 Land Use Plan that was just adopted  
642 shows it at Rural Residential, and shows Chapel Ridge as being Suburban  
643 Residential. I'm sure it shows the property to the north that way, too. Yes, the  
644 property to the north, which is in the process of being developed, is also shown  
645 as Suburban. But the recently adopted Comprehensive Plan shows this parcel  
646 and everything else on Opaca Lane and Chapel Road as Rural Residential. That  
647 would be staff's basis. I wasn't in on that meeting with him.

648  
649 Ms. Dwyer - Just for my clarification, when this variance was  
650 granted in 1979 and the representation was made by the applicant that the  
651 house would be in the center of this lot as opposed to 17 feet from the property  
652 line, certainly the applicant should not have built the house in the place where  
653 they claimed that they would not build it, but—

654  
655 Mr. Blankinship - The way we confirm that today, as you know, is that  
656 there is a condition on the variance that says that the applicant will build what  
657 he's shown, essentially. We have the approval letter from the 1979 variance, and  
658 there is not a condition to that effect. So, in a sense, the illustrations shown by  
659 the applicant are not binding on him in the same way an illustration on a rezoning  
660 case is not binding unless it's included in the proffer.

661  
662 Ms. Dwyer - There was no condition.

663  
664 Mr. Blankinship - Right. The two conditions are that a septic system  
665 must be approved by the Health Department, and the owners have to accept  
666 responsibility for that.

667  
668 Ms. Dwyer - So the County did not make an error in enforcing, I  
669 guess, the Board's decision.

670  
671 Mr. Blankinship - Right. The building should not have been built within  
672 three feet of the property line, but changing it from 80 feet to 20 feet would not  
673 have been illegal.

674  
675 Ms. Dwyer - All right. Any other questions by Board members?  
676 Anyone to speak to this case? The case is closed.

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**DECISION**

Mr. Wright - I move that we approve this case. By granting this variance, it will alleviate a clearly demonstrable hardship approaching confiscation.

Mr. Nunnally - Second.

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

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **approved** application **A-009-09, Barbara W. Caplan's** request for a variance from Section 24-94 to allow the existing dwelling to remain at 5400 Chappell Road (Parcel 749-773-5569), zoned A-1, Agricultural District. The Board approved the variance subject to the following conditions:

1. This variance applies only to the least side yard setback affecting the existing dwelling. All other applicable regulations of the County Code shall remain in force.
2. Any new or additional improvements shall comply with the applicable regulations of the County Code.
3. The owners of the property, and their heirs or assigns, shall accept responsibility for maintaining access to the property until such a time as the access is improved to County standards and accepted into the County road system for maintenance.

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

**A-010-09** **JOHN W. GIBBS, JR.** requests a variance from Section 24-95(b)(8) to build a one-family dwelling at 11310 Greenwood Road (Lakeview) (Parcel 773-772-5669), zoned A-1, Agricultural District (Brookland). The total lot area requirement and lot width requirement are not met. The applicant has 29,700 square feet total area and 100 feet lot width where the Code requires 30,000 square feet total area and 150 feet lot width. The applicant requests a variance of 300 square feet total area and 50 feet lot width.



722 Ms. Dwyer - Is there anyone here to speak to this case, for or  
723 against? If so, please stand and be sworn.

724  
725 Mr. Blankinship - Raise your right hands, please. Do you swear the  
726 testimony you're about to give is the truth and nothing but the truth so help you  
727 God?

728  
729 Mr. Condlin - I do.

730  
731 Ms. Dwyer - Good morning.

732  
733 Mr. Condlin - Good morning, members of the Board. My name is  
734 Andy Condlin from Williams Mullen. I have with me Tom Kinter, who also works  
735 with the applicant in this case.

736  
737 Mr. Blankinship - Let me just call the Board's attention to the materials  
738 Mr. Condlin submitted that were left on the table for you this morning.

739  
740 Mr. Condlin - The current property is zoned A-1 with a .6-acre  
741 parcel that really consists of four subdivided lots. It was subdivided in 1924, so  
742 there are four 25-foot lots that we have currently. It's a 100-foot lot width where  
743 a 150-foot lot width is required. This property does not meet the area  
744 requirement, which is 30,000 square feet.

745  
746 Literally, with respect to this property, you cannot now use the property as  
747 configured, and we believe for the following reasons it does meet all the  
748 requirements for the variance.

749  
750 First of all, the applicant did acquire the property in good faith. The applicant, nor  
751 its predecessor, did not cause the need for this variance, did not cause the  
752 shape of the property to occur. The lots have been like this, the four configured  
753 lots, the four 25-foot wide lots that are properly subdivided—25-foot wide lots; it's  
754 pretty odd to say nowadays—to get a hundred feet wide, had been together  
755 since 1930. So, they were once valid, validly subdivided. It used to meet the  
756 width standard, but it also used to meet the area requirements until at one time  
757 Greenwood Road was expanded, which brought it below the width requirements.  
758 He tried to acquire the property next door, without any success. They used to  
759 be, as I said, conforming lots, until the government action changed the Code  
760 requirements for the lot width and/or the taking for the Greenwood Road  
761 expansion.

762  
763 Given the current regulations, the current size of the lot effectively prohibits the  
764 use of the property. There is literally no beneficial use of the property that can be  
765 made at this time. When you look at the Code, every permitted use requires a  
766 greater area and a greater lot width than which is physically available with this  
767 property. Clearly, there is a hardship in this case. The old property that at one

768 time did meet the Code requirements, and at one time was usable without any  
769 change in the property at all, now, because of the area and width requirements  
770 that have changed in the Code, or physically because of the takings, through no  
771 cause of the applicant, cannot now be used for any beneficial use.

772  
773 This use is not generally the same within the district, the zoning district or the  
774 vicinity. It's not shared, generally, by the area properties. We're asking for a  
775 dwelling use. A dwelling use, of all the uses listed within the A-1 district, has the  
776 smallest width and area requirements. It's the closest. A dwelling use is also  
777 appropriate in this property because the lot, in and of itself, is big enough, as  
778 shown in our application, to actually meet all the side yard, front yard, and rear  
779 yard setbacks. We can meet all the setback requirements. It literally is lot area  
780 and the lot width requirement causing our problem.

781  
782 A dwelling unit is also consistent with the County's Comprehensive Plan. It  
783 certainly is consistent with the area, which is primarily and predominantly single-  
784 family dwelling uses. The home size itself that has been proposed is, as well,  
785 consistent with the home sizes in the area, particularly along Greenwood Road.  
786 The authorization of the variance will not be a detriment to the adjacent property  
787 or the dwellings within the area, and it certainly meets all setbacks, and is of  
788 comparable size.

789  
790 As I said, and to conclude, this property at one time was properly subdivided. It  
791 did allow for construction and use of the property. But since that time, the only  
792 change to the property was the taking for the widening of Greenwood Road. For  
793 these reasons, we believe that the property does meet all the requirements for a  
794 variance to be granted for a hardship occurring at this time. I'll be happy to  
795 answer any questions that you have. As well, Mr. Kinter is here.

796  
797 Ms. Dwyer - Any questions for Mr. Condlin?

798  
799 Ms. Harris - You said this property's problem is not shared by  
800 neighboring properties?

801  
802 Mr. Condlin - I was talking about generally the standard is within  
803 the vicinity of the property. There are two other lots, which I believe are right  
804 here, that are about 85 feet wide each, I believe. Those two I think are in a  
805 similar situation. I certainly don't know the title history of when they were put  
806 together and where that was caused. My understanding of the standard, my  
807 reading of the standard, is that it's not immediately adjoining property, or even in  
808 the same block, it's within the zoning district, A-1, or within the vicinity generally.  
809 Within the vicinity, within the staff report, it makes a determination that, in fact,  
810 there are a number of homes within the area, that there are over 40 other homes  
811 along Greenwood between Old Washington and Bent Pine Road, approximately  
812 one mile. Most of these lots are on 200 feet or wider, but few are on narrower  
813 lots. Within this distinct vicinity, there are only a few lots in this area immediately

814 of the very many that are in this area that actually share this. I don't think that  
815 prohibits the granting of a variance. Certainly, I think if they're in a similar  
816 situation, and if a hardship was not caused by them, they would also have the  
817 right to a variance, if they can meet the setbacks. And I think that's what makes  
818 this one a little bit different. This lot is wider than the other two adjacent lots. We  
819 can meet all the standard setback requirements in order to build a dwelling.  
820 We're not asking for a setback variance in this case. I'm not sure that they  
821 would be able to meet that standard.

822  
823 Mr. Witte - Did I understand you to say that additional road  
824 frontage was attempted to be purchased from the adjacent land owners?

825  
826 Mr. Condlin - From my understanding of talking with the applicant,  
827 from the folks next door. They know the folks and they were not able to get  
828 anything to widen the lot. This lot itself has been in existence like this since 1930,  
829 and they acquired it as it had been in existence since at least 1930. But no, they  
830 have not been able to widen the lot to try to meet the Code requirements.

831  
832 Ms. Dwyer - I'm looking at the staff report. I think you just  
833 referenced this comment. It says in the block between Branch and Braxton,  
834 there are two dwellings and six vacant lots. I believe the two dwellings meet the  
835 road frontage and lot area requirements just by eyeballing it. And then of the six  
836 vacant lots, five are less than 150 feet. So, this seems to me to be a particularly  
837 important case because it could set a precedent for a majority of the lots in this  
838 one block. All of those lots share the lack of adequate road frontage with this lot.  
839 So, it seems to me that it could be, certainly, a recurring issue in this block alone.

840  
841 Mr. Condlin - Yes ma'am. I apologize that you only received the  
842 memo today. We received the staff report on Monday and turned our memo  
843 around on Monday as well. I do not believe the in standards you need to look at,  
844 that you're required to look at it as part of the statutory and case law in there that  
845 says that the hardship is not generally shared in the zoning district or the same  
846 vicinity. I do not believe that there has ever been an interpretation that said the  
847 same vicinity is within the block. I would argue that, first for all, the zoning district.  
848 Certainly, this is not a standard issue within the A-1 District, such as at one time  
849 A-1, for example, might have been 200 feet and a lot of lots were subdivided  
850 accordingly, and the standard had been changed down to 100 feet. I do not think  
851 that's the issue in this case. I don't think this applies to A-1 generally, nor the  
852 vicinity. Looking up the case law, it certainly wasn't within the block; it's within the  
853 general area of the home in which it was located, and the general nature of the  
854 environment. Certainly, there is continuing building going on in this particular  
855 area. I will point out that the facts—if I can pull up my reference here. There are  
856 two subdivisions in the area that have similar lot sizes. Certainly when you look  
857 at the homes in the area, there are dwelling sizes that are comparable that we  
858 can meet. I only counted four, but maybe we're the fifth. I don't know if you  
859 counted us as the "five" in this area.

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Mr. Blankinship - I'm looking on both sides of the street.

Mr. Condlin - Right. I counted these two and these two here. Certainly, we're one of the wider ones of those. And like I said, we can meet the Code standards for side yard setbacks. I think that's different than the precedent of the others. If they can meet it, maybe they should be able to grant that variance. I'm not here to argue their case, and I don't think the standard is immediately adjacent, or even from the same block. If the standard is within the same vicinity, this vicinity, I would contend, would be maybe not a mile, or maybe it is a mile, but it's certainly within the area. And in the area, I don't think this is shared generally by all the other lots in this area.

Ms. Dwyer - I guess as I look at it from a policy standpoint, it seems to me that you're right, this is not an appropriate agricultural use, that a residential use is appropriate. I think you're asking for the right use. I'm just concerned about the development standards of all these piecemeal variances. Seems to me that this would be a perfect candidate for rezoning because you do want a residential use, and there are other lots on this block—five out of the six lots—that don't meet the agricultural standards, but could meet a fairly generous residential zoning development standard. Have you looked into rezoning this lot?

Mr. Condlin - In talking with some of the staff, obviously their concern is the single-lot rezoning.

Ms. Dwyer - I can appreciate that.

Mr. Condlin - That is a consistent concern that folks have. Certainly, by putting property together, that could occur. Since 1930, there has been no ability to put the properties together. I'm not sure. Certainly maybe it could happen in the next five to ten years, but you can see any zoning with the subdivisions—I apologize that you can't get to Quail Walk in this area. You can see some of the large lots, and that's exactly what staff would be looking for, certainly within the block area, to have a more consistent subdivision to be able to be put in rezoning. So, would that occur? At some point maybe in the far future, but we don't see anything occurring, and certainly nothing has occurred since the 1930's. I also would point out, with all due respect, I don't think the fact that we could meet another zoning standard is a question for today. The question is, is there a hardship, and I would contend there is under the current zoning. Was it acquired in good faith, and did we cause the hardship? And the answer to that is, yes, we did acquire it in good faith because there were four legitimate lots. Through no fault of ourselves or our predecessor are we put in this situation. At this point, I would think that we could be a candidate for a variance.

904 Ms. Harris - I do have a question, Mr. Condlin. I don't know if Mr.  
905 Blankinship received the [unintelligible] that was designed in 1925, I believe. At  
906 this point, was this agricultural zoning or was this residential?

907

908 Mr. Blankinship - That was before there was any zoning.

909

910 Ms. Harris - Okay.

911

912 Mr. Blankinship - The first zoning ordinance was adopted in 1933.

913

914 Ms. Harris - When you see these small lots, you would tend to  
915 think it would be residential more so than agriculture.

916

917 Mr. Condlin - I think that would obviously be the intent. There is no  
918 way to tell. That's easy for me to say we met the standards; there weren't any  
919 standards at that time, so I guess—And plus, even if they were or were not for  
920 residential, I certainly think residential is the character of this area as you drive  
921 around this area. Certainly there are some smaller farms, but that's the  
922 exception to the rule in this area.

923

924 Ms. Dwyer - Any other questions of Mr. Condlin?

925

926 Mr. Condlin - Thank you.

927

928 Ms. Dwyer - Mr. Condlin, did you want someone else to speak for  
929 the case? Okay. All right. Anyone else to speak to the case, please come  
930 forward to the podium.

931

932 Mr. F. M. Brooks - My name is Frederick M. Brooks. My house is right  
933 next door to it. I just want to ask one question. What kind of sewer system is he  
934 going to put in? They've tried to get it perked for the last five years, a couple of  
935 other people, and it never passed.

936

937 Mr. Blankinship - Madam Chairman, do you want to ask Mr. Condlin if  
938 he has a reply?

939

940 Mr. Kinter - Good morning. My name is Tom Kinter—K-i-n-t-e-r.  
941 We have applied for a permit for a septic system. Our soil scientist has  
942 submitted that; we've received comments back. We believe we can do a  
943 sufficient system pursuant to all codes and requirements.

944

945 Mr. Blankinship - One of the conditions recommended by the staff is  
946 that you would have to do that.

947

948 Mr. Kinter - Yes sir.

949

950 Mr. Wright - So the answer to that is they would be required to  
951 have a permit for a septic system before he could build a house.  
952

953 Mr. Kinter - Yes sir. We believe there are engineering methods  
954 that will allow us to provide septic for this site.  
955

956 Mr. Witte - It also says that the dwelling shall be served by public  
957 water. Is there public water in the street in front of that?  
958

959 Mr. Condlin - To that point—and, Ben, I don't know if you made  
960 that—I think there is a condition right above there in reference to well. We'd like  
961 to have that removed. We're going to be served by public water. With respect to  
962 the conditions, I know you often ask are they acceptable, and the answer is, yes  
963 they are. But at the end of #3 it says, "and approval of a well location." If we  
964 could have that stricken with respect to the conditions because it is public water.  
965

966 Mr. Blankinship - That was distributed to you.  
967

968 Mr. Condlin - I'm sorry; I didn't know.  
969

970 Mr. Blankinship - No, that's okay.  
971

972 Mr. Wright - If it's served by public water, why do you need a  
973 reference to a well on there?  
974

975 Mr. Blankinship - Exactly.  
976

977 Ms. Harris - Mr. Brooks, you are an adjacent neighbor? Where is  
978 your property?  
979

980 Mr. F. M. Brooks - Right next door to it. Right to the left of that. The little  
981 white dot there.  
982

983 Mr. Blankinship - 11330?  
984

985 Mr. F. M. Brooks - Yes.  
986

987 Ms. Harris - Do you wish to build a home, too?  
988

989 Mr. F. M. Brooks - Do what?  
990

991 Mr. Blankinship - He has a home.  
992

993 Mr. F. M. Brooks - I've been living there for 50 years.  
994

995 Ms. Harris - Oh, okay.

996  
997 Mr. F. M. Brooks - I've been in that neighborhood for 65 years.  
998  
999 Mr. Witte - Other than the septic system, do you have any  
1000 opposition to this property?  
1001  
1002 Mr. F. M. Brooks - That's the only thing. We just wanted to know  
1003 because I know several other people have tried to get it passed. They've drilled  
1004 enough holes over there to start a worm farm.  
1005  
1006 Mr. Wright - Do you have a septic system?  
1007  
1008 Mr. F. M. Brooks - I have septic.  
1009  
1010 Mr. Wright - Yours operates properly?  
1011  
1012 Mr. F. M. Brooks - Yes. I have no problem with it.  
1013  
1014 Mr. Witte - As we discussed, you're aware of the fact that even if  
1015 we approve this variance, if they can't get the Health Department to approve the  
1016 septic permit, or the Building Department, they still can't build on it.  
1017  
1018 Mr. F. M. Brooks - Yes.  
1019  
1020 Ms. Dwyer - Yes sir.  
1021  
1022 Mr. F. F. Brooks - My name is Frederick F. Brooks. I own property  
1023 across the street from it. I have about four acres over there. For 50 years, I've  
1024 tried to get some kind of septic system on it, and they tell me there's none that  
1025 you can put on them. I own the same property that he owns across the street. If  
1026 he's going to get a variance for 100 feet, I think the whole section should be the  
1027 same.  
1028  
1029 Mr. Witte - I'm sorry, what section are you speaking of?  
1030  
1031 Mr. F. F. Brooks - Section A.  
1032  
1033 Mr. Blankinship - He owns the three lots across the street—11329,  
1034 11315, and 11309. Maybe you can talk to their engineer. If they can get a  
1035 system approved, maybe they can help you get a system approved.  
1036  
1037 Mr. F. F. Brooks - Can I still use the same hundred feet?  
1038  
1039 Mr. Blankinship - That would take a new application just like this one.  
1040

1041 Ms. Dwyer - What this states is that the building permit is  
1042 contingent on the Health Department requirements including requirements for a  
1043 drain field. So, how does that work in practice, Mr. Blankinship? If this is  
1044 approved, then the application for a building permit, would that be literally  
1045 contingent upon certification by the Health Department that the septic system  
1046 has been approved?  
1047  
1048 Mr. Blankinship - Yes ma'am. Their building permit will actually be  
1049 routed to the Health Department, and they'll have to sign off on it.  
1050  
1051 Mr. F. F. Brooks - About 40 years ago, there were two bond issues run  
1052 for County-wide sewage because they guaranteed, you know, when it got the  
1053 bond issue through, that they would put sewage where everybody could hook up  
1054 to it. Henrico County. They've been paying taxes on it for 40 years, and they still  
1055 haven't run the sewage up there.  
1056  
1057 Ms. Dwyer - All right.  
1058  
1059 Ms. Harris - Mr. Brooks, what is your address?  
1060  
1061 Mr. F. F. Brooks - Ma'am?  
1062  
1063 Ms. Harris - What is your address?  
1064  
1065 Mr. F. F. Brooks - It's Lot 8 through 14 on Greenwood Road.  
1066  
1067 Mr. Witte - That's 11329 through 11309? What's your street  
1068 address?  
1069  
1070 Mr. F. F. Brooks - I don't have an address on it.  
1071  
1072 Mr. Blankinship - Yes sir, that's correct.  
1073  
1074 Mr. Witte - Okay, thank you.  
1075  
1076 Mr. F. F. Brooks - I'm 90 years old, and I would like to be able to use the  
1077 property, but I haven't been able to use it.  
1078  
1079 Mr. Wright - You might be able to check with Mr. Condlin or  
1080 somebody that represents these folks. They may be able to help you find a way  
1081 to put in this septic tank or the proper sewage. That's what I would suggest.  
1082  
1083 Ms. Dwyer - Thank you, Mr. Brooks.  
1084  
1085 Mr. Witte - Thank you, sir.  
1086



1087 Ms. Dwyer - Mr. Condlin, would you like an opportunity to  
1088 respond?

1089  
1090 Mr. Condlin - No ma'am. We have the application we've already  
1091 submitted to the Health Department. We're working with them, including the  
1092 perk. I didn't figure you'd want to see that. I think the standard of the condition  
1093 certainly fits that, which is it has to be approved by the Health Department before  
1094 we can get our building permit, which is the typical procedure.

1095  
1096 Mr. Wright - One thing. Did we discuss the conditions when you  
1097 were up before?

1098  
1099 Mr. Condlin - I kinda stuck my nose in the other presenter's case  
1100 here, but other than my one caveat, the conditions are fine. They're acceptable  
1101 to the applicant. Again, I didn't want there to be any confusion so we're not back  
1102 here 20 years from now wondering about a well location and what it was doing  
1103 there when we have public water.

1104  
1105 Ms. Dwyer - One other statement made in the staff report was that  
1106 there might be a road widening along Greenwood. Their recommendation was  
1107 that the front yard setback be 66 feet from the current right-of-way. Is that  
1108 something you could agree to in the conditions?

1109  
1110 Mr. Condlin - Yes, with the understanding with this discussion here  
1111 that I think one of the conditions says it has to be built generally as shown. That  
1112 was one of the statements that they asked for on the application. With your  
1113 recommendation that it be pushed back to that 66 feet, that's fine. I don't want  
1114 there to be a conflict with any of those conditions.

1115  
1116 Ms. Dwyer - Technically, I don't think you have to agree to a  
1117 variance condition, but.

1118  
1119 Mr. Condlin - Technically, you're right, but I know you like to have  
1120 everybody in line. So, that's fine. We certainly have enough room to meet that,  
1121 and that makes sense.

1122  
1123 Mr. Blankinship - The sketch that they submitted shows a greater  
1124 setback than that.

1125  
1126 Mr. Condlin - Okay. All right. I thought it said 50, but—Oh, you're  
1127 right. My apologies on that. Thank you.

1128  
1129 Ms. Dwyer - Thank you. Any other questions by Board members?  
1130 Anyone? That will close the case.

1131  
1132

1133 **DECISION**

1134

1135 Mr. Witte - I'm going to make a motion that we approve this. I  
1136 don't think it's going to be detrimental to the area. I don't think it's going to affect  
1137 any public safety whatsoever. The only opposition to this who spoke was Mr.  
1138 Brooks and Mr. Brooks. Their only opposition was concern for a septic system.  
1139 Mr. Brooks owns two of the other lots that are short in the area. The one on the  
1140 corner of Braxton has Braxton Road frontage. So, under those circumstances, I  
1141 make a motion we approve this.

1142

1143 Mr. Wright - Second.

1144

1145 Ms. Dwyer - Motion by Mr. Witte, seconded by Mr. Wright. Any  
1146 comments or discussion?

1147

1148 Ms. Harris - I don't think it was mentioned that the applicant did  
1149 not cause the problem. I quite agree that taking of the lot by the jurisdiction did  
1150 create the problem.

1151

1152 Ms. Dwyer - Let me just follow up with a point of clarification. We  
1153 had an amended set of conditions. I assume that the motion included that  
1154 amended set, which eliminates reference to the well location.

1155

1156 Mr. Witte - I agree.

1157

1158 Mr. Wright - I agree to that.

1159

1160 Ms. Dwyer - I just wanted to clarify. I think that is what's actually  
1161 presented, but I wanted to clarify that. There also was a statement in the staff  
1162 report about the house being located far enough away from the right-of-way that  
1163 it would accommodate future widening. Sixty-six feet. Do you want to include  
1164 that as part of your motion?

1165

1166 Mr. Witte - Yes. I think that's appropriate.

1167

1168 Ms. Dwyer - Do you agree?

1169

1170 Mr. Wright - Yes.

1171

1172 Ms. Dwyer - So, Condition #2, then, would include the staff  
1173 recommendation that the house be at least 66 feet from the current right-of-way  
1174 of Greenwood Road. All right. We have a motion and a second. All in favor say  
1175 aye. All opposed say no. The ayes have it; the motion passes.

1176

1177 After an advertised public hearing and on a motion by Mr. Witte, seconded by  
1178 Mr. Wright, the Board **approved** application **A-010-09, John W. Gibbs, Jr's**

1179 request for a variance from Section 24-95(b)(8) to build a one-family dwelling at  
1180 11310 Greenwood Road (Lakeview) (Parcel 773-772-5669), zoned A-1,  
1181 Agricultural District (Brookland). The Board approved the variance subject to the  
1182 following conditions:

1183

1184 1. This variance applies only to the total lot area and lot width requirements for  
1185 one dwelling only. All other applicable regulations of the County Code shall  
1186 remain in force.

1187

1188 2. [AMENDED] The dwelling shall be located on the lot as shown on the sketch  
1189 submitted with the application, and at least 66 feet from the right-of-way of  
1190 Greenwood Road. Any substantial changes to the location of the dwelling may  
1191 require a new variance.

1192

1193 3. Approval of this request does not imply that a building permit will be issued.  
1194 Building permit approval is contingent on Health Department requirements,  
1195 including, but not limited to, soil evaluation for a septic drainfield and reserve  
1196 area.

1197

1198 4. At the time of building permit application, the applicant shall submit the  
1199 necessary information to the Department of Public Works to ensure compliance  
1200 with the requirements of the Chesapeake Bay Preservation Act and the code  
1201 requirements for water quality standards.

1202

1203 5. Any dwelling on the property shall be served by public water.

1204

1205

1206 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5

1207 Negative: 0

1208 Absent: 0

1209

1210

1211 **A-011-09 JOHN W. WRAY, JR. AND CATHERINE S. ROLFE**

1212 request a variance from Section 24- 9 to build a one-family dwelling at 9480  
1213 Hoehns Road (Parcel 765-759-1344), zoned A-1, Agricultural District and R-3AC,  
1214 One-family Residence District (Conditional) (Brookland). The public street  
1215 frontage requirement is not met. The applicant has 0 feet public street frontage  
1216 where the Code requires 50 feet public street frontage. The applicant requests a  
1217 variance of 50 feet public street frontage.

1218

1219 Ms. Dwyer - Anyone here to speak to the case? All those who are  
1220 planning to speak or might speak, please stand and be sworn.

1221

1222 Mr. Blankinship - Raise your right hands, please. Do you swear the  
1223 testimony you're about to give is the truth and nothing but the truth so help you  
1224 God?

1225  
1226 Mr. Snipes - I do. My name is Harry Snipes. I'm representing the  
1227 purchaser and the owner of the property. This particular piece of property was a  
1228 family subdivision divided in 1939. There's an existing home on the property. The  
1229 applicant wishes to knock that house down because it's in total disarray and it's  
1230 unfeasible to restore. They would like to build a new home, moving the site just a  
1231 little bit in there. This is a private road that enters into Hungary Road and then  
1232 picks up another family division, I guess it would be to the south of it. There are  
1233 approximately, I think, eight—Sylvia can probably answer this better than me. I  
1234 think there are eight homes on this road right now. This is the request for a  
1235 variance basically to knock the existing home down, and to build a new dwelling.  
1236  
1237 Mr. Witte - This lot, is this the 3.5-acre lot?  
1238  
1239 Mr. Snipes - Yes sir. Three point five is in exactly the blue and the  
1240 red line. I think that other red line between the blue and the red is not part of that  
1241 lot, I don't think. Maybe it is. There are two parcels there that the owner owns.  
1242 We're trying to just work on the one lot, the three-acre lot.  
1243  
1244 Mr. Blankinship - At some point, the boundary was adjusted. So what's  
1245 shown in red now is the property line, the lot with the house on it. Then  
1246 immediately to the west of where that property bows out a little bit, is another lot  
1247 that is also owned by the applicant.  
1248  
1249 Mr. Snipes - Right. Owned by the owner, not the applicant.  
1250  
1251 Mr. Blankinship - By the owner. Excuse me, yes. Not the current  
1252 owner.  
1253  
1254 Mr. Snipes - I think probably the adjustment in that line was made  
1255 so that that house met the setback requirements.  
1256  
1257 Mr. Blankinship - I think so.  
1258  
1259 Mr. Witte - Okay. So, you don't intend to subdivide this lot.  
1260  
1261 Mr. Snipes - No.  
1262  
1263 Mr. Witte - Just replace the existing dwelling.  
1264  
1265 Mr. Snipes - Replace the existing dwelling with a new dwelling.  
1266 John can speak for it. He's going to move the dwelling up a little bit more toward  
1267 the middle of the lot. That house sort of sits to the left, or the west side of the lot,  
1268 so I think he's going to move it up so it sits a little more to the middle.  
1269  
1270 Mr. Witte - I see. Thank you.

1271  
1272 Mr. Snipes - Basically, where you have that little dot. Isn't that  
1273 about where you're going to put that house, John? That little dot thing is where  
1274 he wants to move the house to.  
1275  
1276 Mr. Nunnally - What size house are you planning on putting there,  
1277 Mr. Snipes?  
1278  
1279 Mr. Snipes - A 3,000 square foot? It's going to be a 3,000-square-  
1280 foot passive solar home.  
1281  
1282 Mr. Witte - So you're actually moving it further away from the  
1283 house that's behind it.  
1284  
1285 Mr. Snipes - Yes sir.  
1286  
1287 Mr. Wright - When was this lot created?  
1288  
1289 Mr. Snipes - 1939.  
1290  
1291 Mr. Wright - 1939?  
1292  
1293 Mr. Snipes - Yes. All those lots on that road were gifted by the  
1294 applicant's mother, I believe. Sylvia can answer this. It was subdivided in 1939,  
1295 and she gave each one of her children a parcel there.  
1296  
1297 Mr. Wright - Do you know when the house that's on there now was  
1298 built?  
1299  
1300 Mr. Snipes - I'll have to give that to Sylvia.  
1301  
1302 Mr. Blankinship - Our records show 1937.  
1303  
1304 Mr. Snipes - Is it older than that, Sylvia? Thirty-seven.  
1305  
1306 Mr. Wright - The house that's on the property now was built in  
1307 1937.  
1308  
1309 Mr. Blankinship - Yes sir.  
1310  
1311 Ms. Harris - If this variance is not granted, what would you do?  
1312  
1313 Mr. Snipes - The only other option would be to try to come through  
1314 Hungary Woods Terrace, but the neighbors in the family subdivision, we're trying  
1315 to keep that subdivision out of this family division, and to eliminate road traffic up  
1316 on that private road.

1317  
1318 Ms. Dwyer - I would like to follow up with that because staff  
1319 mentioned that you do actually have road frontage on Hungary Woods Terrace.  
1320  
1321 Mr. Snipes - But the applicant and the owner are two different  
1322 people. The applicant is not requesting that zoning. We're leaving that property  
1323 as a buffer between the two subdivisions. We're just trying to deal with the  
1324 existing subdivision that's already there.  
1325  
1326 Ms. Dwyer - I understand that might not be your first choice, but  
1327 what we're saying is—The parcel on Hungary Woods Terrace, is that owned by  
1328 the applicant? You said it's not owned by the applicant?  
1329  
1330 Mr. Snipes - Not owned by the applicant.  
1331  
1332 Ms. Dwyer - Who owns it?  
1333  
1334 Mr. Snipes - The Madeline Trust owns that.  
1335  
1336 Mr. Blankinship - The applicant is a contract purchaser at this point?  
1337  
1338 Mr. Snipes - Right, that's right.  
1339  
1340 Mr. Blankinship - So currently they're owned by the same person.  
1341  
1342 Ms. Dwyer - Currently they're owned by the same person.  
1343  
1344 Mr. Blankinship - If this application is approved and the contract closes,  
1345 they'll be owned separately.  
1346  
1347 Ms. Dwyer - So currently they could be consolidated, and there  
1348 could be access.  
1349  
1350 Mr. Snipes - Well, you run into the issue that the other property is  
1351 zoned R-3A, and this property is zoned A-1. I'm not sure if you can combine the  
1352 two properties to do that, based on the Zoning Ordinance. I don't know.  
1353  
1354 Ms. Dwyer - I don't think the zoning would prevent you from  
1355 consolidating properties.  
1356  
1357 Mr. Snipes - They were never together to start with. We're not  
1358 trying to make a subdivision, you know. We're just trying to deal with what we  
1359 have.  
1360  
1361 Ms. Dwyer - Once you tear this house down, you don't have  
1362 anything, is the issue. So you have to request a variance to build from scratch.

1363  
1364 Mr. Snipes - Right, which I was kind of unaware of because I  
1365 would have thought if you can add an addition to the house without getting a  
1366 variance, why couldn't you just build a new house. I feel like the process doesn't  
1367 quite fit the application, but—  
1368  
1369 Ms. Dwyer - It's certainly possible, since the two parcels are  
1370 owned by the same person at this point, to combine the two and to have access  
1371 to a public street and not require the variance.  
1372  
1373 Mr. Snipes - By the person that owns it, you could do that.  
1374 Theoretically, you could do that.  
1375  
1376 Ms. Dwyer - You need to be on the microphone, ma'am.  
1377  
1378 Mr. Blankinship - What is your name, please?  
1379  
1380 Ms. Rolfe - Catherine Rolfe—R-o-l-f-e. The subdivision that's to  
1381 the west of the larger parcel is R-3A. They're small lots that are all done in that  
1382 T-hole sort of orientation. The only way we've come in to look at the property is  
1383 down Hoehns Road, the private road. That's where we want the house to be  
1384 faced. We're not interested in subdivision; we're interested in the 3-1/2 acre  
1385 property.  
1386  
1387 Ms. Dwyer - You're the contract purchaser?  
1388  
1389 Ms. Rolfe - Yes.  
1390  
1391 Mr. Blankinship - You're not the contract purchaser of that other parcel.  
1392  
1393 Ms. Rolfe - We are now, but we would be willing to—  
1394  
1395 Mr. Blankinship - Oh, I'm sorry.  
1396  
1397 Ms. Rolfe - We added it only as buffer. What we want is the large  
1398 parcel to put one home on and keep it facing Hoehns Road.  
1399  
1400 Mr. Blankinship - Okay. I misunderstood.  
1401  
1402 Ms. Rolfe - Hoehns Road is a private road, so we found out we  
1403 couldn't rebuild without the variance.  
1404  
1405 Mr. Blankinship - So the contract does include both parcels.  
1406  
1407 Ms. Rolfe - Presently.  
1408

1409 Mr. Blankinship - I misspoke earlier.

1410

1411 Mr. Wray - I'd like to add to that. John Wray—W-r-a-y. We  
1412 purchased these two pieces of property together. These two parcels were  
1413 presented to us at separate times. We offered to buy the large parcel first, and  
1414 then we were told that the parcel next to us is part of that subdivision. Actually, it  
1415 has the address of the subdivision, and it's zoned completely separate. It's a  
1416 completely separate lot. It has no bearing on the larger lot other than it's adjacent  
1417 to it. There is no interest in combining these two parcels and putting a road  
1418 through it. Therefore, we would not accept probably the purchase of either of  
1419 these properties if you forced us to put these two properties together. I don't  
1420 think that's a proper thing to ask us to do, and there are many variances that  
1421 have already been given for Hoehns Road for this 50-foot public street variance.  
1422 There is no reason not to give it to us because of what you just stated, or put  
1423 these two properties together.

1424

1425 Ms. Dwyer - Let me just clarify something. We are simply  
1426 considering options that would enable you to be able to build on this lot. So,  
1427 that's why staff pointed that out, and that's why we're looking at it. We have a  
1428 different perspective than you do as a contract purchaser. We're looking at  
1429 granting a variance as an exceptional situation, especially since some Supreme  
1430 Court cases have come down in the last several years. So, granting a variance is  
1431 an unusual and exceptional situation. What you have here, once you remove  
1432 that house, is a lot that cannot be built on, and you're asking for us to make an  
1433 exceptional decision on your behalf so that you can build that. We're not forcing  
1434 you to do anything, certainly, but we're just considering all the options that are  
1435 available to determine whether or not this lot can be built upon. One might be the  
1436 exceptional grant of a variance by this Board, and one might to recognize that  
1437 you could have access to your property through the cul-de-sac, which is a public  
1438 street. Right now, the law requires you to have public street frontage. The  
1439 variance would be an exceptional decision on our part that would allow you not  
1440 to comply with the law.

1441

1442 Mr. Wray - I understand you perfectly.

1443

1444 Mr. Wright - Let me ask a question. That lot is a little over an acre.

1445

1446 Ms. Harris - Which one?

1447

1448 Mr. Wright - The one that's part of the subdivision. They could  
1449 build on that lot right now.

1450

1451 Mr. Blankinship - Yes sir.

1452



1453 Mr. Wright - Let's assume they built a house on that lot. How  
1454 would that affect what you're now trying to do, to say how could you combine  
1455 both lots if they've already built a house on it?  
1456

1457 Ms. Dwyer - Hypothetically, that would—  
1458

1459 Mr. Wright - That would knock that in the head, wouldn't it? If we  
1460 denied this variance, and they want to go ahead and build a house on that lot,  
1461 then they could come back and then that argument would be out the window,  
1462 wouldn't it?  
1463

1464 Ms. Dwyer - They'd have to come back and get a variance without  
1465 that parcel. Can you be more specific about the location of this house?  
1466

1467 Mr. Wray - Sure. I can be real specific. Right where the house is  
1468 now, we're going to move it to the center of the lot.  
1469

1470 Ms. Dwyer - When we have these substandard lots, one of the  
1471 issues is—Certainly, as we saw in the first case we had today where the house  
1472 was facing the backyard of the subdivision and 17 feet from it, we certainly want  
1473 to avoid that. Can you give us distance from property lines?  
1474

1475 Mr. Wray - Oh, of course. The new house will be, like, 70 feet  
1476 from the left side, as I'm looking at it, and at least 70 or 80 feet or more—This is  
1477 a huge lot. This is 3-1/2 acres. That's huge.  
1478

1479 Ms. Dwyer - Where would the house be oriented? Where would  
1480 the front of the house be facing?  
1481

1482 Mr. Wray - The front is probably going to be facing—There's an  
1483 orchard right at the beginning of the lot when you look to the north there. The  
1484 front will sort of be facing the orchard and the rear would be facing south  
1485 because we want to use it for solar gain.  
1486

1487 Ms. Dwyer - The house would be oriented toward the—  
1488

1489 Mr. Wray - North.  
1490

1491 Ms. Dwyer - The north.  
1492

1493 Mr. Wray - His orientation is not what I put on the sheet. The  
1494 house will be turned so the orientation—the front will be towards the north; the  
1495 back will be to the south.  
1496

1497 Mr. Wright - Of course whatever is built on that will have to meet  
1498 the County side yard—

1499  
1500 Mr. Wray - There is no problem with that.  
1501  
1502 Ms. Dwyer - Your distances, again?  
1503  
1504 Female - [Off microphone.] Would it help you [inaudible]  
1505 computer—  
1506  
1507 Ms. Dwyer - Do you have a plat?  
1508  
1509 Mr. Blankinship - Mr. Gidley, could you show us the plat with the  
1510 proposed location? The package. Plat of subject lot? Yes, that's it there.  
1511  
1512 Ms. Dwyer - So this is not to scale and doesn't show distances  
1513 from property lines, as far as I can tell.  
1514  
1515 Mr. Wray - Correct. But if you have any math ability at all, you  
1516 can see that it's 351 feet across the property at the bottom, and at the top, it's  
1517 242 feet. So, if you're putting a house sort of in the center, there, I mean, you  
1518 have a hundred feet on each side.  
1519  
1520 Ms. Dwyer - The house will be a hundred feet from both the east  
1521 and western property lines.  
1522  
1523 Mr. Wray - Yes. Or somewhere that close. I mean, I didn't go out  
1524 and measure.  
1525  
1526 Ms. Dwyer - All right. Any more—  
1527  
1528 Mr. Wray - Setbacks are 20 feet on each side, total of 50. And  
1529 front and back is 50 each way, so we have enough room for three or four houses  
1530 in there, and she only wants one.  
1531  
1532 Ms. Dwyer - Any other questions of this witness by Board  
1533 members? Thank you, sir.  
1534  
1535 Mr. Wray - Thank you.  
1536  
1537 Ms. Dwyer - Anyone else like to speak? Ma'am, come forward,  
1538 please.  
1539  
1540 Ms. Wright - Hi, my name is Sylvia Wright. I'm the I guess you  
1541 would say investor builder of what is called the Wright Family Subdivision to the  
1542 south, which, after this sale, will most likely be the only remaining original  
1543 property of the Bolton Estate. At one time, it was about a mile square. Back in  
1544 the '30's, my grandmother, Louisa, deeded this property to my dad. With that,

1545 she established the easement, the 15-foot right-of way that you see there  
1546 coming through the property. As all this property has come up for sale, and has  
1547 turned into the urban suburban that surround us, what we had tried to do is limit  
1548 the access as much as possible. My preference is this 15-foot right-of-way. I  
1549 presently have part of the property under a scenic easement. It's one of the few  
1550 remaining green corridors left there in the County with the creek and lake.  
1551 Unfortunately, because it is somewhat of an open space, the general public  
1552 seems to think it's a park. And I almost two or three times a week daily, you  
1553 know, deal with somebody who's in there trespassing or that kind of thing. So, I  
1554 really appreciate the idea of very limited access. When you open the door one  
1555 way, which may make it convenient, the door goes both ways. Like I said, I  
1556 would prefer the limit, and that's why I'm here to support John and Cathy.

1557  
1558 Ms. Dwyer - Thank you. Any questions of Ms. Wright?

1559  
1560 Mr. Blankinship - Where do you live, Mrs. Wright?

1561  
1562 Ms. Wright - My actual house is located on the southwest side up  
1563 on a hill. My dad deeded that property to me back in the '70's. In the '80's, they  
1564 turned over the entire parcel to me. Since then, I have deeded off from an acre  
1565 or two, maybe 2-1/2 acres to four of my five children. Everybody there within the  
1566 complex is an immediate family person. We all use that 15-foot right-of-way, and  
1567 each time we built a new home, yes, we did come back and ask for a variance to  
1568 use the 15-foot right-of-way to support that family subdivision.

1569  
1570 Ms. Dwyer - What property is subject to the scenic easement?

1571  
1572 Ms. Wright - It's basically the lake and about maybe three to five  
1573 acres that we still agriculture farm. Some of the requirements are that it can  
1574 either be water, forest, or agriculture. I think the County did sort of a combination  
1575 type thing so that that easement could go into place.

1576  
1577 Ms. Dwyer - Any other questions for Ms. Wright? Would the  
1578 applicant like to come forward to make another statement about anything?

1579  
1580 Mr. Snipes - I think you probably pretty well have covered the  
1581 bases here. We're trying to keep a family subdivision. The neighbors that are in  
1582 the family subdivision and the adjacent family subdivision would like to limit the  
1583 access strictly to Hoehns Road, and not open that up as a subdivision. Actually,  
1584 a couple years ago, I tried to open it up as a subdivision, and felt like it was a  
1585 futile argument. Trying to remove Hoehns Road, it's not feasible to do another  
1586 subdivision in there.

1587  
1588 Ms. Dwyer - Any other questions? That closes the case; thank  
1589 you.

1590

1591 Mr. Witte - I'm going to make a motion that we also approve this  
1592 one. The property in question is a large parcel. It's isolated. It's not going to  
1593 impact any of the existing areas. I think it's only going to improve the area by  
1594 removing a nuisance building and putting a new home in. I see no detrimental  
1595 impact on the area. I think this should be approved. I understand the situation  
1596 with the road frontage, but this is a family subdivision, and they're not really  
1597 building a new home, they're actually replacing an existing one. Under those  
1598 conditions, I make a motion we approve it.

1599  
1600 Mr. Wright - I'll second that, and add that it's my opinion that there  
1601 is no beneficial use of the property other than granting this variance.

1602  
1603 Ms. Dwyer - That satisfies Cochran. We have a motion by Mr.  
1604 Witte, seconded by Mr. Wright. Any discussion?

1605  
1606 Mr. Witte - I also want to mention that the only other person to  
1607 speak was a neighbor, and she supported the new home situation.

1608  
1609 Ms. Dwyer - I think that as we approve these substandard lots, it's  
1610 important, I think, that we pay attention to the orientation and location of them so  
1611 that we avoid the problem that we had in the first case today, which was a very  
1612 large lot—I think more than an acre—and yet the house was located 17 feet from  
1613 the property line, and faces the rear of a subdivision. I think that it would be  
1614 appropriate to put something in here to specify the commitment on the part of the  
1615 applicant that the house will be located centrally in the lot since we don't have  
1616 measurements or a drawing that is to scale. I think the applicant did indicate that  
1617 the house would be oriented to the north, which I think is fairly easy to specify.  
1618 And they also indicated that it would be 100 feet from both the east and west  
1619 property lines. What does the Board think about including some specificity about  
1620 the location of the house so that we avoid the problem we had in the first case?

1621  
1622 Mr. Witte - I'm not opposed to that. My only concern would be  
1623 that since this is a passive solar home, that they can move it enough in either  
1624 direction to accommodate the solar effect, which is a benefit to everyone.

1625  
1626 Ms. Dwyer - You could say oriented generally, that the front of the  
1627 house would be oriented generally to the north. That gives them some wiggle  
1628 room.

1629  
1630 Mr. Witte - I think that's appropriate.

1631  
1632 Ms. Dwyer - The applicant seems quite certain in doing his math  
1633 that a hundred feet from the east and west property lines [inaudible; blank]

1634  
1635 Mr. Witte - I'm agreeable.

1636

1637 Ms. Dwyer - All right. So we'll specify, then, I guess in Condition 2,  
1638 that the front of the house will be generally oriented to the north, and that the  
1639 house will be 100 feet from both east and west property lines. All right. We have  
1640 a motion with amended conditions. All in favor say aye. All opposed say no. The  
1641 ayes have it; the motion passes.

1642  
1643 After an advertised public hearing and on a motion by Mr. Witte, seconded by  
1644 Mr. Wright, the Board **approved** application **A-011-09, John W. Wray, Jr., and**  
1645 **Catherine S. Rolfe's** request for a variance from Section 24- 9 to build a one-  
1646 family dwelling at 9480 Hoehns Road (Parcel 765-759-1344), zoned A-1,  
1647 Agricultural District and R-3AC, One-family Residence District (Conditional)  
1648 (Brookland). The Board approved the variance subject to the following  
1649 conditions:

1650  
1651 1. This variance applies only to the public street frontage requirement for one  
1652 dwelling only. All other applicable regulations of the County Code shall remain in  
1653 force.

1654  
1655 2. [AMENDED] Only the improvements shown on the plot plan filed with the  
1656 application may be constructed pursuant to this approval. The house shall be  
1657 located at least 100 feet from the east and west property lines, and the front of  
1658 the house shall be oriented generally to the north. Any additional improvements  
1659 shall comply with the applicable regulations of the County Code. Any substantial  
1660 changes or additions to the design or location of the improvements may require a  
1661 new variance.

1662  
1663 3. At the time of building permit application, the applicant shall submit the  
1664 necessary information to the Department of Public Works to ensure compliance  
1665 with the requirements of the Chesapeake Bay Preservation Act and the code  
1666 requirements for water quality standards.

1667  
1668 4. The applicant shall present proof with the building permit application that a  
1669 legal access to the property has been obtained.

1670  
1671 5. The owners of the property, and their heirs or assigns, shall accept  
1672 responsibility for maintaining access to the property until such a time as the  
1673 access is improved to County standards and accepted into the County road  
1674 system for maintenance.

1675  
1676  
1677 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
1678 Negative: 0  
1679 Absent: 0

1680  
1681

1682 **UP-016-09** **RIVER OF LIFE COMMUNITY CHURCH** requests a  
1683 temporary conditional use permit pursuant to Section 24-116(c)1 to hold a tent  
1684 revival at 7700 Woodman Road (Woodland Hills) (Parcel 778-752-4053), zoned  
1685 R-4, One-family Residence District (Brookland).  
1686

1687 Ms. Dwyer - Is there anyone here to speak to this case?  
1688

1689 Rev. Stephens - Good morning. I'm Wayne Stephens—S-t-e-p-h-e-n-  
1690 s. I'm pastor at River of Life.  
1691

1692 Ms. Dwyer - Would you please raise your hand?  
1693

1694 Mr. Blankinship - Do you swear or affirm that the evidence you're about  
1695 to give is the truth and nothing but the truth so help you God?  
1696

1697 Rev. Stephens - Yes sir, I do.  
1698

1699 Ms. Dwyer - What was your name again? Reverend Stephens?  
1700

1701 Rev. Stephens - Wayne Stephens. Good morning; thank you for your  
1702 time. It should be a simple process for us. We are doing a tent revival there on  
1703 Woodman Road where our church is located. This property that the tent would  
1704 be located on is the part of the church property that's on the lower side of the  
1705 church building. We're looking at this going on from Sunday through Sunday, so  
1706 it's one week only. The church facility itself will be open for bathroom facilities  
1707 and also childcare. We have the tent orientation scheduled so that the sound  
1708 that's generated will actually go up across the church property toward Moody  
1709 Middle School, which is there toward the north. I anticipate this being an event  
1710 that will be compatible with the area where we're located, and be something that  
1711 the community will benefit by.  
1712

1713 Mr. Witte - Do you have sufficient parking?  
1714

1715 Rev. Stephens - Yes sir, we do. The staff has the pictures there. We  
1716 do have sufficient parking on our lots. We have also spoken with Art Raymond at  
1717 Moody Middle School. The church and Moody Middle School kind of have a  
1718 cooperative agreement going on to facilitate on a daily basis the school, parents  
1719 and so forth coming and going. So that works out very conveniently for us, as  
1720 well as for the school.  
1721

1722 Ms. Harris - Is this your first tent revival?  
1723

1724 Rev. Stephens - Yes ma'am, it is. Any suggestions?  
1725

1726 Ms. Harris - No, but do you have future plans to continue it?  
1727

1728 Rev. Stephens - We have no future plans at this point. This is a first-  
1729 time event for us. We're actually partnering with several other churches in the  
1730 area. We'll see how it goes. This is a new foray for us. We've been a church  
1731 that's been reaching out into our community and helping the community in  
1732 various and sundry ways, and felt it was time to maybe get outside the walls and  
1733 become a little bit less institutional in our approach, at least for a short period of  
1734 time, and be able to positively impact the community. So, we're looking forward  
1735 to it.

1736  
1737 Ms. Harris - Do you think your music might offend anyone in the  
1738 neighborhood?

1739  
1740 Rev. Stephens - I really don't think so. Once again, the way the lot is  
1741 oriented and the way the sound will be projected, I don't see that as a problem.  
1742 We have our sound techs, and they know the decibel requirements at the  
1743 property lines. We've gone around and talked already to the neighbors around  
1744 us this and other times, so we have a good relationship with them. They have  
1745 my cell phone number, so if they have a problem they can call me, and we'll do  
1746 our best to make it right. But I really do not anticipate any big problems as far as  
1747 noise. We hope to have a little bit of noise, but we're not looking to be raucous.

1748  
1749 Ms. Dwyer - What kinds of noise will there be? Music will be  
1750 noise, but—

1751  
1752 Rev. Stephens - Yes, yes. We have speakers that will be there in the 8  
1753 to 9:00 window in the evenings. Then prior to that, we have music, what we  
1754 would call a praise band or worship team—guitars, [unintelligible], some drums.  
1755 That would be the extent of the noise.

1756  
1757 Ms. Dwyer - That will be amplified?

1758  
1759 Rev. Stephens - The music will be amplified, yes.

1760  
1761 Ms. Dwyer - That's my only concern. I know that you plan maybe  
1762 to orient the speakers toward the school, but you are surrounded on the other  
1763 three sides by houses.

1764  
1765 Rev. Stephens - Right. I am aware of that, and that's why we're  
1766 keeping that very much in mind as far as our time periods are concerned. We do  
1767 not anticipate a problem. Once again, open to any suggestions that you have. I  
1768 think the staff has already made some conditions there, and we can work within  
1769 those parameters. I do not see that as a problem.

1770  
1771 Ms. Dwyer - So you have read the conditions and agree to them?

1772  
1773 Rev. Stephens - Yes ma'am.

1774  
1775 Ms. Dwyer - It says 65 decibels at the property lines, which is, as  
1776 we discussed earlier in the meeting, a conversational level at the property line.  
1777  
1778 Rev. Stephens - I understand that.  
1779  
1780 Ms. Dwyer - That's quite low. Will you be projecting, amplifying  
1781 any music or speeches after 9:00 in the evening?  
1782  
1783 Rev. Stephens - No ma'am.  
1784  
1785 Ms. Dwyer - I would like that be perhaps one of the conditions,  
1786 that after 9 there be no amplified sound.  
1787  
1788 Rev. Stephens - If we haven't done what we need to do by 9, we  
1789 probably need to stop anyhow. This meeting, obviously, is going on during  
1790 school time. It's been our practice as a church, and my practice as a pastor, to  
1791 be aware of people's time and their obligations. The idea is for people to come  
1792 and say, "Hey, we want to come back," not "How soon can we get out of here,"  
1793 and never come back. So, we keep that very much in mind.  
1794  
1795 Ms. Dwyer - How many people do you expect to come?  
1796  
1797 Rev. Stephens - We're setting up chairs for about 200 people. I really  
1798 don't know what to expect from that. This is a first-time event. We have not been  
1799 extensively media blitzing or anything of this nature. Our promotions have gone  
1800 on through our Angel Food Ministries that we do once a month, so it's been  
1801 hand-to-hand publicity or advertising. We've done some community service  
1802 announcements. We haven't really tried to make this a big glitzy event, as it  
1803 were.  
1804  
1805 Ms. Dwyer - How many cars can park in your lot?  
1806  
1807 Rev. Stephens - We have spaces on our lot for about 60 cars, and  
1808 then we have the adjoining lot with Moody Middle School, and they have spaces  
1809 for about 75 cars. We should be in good shape as far as that is concerned.  
1810  
1811 Ms. Dwyer - Any other questions by Board members?  
1812  
1813 Mr. Witte - Isn't there another church near?  
1814  
1815 Rev. Stephens - There are several churches near. There's a church  
1816 immediately across the street from Moody Middle School. So if you're headed  
1817 north on Woodman Road, River of Life is on the left, then comes Moody Middle  
1818 School on the left, and then across the street from Moody Middle School on the



1819 right you have the Lutheran church there. Further back toward Hermitage,  
1820 there's Lakeside Baptist.

1821  
1822 Mr. Witte - Have you spoken to any of those people about  
1823 overflow parking just in case, especially the one across from Moody, which is so  
1824 close?

1825  
1826 Rev. Stephens - I have not, but I'll be glad to do that. I went over a  
1827 couple weeks ago and spoke with the pastor. That would be a possibility. If it's  
1828 that big, it's going to scare me as much as it scares you.

1829  
1830 Ms. Dwyer - Any other questions? Thank you, sir.

1831  
1832 Rev. Stephens - All right. Thank you so much. I appreciate your time.

1833  
1834 Mr. Blankinship - Madam Chairman, I'd like to just read a note into the  
1835 record, if you don't mind. This is an e-mail to me from Miguel Madrigal on our  
1836 staff, sent yesterday at noon. This is from Arleen Dolan. She lives adjacent to  
1837 the church at 7610 Woodman Road, abutting the activity field.

1838  
1839 She was calling concerning the tent revival event to be held at the  
1840 church. She noted that the church is already installing the tents  
1841 prior to the hearing, but her concern was primarily with noise  
1842 generated from the event at late hours. She said that she is not  
1843 against the church having their event, but she wanted some  
1844 assurance that noise will not be an issue since she has school-age  
1845 children. Her children's bedroom faces the field, and she wouldn't  
1846 want them to be affected by amplified noise or noise in general as  
1847 a result of the tent revival, especially during school.

1848  
1849 Ms. Dwyer - Okay.

1850  
1851 Mr. Witte - I have another question for Reverend Stephens.

1852  
1853 Ms. Dwyer - I will reopen the case. Reverend Stephens, would  
1854 you come down?

1855  
1856 Rev. Stephens - Yes ma'am.

1857  
1858 Mr. Witte - The tent is already being erected.

1859  
1860 Rev. Stephens - That is correct.

1861  
1862 Mr. Witte - Have you received a building permit to erect the tent?  
1863

1864 Rev. Stephens - I have. A building permit is in the office. I've spoken  
1865 with Karen, and I don't have her name in front of me. But, quite honestly, I did  
1866 not realize I needed a building permit to put up a tent. So, we do not have that in  
1867 hand yet.

1868

1869 Mr. Witte - Thank you.

1870

1871 Ms. Harris - To relieve the anxiety of neighbors, I think we need to  
1872 place in the report that the program will be until 9 p.m. We know there has to be  
1873 some wrap-up and disassembling of equipment and all. Could we place in the  
1874 report that there will be no music after 9, or that the program will end at 9?

1875

1876 Ms. Dwyer - I think he agreed to not amplify anything after 9, but  
1877 you're suggesting that the program end at 9.

1878

1879 Rev. Stephens - We can do our best. I don't anticipate a problem  
1880 there. I'm sure we can definitely kill the amplification by 9. And, once again, I'm  
1881 aware this is during the school week, and we want to have an environment  
1882 where parents are happy to have their kids, and feel empowered and  
1883 encouraged with them being there. We can work within the spirit of that request,  
1884 I'm sure.

1885

1886 Ms. Dwyer - What Ms. Harris is suggesting is that we actually  
1887 change the condition to say that it ends at 9:00 each day. And you're in  
1888 agreement with that.

1889

1890 Rev. Stephens - Correct. I would understand that to mean that the  
1891 music will be ending as far as any singers, any musicians, any speakers. There  
1892 may be some counseling work going on, conversation within the tent, and that  
1893 sort of thing following that time. But all the, for lack of a better word—The  
1894 platform activity will be ended by then.

1895

1896 Ms. Dwyer - By 9?

1897

1898 Rev. Stephens - Yes. Is that satisfactory?

1899

1900 Ms. Dwyer - Amen at 9.

1901

1902 Rev. Stephens - Amen at 9.

1903

1904 Ms. Dwyer - Thank you.

1905

1906 Rev. Stephens - Thank you.

1907

1908 Ms. Dwyer - Any other questions? All right. Do you feel like a  
1909 break, or do you want to press on? All right.

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**DECISION**

Ms. Harris - I move that we approve this use permit. I think it will not adversely affect the health, safety, or welfare of the community, however, with the amendment that the time of the amplified program would end at 9 p.m.

Mr. Nunnally - Second.

Ms. Dwyer - Motion by Ms. Harris, seconded by Mr. Nunnally. Any discussion on the motion? Amendment to Condition 1 that it ends at 9 p.m. Okay. 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. Nunnally, the Board **approved** application **UP-016-09, River of Life Community Church's** request for a temporary conditional use permit pursuant to Section 24-116(c)1 to hold a tent revival at 7700 Woodman Road (Woodland Hills) (Parcel 778-752-4053), zoned R-4, One-family Residence District (Brookland). The Board approved the temporary use permit subject to the following conditions:


- 1.[AMENDED] This approval is for one 50' X 100' tent as part of the Fall Tent Revival event to be held on the following days and hours: Sunday, September 27, 2009 from 9:00 am to 1:00 pm and 6:00 pm to 10:00 pm; Monday, September 28, 2009 through Saturday, October 3, 2009 from 6:00 pm to 10:00 pm; ending on Sunday, October 4, 2009 from 9:00 am to 1:00 pm and 5:00 pm to 10:00 pm. The program shall end no later than 9:00 pm, and there shall be no amplified sound after that time.
2. The tent shall be set back 40 feet from the right-of-way of Wood Road and shall be placed as far away as practicable from the western and southern property lines.
3. The tent shall be removed no later than October 10, 2009, at which time this permit shall expire.
4. The sound emanating from the revival tent shall not exceed 65 decibels at the property lines of all adjoining residential property.
5. Any exterior lighting shall be shielded to direct light away from adjacent property.
6. On-site parking areas shall be clearly identified and pedestrian paths shall be clearly established. The applicant shall make every effort to discourage event attendants from parking in the adjacent residential neighborhoods.


1956  
1957 7. The applicant shall provide covered trash receptacles throughout the site and  
1958 shall maintain the property and adjacent streets free of debris and litter during  
1959 the scheduled event.  
1960  
1961 8. Any necessary building and electrical permits shall be obtained from the  
1962 Henrico County Office of Building Inspections.  
1963  
1964 9. On-site security and traffic control assistance shall be coordinated with the  
1965 Henrico County Division of Police.  
1966  
1967  
1968 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
1969 Negative: 0  
1970 Absent: 0  
1971  
1972  
1973 Ms. Dwyer - Approval of the minutes for August 27, 2009. Any  
1974 amendments to the minutes?  
1975  
1976 Mr. Wright - I move they be approved as submitted.  
1977  
1978 Ms. Dwyer - Motion by Mr. Wright. Second?  
1979  
1980 Ms. Harris - Second.  
1981  
1982 Ms. Dwyer - Second by Ms. Harris. All in favor say aye. All  
1983 opposed say no. The ayes have it; the motion passes.  
1984  
1985 On a motion by Mr. Wright seconded by Ms. Harris, the Board **approved as**  
1986 **submitted the Minutes of the August 27, 2009** Henrico County Board of  
1987 Zoning Appeals meeting.  
1988  
1989 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
1990 Negative: 0  
1991 Absent: 0  
1992  
1993 Ms. Dwyer - Any new business, Mr. Blankinship?  
1994  
1995 Mr. Blankinship - No ma'am. Except to point out that the amendment to  
1996 the Zoning Ordinance concerning public street frontage was recommended by  
1997 the Planning Commission.  
1998  
1999 Ms. Dwyer - Okay. Could we have a copy of that?  
2000  
2001 Mr. Blankinship - I'll send you a copy of that.

2002  
 2003 Ms. Dwyer - I think that would be good. So, it's on its way, then, to  
 2004 the Board.  
 2005  
 2006 Mr. Blankinship - Yes.  
 2007  
 2008 Ms. Dwyer - All right. Motion for adjournment.  
 2009  
 2010 Mr. Wright - So moved.  
 2011  
 2012 Mr. Witte - Second.  
 2013  
 2014 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Witte. All in  
 2015 favor say aye. All opposed say no. The ayes have it; the motion passes.  
 2016  
 2017  
 2018 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
 2019 Negative: 0  
 2020 Absent: 0

2021  
 2022  
 2023 We are adjourned.

2024  
 2025 There being no further business, the Board adjourned until the October 22, 2009  
 2026 meeting at 9 a.m.  
 2027

2028  
 2029  
 2030   
 2031 Elizabeth G. Dwyer  
 2032 Chairman  
 2033

2034  
 2035  
 2036   
 2037 Benjamin Blankinship, AICP  
 2038 Secretary  
 2039  
 2040